Health Bulletin

The Health Care Reform Debate: A Comparison of the Romanow and Kirby Reports

On October 25, 2002 the Standing Senate Committee on Social Affairs, Science and Technology, led by Senator Michael Kirby, released its final Report on the health of Canadians (the “Kirby Report”). On November 28, 2002, the Commission on the Future of Health Care in Canada, led by former Saskatchewan Premier Roy Romanow, produced its final Report entitled “Building on Values” (the “Romanow Report”). These two Reports will now serve as much-needed lightning rods for the lively debate surrounding health care reform in Canada. Both Reports agree that Canada will be best served by a universal publicly funded health care system. They concur on what the goals of that system should be, and they urge the federal government to take on a bigger share of the cost of the system in order to promote change. However, they otherwise differ in many significant ways. This bulletin will focus on several policy areas analysed by the Kirby and Romanow Reports and provide a brief comparison.

(a) Accountability

As can be seen in recent headlines, a significant area of political debate emerging out of the Kirby and Romanow Reports is accountability. Both Mr. Kirby and Mr. Romanow call for measures to be taken to ensure the accountability of provincial governments. They would hold provincial governments responsible for the decisions they make regarding health care.

The Romanow Report suggests that a Health Care Covenant (“HCC”) be created which would confirm and outline the responsibilities and entitlements of individual Canadians, health care providers and governments. The HCC would possibly function as a guideline or blueprint for a Health Care Council. The Council would play a key role in setting common indicators and benchmarks for measuring and tracking the performance of the health care system, and in reporting results regularly to Canadians. Significantly, Mr. Romanow also recommends that “accountability” become enshrined in the Canada Health Act as one of the pillars of health care.

The Romanow Report recommends centralising the management of waiting lists at the provincial level. It also recommends implementing standardised and objective criteria for assessing a patient’s need for particular services, with the assessment of need to be done by the health care professional providing the service. Mr. Romanow argues that this would provide patients with more accurate information on the expected
length of any delay in receiving health care services and the reason for the delay.

The Kirby Report envisions a more exacting measure of accountability. It recommends a “Health Care Guarantee” that patients will receive treatment within a certain period of time. If the maximum waiting period expires without the patient receiving the treatment, the government would have to pay for the patient to receive treatment outside the jurisdiction (either within Canada or another country). Like Mr. Romanow, Mr. Kirby also calls for a third party evaluator of the health care system and recommends the creation of a National Health Care Commissioner, to operate independently and at arm’s length from government. The Commissioner would serve as the chair of the National Health Care Council, which would be funded by the government. The Council would provide an annual report to the ministers of health of each of the provinces and territories on the status of the system.

The issue of accountability is emerging as a live political issue leading up to the First Minister’s Conference to be held in Ottawa in February. Health Minister Anne McLellan has publicly stated the Federal Government’s desire to tie federal funding to strict accountability for provincial spending. Some provinces expressed concern that the proposed accountability measures will add needless bureaucracy.

(b) Information, Evidence and Ideas

The Romanow Report recommends creating a personal, electronic health record for each Canadian. This would build upon work which is already underway across Canada, including the work of Canada Health Infoway. Canada Health Infoway is an independent non-profit corporation responsible for accelerating the development and adoption of modern systems of technology in the health sector. Mr. Romanow calls for Infoway to take the lead in moving towards a national electronic record system, which would amplify existing provincial systems to ensure that all provinces can share information and guarantee the privacy and security of the system. Mr. Romanow’s electronic health record system would empower Canadians and increase their health literacy by utilizing the existing work of the Canadian health network – a web based network of health resources – to develop a comprehensive health information website with links to other credible health sites. Canadians would access their personal health information and, by following the links to the health information side of the system, obtain the information relevant to their own circumstances. Armed with accurate, up to date, independent health information, Canadians could then participate more efficiently in their own care.

Similarly, the Kirby Report supports the development of a national inter-operable electronic health network containing an individual’s complete health record. In Mr. Kirby’s view, an Electronic Health Record (“EHR”) system would improve the quality, safety, accessibility, timeliness and efficiency of health services. In addition, it would permit the creation, analysis and assimilation of the best evidence as a basis for informed decision making by patients, caregivers, providers, managers and policy makers. This would be done through the creation of a statistical database that would provide users with results-based information on treatments. Unlike Mr. Romanow’s electronic health Infoway, Mr. Kirby’s EHR system would not include an additional layer of general health information.

While Mr. Romanow hopes for an electronic health record system which would empower citizens through information to make good personal health decisions and Mr. Kirby calls for a system that would improve the efficiency, effectiveness of care and the evidentiary basis for health care decisions, both reports emphasise the need for an investment in and a commitment to an electronic health record system.
(c) Investment in Health Care Providers

The Romanow Report says relatively little about the issue of investing in health care infrastructure and human resources. Mr. Romanow calls for a review of current education training programs for health care providers to focus more on integrated approaches for preparing health care teams. He suggests that the government establish a national strategy for addressing the supply, distribution, education, training and changing skills and patterns of practice for Canada’s health workforce. Finally, and perhaps controversially, Mr. Romanow calls for a change in the scope and patterns of practice of health care providers.

Unlike the Romanow Report, the Kirby Report calls for substantial and significant change, providing hard numbers in the area of health care investment. First, Mr. Kirby calls for a capitation fee base for doctors, whereby a price would be fixed for each patient whom a doctor treated, regardless of the treatment provided and the frequency of the treatment. Second, he proposes that hospitals be funded on a fee-for-service basis. Service based funding consists of fixed prices which are established for different procedures, and hospital funding would be based upon how many of each procedure a hospital actually performs. Mr. Kirby believes that these two changes would improve operating efficiencies and accountability.

Mr. Kirby also recommends making a significant investment in the physical plant and equipment of Canada’s teaching hospitals and recommends that the federal government provide $160 million per year to increase medical school enrolment by 2,500 first year students by 2005. Similar investments and enrolment improvements are suggested in both the nursing and allied health care provider fields.

One area of significant divergence between the Romanow and Kirby Reports is the issue of public vs. private health care. The Kirby Report recommends that the government continue to use public funds to insure services regardless of whether they be provided by public or private entities, but only so long as those services meet government standards and are provided at government-regulated prices. Conversely, Mr. Romanow is opposed to increased private health care in Canada and indeed calls for increased funding for diagnostic services within the public system to combat the growing number of private providers of CT and MRI scans, which he says direct much-needed resources from the public health system to private facilities.

(d) Primary Care and Prevention

Both Mr. Kirby and Mr. Romanow suggest significant primary care reform and want to push primary care doctors away from fee-for-service practices to group practices.

Mr. Romanow comes out strongly in favour of primary care reform and has proposed a significant short-term investment by the federal government. He suggests using the proposed Primary Health Care Transfer as the impetus for fundamental change in how health care services are delivered by tying money to the development and implementation of primary care reform. Without offering specifics on implementing such change, he recommends four building blocks essential to primary care reform: (1) continuity of care through case management and service integration, (2) early detection and action leading to better treatment, (3) better information on needs and outcomes, allowing health care professionals and patients to make informed decisions and (4) focus on outcomes and new and stronger incentives for health care providers to participate in primary health care approaches to create certainty and stability for patients and provide flexible work-life conditions for health care providers.

As stated above, the Kirby Report recommends that doctors be paid on a capitation basis. Mr. Kirby
calls for 24 hour a day/7 days a week access to a health care team for all Canadians. This would permit the utilisation of a full spectrum of health care providers, as the health care practice groups would seek to integrate health promotion and illness prevention strategies into their day-to-day work. The proposed EHR would be integral to improving patient care in the group practice model as all health care providers would be able to access an individual’s health record and compare treatments with those used successfully on others in similar circumstances. Mr. Kirby recommends that the federal government provide $50 million per year to set up primary care groups. This recommendation is in line with the changes to primary care currently underway in Ontario where Family Health Networks are being formed to provide citizens with access to quality care.

(e) Home Care

The Romanow Report recommends that the Canada Health Act be revised to include coverage for medically necessary home care. Mr. Romanow suggests that the definition of “medically necessary” in the Canada Health Act not be limited to services provided in a hospital or by a doctor, but should include the health care needs of Canadians regardless of who provides the care or where the care is provided. Mr. Romanow recommends that home care should become part of the publicly funded health care system, although he acknowledges that public funding of all home care services in Canada is not economically feasible today. The Romanow Report recommends prioritising funding in three areas: mental health, post-acute care, and palliative care. It proposes an immediate “Home Care Transfer” by the federal government to the provinces in the amount of $1 billion in order to pay for it. Ongoing funding for home care services would be included in subsequent health care transfers to the provinces, and public funding of additional health care services could be added at a later date.

Senator Kirby also recommends public funding of post-acute care for a period of time. Such funding would be given directly to hospitals because this would provide hospitals with an incentive to provide the most efficient care for patients notwithstanding where the services are provided. Unlike Mr. Romanow, Mr. Kirby does not address home care services for mental illness in his Report and does not recommend that palliative care be deemed medically necessary under the Canada Health Act. He does suggest however, that the federal government set aside new money to cover the costs of the home care program to be developed with the provinces and territories and that the costs of such a program be shared by the federal government with the provinces and territories. The issue of home care has become a key issue for the Federal Government going into the First Minister’s Conference and, if included under medicare, could amount to a dramatic expansion of publicly insured health care services.

(f) Prescription Drugs

Mr. Romanow strongly recommends integrating prescription drugs into the health care system. He proposes the establishment of a catastrophic drug insurance program (the “Drug Transfer”), as well as a new National Drug Agency to control costs and evaluate drugs. He recommends reviewing aspects of Canada’s patent laws. He also recommends the development of a national formulary (a list of approved drugs) of prescription drugs and a new medication management program. The Drug Transfer would be a new federal transfer of funds designated to cover the cost of prescription drugs as an incentive for provinces and territories to expand their coverage. The costs of prescription drugs are increasing and their use is becoming increasingly widespread. Mr. Romanow argues that the resulting pressure on governments would ease with the
implementation of the catastrophic Drug Transfer. Conditions and reporting requirements for the Drug Transfer would be jointly agreed to by the federal, provincial and territorial governments. The federal government would reimburse 50% of an individual’s drug costs over $1,500 per year. It is estimated that the cost of the transfer could be as high as $1.01 billion. This is similar to Mr. Kirby’s proposals but appears to put a greater financial burden on the federal government.

Mr. Romanow envisages the National Drug Agency as simplifying and streamlining the drug assessment and review process, the evaluation of new and existing drugs and the negotiation and containment of drug prices. It would be an independent federal agency with regulatory powers, and it would report directly to Parliament. Funding would be derived from the current budgets of the federal bodies to be integrated into it, including the Patented Medicine Prices Review Board and all the drug analysis, surveillance, approval and pharmaceutical surveillance functions currently performed by Health Canada.

The Romanow Report argues that patent protection laws will have to be re-examined because current legislation allows pharmaceutical companies to extend the life of a patent through various means such as “evergreening”, where manufacturers make variations to existing drugs to extend their patent. Romanow also has an eye to the future and the need to review the Patent Act in light of the emerging issues relating to gene patenting.

(g) Health Care and Globalisation

Mr. Romanow’s interest in and focus on global issues in respect of health care is unique, as the Kirby Report does not address this issue. The impact of international trade agreements on our health system is a concern for him. Mr. Romanow recommends ensuring that any future reforms are protected under current and future national agreements so that Canada maintains control of its right to regulate health care policy.

(h) Conclusion

Clearly, the Romanow and Kirby Reports have provided much fodder for the health care debate. Never before has health care reform held such a high place on the agenda of the media, politicians and citizens. In the weeks and months to come, the health care debate will likely build, as Canada’s political leaders gather in Ottawa for the First Minister’s Conference. The results of that meeting may have a profound impact on the direction of health care reform.

Fasken Martineau DuMoulin will continue to provide information and guidance on health care issues. On April 28 and 29, 2003 we are sponsoring a Health Policy Summit, which is being offered by Insight Information Co. at the Crowne Plaza Hotel in Toronto. The Summit will be chaired by David Rosenbaum (a partner and member of our Health Law Group).

Should you have any questions about the Kirby or Romanow Reports, or any other health law matters, please do not hesitate to contact any member of our Health Law Group.
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