

# Specialized Medical Centres: Newcomers in the Healthcare System

By Jocelyne Forget

Since January 1, 2008, the “specialized medical centres” provided for in the **Act to amend the Act respecting health and social services and other legislative provisions**<sup>1</sup> are part of our healthcare system. They were created in response to the Supreme Court’s decision in the *Chaoulli* case<sup>2</sup> in which it was decided, by a majority, that because of the waiting lists, the prohibition against having private insurance for services insured by the plan<sup>3</sup> was contrary to the rights to life, liberty and security guaranteed by the *Charters*<sup>4</sup>.

“Specialized medical centres” are midway between a “private professional practice” and an “institution”. Let us begin by examining the principal characteristics of a specialized medical centre and its interaction with a healthcare network institution that operates a hospital centre.



## The specialized medical centre

We should mention at the outset that specialized medical centres were created to meet specific needs. They are defined as “a place, outside a facility maintained by an institution, that is equipped for the provision by one or more physicians of medical services necessary for an arthroplasty - hip or knee replacement, a cataract extraction and intraocular lens implantation, or any other specialized medical treatment determined by regulation of the Minister”.<sup>5</sup>

As regards the other medical treatments that may be provided in a specialized medical centre, a draft regulation was published on November 14, 2007 in the *Gazette officielle du Québec*. This proposed regulation contains a list of treatments that, unless provided in a hospital centre, must be provided in a specialized medical centre. These treatments are essentially surgeries. The list of surgeries covered is divided into two parts, one regardless of the type of anesthesia used and the other for surgeries under general or regional anesthesia. This list includes, among others, the following types of surgery: breast, esthetic, orthopedic, airway, digestive system, gynecological, nervous system, visual apparatus, auditory apparatus, and surgery for transsexual purposes.

<sup>1</sup> S.Q. 2006, c. 43.

<sup>2</sup> *Chaoulli v. Quebec (Attorney General)* EYB 2005-91328.

<sup>3</sup> Prohibition stipulated in section 15 of the *Health Insurance Act*, R.S.Q., c. A-29 and section 11 of the *Hospital Insurance Act*, R.S.Q., c. A-28.

<sup>4</sup> Section 1 of the Quebec Charter and section 7 of the Canadian Charter.

<sup>5</sup> Section 333.1 of the *Act respecting health services and social services*.



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BARRISTERS AND SOLICITORS

This list is part of a proposed regulation<sup>6</sup> which could be amended before it is adopted. However, it should be remembered that this proposed regulation ensures that the surgeries included in this list will no longer be performed in private practice. It will be compulsory that they be performed in a hospital centre or a specialized medical centre. Any person or partnership who, as of January 1, 2008, operates a private practice providing one of the surgeries stipulated in the Act or, eventually, in the regulation, must, in order to continue performing the same surgeries, obtain a permit before June 30, 2008, authorizing him to operate a specialized medical centre.

### **Rules applicable to specialized medical centres**

Without performing an exhaustive review, the principal rules applicable to a specialized medical centre are as follows:

- Only a member physician of the Collège des médecins du Québec may operate a specialized medical centre. If the operator of the centre is a legal entity or a partnership, more than 50% of the voting rights attached to the shares of the legal entity or the interests in the partnership, as the case may be, must be held by physicians who are members of the Collège des médecins du Québec.
- The affairs of a specialized medical centre operated by a legal entity or a partnership must be administered by a board of directors or an internal management board, as the case may be, a majority of whose members are physicians who are members of the Collège des médecins du Québec. Such physicians must at all times form the majority of the quorum of such board.

<sup>6</sup> As of January 16, 2008, this was still a draft regulation.

- The operator of a specialized medical centre must appoint a medical director who must be a member of the Collège des médecins du Québec.
- The physicians of a specialized medical centre must be either physicians participating in the health insurance plan or physicians not participating in the plan. In other words, the specialized medical centre may not be composed of both participating physicians and non-participating physicians.
- Only a physician who provides medical services necessary to perform an arthroplasty - hip or knee replacement -, a cataract extraction and intraocular lens implantation, or any other specialized medical treatment determined by regulation of the Minister or preoperative or postoperative services normally associated with this surgery, may practice in a specialized medical centre.
- The operator of a specialized medical centre must obtain a permit from the Ministère de la santé et des services sociaux. The permit indicates the status of the centre (participating or non-participating), the medical treatments that may be provided there, the address and, if applicable, the number of beds available. The permit is valid for five years and renewable for the same term.
- Within three years after the permit is issued, the operator of a specialized medical centre must obtain accreditation of the services provided in the centre by an accreditation body recognized by the Minister. Subsequently, the accreditation must be maintained at all times.
- The operator of a specialized medical centre in which non-participating physicians practice must ensure that every person who has surgery there that is covered in the permit also receives, in the centre, all the preoperative and postoperative services normally associated with such surgery. The operator must also ensure that such a person receives, in the centre or from another source, all the rehabilitation services and home care support services

needed for a complete recovery. The same obligations also apply to the operator of a specialized medical centre where participating physicians practice with respect to specialized medical treatment that is considered non-insured under the *Health Insurance Act* (R.S.Q., c. A-29).

Consequently, the cost of all of the care related to surgery or treatment provided by a non-participating physician must be assumed by the patient. The same applies to care provided by a physician participating in the plan, if the care is not a service insured under the plan.

### **Interaction between a “specialized medical centre” and an institution that operates a hospital centre**

In addition to its clientele, can a specialized medical centre treat the users of an institution that operates a hospital centre? Yes, but subject to certain conditions if this is an association which has the effect of significantly modifying the organization of specialized medical services provided in the hospital centre by entrusting them to the specialized medical centre. In such circumstances, the Act refers to the “specialized medical centre” as an “associated medical clinic”. The principal conditions of such an association are as follows:

- Such an association will only be possible pursuant to a proposal by an agency that has previously consulted with the regional panel of heads of departments of specialized medicine, and only if accepted by the Minister.

- Before accepting an agency's proposal, the Minister must be of the opinion that such an association will improve accessibility to the specialized medical services concerned and that it will not affect the capacity of the public health and social services network, in particular as regards staffing requirements for the operation of that network.
- The Minister's decision to accept the agency's proposal must specify the procedure to be followed by the agency to determine which specialized medical centre offers the best quality/cost ratio.
- After completion of the selection procedure and after obtaining the authorization of the Minister, the agency and the institution concerned must enter into an agreement with the operator of the specialized medical centre.
- Such an association will only be possible with a specialized medical centre in which all the physicians who practice there participate in the health insurance plan and those who provide services under the agreement first hold an appointment allowing them to practice in the hospital centre with which the specialized medical centre is affiliated.
- The agreement must deal with specific points provided for in the Act, particularly the following:
  - 1) the nature of the specialized medical services covered;
  - 2) the minimum and maximum number of services that may be provided each year in the specialized medical centre, as well as their distribution on a quarterly basis;
  - 3) the unit amount to be paid by the agency to cover the costs related to each specialized medical service provided in the specialized medical centre;
  - 4) the monitoring mechanisms that will allow the institution operating a hospital centre, or one of its boards or committees determined in the agreement, to ensure the quality and safety of the medical services provided in the specialized medical centre.

- The services covered by the agreement are subject to the complaint examination procedure of the institution that refers users to the specialized medical centre.
- The agreement has a maximum five-year term. Unless the agency terminates the agreement on grounds relating to the quality or safety of the services or because of failure to comply with the Act, the parties may not terminate the agreement before its expiry, or amend or renew it, without the Minister's authorization. To renew the agreement, a draft renewal agreement must be sent to the Minister at least six months before the agreement expires.

Remember that all of the above conditions apply when an association between a specialized medical centre and an institution operating a hospital centre has the effect of significantly modifying the organization of the specialized medical services provided in such institution. Otherwise, section 108 of the *Act respecting health services and social services* continues to apply. It provides that an institution may enter into an agreement with another body or any other person for the provision of certain health services or social services required by a user of the institution or for the provision, or exchange, of professional health or social services. However, prior authorization from the Minister is required to enter into an agreement with the operator of a specialized medical centre in which non-participating physicians practice, or with a non-participating professional, or if the service covered by the agreement is an insured service that is considered non-insured.

### **What about private insurance?**

From now on, insurance contracts or employee benefit plans may provide, subject to the applicable deductible, for coverage of payment of the cost of medical services received in a non-participating specialized medical centre for an arthroplasty - total hip or knee replacement -, a cataract extraction and intraocular lens implantation or any other treatment determined by government regulation. The insurance contract or the employee benefit plan may also cover all the preoperative, post-operative, rehabilitation and home care support services related to such surgery or such treatment.

As we can see, the Act offers little flexibility in terms of private insurance.

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