

# President's Letter

August 22, 2016

## Decision not to release individual FFS billings appealed

Dear Colleagues:

As you are aware, the Department of Health and Community Services received an access to information request in April 2016 for "All MCP billings listed by physician (by specialty) for either calendar year 2015 or fiscal year 2015-16..." The Department sent a notice to fee-for-service physicians in May advising that it intended to release the MCP billing records of physicians, listed by names, medical specialties, and total billing amounts. Many physicians filed complaints with the Department and the Office of the Information and Privacy Commissioner (OIPC) to contest the release of this personal information. The NLMA also filed a submission with the Department and the Commissioner because it is our opinion that the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)* legislation does not address FFS circumstances. NLMA's reasons for contesting the release of this information are outlined in our [May 27, 2016 President's Letter](#).

Before the Commissioner assessed those complaints, the Department reversed its original decision and elected not to release the information. While the NLMA was pleased with this decision, we were aware that the original applicant for the information could appeal the Department's decision to the Commissioner. We have been informed by the Commissioner's Office that such an appeal has been filed objecting to the Department's decision.

The Commissioner has now launched a formal investigation in accordance with section 44(4) of ATIPPA, 2015 to determine whether or not the disclosure of the records containing the MCP billing records of physicians, listed by names, medical specialties, and total billing amounts, would be an unreasonable invasion of physicians' personal privacy under section 40 of the *ATIPPA, 2015*. As part of this investigation, the Commissioner will consider the complaints filed by individual physicians as well as the submission made by the NLMA.

The investigation and report by the Commissioner will be completed and released by September 26, 2016. If the OIPC recommends that the Department disclose the information, the Department may elect to seek a declaration from the Supreme Court Trial Division on whether or not the Department is required to comply with the Commissioner's recommendation. If the Department decides to disclose the information, then the physicians affected (and the NLMA) may file an appeal in the Supreme Court Trial Division. If, on the other hand, the Department decides the information should be withheld, the applicant who filed the *ATIPPA, 2015* request may file an appeal in the Supreme Court Trial Division.

A noteworthy additional information release has occurred that is linked to this process. In July, the Department received another *ATIPPA, 2015* request seeking "a copy of all correspondence related to" the handling of the FFS access request. This includes internal correspondence from the Department, correspondence from the NLMA, as well as the submissions made by individual physicians (with their names redacted). This information has now been posted on the government's website. Therefore, it is possible there will be media coverage of this additional release.

The NLMA will continue to keep its members apprised of developments on this matter.

Regards,



Christopher Cox, MD, FRCSC, FACS  
President



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