2026 Update to the new interpretation of the Canada Health Act

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In January 2025, former Federal Minister of Health, the Honourable Mark Holland, released a Letter to provinces and territories on the importance of upholding the *Canada Health Act* – 2025. We wrote about it here. In short, Minister Holland released an interpretation of the *Canada Health Act* (CHA) that charging patients for services provided by any health professional that are typically covered by the province when delivered by a physician, is a violation of the CHA's prohibitions on extra-billing and user charges. Provinces and territories that do not prevent patients from being charged for medically necessary services by non-physician health professionals, including nurse practitioners, risk reductions in future Canada Health Transfer payments.

Health Canada released its 2026-2027 departmental plan on March 13, 2026, which included its intention to implement the vision outlined in the "new Canada Health Act Services Policy" (the CHA Policy) based on Minister Holland's 2025 letter. As part of this plan, Health Canada indicated its intention to "[h]elp [provinces and territories] implement the Canada Health Act Services Policy, effective April 1, 2026, which confirms that medically necessary services provided by regulated health care providers (e.g., nurse practitioners) are insured under the *Canada Health Act*."

Although details of the implementation plan are currently sparse, the implications for both the public and the private sectors are significant. Practically, and in the long term, the magnitude of the impact will depend on how the provinces or territories with implement the policy. In the short term, both hospitals and the private sector should be preparing for potential impacts.

What does this mean for the private sector?

The CHA broadly establishes a framework mandating provinces and territories to establish insurance plans to cover "medically necessary" services in order to qualify for transfer payments from the federal government. Although the term "medically necessary" is not defined in the legislation and each province has discretion to define the scope of their plans, traditionally these have been primarily hospital and physician services. Healthcare professionals or businesses are allowed to charge patients for services that are not covered under provincial insurance plans under this framework.

As non-physician providers' roles expand, the private sector has increasingly provided services through these practitioners and charged patients directly, based on the interpretation that non-insured services fall outside the CHA's extra-billing and user-charge prohibitions. Provinces implement and enforce these prohibitions through their own legislation, including Ontario's *Commitment to the Future of Medicare Act*.

However, businesses that are relying on the past interpretation of what are considered "insured services" in provinces where they operate, will need to monitor provincial signals and actions closely moving forward. The federal government has made its position clear on this issue. It considers charging patients for services provided by other health professionals to be a violation of the CHA's prohibition on extra billing and user charges where those services would be covered if provided by physicians. The federal government expects that provinces and territories will report such prohibited charges starting in December 2028.

Assuming provinces implement this directive by essentially insuring the same basket of services, whether provided by physicians or nurse practitioners, companies would risk being found in violation of a province's prohibitions on extra billing and user charges if they charged a fee directly to patients for these services.

Virtual care carve out?

Virtual services continue to be an area of technological, entrepreneurial, and policy evolution. Minister Holland signalled in his letter that the federal government's position is to promote the use of virtual services, and Minister Holland encouraged all jurisdictions to continue down the path of insuring those services.

Provinces continue to take different positions on insuring virtual services, creating space for the private sector to charge patients directly for these services. Many of the major virtual care providers in Canada charge patients or their employers for medically necessary services provided by nurse practitioners. This may be problematic under the new interpretation of the CHA Policy unless a carve out is created for virtual care. In Quebec, provincial laws allow for employer paid virtual care. It remains to be seen whether other provinces will take a similar approach.

What does this mean for hospitals and other publicly funded organizations?

Currently, hospitals and other healthcare organizations such as primary care teams, have integrated nurse practitioners primarily through an employment relationship and a salaried compensation model.

To the extent that the vision in Minister Holland's letter is implemented provincially by allowing nurse practitioners to bill a provincial insurance plan directly, hospitals and other publicly funded health care organizations may be able to enter into alternative arrangements with nurse practitioners moving forward. From a financial perspective, this might involve a shift from a primarily salaried based model to either a fee for service model or a mixed compensation model.

Such a change would invite a review of the relationship between nurse practitioners and hospitals. Consideration could be given to moving away from an employment model and towards a privileges model or a mixed model. The evolution of the model will depend on a number of organizational specific factors, including whether nurse practitioners are members of a union.

On April 1, 2026 Ontario Minister of Health Sylvia Jones announced that there were currently no plans to change OHIP billing codes to allow nurse practitioners to bill OHIP on a fee-for-service basis.

Conclusion

Minister Holland's 2025 letter articulated the federal government's position that charging patients for services that would be covered by provincial insurance plans if they had been provided by physicians is a violation of the CHA, a position that has just been endorsed in Health Canada's 2025-2026 Departmental Plan. The exact implications for the private and public sectors and the timelines for those impacts will depend on how the provinces respond to this position.

BLG is ready to assist both the public and the private sectors in this evolving landscape and to strategically advise on their options.

Thank you to articling student Dr. Rami Shoucri for his assistance with this bulletin.

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