

2000 BILL 11

Fourth Session, 24th Legislature, 49 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 11

HEALTH CARE PROTECTION ACT

THE MINISTER OF HEALTH AND WELLNESS

First Reading
Second Reading
Committee of the Whole
Third Reading
Royal Assent

BILL 11

2000

HEALTH CARE PROTECTION ACT

(Assented to , 2000)

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Preamble

WHEREAS it is the responsibility of the Government of Alberta to provide leadership and support in the delivery of quality health services in order to maintain and improve the health of Albertans;

WHEREAS Albertans cherish Alberta's publicly funded and publicly administered health system;

WHEREAS the Government of Alberta is committed to the preservation of the principles of universality, comprehensiveness, accessibility, portability and public administration, as described in the *Canada Health Act* (Canada), as the foundation of the health system in Alberta;

WHEREAS the Government of Alberta is committed to the pursuit of excellence in the health system in Alberta through the efficient

delivery of quality publicly funded services based on high standards, best practices and effective patient outcomes;

WHEREAS the Government of Alberta is committed to continually enhancing and improving accessibility to health services for Albertans;

WHEREAS the Government of Alberta is committed to ensuring that no person who is entitled to an insured surgical service be required to pay for that service or be given priority for that service by reason of the payment of money or other valuable consideration, and whereas the Government of Alberta is committed to paying for that service;

WHEREAS regional health authorities are accountable to the Minister and are responsible for assessing the health needs of the population, determining priorities in the delivery of health services and allocating resources accordingly and ensuring reasonable access to those health services; and

WHEREAS there is a need in Alberta for legislation regulating the delivery of surgical services;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

PART 1

PROTECTION OF PUBLICLY FUNDED HEALTH CARE

Operation of private hospitals prohibited

1 No person shall operate a private hospital in Alberta.

Provision of surgical services

2(1) No person shall provide a surgical service in Alberta except in

(a) a public hospital, or

(b) an approved surgical facility.

(2) No person shall provide a major surgical service, as described in the by-laws under the *Medical Profession Act*, in Alberta except in a public hospital.

Queue jumping prohibited

3 No person shall give or accept any money or other valuable consideration for the purpose of giving any person priority for the receipt of an insured surgical service.

Facility services

4 Where a person receives an insured surgical service at a designated surgical facility,

- (a) the operator of the surgical facility shall provide facility services to the person, and
- (b) no person shall charge or collect any amount in respect of the provision of facility services that is in addition to the amount that is payable for the facility services by the health authority under an agreement referred to in section 8.

Disclosure requirement

5(1) No person shall require a person who receives an insured surgical service at a public hospital or a designated surgical facility

- (a) to pay for enhanced medical goods or services, or
- (b) to pay for non-medical goods or services that are provided in connection with the provision of the insured surgical service or that arise out of the stay at the public hospital or designated surgical facility,

unless subsections (2) and (3) have been complied with.

(2) Before any enhanced medical goods or services are provided to a person,

- (a) the nature of the enhanced medical goods or services being offered and the charges for them must be fully explained to the person,
- (b) the person must be presented with a statement signed by the physician or dentist who will be providing the insured surgical service that
 - (i) explains the nature of the enhanced medical goods or services to be provided,
 - (ii) explains why the physician or dentist is offering the enhanced medical goods or services,
 - (iii) explains that the enhanced medical goods or services are not part of the medically required service,

(iv) sets out the charges for the enhanced medical goods or services, and

(v) meets any other requirements of the regulations,

and

(c) the person must have agreed in writing to accept and pay for the enhanced medical goods or services.

(3) Before any non-medical goods or services are provided to a person, the nature of the goods or services and the charges for them must be fully explained to the person and the person must have agreed in writing to accept and pay for the goods or services.

(4) A person who has agreed to accept and pay for enhanced medical goods or services or non-medical goods or services may, in accordance with the regulations, rescind the agreement before the goods or services are provided.

(5) Where a person is provided

(a) with an enhanced medical good or service because the public hospital or designated surgical facility does not have available the medical good or service that would normally be used in accordance with generally accepted medical practice, or

(b) with a private or semi-private room because the public hospital or designated surgical facility does not have standard ward accommodation available,

the person is not responsible for the extra cost of having the enhanced medical good or service or the private or semi-private room provided.

Recovery of
unlawful
charges

6(1) If a person charges or collects an amount in contravention of section 4 or requires a person to pay an amount in contravention of section 5, the Minister may recover that amount in a civil action in debt as though that amount were a debt owing from the person to the Crown in right of Alberta.

(2) Where the Minister recovers any amount under subsection (1), the Minister shall reimburse the person who paid the amount.

PART 2
REGULATION OF DELIVERY OF
SURGICAL SERVICES

Division 1
Regulation of Surgical Facilities to
Provide Insured Surgical Services

Conditions of
operation

- 7** No person shall operate a surgical facility at which insured surgical services are provided unless
- (a) the surgical facility is accredited as required by section 11(1)(b),
 - (b) the operator of the surgical facility has an agreement with a health authority that the Minister has approved under section 8, and
 - (c) the surgical facility is designated under this Division.

Approval of
agreement

- 8(1)** A health authority that wishes to enter into an agreement with an operator of a surgical facility for the purpose of providing insured surgical services and facility services at the surgical facility shall provide the Minister with a copy of the proposed agreement for the Minister's approval.
- (2)** The Minister may
- (a) refuse to approve a proposed agreement, or
 - (b) approve a proposed agreement, subject to any terms or conditions the Minister considers appropriate.
- (3)** The Minister shall not approve a proposed agreement unless the Minister is satisfied
- (a) that the provision of insured surgical services as contemplated under the proposed agreement would be consistent with the principles of the *Canada Health Act* (Canada),
 - (b) that there is a current need and that there will likely be an ongoing need in the geographical area to be served for the provision of insured surgical services as contemplated under the proposed agreement,

- (c) that the provision of the insured surgical services as contemplated under the proposed agreement would not have an adverse impact on the publicly funded and publicly administered health system in Alberta,
- (d) that there is an expected public benefit in providing the insured surgical services as contemplated under the proposed agreement, considering factors such as access to such services, quality of service, flexibility, cost effectiveness and other economic considerations,
- (e) that the health authority has an acceptable business plan in respect of the proposed agreement showing how the health authority will pay for the facility services to be provided, and
- (f) that the proposed agreement indicates performance expectations and related performance measures for the insured surgical services and facility services to be provided.

Changes to agreement

9 No amendment to or renewal of an approved agreement is effective until it is approved by the Minister, and section 8 applies in such a case as if the amendment or renewal were a proposed agreement.

Transfer, changes in ownership

10(1) No person shall assign or transfer an approved agreement to another person without the prior written consent of the Minister.

(2) No person shall cause or permit a change in the ownership of a surgical facility that is designated under this Division without the prior written consent of the Minister.

Designation of facility

11(1) Where the Minister

- (a) approves a proposed agreement, and
- (b) is satisfied that the surgical facility at which the insured surgical services will be provided is accredited to provide those insured surgical services or will be accredited before any such services are provided,

the Minister shall by order designate the surgical facility as a surgical facility for the purposes of this Division.

(2) A designation must describe the insured surgical services that the designated surgical facility is authorized to provide.

(3) The Minister may make a designation subject to any terms and conditions that the Minister considers appropriate.

(4) The Minister shall publish or otherwise make available to the public in a form and manner the Minister considers appropriate the Minister's reasons for designating a surgical facility under this Division or for amending such a designation.

Information
available to
public

12 Where an agreement has been approved under section 8, notwithstanding the *Freedom of Information and Protection of Privacy Act* the health authority shall

(a) make the agreement available to the public for inspection during normal business hours, and

(b) publish the following information in respect of the agreement in a form and manner directed by the Minister:

(i) the name and address of the owner and operator of the designated surgical facility to which the agreement relates;

(ii) the insured surgical services to be provided under the agreement;

(iii) the term of the agreement;

(iv) the amount or the estimated amount to be paid by the health authority under the agreement;

(v) a description of the performance expectations and related performance measures for the insured surgical services and facility services to be provided under the agreement.

Division 2 Regulation of Surgical Facilities to Provide Uninsured Surgical Services

Conditions of
operation

13 No person shall operate a surgical facility at which uninsured in-patient surgical services are provided unless the surgical facility is accredited as required by section 15(2) and is designated under this Division.

Proposal to Minister	14 The operator of a surgical facility who proposes to provide uninsured in-patient surgical services and facility services at the facility shall submit to the Minister a proposal for that purpose that is in a form acceptable to and contains the information required by the Minister.
Designation of facility	<p>15(1) On considering the proposal and the following factors, the Minister may by order designate the surgical facility as a surgical facility for the purposes of this Division:</p> <ul style="list-style-type: none"> (a) whether the provision of the uninsured in-patient surgical services as contemplated in the proposal would have an adverse impact on the publicly funded and publicly administered health system in Alberta or impair the government's ability to comply with the <i>Canada Health Act</i> (Canada); (b) whether the public interest would be served by the designation of the surgical facility; (c) any other factors the Minister considers appropriate. <p>(2) The Minister shall not designate the surgical facility unless the Minister is satisfied that the surgical facility is accredited to provide the uninsured in-patient surgical services referred to in the proposal, or that it will be accredited before any such services are provided.</p> <p>(3) A designation must describe the uninsured in-patient surgical services that the designated surgical facility is authorized to provide.</p> <p>(4) The Minister may make a designation subject to any terms and conditions that the Minister considers appropriate.</p> <p>(5) The Minister shall publish or otherwise make available to the public in a form and manner the Minister considers appropriate the Minister's reasons for designating a surgical facility under this Division or for amending such a designation.</p>
Condition of operation	16 No person shall operate a surgical facility at which an uninsured day surgical service is provided unless the surgical facility is accredited to provide that surgical service.

Disclosure requirement

17 Where a person receives an uninsured surgical service at a public hospital or an approved surgical facility in circumstances under which that person is expected to pay for the uninsured surgical service, no person shall require that person to pay for the uninsured surgical service or for any facility services unless, before the uninsured surgical service is provided, the nature of the uninsured surgical service and facility services to be provided and the charges for them are fully explained to the person and the person agrees in writing to accept and pay for them.

Division 3 Miscellaneous Provisions

Withdrawal of designations

18(1) The Minister may, in the following circumstances, by order withdraw a designation of a surgical facility or amend such a designation to delete one or more of the surgical services that the designated surgical facility is authorized to provide:

- (a) where, since the granting of the designation, circumstances have changed with respect to any of the factors referred to in section 8(3) or 15(1) in a manner or to an extent that, in the Minister's opinion, justifies the withdrawal or amendment;
- (b) where there has been a contravention of this Act, the regulations, an approved agreement or a term or condition imposed under section 8(2), 11(3) or 15(4).

(2) The Minister shall by order withdraw a designation of a surgical facility where the Minister is advised by the council of the College that the surgical facility is no longer accredited.

Termination of designations

19(1) A designation under Division 1 terminates automatically

- (a) on the expiry or cancellation of the approved agreement, or
- (b) if the operator closes the surgical facility permanently.

(2) A designation under Division 2 terminates automatically if the operator closes the surgical facility permanently.

(3) The operator of a designated surgical facility shall forthwith notify the Minister and the relevant health authority of the occurrence of any event referred to in subsection (1) or (2).

Provision of unauthorized surgical service prohibited

20 No person shall provide at an approved surgical facility any surgical services other than the surgical services the facility is authorized to provide under this Part.

PART 3

GENERAL

Information re accredited surgical facilities

21(1) The council of the College shall

- (a) forthwith on receiving a request from the Minister, provide the Minister with a list of surgical facilities that have been accredited and a description of the accreditations, and
- (b) forthwith provide the Minister with notice of any new accreditations or of the withdrawal or cancellation of or changes to an accreditation.

(2) The council of the College shall provide copies of the accreditation report in respect of a surgical facility to the Minister and the relevant health authority.

(3) The council of the College may provide to the Minister any other information in respect of the operations of surgical facilities that the council considers would be relevant to the Minister for the purposes of the administration of this Act.

(4) Notwithstanding the *Freedom of Information and Protection of Privacy Act*, the Minister and a health authority may provide to the council of the College any information that the Minister or health authority considers to be relevant to an accreditation or the accreditation process in respect of a particular surgical facility.

Restraining order

22(1) The Minister may apply to a judge of the Court of Queen's Bench for an order restraining any person from contravening section 1, 2, 7, 13, 16 or 20.

(2) On an application under subsection (1), the judge may make any order the judge considers appropriate.

Privative clause

23 No decision made by the Minister in the exercise or purported exercise of a power or the carrying out or purported carrying out of a duty under this Act may be questioned or reviewed in any court by application for judicial review or otherwise, and no order may be made or process entered or proceedings taken in any court, whether by way of injunction, declaratory judgment, prohibition,

quo warranto or otherwise, to question, review, prohibit or restrain the Minister.

Inquiries and inspections

24(1) The Minister may

- (a) make inquiries into the management and affairs of a designated surgical facility or a surgical facility whose designation has been withdrawn, and
- (b) visit and inspect the surgical facility and examine records at the surgical facility for the purpose of verifying the accuracy of records, reports and returns and ensuring compliance with this Act and the regulations, an approved agreement and the terms and conditions imposed under section 8(2), 11(3) or 15(4).

(2) No person shall obstruct, hinder or interfere with the Minister in the exercise of the Minister's powers under subsection (1).

Regulations

25(1) The Lieutenant Governor in Council may make regulations

- (a) providing for the exemption from the definition of surgical services of minor surgical procedures that may safely be performed in a physician's or dentist's office;
- (b) governing the rates that may be charged
 - (i) for enhanced medical goods and services and non-medical goods and services that are provided to a person who receives an insured surgical service at a public hospital or a designated surgical facility,
 - (ii) for private and semi-private room accommodation that is provided to a person who receives an insured surgical service at a designated surgical facility, and
 - (iii) for facility services that are provided to a person who is a resident of another province with which the Government of Alberta has an agreement, where that person would be entitled to receive those facility services under the health plan of the other province if they were provided in the other province, and for private and semi-private room accommodation provided to such a person;
- (c) respecting statements for the purposes of section 5(2)(b) including, without limitation, regulations respecting the

form of the statement, prescribing additional matters to be contained in the statement and when the statement must be given and prescribing the period of time for which the statement must be retained by the operator of the public hospital or designated surgical facility;

- (d) varying or making inapplicable any of the requirements of section 5 in the case of a medical emergency;
- (e) governing all aspects of how the right to rescind in section 5(4) is to be exercised, and the return of all or part of the money paid under the agreement;
- (f) prescribing services to be facility services for the purposes of this Act;
- (g) regarding whether a particular medical good or service is or is not an enhanced medical good or service or whether a particular good or service is or is not a medical good or service;
- (h) governing procedural matters related to obtaining the Minister's consent for the purposes of section 10;
- (i) determining what constitutes a change in ownership for the purposes of section 10(2);
- (j) authorizing the Minister to amend designations under Part 2 or to add, remove or vary a term or condition to which such a designation is subject;
- (k) governing the giving of notice of orders under section 18;
- (l) governing reinstatement of designations that have been withdrawn and surgical services that have been deleted under section 18;
- (m) respecting the keeping of records by operators of designated surgical facilities;
- (n) requiring operators of designated surgical facilities to provide reports, returns and information to a health authority or the Minister and requiring health authorities to provide reports, returns and information to the Minister, including regulations respecting the nature and contents of the reports, returns or information to be provided, the form in which they are to be provided and the times at which they are to be provided;

- (o) governing publication of reports, returns and information referred to in clause (n);
- (p) governing standards of operation applicable to designated surgical facilities, in addition to standards that apply by virtue of the operation of the *Medical Profession Act*;
- (q) providing, with respect to any provision of the regulations, that its contravention constitutes an offence, and prescribing penalties in respect of such offences;
- (r) respecting the appointment of the members of the Premier's Advisory Council on Health.

(2) The Minister shall consult with the council of the College in the development of regulations under subsection (1).

Offence

26(1) A person who contravenes section 1, 2, 7, 13, 16 or 20 is guilty of an offence and is liable to a fine of not more than \$100 000.

(2) A person who is guilty of an offence under subsection (1) is liable on conviction to pay a fine in respect of each day or part of a day on which the offence occurs or continues.

(3) A person who contravenes section 3, 4, 5(1), 17 or 24(2) is guilty of an offence and is liable to a fine of not more than

(a) \$10 000 for a first offence, and

(b) \$20 000 for the 2nd and each subsequent offence.

PART 4

PREMIER'S ADVISORY COUNCIL ON HEALTH

Council established

27 The Premier's Advisory Council on Health is established and consists of the persons appointed under the regulations.

Council's mandate

28 The mandate of the Premier's Advisory Council on Health is to provide strategic advice to the Premier on the preservation and future enhancement of quality health services for Albertans and on the continuing sustainability of the publicly funded and publicly administered health system.

PART 5
DEFINITIONS

Definitions

29 In this Act,

- (a) “accredited”, in respect of a surgical facility, means that the facility is approved by the council of the College within the meaning of section 93 of the *Medical Profession Act* and the by-laws under that Act;
- (b) “approved surgical facility” means a designated surgical facility and a surgical facility referred to in section 16;
- (c) “council of the College” means the council of the College of Physicians and Surgeons of the Province of Alberta;
- (d) “dentist” means a person who is registered as a licensed member of The Alberta Dental Association;
- (e) “designated surgical facility” means a surgical facility that is designated under Part 2, Division 1 or 2, as the context requires;
- (f) “enhanced medical goods or services” means medical goods or services that exceed what would normally be used in a particular case in accordance with generally accepted medical practice;
- (g) “facility services” means any of the following services that are medically necessary and are directly related to the provision of a surgical service at an approved surgical facility:
 - (i) standard ward accommodation, or a semi-private or private room where the patient’s condition requires it;
 - (ii) meals;
 - (iii) necessary nursing services, including private nursing care where ordered by the attending physician or dentist;
 - (iv) laboratory, radiological and other diagnostic procedures, together with the necessary interpretations;

- (v) drugs, biologicals and related preparations when administered in the surgical facility;
 - (vi) use of operating room, case room and anaesthetic facilities, including necessary equipment and supplies;
 - (vii) use of physical therapy services;
 - (viii) use of surgical equipment and supplies;
 - (ix) medical goods and services consistent with generally accepted medical practice for the surgical services being provided in the surgical facility;
 - (x) transportation by ambulance or commercial vehicle of a patient from the surgical facility to an approved hospital under the *Hospitals Act*, a nursing home, a mental health facility or another surgical facility;
 - (xi) other services provided by persons who receive remuneration for providing the services directly or indirectly from the operator of the surgical facility;
 - (xii) any other service that is prescribed in the regulations;
- (h) “health authority” means a regional health authority and the Alberta Cancer Board;
- (i) “insured surgical service” means a surgical service that is provided by a physician, or by a dentist in the field of oral surgery, in circumstances under which a benefit is payable under the *Alberta Health Care Insurance Act*;
- (j) “Minister” means the member of the Executive Council determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (k) “operator” means
- (i) in the case of a designated surgical facility, the person named as the operator in the designation, and
 - (ii) in the case of a surgical facility referred to in section 16, the person who is shown in the records of the council of the College as the person responsible for the operation of the surgical facility;

- (l) “physician” means a person registered as a medical practitioner or as a practitioner of osteopathy under the *Medical Profession Act*;
- (m) “private hospital” means an acute care facility that
 - (i) provides emergency, diagnostic, surgical and medical services, and
 - (ii) admits patients for medically supervised stays exceeding 12 hours,
 but does not include a public hospital;
- (n) “public hospital” means
 - (i) a hospital that is established by or under, or the establishment or operation of which is governed by, the *Hospitals Act*, the *Regional Health Authorities Act*, the *Cancer Programs Act* or the *Workers’ Compensation Act*, or
 - (ii) a hospital that is established by the Government of Alberta or the Government of Canada;
- (o) “regional health authority” means a regional health authority established under the *Regional Health Authorities Act*;
- (p) “standard ward” means a room having more than 2 beds;
- (q) “surgical facility” means a facility whose primary function is to provide a limited range of surgical services;
- (r) “surgical service” means the alteration of the human anatomy manually or through the use of an instrument or the introduction of any instrument into the human body, where such a procedure
 - (i) is carried out with the concurrent use of
 - (A) a drug to induce sedation, or
 - (B) local, regional or general anaesthesia
 to a degree that requires the monitoring of vital signs, or

(ii) is normally associated with the kind or degree of risk that is prescribed by the council of the College for the purposes of this clause in by-laws under the *Medical Profession Act*,

but does not include a minor surgical procedure that is exempted in the regulations under section 25(1)(a);

(s) “uninsured day surgical service” means a surgical service that

(i) is provided by a physician, and

(ii) does not require a medically supervised post-operative period of care exceeding 12 hours,

and is provided in circumstances under which no benefit is payable under the *Alberta Health Care Insurance Act*;

(t) “uninsured in-patient surgical service” means a surgical service that

(i) is provided by a physician, and

(ii) requires a medically supervised post-operative period of care exceeding 12 hours,

and is provided in circumstances under which no benefit is payable under the *Alberta Health Care Insurance Act*.

PART 6

TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS AND COMING INTO FORCE

Transitional **30(1)** Where on the coming into force of this section an operator of a surgical facility is, through an agreement with a health authority, providing insured surgical services in circumstances that would make section 7 applicable,

(a) the agreement is deemed to be an approved agreement under section 8, and

(b) the surgical facility is deemed to be the subject of a designation under Part 2, Division 1.

(2) Where an agreement referred to in subsection (1) has an expiry date that is before October 1, 2000,

- (a) notwithstanding anything in the agreement, the expiry date is deemed to be October 1, 2000 unless the parties agree to terminate the agreement before that date without renewing it, and
- (b) notwithstanding subsection (1), Ministerial approval under section 8 is not required for amendments to the agreement during the period between the coming into force of this Act and October 1, 2000.

(3) Section 12 does not apply to an agreement referred to in subsection (1) until it is renewed or replaced.

Amends RSA
1980 cA-24

31(1) The *Alberta Health Care Insurance Act* is amended by this section.

(2) Section 5.41 is amended

- (a) in clause (a) by striking out “\$1000” and substituting “\$10 000”;
- (b) in clause (b) by striking out “\$2000” and substituting “\$20 000”.

Amends RSA
1980 cH-11

32(1) The *Hospitals Act* is amended by this section.

(2) Section 62(a) is repealed and the following is substituted:

- (a) prescribing the basis on which the Minister may make contracts with hospitals, other than approved hospitals, for the provision of standard ward hospitalization or other services to be furnished to patients as insured services under this Part;

Amends RSA
1980 cM-12

33(1) The *Medical Profession Act* is amended by this section.

(2) Section 93(6) is repealed and the following is substituted:

- (6) It is unbecoming conduct for a medical practitioner to see or treat patients

Explanatory Notes

(section 31(1)) Amends chapter A-24 of the Revised Statutes of Alberta 1980.

(section 31(2)) Section 5.41 presently reads:

5.41 A person who contravenes section 5.2, 5.3, 5.31 or 5.32 is guilty of an offence and liable to a fine of not more than

(a) \$1000 for the first offence, and

(b) \$2000 for the 2nd and each subsequent offence.

(section 32(1)) Amends chapter H-11 of the Revised Statutes of Alberta 1980.

(section 32(2)) Section 62(a) presently reads:

62 The Lieutenant Governor in Council may make regulations

(a) prescribing the basis on which the Minister may make contracts with nursing homes, private hospitals, or other institutions, facilities or persons, other than approved hospitals, for the provision of standard ward hospitalization or other services to be furnished to patients as insured services under this Part;

(section 33(1)) Amends chapter M-12 of the Revised Statutes of Alberta 1980.

(section 33(2)) Section 93(6) presently reads:

(6) It is unbecoming conduct for a medical practitioner to continue to see or treat patients in a diagnostic and treatment facility that does not have the approval of the council.

- (a) in a surgical facility that is not designated as required under Part 2 of the *Health Care Protection Act* or that is not approved by the council under the by-laws, or
- (b) in any other diagnostic and treatment facility that is not approved by the council under the by-laws.

Coming into
force

34 This Act comes into force on Proclamation.