



18 February 2015

Ref: JMK64-15

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Dear Lesley

Feedback on Draft statement on third party funding arrangements

Thank you for the opportunity to comment on the New Zealand Medical Association's (NZMA) draft policy statement on third party funding arrangements (the Draft Statement). The Royal Zealand College of General Practitioners (the College) commends the NZMA on its work in developing policy on this aspect of health funding and its inherent challenges.

The College is the professional body and post-graduate educational institution that sets the standards for general practice, providing research, assessment, post-graduate training, and on-going education and support for general practitioners and general practice. College Fellows provide advice and expertise to government and within the wider health sector. The College aims to improve the health of all New Zealanders by supporting and strengthening high quality care and standards in general practice.

The College has a focus on ensuring high quality patient centred clinical care is delivered in CORNERSTONE[®] accredited general practices by vocationally registered general practitioners.

The NZMA Draft Statement

We understand that the Draft Statement was developed largely in response to the issues that arose with a New Zealand affiliated provider scheme for hospital based care. The Draft Statement outlines the key principles that the NZMA believes should be reflected in any contract entered into by the profession with a third party funder. We note that while the statement was developed in response to hospital based issues, it will also cover other funding contracts – including those in primary care.

The College's response

The College fully supports the Draft Statement and, in particular, its emphasis on ensuring the care of patients is the primary concern of both doctors and funders under any agreement. We commend the NZMA on setting out the key principles in a simple and logical manner. The College's further comments are set out below.

Scope of the Draft Statement

At the outset, the College acknowledges that although the Draft Statement is primarily intended to cover third party arrangements involving private insurers, it could conceivably address the situation where a general practice receives funding from any third party funder. General practitioners are typically compensated by a capitated government-determined subsidy paid through primary health organisations, and payments from ACC in the case of accidents. These are also third party arrangements, as are payments received for Immigration New Zealand medical examinations and immunisations.

Professional, ethical and legal obligations

The Draft Statement requires third party funding arrangements to acknowledge the professional and ethical obligations involved (last para, page 1). The College notes that in addition to professional and ethical obligations, legal obligations could also be usefully added at this point. As you will be aware, the Code of Health and Disability Services Consumers' Rights (the Code) places legal obligations on health providers, and these are reflected in the College's Foundation Standard, the minimum requirements for general practice in New Zealand. For example, Right 4(5) of the Code is relevant to the next point of the Draft Statement about the patient's ongoing care (page 2). Specifically, Right 4(5) states: "Every consumer has the right to co-operation among providers to ensure quality and continuity of services."

The process of informed consent is a legal requirement under the Code and an important aspect of third party funding arrangements. An essential element of this process is the right to be informed; Right 6(1) of the Code states:

"Every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive, including an explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option."

Moreover, the Medical Council of New Zealand's (MCNZ) publication, *Statement on safe practice in an environment of resource limitation* (August 2008) states (para 26):

"Doctors who are placed in a position where they are unable to provide a preferred treatment are advised to inform the patient what the preferred treatment involves, what the next best option is and what this next best option involves. This discussion should be documented."

We note the "control" given to third parties over the services they fund is a form of "resource limitation".

The Draft Statement requires all parties to ensure that "patient involvement in treatment decision making and choice is protected." In light of the legal and professional obligations (discussed above), the College is of the view that this matter could be made more explicit. One of our members commented that doctors should be able to inform their patients of best practice, and if this is unavailable, to explain the service offered in their environment and any cost difference. If the patient then wishes to obtain care that is consistent with best practice, the doctor should facilitate this through appropriate referral, even if this falls outside the insurer/patient agreement. Another College member pointed out that patients should be made aware that in third party funding arrangements the funder may request full disclosure of the patient's health information.

Concerns about funding decisions

As mentioned above, potential treatment options offered may be affected by limits on resources. Therefore, it would be helpful to add a section into the Draft Statement on what doctors should do if they are concerned about how a funding decision might conflict with their primary duty to the patient. This might include steps to manage or deal with any concerns such as asking colleagues for advice, taking concerns to the doctor's board or other decision-making body, or asking for advice from external professional or regulatory bodies, including defence organisations, if necessary. We also recognise that the MCNZ's *Statement on safe practice in an environment of resource limitation* states that doctors have a responsibility to seek the provision of appropriate resources for their patients' care and report any deficiencies to the appropriate authorities (para 9).

Conflicts of interest

The College notes that the MCNZ's statement, *Doctors and health related commercial organisations* (July 2012) is also of some relevance to the Draft Statement. It acknowledges that doctors' interactions with health related commercial organisations, such as insurers, can influence patient care, and discusses managing inherent conflicts of interest which arise from doctors' interactions. You may wish to consider making reference to the MCNZ's statements.

Commerce Commission's position

The Draft Statement mentions fixed price contracting as part of a purchasing model. The College appreciates that price fixing under the Commerce Act 1986 involves an agreement between competitors that sets prices or interferes with how that price is reached. However, for clarification, we suggest adding a note on the Commerce Commission's current position of the relevance, or not, of the Commerce Act to the situation where there is a third party funder.

Consumer perspective

Finally, we note that a medical perspective has been taken on the Draft Statement. It may be worth considering whether any consumer input should be sought, if not done so already.

We hope you find our comments helpful. If you would like any further information or clarification please do not hesitate to contact the College's policy team (policy@rnzcgp.org.nz).

Yours sincerely



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