Policy Options Should Charter Challenges to Medicare Succeed

Colleen M. Flood
Charter Challenges to Medicare

- Chaoulli v. Quebec, 2005

- Cambie Surgeries v. BC Medical Services Commission
Each province has a mix of legal limits on 2-tier care...

- Laws banning extra-billing
- Laws banning user charges
- Laws banning private insurance
- Laws requiring doctors to opt-out of public medicare if they wish to bill privately
- Laws restricting the prices that physicians can bill if they opt out
A key evidence gap...

• Courts will hear international evidence for s. 7 analysis

• But nuanced and detailed evidence required to translate foreign experience
Subsidize Demand for Private Finance
Propping up private health insurance is like putting lipstick on a pig

John Menadue

Australia has 34 insurers who offer 40,000 variations of policies. It is an awful mess - and we've been down this path before.

Experts agree private health insurance is broken. But how can it be fixed?

Private health insurance attacked for lack of value and transparency by experts

Consumers Health Forum publishes views of 20 experts in latest edition of Health Voices as part of series
Fake News Re Europe & 2-tier care
Restrict Demand for Private Finance

Taxes on private finance (the 2-for-1 approach to private MRIs in Saskatchewan)

U.S. Affordable Care Act’s tax on ‘Cadillac’ plans

Japanese law penalizes heavily those who buy non-insured drugs and technologies.
Restricting the Supply of Privately Finance Care

• Ways to limit extra-billing

• National Fee Schedules (e.g., Japan, Netherlands)

• US restrictions on extra-billing for Medicare providers
Restrictions on Private Practice by *Category* of Physician
Contractual Measures to Limit Two-Tier Care

- NHS physicians are contractually bound to a full-time work schedule

- Similar approach is taken in Norway and Sweden

- Japan uses contractual leverage to limit proliferation of private hospitals
Options for Canada?

Options if courts overturn ban on private health insurance...

• Wait time guarantees

• Liberalize PHI only for services with long wait times?

• Liberalize PHI only for categories of care where there is ample supply in public system?

• Embrace PHI (as in Australia, Ireland)?
Options for Canada?

Options if courts overturn ban on dual practice…

• Permit dual practice without reservation?

• Limit dual practice by category of physician?

• Impose contractual restrictions on dual practitioners?
FEDERALISM

HISTORY OF MEDICARE

FEE-FOR-SERVICE PAYMENT

EXISTING HIGH LEVELS OF PRIVATE HEALTH INSURANCE

POWER OF PHYSICIANS

SERVICING REMOTE/RURAL AREAS

POTENTIAL LITIGATION OVER NEW ARRANGEMENTS

PROXIMITY TO THE UNITED STATES

HISTORY OF MEDICARE