Legal Routes to Accountability in Health Care

Friday, May 7, 2004 – Recent years have seen an increasing use of legal means to define rights and obligations regarding health care.

The competing goals of maintaining a sustainable public health care system, funding other public programs and services adequately, and fiscal balance, provide a context for dispute.

But does this growing appeal to the courts advance the cause of greater accountability in health care?

The third report in the Health Care Accountability Papers from CPRN's Health Network, explores this terrain. ***Accountability in Health Care and Legal Approaches***, by Nola M. Ries and Timothy Caulfield of the Health Law Institute at the University of Alberta, examines five key legal mechanisms and their effectiveness in improving accountability in health care.

The five legal mechanisms are:

1) Legal challenges based on the *Canadian Charter of Rights and Freedoms* or human rights laws seeking access to services through the publicly funded health care system.
2) Legal challenges based on the *Charter* in which individuals dispute restrictions on the ability to exercise choice regarding health care.
3) Legal challenges or complaints directed to bodies created by statute (health service review boards, ombudsmen), in which individuals dispute the reasonableness or fairness of government health care policies.
4) Legal principles establishing an entitlement to a specific level, or standard, of care.
5) Legislative or policy mechanisms, such as patient bills of rights, or care guarantees, that set out rights and responsibilities regarding health care.

The authors review the use of these mechanisms here and abroad and assess their utility for health care accountability. Their conclusions in this regard are mixed.

Charter and human rights cases, for instance, can enhance accountability by ensuring that overlooked groups have an avenue of recourse. They also require governments, as health care funders, publicly to explain their resource allocation choices.

At the same time, these cases could have an adverse effect on accountability, by interfering with legislative responsibility for resource allocation with perverse effect.

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“If courts grant remedies that tell governments how to allocate their health care dollars, the effect could be paradoxical,” says Ries. “A court-approved claim for access to particular services, not previously funded, could have the effect of diluting resources and the quality of services across the board.”

Similarly, the authors find that *Charter* cases that seek to widen the range of individual options force governments to justify their policy choices and strengthen accountability. But they, too, raise the potential of court decisions that interfere with legislated policies supported by many, if not a majority of Canadians.

As for administrative bodies with the power to review decisions about the scope of health coverage, the authors see potential for investigating unfairness, but uncertain remedies. Medical malpractice cases, on the other hand, may enhance accountability by providing a means of enforcing compliance with acceptable standards of care. The cases also help clarify patient rights and provider obligations.

The paper concludes with an examination of legislated patient bills of rights and care guarantees, drawing on experience abroad.

The authors see a symbolic value in laws establishing patients’ rights, and they find that commitments to monitor and report on quality, safety and other issues may improve accountability. However, they see enforcement of the principles embodied in the legislation as problematic. They regard care guarantees as potentially useful to efforts to manage waiting lists and timely access to primary and specialist care, but they find evidence of their impact hard to come by.

“In summary, the mechanisms we examine here may have both beneficial and unfavourable effects on accountability,” says Ries. “It is difficult to reach a conclusion that, in general, use of legal mechanisms is good or bad. We can say, however, that lawsuits are not likely to offer the best approach to health system reform.”

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