Hewitt Research Advisory
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Highlights

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The Hewitt Research Advisory is a regular Hewitt newsletter designed to provide a detailed overview of specific legislative and regulatory developments in Canada relating to human resources.

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Provincial Statements Regarding "Private Health Care"

Recently, Alberta and Québec have delivered policy statements which, if passed into law, will profoundly affect the way health care is delivered and funded in Canada. Both provinces will be seeking input from the public over the coming weeks before formally tabling new legislation in their respective legislatures. A goal of the proposals is to provide faster access to quality health care for patients. Although not the only driver of change, the increased focus on wait times in recent years is a key issue which both provinces aim to address.

Hewitt Comment: *In recent years, health care reform has been at the forefront of policy debates in Canada. In 2002, the Commission on the Future of Health Care in Canada's chair, Roy Romanow delivered its report on the sustainability of our health care system. In 2003, the First Ministers attended a historic health care conference in Ottawa. The Federal election in 2004 focused on health care issues and that same year, another First Ministers conference was held where, among other things, a "National Wait Times Strategy" was established. This was followed by last summer's Supreme Court of Canada decision in the Chaoulli case which dealt with wait times in the province of Québec.*

Although Alberta and Québec are the two provinces who have made policy statements to date, it is anticipated that others will follow. Therefore, it is important for employers to understand the nature of change being proposed and the impact it may have on their employees and their health plans.

Québec's Position

Background

On February 16, 2006, the province of Québec released a consultation paper regarding access to health care in response to last summer's Supreme Court of Canada (SCC) ruling in the *Chaoulli* case.

In that case, the SCC ruled that “lack of timely health care” in Québec violates an individual’s right to “life and security” as guaranteed by Québec’s *Charter of Human Rights and Freedoms*. Therefore, provincial legislation prohibiting Québeckers from obtaining private health care insurance for services already available under Québec’s public health care plan is not justifiable under the Québec Charter.

In other words, the SCC told the Québec Government that if wait times are unreasonable, patients are allowed to buy private insurance to cover medical treatments already provided by Medicare. The ruling implies that if wait times are reduced to fall within a medically acceptable time-frame such that they do not violate a patient’s constitutional rights, the government’s prohibition against private insurance would be acceptable.

The Proposal

In the proposal tabled in February, Québec envisions a minor role for private health clinics. Within the first six months of a patient’s wait for specified health care services (knee replacement, hip replacement, cataract surgery), the public system would pay for care through public clinics only. Between six and nine months of wait time, the public system will pay for a patient’s care provided by “affiliated” private clinics in Québec. Affiliated private clinics are privately run clinics funded by the public system. After nine months of wait time, the public system would pay for the patient to have treatment provided at any clinic, regardless of location (e.g. another province or in the United States).

In addition, private clinics (different from “affiliated” clinics) would be able to offer these same three services to individuals through private insurance. However, significant limitations have been placed upon clinics wishing to offer services of this nature.

Hewitt Comment: *The above-mentioned is a clear recognition by Québec of the need to address the Chaoulli decision – yet it has been done in a very literal and limited way. While Québec has envisioned a broader role for the private* ***delivery*** *of services through affiliated private clinics, it allows a very minor role for the private* ***funding*** *of health services. This distinction of private delivery versus private funding is one that needs to be made when referring to “private” health care and its implications. Private delivery has little impact on employers, whereas private funding could have a significant impact.*

Of note are the following elements within Québec’s proposed changes to its healthcare system:

- Private clinics offering services to private payors would be different from the “affiliated” clinics which are reimbursed by the public system;
- Physicians offering care to private payors *cannot* also receive payment under the public system;
- Restrictions would be placed on the number of doctors who could opt-out of the public system, and
- Only the three services identified (knee and hip replacements, cataract surgery) will be eligible for private payment. This list could potentially be expanded in the future.

Hewitt Comment: *These elements combine to essentially marginalize the use of privately funded care and retain a very strong primary role for the public health care system, except in extreme circumstances.*

Alberta's Health Policy Framework

On February 28, 2006, the province of Alberta tabled a *Health Policy Framework* aimed at ensuring its health care system continues to deliver quality and timely patient care that is sustainable and affordable. The Alberta document does not "propose a rigid adherence to the status quo, nor will it introduce an American-style health care system." Instead, the *Health Policy Framework* states five values of the "Third Way" health care system:

- Patient-focused health care;
- Delivery of quality health services;
- Timely and fair access to services;
- Accountability for sound evidence-based investments, fiscal management, and responsive service; and
- Increased choice and control over one's own health and wellness.

Alberta's clear priority is patient access to prompt and effective treatment. Based on this framework, Alberta's proposal envisions a much broader role for both private delivery and private funding of health care than Québec's. The Alberta document clearly states that "If the public health system does not meet their [Albertans] needs or expectations, they feel that they should have the ability to choose other options - including the option of paying privately for quicker access."

Specifically, as there are no references to wait times, it is unclear whether there would be any restrictions on private clinics in Alberta being reimbursed by the public system. Alberta's *Health Policy Framework* does not specifically limit the services that can be provided through private facilities. And, unlike Québec, doctors in Alberta would be able to receive payment from both the public system and privately paid care in certain circumstances.

Hewitt Comment: *Alberta's proposed framework suggests that the private delivery of publicly funded health services will continue to be a model for expanding system capacity and patient choice. Further, the ability for doctors to practice in both systems could render the private care system in Alberta to be more feasible than in Québec, and encourages continued contribution to the public system where many health care professionals are already in short supply.*

The Canada Health Act

Significance

Some of the reaction to both the Québec and Alberta statements has included questioning whether the proposed changes in each province are in conflict with the *Canada Health Act* (CHA). The CHA states, in very broad principles, how each province must administer its provincial health care system in order to receive federal government funding in the form of federal-provincial transfer payments.

Since the principles are so broadly defined it becomes unclear how the involvement of private health care might contravene the legislation and impact provincial transfer payments.

The Legislation
Under the CHA, each provincial health care system must meet the following five criteria:

- Comprehensiveness – Must cover all “medically necessary” services;
- Universality – All residents must be covered;
- Portability – Individuals must receive coverage when traveling to other provinces;
- Accessibility – Insured persons must have reasonable and uniform access to insured health services, free of financial or other barriers. No one may be discriminated against on the basis of such factors as income, age, and health status; and
- Publicly administered – Non-profit, single payor administration.

It is not yet known whether the accessibility and public administration criteria are met by the new proposals from Québec and Alberta. Supporters of the new proposals argue that so long as the ***public*** system continues to meet these criteria, the presence of a separate private system does not contravene the legislation. Those arguing against the new proposals suggest that the ability to buy additional health services or faster access to health services goes directly against this criteria regardless of whether those services are provided inside or outside the public system.

Hewitt Comment: *The Federal government has not yet revealed its position on whether the proposals violate the CHA. The potential legal and political implications of these changes may well affect the public consultation process and the legislation each province proposes. In the case of Alberta, the government has stated several times since tabling the Third Way proposal that it will move forward regardless of whether legislation contravenes the CHA.*

Other Provinces
In addition to Québec and Alberta, several other provinces have made informal statements about their position on the role of private health care in their province. For example, British Columbia has stated that it is looking at European systems that combine public and private health care for possible application in that province. In contrast, Ontario has made a commitment to the public system, including non-profit delivery of care, apparently limiting the potential use of private clinics either inside or outside the public system.

Hewitt Comment: Next Steps
Watch and Wait
Both Alberta and Québec will hold public consultations over the coming weeks to seek feedback on the approach they have recommended. It is anticipated that by late April or early May, both provinces will have tabled legislation based on these public consultations, at which point the implications for individuals and employers in those provinces will be better understood.

Be Prepared to Review Health Insurance Contracts on a Provincial Basis
Despite the overriding federal legislation in the CHA, health care remains a provincially delivered service in Canada. As evidenced by the Québec and Alberta proposals, changes are coming to the Canadian health care system, and those changes are likely to be driven and implemented at a provincial level. This will force employers to address the provision of supplementary health care programs to employees on a provincial basis. Issues such as plan design and associated costs, employee communications, and administration will likely vary by province.

Role of Private Insurance
One clear element of both the Québec and Alberta proposals is to allow "private insurance" for some services offered through private facilities. Given that legislation has not yet been tabled in either province, it is too early to state what role the insurance industry will have going forward, or what insurance products may be developed to fit this niche. We anticipate that once legislation is passed in either Québec or Alberta later this spring, the insurance industry will need to provide products to supply the needs of those companies who may wish to cover private health services for their employees, retirees or executives.

Consider Your Health Strategy
If private health services become available in Québec, Alberta or other provinces, employees may approach their employers requesting coverage of these services under their medical plan. Employers should begin the process of assessing whether, or under what circumstances they would cover these services. Some issues to consider:

- *If the services offered are considered "elective" or "luxury" items, should they be covered under the health plan? Should the services be covered for executives only? Should the services be covered for employees on disability who could be returned to work if treatment was received more quickly?*

- *Are the services under consideration eligible expenses under a Health Care Spending Account?*

- *What commitments were made to employees or retirees through past communications, union contracts or insurance contracts?*

Conclusion
Provinces are framing policies for health care delivery in a variety of ways, and the expected outcome of these initiatives will likely be significantly different. The health care climate in Canada seems to be shifting from a firmly entrenched belief in universal and uniform access to a climate of compromise and an increased recognition of the skyrocketing cost of maintaining the current system. This shift in stance alone, even without the proposals on the table, guarantee that traditional "Canadian style" health care may be ready for change.

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