Submission to the Minister's Advisory Committee on Health (MACH) Final Report

Alberta Health Act

July 2010

The Alberta Federation of Labour, representing over 140,000 Alberta workers and their families, is pleased to provide this response to the Minister's Advisory Committee on Health Final Report.

1. What are your organization's views on the appropriateness of the overarching principles proposed for the Alberta Health Act (pp. 10-15 of the MACH report)? Are there additional principles you would propose?

There is nothing inherently wrong with any of the overarching principles. However, Alberta's current health-care framework prohibits private funding and private delivery of health-care services. The major question is whether these key elements will be preserved when the legislation is amalgamated.

An additional principle should therefore be a commitment to a public health-care system that is not undermined by allowing a parallel private system to flourish in Alberta. Patient-centred care, equitable access, and quality and safety are meaningless in the public system if resources (doctors, funds, and health-care professionals) are being siphoned off to a parallel private system.

If changes are to be made to the Alberta's health-care legislation, government should state up-front that there will be **no consideration of removing the ban on private insurance, allowing doctors to practise in both a public and a private system, or allowing private insurance to pay for services already available in the private system.** The principle of limiting the growth of a parallel private health-care system should be embedded in any new health legislation. These legislative changes were at the core of the Third Way, and those proposals were roundly rejected by Albertans. In fact, the "Third Way" debates were explicitly about amending Alberta's health-care legislation. To quote the government's materials in 2005: "Amendments [are] required to *Alberta Health Care Insurance Act* and *Hospitals Act*," which "opens [the] market for private health insurance, [and] removes barrier to private delivery." In addition, the Ministry recommended "amending [the] opting-in rule...doctors and dentists will be able to work in both private and public system for specified procedures." (Source: Removing Barriers, Ministry of Health and Wellness, 2005 www.health.alberta.ca/documents/Removing-Barriers-PPT-2005.pdf)

Any attempt to resurrect these failed proposals should be explicitly rejected by a new legislative framework.

Furthermore, the Committee's – and the government's – insistence that any new Alberta health legislation will conform to the *Canada Health Act* is a red herring. The *Canada Health Act* R.S.C. 1985, c. C-6 does not prevent private health services, private delivery, or private insurance. The *Canada Health Act* (the *"CHA"*) simply provides the legislative mechanism to ensure that Government of Canada spending on health-care supports publicly administered, comprehensive, universal, portable and accessible provincial health-care insurance plans.

Restricting the growth of a parallel for-profit health-care system is the role of provincial legislatures, not the federal *Canada Health Act*. In Alberta, physicians choose to opt-in to the public health-care system (sections 6 and 7). In addition, the *Alberta Health Care Insurance Act* outlaws contracts for private insurance for services that are covered in the public system, and private insurance is also not allowed to pay for all or part of fees charged by physicians who opt-out of the public system (section 26).

The *Canada Health Act* merely guarantees the existence of a public health-care system for all Canadians; it is silent on whether there is a parallel private system for the wealthy that can be purchased, with private insurance, from doctors who opt-out of the public system. It is the **Alberta** laws that make a private health-care market impossible, and it is those laws the Minister's Advisory Committee on Health is proposing to amalgamate, "streamline," and relegate most of the details into regulations.

2. What are your organization's views about rights, responsibilities and other components that should be included in the Alberta patient charter (pp. 24-25 of the MACH report)?

Patient rights are best guaranteed by a high-quality public system, governed by a sound regulatory system that has oversight over all aspects of health service delivery. Patient rights are also well-served in the long run by prohibiting the growth of a parallel private, for-profit health-care system that siphons off much-needed resources, such as doctors and other health-care professionals, to a U.S.-style parallel private system.

A Patient Charter for Alberta can easily be interpreted as an attempt by the province to open ourselves up to litigation from doctors who wish to provide private, for-profit health-care services covered by private insurance plans. In the Chaouli decision by the Supreme Court of Canada (*Chaouli v. Quebec 2005 [2005] S.C.R. 791)*, the Supreme Court held that provincial laws prohibiting the purchase of private insurance for services provided by opted-out doctors violated s. 1 of the Quebec Charter of Rights and Freedoms. No similar challenge has been made in Alberta, likely due to the fact that there are no opted-out doctors. All that has to be done for a similar challenge to occur in Alberta is a muddying of the very clear language on physicians opting in or opting out (allowing doctors to practise in both a public and parallel private system). A Patient Charter of Rights proclaiming a patient's right to access care by paying for it, would aid in such a legal change for Alberta.

3. Please provide your views as desired on the other components of the Alberta Health Act proposed by the MACH (pp 16 – 23 of MACH report). These include embedding principles into the Act, identifying key roles, responsibilities and accountabilities in the health system; clear and consistent definitions to apply to all health legislation; consolidating core health acts that deal with publicly funded health services, and establishing an arms-length entity to support evidence-based decision-making.

<u>Consolidation</u>

There is no obvious or immediate need to consolidate core health-care acts, such as the *Mental Health Act*, *Nursing Homes Act*, or *Emergency Services Act*. These Acts set out standards of care for our most

vulnerable citizens. Relegating the details of care for vulnerable Albertans to the arcane world of behind-closed-doors regulation, proclaimed to the public as a *fait accompli*, is not consistent with democratic principles. Further, there is no compelling reason why these very specialized areas of health-care service delivery should be consolidated with more general legislation governing insurance or hospital care.

Alberta's core health-care legislation could be improved by separating out the Acts into the different functions that are sought to be achieved. For instance, it would make sense to have one Act dealing both with Alberta Health Care Insurance benefits and Hospitalization benefits. A revised health-care insurance act could establish a medical care insurance plan for all insured services by referencing the framework established by the CHA. It should also include a guarantee of continued benefits for seniors and low-income citizens that are currently contained in the plans. It would also make sense, if non-hospital surgical facilities (that is to say, the private clinics established by the controversial "Bill 11" in 2000) are allowed to continue, to regulate their operations in the same manner that approved hospitals are regulated.

Enabling Legislation

The legislative model proposed by the Minister's Advisory Committee on Health for the new "*Alberta Health Act"* is the model used in the *Drug Program Act* (not yet proclaimed). The *Drug Program Act* is enabling legislation, which permits the Minister to establish a drug program for the purpose of providing funding for, or providing, drugs, services and approved drugs (s. 2). The *Drug Program Act* then permits the Minister to make regulations which will determine all of the details of the plan, including who is covered for what kind of drug coverage, amounts of co-payments and deductibles. The *Drug Program Act* puts most of the power to decide the future of Albertans' drug coverage in the regulations, not the legislation or statute itself.

The key difference between a statute and a regulation is that a statute is approved by the Legislative Assembly following debate before it becomes law, where a regulation is not. If the *Drug Program Act* is accepted as the model for the new *Health Care Act*, Alberta's health-care legislation will contain no details of the core health-care framework. All details will be left to the Minister's discretion and will not subject to debate in the Legislative Assembly. Further, the Minister can change the regulations at any time without notice and without debate. This model offers no assurances that delivery of insured services using public funding will be organized in a manner that preserves delivery of health care on a non-profit model; or appropriate standards for health and health services in Alberta will be established and enforced.

Standards, Oversight and Accreditation

Non-Hospital Surgical Facilities – the government's term for the private, for-profit clinics enabled by the controversial *Health Care Protection Act R.S.A. 2000 c. H-1* (more popularly known as "Bill 11") are not accredited in the same manner as public health-care facilities. NHSFs are inspected and accredited by the College of Physicians and Surgeons, where public facilities are accredited by a third-party, independent entity. This is a significant discrepancy between oversight and governance of public and private facilities.

In addition, NHSF finances are not available to the public in the same manner as those of public facilities. For example, Albertans are keenly aware of executive compensation for former health authority officials and other public servants, such as officials at the new health "Superboard." They are not allowed the same window into executive compensation at, say, Calgary's now-bankrupt Health Resources Centre.

The *Health Care Protection Act*, if it is to be amended, should allow for the same standards, accreditation, and financial oversight for non-hospital surgical facilities as in the more rigorous and transparent public health facilities.

4. Going forward, how should the public, health professionals and other stakeholders be consulted in the development and review of future legislation, regulation and policy (p. 26 of the report)? Please suggest specific processes or mechanisms you feel would be appropriate for ongoing consultation.

There have been myriad consultations on health care in Alberta. The message from the public is always the same – public health care is Albertans' number one priority. Strengthening public health care while ensuring judicious use of taxpayers' dollars is not only possible, but the most important issue on Albertans' minds, as demonstrated in opinion poll, consultations, letters to the editor, and constituent feedback to MLAs of all political stripes.

The government of Alberta has conducted myriad consultations on health care because they have been attempting to introduce private, for-profit health care for more than a decade, and government has mostly failed in those efforts, as there is little to no popular appetite for U.S.-style private health-care schemes in Alberta. The lesson from these earlier attempts at privatization ***should*** have been that the people of Alberta are not interested in more user fees, a parallel private system, or purchasing private insurance. They are not interested in queue-jumping or a U.S.-style system. What people want is a properly-funded public system that uses intelligent innovations within the public system to make sure people get the care they need.

But the lesson the government has taken from all of these failed attempts to usher in more private health care is not to strengthen the public system, but to bring in privatization by other means. It is Alberta's health-care legislation that outlaws a parallel private, for-profit health-care system, not the *Canada Health Act*. It is now those very laws that the Ministry's Advisory Council on Health is proposing to consolidate, put most of the details into regulations, and take any discussion of privatization out of the public eye.

Stronger public health care can – and should – come from innovations within the public system. Evidence from all over the world shows that the best health outcomes are achieved by publicly funded, insured, and delivered health care. Furthermore, public systems save everyone money – jurisdictions with more private involvement spend more on health care, such as the United States. Innovations within the public system can include specialized operating theatres to alleviate backlogs and lessen wait times for orthopedic procedures such as hip and knee replacements or ophthalmology

procedures such as cataract surgery. They can include even more innovation in bulk buying, reference-based pricing, and generic substitution in pharmaceutical policy. Costs are also trimmed through making preventative health care more accessible, such as instituting a model of broader-based community-based clinics.

Our health-care legislation could most certainly reflect a broader array of insured services. Some of the acts could be more detailed with respect to standards of care, such as the *Nursing Homes Act*. However, the vast majority of the changes Albertans actually want to see in our health-care system concern wait times and quality of care. These issues are not solved by removing the ban on private insurance – they are exacerbated by private, for-profit elements.

Any changes that are proposed to Alberta's health-care laws should be fully debated within the Legislature, as well as in town hall meetings, on-line forums, and in the public at large, with plenty of opportunity for Albertans to participate, long timelines, and lack of interference from government with respect to structuring survey questions, limiting public access to town halls. Consultation needs to result in action; if Albertans reject privatization, government should listen.

The Alberta Federation of Labour is always happy to provide feedback to government. We are delighted to be consulted on the issue of public health care, as many of our 29 unions and 140,000 members work in the health-care system, and certainly all of our members and their families have a stake in high-quality, accessible public health care for all Albertans.

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