

# Policy Options Should Charter Challenges to Medicare Succeed



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# 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...

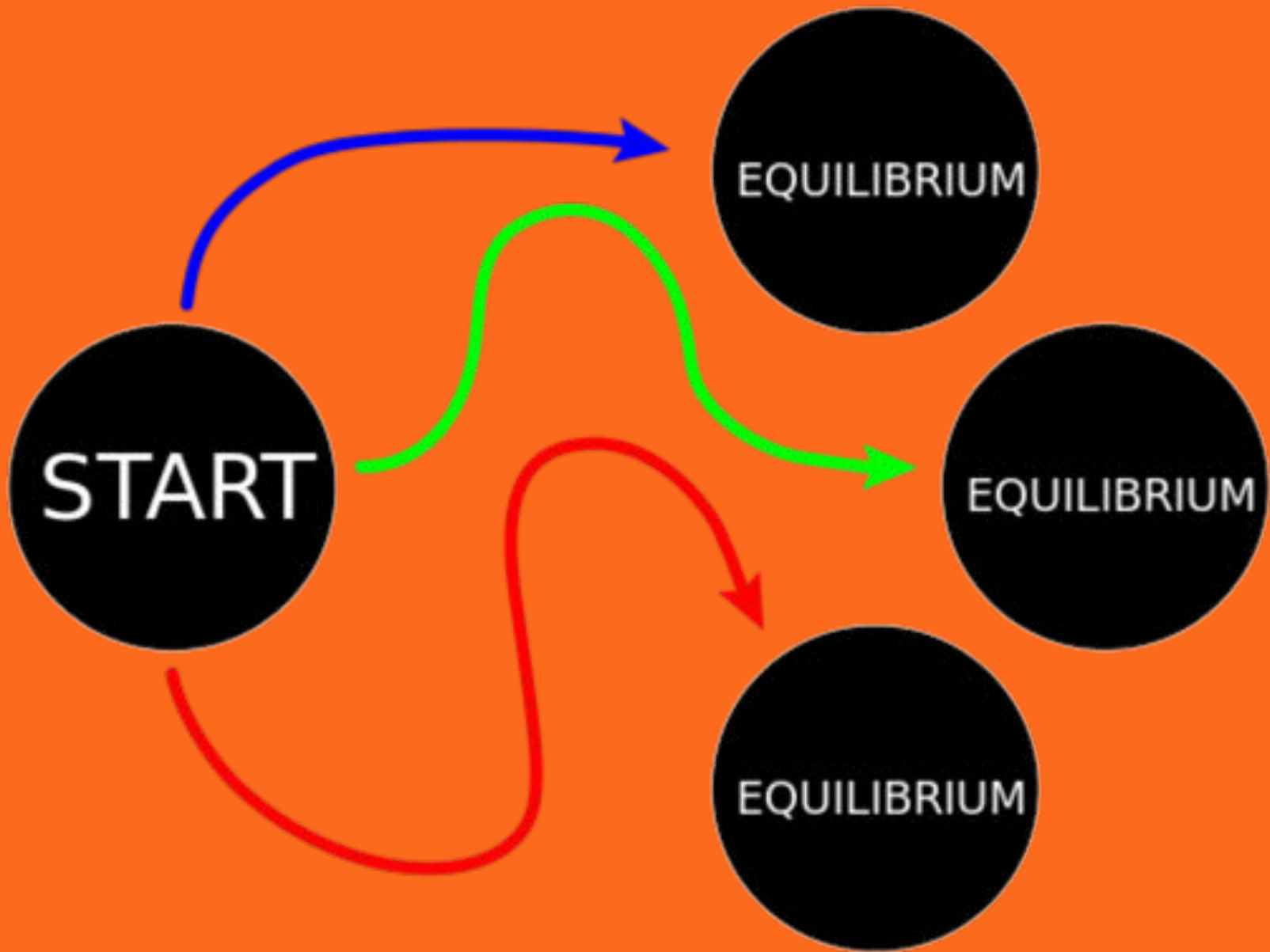
- Laws banning **extra-billing**
- Laws banning **user charges**
- Laws banning **private insurance**
- Laws requiring doctors to **opt-out** of public medicare if they wish to bill privately
- Laws **restricting the prices** that physicians can bill if they opt out



# 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 attack private health insurance for lack of value and transparency

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?







EXISTING HIGH LEVELS OF PRIVATE HEALTH INSURANCE

FEDERALISM

POTENTIAL LITIGATION OVER NEW ARRANGEMENTS

FEE-FOR-SERVICE PAYMENT

SERVICING REMOTE/RURAL AREAS

POWER OF PHYSICIANS

HISTORY OF MEDICARE

PROXIMITY TO THE UNITED STATES



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