President's Letter

September 1, 2016

Christopher Cox, MD, FRCSC, FACS
President

Advice for Members on Changes to Benefits Outside MOA

Dear Colleagues:

As you are aware, the provincial government has decided to reduce certain benefits to fee-for-service and salaried physicians from Regional Health Authorities (RHAs) that are not included within the NLMA Memorandum of Agreement. In this letter we are providing an update on these decisions and some advice on how affected physicians may wish to respond.

In some cases, these benefits exist in individual contracts with physicians. While the NLMA does not dispute Government's right to adjust its spending on items that are discretionary or policy-based, it is the Association's position that Government and the RHAs must respect the obligations of contracts that have been negotiated and entered into with individual physicians.

We communicated this concern as well as a number of questions to the Department of Health and Community Services (DHCS). The NLMA also requested that government delay the changes until such time as appropriate arrangements for addressing individual contracts, and clear implementations rules, could be developed and communicated. In a letter recently received by the NLMA, Government signaled that it would not alter its position that changes will be made to individual contracts nor alter its timeline for implementing such changes. A summary of Government's responses to our questions is included as an attachment to this letter.

Although the NLMA is not a party to individual contracts between physicians and RHAs, and we are not seeking such a role, many physicians have contacted us for advice on this situation. *(Please note that the following serves as general advice to members and that any member considering legal action should first consult with their own legal counsel.)*

It is each physician's right to legally challenge an RHA's proposed course of action if the RHA is a party to a contract with a physician and the change(s) affect(s) the benefits outlined in such contract.

Each FSS and salaried physician member who is a party to an individual contractual relationship with a RHA has the right to advise the RHA: (i) that he or she does not accept the RHA's attempt to unilaterally change their contract: and (ii) that he or she expects the RHA to continue to abide by the terms of the individual's contract. If the RHA terminates the benefit(s) anyway, such action may be a breach of the contract. In such circumstances, the physician could at that stage elect to ask a court to require that the RHA comply with the contract, and the physician should seek the advice of legal counsel.

We do not believe that RHAs actually wish to bring an end to contracts with individual physicians. It is our assessment that to implement some of the cost reduction measures, RHAs will have to breach, and thereby risk the termination of, these contracts. Under these circumstances, Government and the RHAs are assuming that many physicians will accept unilateral alterations to individual contracts and continue the relationship uninterrupted, without any legal action. This choice is up to the individual physicians.

We would appreciate being kept informed by physicians about the communications made to them by RHAs on these matters. The NLMA will assess these activities and determine if there is any role for the Association in providing further advice or advocacy.

Regards,

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The following is a summary of the answers received by the Department and Community Services on July 14, 2016 in response to questions submitted by the NLMA:

1. **Any proposals to revise Alternate Payment Plans that are subsidiary agreements to the Memorandum of Agreement should be proposed to the NLMA for negotiation. These changes cannot be made unilaterally by the Government.**

   DHCS RESPONSE: Government appreciates the process for altering terms of APP contracts; however, it is Government's position that the changes being suggested are for benefits that are received by physicians that are outside benefits negotiated under the MOA and in the case of physicians remunerated via an APP, benefits that are received outside the APP contract. Clearly, if benefits identified outside the MOA are embedded in an APP contract then changes to the APP contract would be achieved via negotiation between the NLMA and Government. As you are aware there are many nuances to APP contracts and Government has been working with the NLMA and RHAs on a process to standardize these contracts.

2. **Many of the benefits in the April 18 list are embedded in contracts between RHAs and specific physicians. These are contractual benefits no different in legal status than contractual benefits under the MOA. These contracts with individual physicians may have different formats – such as agreements, exchanges of letters, position descriptions, verbal agreements and customary practice – but they all have legal effect. If Government is intent on pursuing the proposed changes, it must assume that doctors will not voluntarily agree to these compensation reductions. Therefore, if Government proceeds, it will effectively be terminating those contracts and seeking to negotiate new contracts with these physicians. As the NLMA has an interest in ensuring the legal rights of its members are protected, we suggest that the Government consult with us on its intended process for addressing the benefits inside individual contracts so that we may provide further advice to Government and to our members.**

   DHCS RESPONSE: Government's intention is to have consistency in the application of rules related to benefits provided to physicians by the RHAs that are outside those negotiated in the MOA with the NLMA. Government recognizes, as the NLMA has identified, that there are proper processes to follow under existing contracts with individual physicians, regardless of whether those contracts are written or verbal. Similarly, where changes will be made to RHA policies under which some benefits may be received, those changes will be made in a fashion which respects obligations of the RHAs to physicians. As you are aware, some benefits received were time limited and others are ongoing. It is Government's intention, as previously discussed with you, to have a complete inventory of the various arrangements and to have the RHAs engage with their legal counsel, including the appropriate notification period to advise physicians about changes to their existing arrangements. Following this, discussion will occur between the RHAs and the individual physicians. The Department will be reviewing the information received and providing feedback so that there is consistency amongst the RHAs in the application of these changes.

3. **In proceeding on this matter, please consider the impact this decision has on rural physician recruitment. We expect Government will find that certain incentives are still required for hard-to-fill positions and to avoid disrupting currently stable services. In this context, and before any such changes are implemented, the NLMA would support a new policy initiative to set appropriate criteria and consistent incentives to maintain the originally intended recruitment and retention goals.**

DHCS RESPONSE: In making these changes, Government is aware of the issue of recruitment and retention of physicians, particularly in areas that have been traditionally hard to fill. While it is appreciated that the full impact of these changes will not be known until implementation has occurred, it is recognized that at present similar types of rural and remote practices do not have consistent application of benefits. It is not evident in these situations that providing additional benefits has necessarily resulted in better recruitment or long term retention. As you are aware, there are a number of factors that influence a physician's decision to establish his or her practice in a particular area of the province and to remain there. In fact, we know from research that considerations other than incentives influence a physician making such a decision. At the same time, Government is aware that incentives do have a role, and for this reason, Government wishes to standardize incentives offered.

4. **We ask that the government's policies regarding these benefits be clearly communicated to physicians. We are attaching a number of issues and questions to this letter in this regard.**

(a) Will targeted CME funding be eliminated for pathologists and oncologists? We note that Recommendation #27 from the Commission of Inquiry on Hormone Receptor Testing says that: "Continuing medical education for pathologists and oncologists must be mandatory and funded. Each regional health authority should develop a written protocol for continuing education for pathologists and oncologists in accordance with the requirements of the region. Each regional health authority has the responsibility to ensure the protocol is followed, and that adequate protected time and resources for these physicians is provided to allow them to participate."

DHCS RESPONSE: It is Government's intention to standardize benefits provided outside the MOA to all physicians, including pathologists and oncologists. Cameron recommendation #27 is noted; however, subsequent to the Report on Hormone Receptor Testing being presented to Government, an increase in compensation was provided to all salaried specialists that was in excess of 40%. It is Government's position that such funding adequately provides salaried oncologists and pathologists with compensation that includes professional development/CME. In addition, it is recognized by all Regulatory Authorities in Canada and as well by the Royal College of Physicians and Surgeons of Canada and the Canadian College of Family Physicians that continuing professional development/CME is a requirement for licensure and to maintain membership in the respective colleges.

(b) Is there a distinction between CME that is necessary for licensure and CME that is funded by a RHA in support of clinical service priorities of the RHA? Will funding be preserved for the latter?

DHCS RESPONSE: Should the RHAs introduce new clinical services or technology, professional development will be provided, when necessary, to support such introduction.

(c) Many individual contracts provide both funding and leave for CME. Please clarify that Government's intention is only targeted at funding and not the associated leave.

DHCS RESPONSE: It is also noted that salaried physicians have study leave as a benefit under the MOA. There is no intention to alter study leave benefits, unless negotiated with the NLMA.

(d) Subsidized office space may have been provided in some locations due to low FFS billing opportunities. Will this factor be taken into account when changes are made?

DHCS RESPONSE: You have suggested in your correspondence that some FFS physicians receive an office overhead subsidy because of limited earning potential. (Government) is not aware of any circumstances presently where this may be an issue but recognize that this may have occurred in the past. If there is a situation where FFS physician earning potential is estimated to be limited, the physician would normally be remunerated via salary.

(e) Will there be a template agreement about the types of office overhead expenses that are included in the $2,400 per month (e.g. office space, administrative assistance, telephone, computer, IT support, office supplies, janitorial, parking, waiting room, etc.). It will be important for standardization purposes that not only such a monthly fee universally be the same but that the services provided to individual physicians also be generally equivalent.

DHCS RESPONSE: It is Government's desire to have FFS and APP physicians charged a fee for their office space and associated costs. As you are aware, there are a variety of office related benefits received by physicians and associated charges. Government has advised RHAs that they will charge FFS and APP physicians $2400 per month for office space, cleaning and maintenance, heat and light, and telecommunications. There have been a number of questions related to this issue and the department has continued to provide clarification to the RHAs as issues come forward. (Government) can advise you that further work is being done on this matter, by the department in collaboration with the RHAs, to ensure consistency and fairness across the four RHAs. Once policies are established, the RHAs will provide appropriate notification to physicians regarding these changes. Academic FFS and academic APP physicians presently provide an overhead payment to the Faculty of Medicine through MPA and (Government) can advise that these physicians will not be included in this policy.

(f) We presume that the overhead charges apply to office and related expenses and not to clinic space. Please clarify this point?

DHCS RESPONSE: The department can confirm that physicians who maintain clinical offices where they see patients outside RHA owned or leased properties will not be charged for clinic space that is utilized in the RHA facilities.

(g) Will the $2,400 monthly overhead fees be charged to physicians who are on maternity leave or other types of leave?

DHCS RESPONSE: The issue of whether physicians on maternity leave, long term sick leave or other extended periods of leave will have the charges reduced or eliminated has not been decided at this time. The department, in conjunction with the RHAs, will formulate a policy on this matter.

(h) Do any of the changes, especially vehicle and housing allowances, also apply to locums?

DHCS RESPONSE: The application of benefits provided to locums will be consistent across the RHAs and will include vehicle allowance and housing. There will be consistency in the duration of these benefits based on the duration of the locum.