

# Health Industry

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This article is part of a practical series written for international companies looking to establish, launch, operate or invest in a business in Canada. Each article covers a major area of law in Canada – everything from employment laws to taxes. Access all the articles on the [“Doing business in Canada: A practical guide from ‘Eh’ to ‘Zed’”](#) page.

Demographic, technological and economic factors continue to challenge the Canadian health care system, and there has been a pan-Canadian focus on co-ordination, innovation and cost containment for some time. Estimated [spending on health care](#) in Canada was \$372 billion in 2024. Of this amount, an estimated 71.2 per cent was from public sources and 28.8 per cent was privately funded. Governments, businesses and health care providers alike are leading initiatives to provide novel, accessible, affordable and high-quality health care, products, and services. This chapter surveys some of the key areas that may be of interest to those looking to invest or do business in the health industry in Canada.

## Health system regulation

Canada is a federal state, with a constitution that divides legislative powers between the federal and provincial governments. While some powers are exclusive to one level of government, several powers are shared, including jurisdiction over health. Canada’s legal system also includes two of the world’s major legal traditions: English common law, applied in nine provinces and three territories; and French civil law, applied in the province of Québec. Some health care services are publicly funded, when determined “medically necessary” by a province, and may be provided by public and/or private providers. Other services are provided on a private-payer basis. Some health care products are publicly funded or subsidized, when available under drug plans or assistive devices programs. Others are purchased privately. The result is that health products, services and care are funded and regulated under a complex mosaic of rules, funders and regulators. Although we often refer to the “Canadian health care system”, there are 14 single-payer, universal, public systems that comprise our “medicare”, which provide universal access to “medically necessary” hospital and physician services on the basis of need (not means) through Canadian tax contributions.

## The Federal/Provincial divide

The federal government's authority over health derives primarily from its spending and criminal law powers. The spending power enabled Parliament to pass the Canada Health Act, which establishes the conditions and criteria that the provinces and territories must meet or risk losing federal cash contributions toward provincial health insurance costs. The Act forms the basis of the nation's universal health care system through its five principles: public administration, comprehensiveness, universality, portability and accessibility. The federal government's spending power also enables it to fund initiatives on health research, promotion, information, disease prevention and control, and pilot projects in health care.

The federal government's power to create criminal legislation on health matters is broad and enables Parliament to enact legislation to protect the health and safety of Canadians, including the selling, distribution and marketing of drugs, medical devices, natural health products, foods and cosmetics. Generally, federal regulatory statutes are structured as criminal law in that they establish prohibitions and penalties, including imprisonment, but in practice, they operate as regulatory statutes intended to protect public health. The federal government also has power over patents of invention and discovery, which, combined with the federal criminal law power, gives Parliament the authority to regulate the pricing of patented medicines in Canada.

The provincial governments' authority over health arises from its powers relating to hospitals, property and civil rights, and local or private matters. The property and civil rights power is the provinces' most sweeping power, and provinces can essentially regulate most legal relationships between individuals and entities in their jurisdiction (e.g., privacy, consent, rights of patients and workers, and certain aspects concerning the sale of drugs - formulary and insurance decisions - in the province). The courts have interpreted this power very broadly to encompass rights that individuals possess under the common law of tort (e.g., the right to bodily integrity, which is at issue in medical negligence, assault and battery), contract law and property law. The provinces' power over matters of a local or private nature forms the basis of the provinces' health insurance regimes, as well as health protection and promotion at the local or municipal level. Broadly speaking, the provinces are primarily responsible for the delivery of health care and health insurance, and for the regulation of health professionals.

Given Canada's constitutional framework, both federal and provincial laws must be considered when dealing with matters relating to health.

## Public versus Private Health Care

Canadian medicare covers "medically necessary" health care provided in hospitals and by physicians. Parliament did not define "medically necessary", which is left for the provinces and territories to determine. What provincial/territorial health insurance will cover often changes and is reduced by provinces and territories under pressure to contain costs, and there is significant variation from one jurisdiction to another.

Private insurance can be obtained to cover "enhanced" care or services that are not covered under provincial plans, and health care tourists can pay cash for care, but provincial statutes prohibit the use of private insurance to pay for medically necessary services. However, in 2005, the Supreme Court of Canada cast doubt on the constitutionality of such prohibitions with its *Chaoulli* decision. A divided court held that Québec's prohibition against private insurance violated the rights of patients, who

otherwise were required to wait long periods to receive publicly funded care. A minority of the Court would have applied the same ruling to the country as a whole. For now, the **decision applies only in Québec, but it may yet have important national effect.**

Cost for enhanced health care, such as prescription drugs, home care and long-term care, are covered through a combination of out-of-pocket, private insurance and public financing. What is covered varies by province and territory. Some employers provide employees with private insurance plans. A number of clinics across Canada operate outside the public system to provide a wide variety of services, including surgical, diagnostic and therapeutic services. Clinics are free to provide non-medically necessary services, like elective cosmetic surgery, which is not covered under public health insurance plans.

In 2024, private health care spending in Canada is estimated to have been about \$108 billion.

## Long-Term Care

Spending on long-term care facilities in Canada is estimated to reach \$38.8 billion in total spending in 2024. Long-term care facilities are licensed provincially, and many are privately owned and operated. These facilities may provide medical, nursing, social and related services.

### Regulated Health Professionals

Nearly all regulated health professionals operate privately, rather than as government employees. Specialized provincial legislation governs regulated health professions in terms of licensing requirements, scope of practice, and professional misconduct, which includes advertising and conflict of interest rules. Advertising prohibitions often address **the professionals' prohibited associations with suppliers of medical goods and services**, and conflict of interest rules often address rebates, kick-backs and self-referrals. The provinces have recently been expanding the scope of practice for certain qualified regulated health professionals to address issues related to Canadians' access to care.

## Pharmacies

Pharmacies in Canada are playing an increasingly central role in patient care, with provinces steadily expanding the scope of practice for pharmacists and pharmacy technicians. In Ontario, pharmacists can now prescribe for 19 common ailments, with proposals to expand this list by 14 more, alongside new authorities to order specific lab tests and administer additional publicly funded vaccines. Pharmacy technicians are also expected to see an expanded role in vaccine delivery. These changes align Ontario with other provinces, such as Alberta and Nova Scotia, where pharmacists have had broader prescribing and testing authority for some time, and have shown measurable benefits in reducing strain on emergency departments. While expansion creates new opportunities for access and system efficiency, pharmacy professionals must remain mindful of documentation, professional conduct, and regulatory compliance to mitigate liability risks.

## Marketing and advertising

Federal and provincial legislation regulates how health care products and services may be advertised and marketed. This includes the federal Food and Drugs Act, the Controlled Drugs and Substances Act, and the Competition Act, as well as provincial consumer protection and health-related statutes and their associated regulations. These laws generally prohibit false, misleading, or deceptive claims, as well as claims that create an erroneous impression about a product's character, value, or safety.

Health Canada is the national regulatory authority responsible for overseeing key laws related to the advertising of health products. It also develops policies and guidelines to help advertisers understand and comply with regulatory requirements. Notably, [Health Canada's guidance on the distinction between advertising and other activities for health products](#) offers insight to help industry stakeholders determine whether their messaging is promotional, and therefore subject to the advertising provisions of the Food and Drugs Act and other legislation.

To support compliance, Health Canada collaborates with independent advertising preclearance agencies. Although largely voluntary (except in the case of opioids), these agencies review promotional materials before they are released. The Pharmaceutical Advertising Advisory Board (PAAB) reviews advertisements for prescription drugs directed at healthcare professionals, while Ad Standards handles preclearance for consumer-directed advertising of non-prescription drugs and natural health products.

Various provincial bodies and industry associations, including Innovative Medicines Canada and Canada's Medical Technology Companies (MEDEC), oversee the advertising of health services and professionals. This includes services from doctors, dentists, chiropractors, and other regulated health professions. These organizations have implemented self-regulatory initiatives, such as publishing codes of marketing practices and conduct for their members. These codes provide guidance on appropriate interactions between member companies that manufacture, design, develop and/or market medical products/services with health professionals, and health professionals. Health professionals generally include those individuals and entities that purchase, lease, recommend, use, arrange for the purchase or lease of, or prescribe medical products in Canada. All such codes have a view to promoting ethical business practices and socially responsible conduct in the industry, helping ensure that health professionals exercise independent judgement and integrity when making product or service-related decisions.

## Procurement

When engaging public-sector organizations in the course of their business operations, health product manufacturers, importers and distributors should be aware of legislation and policies governing public procurement activities. In particular, there are rules that govern the procurement and payment processes of public sector organizations to ensure that they act, and are perceived to act, with integrity and professionalism.

## Privacy

Federal and provincial privacy and data protection legislation and health privacy legislation establish controls over the collection, use and disclosure of personal information. Generally, Canadian privacy legislation is based on the same 10 privacy principles adopted worldwide (1. Accountability, 2. Identifying Purposes, 3. Consent, 4. Limiting Collection, 5. Limiting Use, Disclosure, and Retention, 6. Accuracy, 7. Safeguards, 8. Openness, 9. Individual Access, and 10. Challenging Compliance.).

## Litigation

Personal injury claims and litigation are less common in Canada than in the United States; however, they do arise and require appropriate protection and risk mitigation. The Supreme Court of Canada has capped damages that may be awarded for pain and suffering to approximately \$320,000 per person for the worst injuries. Punitive damages are rarely awarded and are usually modest. Other factors that make our population less litigious include the general rule that the loser of a court case pays a substantial portion of the victor's legal costs, and cases are more often tried before a judge than a jury. However, class action suits are becoming more common in Canada for some of the same reasons that individual claims are relatively less common. Canadian Charter of Rights and Freedoms claims might become more common because the Supreme Court of Canada has held that the Charter applies not just to government actions, but also to private entities (like hospitals) that "act in furtherance of a specific governmental program or policy".

## Virtual care in Canada

Virtual care has become a significant component of the Canadian health system, accelerated by the COVID-19 pandemic and subsequent regulatory reforms. While new **billing models, such as Ontario's requirement for an existing physician-patient relationship to receive full public funding, have disrupted private business models**, governments continue to refine rules to balance access and cost. Licensing remains fragmented across provinces and territories, though steps such as the **Atlantic physician register and Québec's special authorization signal progress toward greater harmonization**. Despite the patchwork, surveys show high patient satisfaction and preference for virtual care, and it is expected to remain an area of continued growth in Canada.

## Femtech

Femtech in Canada is an emerging sector, the industry encompasses products, services, diagnostics and digital solutions that address health concerns affecting women and those assigned female at birth, including reproductive health, menopause, endometriosis, and maternal care. While still in its early stages, Canadian femtech is beginning to attract more attention from entrepreneurs and investors who recognize the **significant gaps in women's health innovation. With increasing awareness, supportive ecosystems and growing patient demand, femtech presents considerable opportunities for growth and advancement within Canada's broader health technology sector.**

## Fertility

**Fertility law is a highly specialized area within Canada's health care sector, shaped by complex clinical, ethical and regulatory considerations. It is governed by a combination of federal and provincial laws, most notably the Assisted Human Reproduction Act, at the federal level, which sets out rules for assisted reproductive technologies, donor anonymity, and surrogacy arrangements.**

## **Artificial intelligence**

Artificial intelligence (AI) may play a transformative role in Canadian health care, offering the potential to revolutionize diagnostics, personalized medicine, administrative efficiency, and patient engagement. AI-driven platforms are increasingly used to analyze complex medical data, support clinical decision-making, and streamline workflows, thus enabling health professionals to focus more on delivering personalized care. As regulatory frameworks evolve and investment in digital health accelerates, Canada is witnessing growing adoption of AI-powered solutions in areas such as imaging, virtual care triage, and population health management. However, the integration of AI also brings new challenges related to privacy, liability, and ethical governance, emphasizing the need for robust oversight and continuous legal adaptation to safeguard patient trust and ensure the responsible use of these powerful technologies.

## **Conclusion**

The legal framework governing Canadian health care is shaped by a division of powers between the federal and provincial governments, as well as a complex network of **interrelated laws and regulations**. **Canada's health care industry is both robust and expanding**, offering significant opportunities for investment. However, successfully navigating this landscape requires a strong understanding of its legal and regulatory foundations – and BLG is here to help.

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### BLG Offices

#### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3  
  
T 403.232.9500  
F 403.266.1395

#### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9  
  
T 613.237.5160  
F 613.230.8842

#### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2  
  
T 604.687.5744  
F 604.687.1415

#### Montréal

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4  
  
T 514.954.2555  
F 514.879.9015

#### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3  
  
T 416.367.6000  
F 416.367.6749

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