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NLMA settles two legal cases with provincial government

Dear Colleagues,

I am very pleased to report that the NLMA and provincial government have agreed to settle two outstanding legal cases prior to going to court.

The NLMA filed an application with the Supreme Court of Newfoundland and Labrador in 2021 to address changes in connection with payments for Specific Assessments to fee-for-service specialists. A second application was filed that year to resolve a disagreement regarding the application of Schedule L of the Memorandum of Agreement (MOA) to Intravitreal Injection (IVI) fees in ophthalmology.

On Sunday, the NLMA accepted the government's offer to settle both cases prior to being heard in court on May 24, 2023. This marks a successful conclusion to these cases, which the NLMA viewed as a breach of our MOA. We aggressively challenged both issues to protect member interests, as we would any time there is a violation of our agreement.

SA/SRA Case

Since 2019, many Specific Assessment (SA) claims by FFS Specialists were improperly rejected by MCP and adjusted to the lower rate of Specific Reassessments (SRA). The NLMA sought a declaration from the court that a claim for a SA is payable as a SA so long as it is performed more than 90 days after any previous SA of that patient by that Specialist. We were also seeking a declaration from the court that the Department's practice since 2019 of changing or reclassifying such claims as SRAs, based on an absence of a new diagnosis or function assessment, was a breach of the MOA. Our court application also sought a declaration that the changes were in breach of the statutory duty to consult the NLMA pursuant to the *Medical Care and Hospital Insurance Act*.

By accepting this settlement, affected FFS physicians will now be compensated for all SAs that had been downgraded due to the government's alternate interpretation of the fee code since May 2019. Physicians will receive 100% of the balance for the difference between the two codes. Current claims for SAs that have been held for adjudication will also be paid in full.

The Department of Health has also accepted the NLMA's proposal for a single code based on a weighted average of the SA, SRA, GA and GRA codes for consultants who can bill SAs/SRAs, as well as the applicable codes. The Department has also accepted the preamble language proposed for the new fee code, which will be called "Assessment". The weighted average will be calculated based on utilization of the above fee codes in 2019-2020 and aligned with the methodology established for telemedicine and temporary virtual care fee codes.

Any increases already allocated by specialty groups to fee codes SA, SRA, GA, GRA will be added to the new single fee code. The new single fee code will not likely be ready for use until publication of the new Payment Schedule. Existing fee codes SA, SRA, GA, GRA will remain in effect until that time. Fee codes SA, SRA, GA, and GRA will also be removed from the Audit and Claims Integrity's Claims Monitoring System.

The new merged Assessment fee code had been proposed by the NLMA during the last round of MOA negotiations but was rejected by the Department at that time. Therefore, we are pleased the government has accepted this idea as part of settling the legal action. We thank the executive committee of the Consultants Section of the NLMA for advising us on these matters in recent weeks and reviewing the phrasing of the new fee code.

IVI Case

In 2021, the NLMA filed an application with the Supreme Court of NL seeking a declaration that the introduction of fee code 54846 (Intravitreal injection (IVI) of anti-VEGF substance) to the Medical Payment Schedule on January 15, 2019 was subject to Part 1 of Schedule L to the MOA, and that any decision to reduce the rate for IVI was subject to the process, procedure and considerations set out in that part of the MOA. These rules allow the government and the NLMA to review and adjust fee codes and billing rules, as well as reallocate any savings from fee code adjustments to other fee codes.

As part of the settlement, the NLMA and the Department have agreed to a new appropriate rate for fee code 54846, which will be adjusted on a go-forward basis, and MCP will make payment to ophthalmologists on all submitted claims for this code retroactive to January 15, 2019. Additional amounts will be made available for micro-allocation.

The government has also agreed that if the Province and the NLMA disagree in the future on the applicability of Schedule "L" of the MOA, the parties must refer the disagreement to Schedule "P" of the MOA for Dispute Resolution. Schedule P establishes a mediation process, which can be triggered by either party.

GFT Case

The NLMA still has a case before the courts on behalf of "fixed fee" GFT physicians. We are currently in the discovery phase of the litigation process and the parties have exchanged all the documents they possess that are relevant to the case. In January, the NLMA sent the government an offer to settle. While we await a response, the process for discovery of key witnesses will begin. The NLMA remains committed to seeing this issue through and is actively pushing this case forward.

Sincerely,



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President



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