President's Letter

December 21, 2016

Update on Status of MOA and Arbitration

**Christopher Cox,
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President**

Highlights

- *The signing of the MOA is delayed due to issues with the binding arbitration provision.*
- *Negotiated benefits remain intact and will be paid out retroactively once the MOA is signed.*
- *Arbitration is contingent on the creation of a mechanism to prevent withdrawal of services.*
- *NLMA has proposed such a mechanism. Government has not yet formally responded.*
- *NLMA will continue to press government with the aim of finalizing the MOA in the coming weeks.*

Dear Colleagues:

The 2013-2017 Memorandum of Agreement (MOA) that was approved by members in a vote on October 15, 2015 has not yet been signed. A significant amount of the delay was due to legal drafting, but the continued delay relates to potential issues with the binding arbitration provisions.

First, I wish to assure you that the increased funding and other improvements in the MOA remain firmly in place. The government and the NLMA reached clear agreement on all these aspects of the MOA and they will flow as soon as the MOA is signed. Retroactive payments to both salaried and fee-for-service physicians will be calculated and paid out at that time.

However, the NLMA is unwilling to sign the MOA until the rules around binding arbitration are finalized. Doctors have fought hard for the right to binding arbitration and nothing short of absolute certainty will suffice. Doctors and their patients never again wish to see the anxiety and difficulties associated with the withdrawal of services in 2002 or the physician resignations of 2010.

The government was an enthusiastic partner in agreeing to arbitration in the 2009-2013 MOA, and in the 20013-2017 MOA negotiations, but has allowed a procedural problem to get in the way of a final resolution. The government proposed that the right to arbitration should be accompanied by a mechanism to prevent physicians from withdrawing services where the explicit intent of the withdrawal is to extract benefits in excess of the MOA. As the right to arbitration is designed to avoid service withdrawals, or strikes, the NLMA supported this mechanism.

The first effort to design a mechanism was through a bylaw amendment by the College of Physicians and Surgeons. The bylaw would make service withdrawal, with the intent of extracting benefits in excess of the MOA, a behaviour deserving of sanction. After examining the mechanism, the College advised that this process was outside its mandate and asked to be excluded. The government agreed, as did the NLMA as long as an alternative was found.

The NLMA is very flexible in how we meet the government's objective, and we have offered an alternative solution using an amendment to the NLMA's own bylaws. The government has not yet formally responded. We believe designing a mechanism is essentially a technical problem, not a policy problem, and should be resolved without further delay.

Even though we support government's objective, a new mechanism to prevent service withdrawal is probably unnecessary given all the other barriers to this behaviour. The NLMA will not organize or support service withdrawals (as we have in the past). There are already rules of the College of Physicians and Surgeons that address job actions and service withdrawals. Furthermore, and quite simply, the right to arbitration will be self-policing; physicians will not tolerate members who jeopardize the hard-won right to binding arbitration. Disputes must be channelled into negotiations or arbitration, and will not require service withdrawals.

We will be pressing government hard in the coming weeks to finalize the MOA so we can move on to more pressing matters such as health care sustainability and the improvement of medical practice in the province.

Sincerely,

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