Health Care Accountability: What the Legislation Says

Friday, February 25, 2005 – All recent major federal and provincial health care reform inquiries have found that Canadians rank greater accountability high among their priorities.

Accountability means answering questions like; Who is responsible to whom for what? How can we tell whether they have fulfilled that responsibility? and, What is the consequence for not fulfilling it?

A new addition to CPRN's Health Care Accountability Papers, explores Canadian health-related legislation with these questions in mind. ***Mapping Legislative Accountabilities*** by Susan Zimmerman, a lawyer with the Health Law Group at Borden Ladner Gervais, in Toronto, provides what she calls, "a useful outline of the landscape, identifying where accountability is concentrated, what types of accountability are most prevalent, and where there are weak spots or gaps."

The key responsible players in health care are: *Governments*; *Government agencies and commissions*; *Regional health authorities* (RHAs); *Professional colleges*, the regulatory bodies for each health profession; *Health facilities*, from hospitals to long-term care centres, and; *Individual health care providers*.

And the key areas of accountability are: *Standards* (systemic, institutional, clinical and professional); *Resources* (financial, human); *Public engagement and responsiveness* (citizen representation in decision-making, public participation, transparency, complaint and appeal mechanisms, public education and information), and; *Quality and evaluation*.

Zimmerman reviews more than one hundred acts to compare federal/provincial/territorial practice with regard to each of these areas of accountability.

"While a review of statutory provisions without reference to their accompanying regulations provides an incomplete picture of legislative accountability," she says, "it does provide a rough measure of where the accountability focus lies and a good indication of the locus of responsibility."

Zimmerman also warns that the fact that powers are legislated tells us nothing about the effectiveness of those powers in practice. That depends on the human and financial resources devoted to implementation, enforcement and the sanctions for non-compliance. The political will to enforce accountability is also an essential ingredient.

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Among her main conclusions:

1) Responsibility for establishing ***standards*** in the health care system lies primarily with provincial ministers, departments of health and specialized government agencies, with the support of RHAs. Professional colleges have a significant role in setting standards of practice and ethical conduct for providers in regulated professions. Operators of health care facilities also play a role in establishing and upholding organizational and professional standards in their institutions.
2) Only health ministers and regional health authorities have significant authority over ***financial resources***. There is little in the way of legislative accountability assigned to any of the main actors for ***human resources***. This may reflect a lack of strategic planning regarding health human resources.
3) Few legislative provisions address ***public engagement and responsiveness***. Professional colleges lead the way in terms of providing for public representation in decision-making, transparency and complaint mechanisms, along with RHAs. Governments and government agencies do not fare so well.
4) Governments take the lead regarding ***quality and evaluation***, monitoring quality, providing information and sponsoring research. Government agencies and professional colleges also perform a monitoring function, while RHAs are a significant source of public information.

Zimmerman concludes that the goals of public engagement and responsiveness are best served when the actor involved has a clear sense of its direct responsibility to answer to the public.

"The contrast between professional colleges and governments and government agencies in this regard is striking," she says. "The former have a clear mandate to set and uphold professional standards and respond to public complaints of misconduct. On the other hand, fewer than half the provinces and territories have provisions of any kind relating to public engagement and responsiveness."

Zimmerman finds that the current system of accountability offers few avenues (with the notable exception of Quebec) for members of the public to express, individually or collectively, their dissatisfaction with *access or quality of services* provided by the health care system.

"Current lines of accountability run primarily between government and service provider or facility operator," she says. "Legislating more direct avenues for accountability to the public would send a strong message that the government understands to whom it is answerable."

CPRN hopes to publish a matrix developed by Zimmerman that allows comparison of legislated accountabilities in the provinces, territories and the federal government at a later date.

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