

President's Letter

May 27, 2015



Jonathan Greenland
MD, FRCP
President

NLMA to contest release of individual FFS billings

- *Government has decided to release individual FFS billings in response to an application under the Access to Information legislation*
- *Before release, Government is advising doctors how to provide consent or how to file a complaint*
- *The NLMA does not believe the Access to Information legislation addresses FFS circumstances*
- *NLMA to file complaint with Information and Privacy Commissioner; physicians may join the complaint*

Dear Colleagues:

In a [letter](#) released today from the Department of Health and Community Services, physicians are being advised that Government will release the MCP billings of more than 1,400 physicians who provided services to patients in the province last year. The information will be provided to an applicant in response to a request under *Access to Information and Protection of Privacy Act, 2015* (“*ATIPPA, 2015*”). Specifically, the records Government plans to release will include: specialty; physician name; and the total fee-for-service (FFS) billing amounts for each physician who had MCP billings in 2015.

In a separate previous decision, the regional health authorities decided to disclose the salary information for employees of regional health authorities earning more than \$100,000 a year. At that time, the NLMA and salaried physicians had the benefit of an opinion of the Information and Privacy Commissioner that indicated the Commissioner was of the view that release of salary information of employees, including names, was in compliance with *ATIPPA, 2015*. No such opinion about the applicability of *ATIPPA, 2015* to FFS circumstances is available. As of the present date, the regional health authorities have released salary information at the individual physician level, but have not released names. It would appear they might be waiting for the conclusion of an application to the Court, filed by several unions, to determine whether names and remuneration of individual employees will be released.

The NLMA disagrees with the release of personal information related to MCP FFS billings because *ATIPPA, 2015* does not address FFS circumstances.

1. The NLMA does not believe that personal information related to FFS payments can be released under the provisions of *ATIPPA, 2015*. Our Memorandum of Agreement (MOA) with Government is not a contract for the procurement of services by Government. FFS physicians provide services to patients, not to Government. The legislation underlying the MCP system creates a right of FFS physicians to be paid when insured services are provided, but FFS physicians are service providers to individual patients. Thus, FFS billings are not salaries, and Government must keep personal information related to FFS billings confidential.

2. FFS payments are designed to cover many types of expenses other than a physician's income. FFS payments also cover overhead expenses such as leases and utilities, office staff salaries and benefits, and certain variable costs such as tray expenses. The proportion of overhead expenses carried by a doctor or all the doctors in a specialty varies considerably between doctors and between specialties. Confusion arises in the public use of FFS data because the total billings of a doctor are sometimes regarded as the actual income of a doctor, which it is not. There is a general misconception that the individual FFS billings of a doctor or a specialty can aptly be compared to other doctors or specialties. Given the obvious opportunity for public misunderstanding, Government should not be releasing the individual names of doctors or other identifiable information.

For these reasons, and in consultation with the Board of Directors and our legal counsel, the NLMA will file a complaint with the Information and Privacy Commissioner concerning the Department's proposed release of personal information linked to FFS billings.

Physicians who oppose the release of this information as proposed by Government and who support our proposed complaint to the Commissioner should contact me at president@nlma.nl.ca by **June 3** to have their names included in that complaint.


Physicians should also contact the Department by email at HCSATIPP@gov.nl.ca, as per instructions in the Department's [letter](#), to advise the Department whether they do or do not consent to the release of personal information for calendar year 2015.

We realize that FFS physicians receive significant revenue from Government and believe we should be transparent within the bounds of the current law. The NLMA would advocate for appropriate data releases that properly describe the nature of FFS billings (e.g. overhead expenses) and also protect the privacy of individual physicians.

Regards,



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President



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