

Guidance for medical practitioners undertaking work under the collaborative arrangements (including family planning and sessional work)

Introduction

The rates for work under the collaborative arrangements have, until 2006/07, been set by the Doctors and Dentists Review Body (DDRB) and issued via an NHS circular. In its 2006 report, however, the DDRB did not recommend collaborative arrangement fees for 2006/07 and it seems unlikely that it will do so in the future; the government has accepted the DDRB report in its entirety, although there was a staging of pay awards for consultants. The DDRB has recommended doctors set their own fees for work done under the collaborative arrangements and this position has not been opposed by the government. The professional fees committee has drafted this guidance as a result of the DDRB's recommendation and seeks to clarify doctors' fee arrangements, superannuation and obligations under the collaborative arrangements, as well as the situation on family planning and sessional work. This guidance provides a more detailed update to the interim guidance produced for the profession in June 2006.

This guidance relates only to work under the collaborative arrangements, and not to work undertaken on a part-time or occasional basis to assist local authorities. Fees for doctors assisting local authorities are negotiated by the BMA with the Local Government Employers (LGE), and are detailed in the BMA's Fee guidance schedule 2, section B.

Background to collaborative arrangements

The collaborative arrangements were established under legislation in 1974 and have not been significantly amended since, although arrangements are in place for new NHS Acts in England and Wales to consolidate the legislation. Current legislation is contained in Sections 26-28 of the NHS Act 1977, Section 15 (1) (c) of the NHS (Scotland) Act 1978 and Schedules 1 (part II) of the HPSS(NI) Order 1972 and requires primary care organisations (PCOs) to provide certain medical services to local authorities to enable the local authorities to carry out their responsibilities in the fields of education, social services and public health.

The main areas covered by the collaborative arrangements (involving certificates or reports) comprise:

- those in relation to children in care or being considered for adoption and fostering, together with certificates and reports on prospective adoptive or foster parents
- psychiatric examinations for the sectioning of patients (under the Mental Health Acts)
- Blue Badge (disabled parking) permits
- priority housing reports requested by local authorities
- attendance at case conferences and other meetings arranged by Social Services
- certificates to enable chronically disabled or blind persons to obtain telephones
- sessional work commissioned by family planning clinics under local authorities or PCOs.

This list covers the main areas under the collaborative arrangements, although in many areas the collaborative arrangements cover most of the work commissioned by local authorities in the fields of education, social services and public health. The difficulty in providing a definitive list of services under the arrangements arises because, in addition to a broad national framework, there is also a complex network of local arrangements that differ between PCOs. Confusion has been increased by the fact that in most cases the PCO pays for services commissioned by local authorities. In 1977 the Department of Health and Social Service (DHSS) produced guidance which detailed what was covered by the arrangements but, unfortunately, the guidance was not sufficiently prescriptive and a number of new services have since been established. These services have been accepted under the collaborative arrangements by 'custom and precedent' at a local level.

Fees under the collaborative arrangements

Services under the collaborative arrangements are provided by PCOs without charge to the patient. The PCOs are obliged to pay doctors involved in undertaking these services, but the mechanisms and responsibility for the reimbursement of fees are agreed locally between the parties concerned.

In its evidence to the 2006 DDRB report, the BMA highlighted its concerns that the level of fees payable to doctors under the collaborative arrangements were no longer economic and lacked consistency with rates paid for other work outside a doctor's terms and conditions of service. The fees were also discouraging medical participation in these areas. The association therefore recommended that these fees should be linked

to GP remuneration and that if this could not be recommended, doctors should be allowed to charge their own market rate. In 1997 the DDRB had recommended that fees under the collaborative arrangements should be established by market rates and the association supported a return to this recommendation.

Following the DDRB's recommendation in the 2006 report, the BMA's advice to individual doctors and GP practices is that they should establish their own fees for work under the collaborative arrangements. They should also notify their PCO in writing that, as there is no longer a DDRB recommended fee, any request for collaborative work received after a set date will be charged at their own fee rate (the BMA recommends that a notice period of at least three months be set).

The BMA is very aware that doctors are the only individuals who can undertake many of the items of work under the collaborative arrangements. Therefore, doctors will need to strike a balance in setting their own fee making sure their remuneration levels and overheads are charged on a time basis. There is nothing under competition legislation that prohibits doctors from publishing their individual fees to their PCO, but fee levels must be reasonable, transparent and be subject to scrutiny where necessary. The BMA strongly advises that fees should be set out in writing and agreed in advance of the work being undertaken.

Impact of competition law on negotiating fees under the collaborative arrangements

In accordance with the framework of the law laid down by the Competition Act 1998, the BMA is prevented from publishing suggested fees for services which can be provided by any doctor. Therefore, the association will be unable to make any suggestion on fee rates for work in this area.

Competition legislation and the Office of Fair Trading (OFT) prohibit the BMA, or local medical committees (LMCs) from advising on fees. The penalties for breaching this law are severe and can be up to 10 per cent of organisation/practice turnover (not profit).

The BMA's legal department has provided advice regarding negotiation options for fees under the collaborative arrangements. The advice was prepared solely for the use of the BMA's professional fees committee in response to a number of specific questions. Please note that the advice therefore does not stand on its own and, as such, cannot be relied upon by LMCs. Competition Law is complex and anyone with a Competition Law query must seek appropriate legal advice.

The BMA is not liable for any loss or damage, howsoever arising, which is occasioned to anyone acting, omitting to act or refraining from acting in reliance upon the contents of the advice.

Insofar as fees for collaborative work are concerned, two proposed options have been considered.

1. Individual practices negotiate their own fees, with a PCO, for collaborative work undertaken by the practice; or
2. An LMC negotiates fees, with a PCO, on behalf of GP practices, for collaborative work undertaken by practices within the LMC area.

Of the two options, option 2 presents a number of significant legal risks under the Competition Act 1998 (the Act). The Act prohibits activities that are anti-competitive. In particular, under what is known as the Chapter 1 Prohibition, agreements between Undertakings or decisions by Associations of Undertakings which have the effect of preventing, distorting or restricting competition are prohibited. An Undertaking includes partnerships and an Association of Undertakings is likely to include an LMC (on the basis that the LMC is, effectively, representing a group (Association) of GP practices (Undertakings). Conduct which is prohibited includes the fixing of purchase or selling prices, sharing markets or limiting or controlling markets.

The difficulty with option 2 is that, in effect, the LMC would be fixing a price, for collaborative work, as between all GP practices within a geographical area. As a consequence, an LMC could fix a price which was anti-competitive (in the sense that it was more expensive than that which could result from one negotiated by individual practices). There is a strong risk that this would amount to 'price fixing', which the OFT regards as one of the most serious offences under the Act.

Whether the incorporation of an LMC, as a limited company, would avoid the Act has also been discussed. The short answer, however, is no. While incorporation would have the effect of 'ring fencing' liability, it does not alter the legal risk.

Note: Doctors who are members of a local negotiating committee (LNC) must also be aware of the principles of competition law when negotiating fees in this area with a hospital trust. The LNC represents the interests of medical and dental staff through the process of negotiation and consultation with the trust management. LNC offices may wish to discuss these issues with their regional BMA office.

Obligations under the collaborative arrangements

As a general rule, if a doctor no longer wants to undertake the work under the collaborative arrangements based on the 2005/06 rates, the doctor may withdraw from any existing arrangements by giving reasonable written notice. The BMA believes that three months' notice would be reasonable. The exception to this general rule applies to doctors who are employees (for example, of a primary care trust in England or a health board in Scotland). In this case a unilateral withdrawal may amount to a breach of the employment contract and doctors are strongly advised to seek advice before taking any steps.

Notwithstanding the above, caution should be exercised, prior to turning down collaborative arrangement work, since there may be ethical considerations as well as the need to maintain the doctor-patient relationship. Where a child is at risk, for example, the BMA would strongly advise doctors to continue to fulfil their obligation to the child and that any fee is considered secondary. The decision to carry out work should therefore be made on a case-by-case basis.

Notification of infectious disease is a statutory duty under section 11 of the Public Health (Control of Disease) Act 1984, and doctors are obliged to notify cases and suspected cases of certain infectious diseases to the local authority. Although the fee for notification of infectious disease has always been published in the collaborative arrangements NHS fee circular, this work is not in statute as part of the collaborative arrangements. The fee for undertaking this work is issued by the Secretary of State and the associated fee levels are currently contained in circular AL(MD)1/2005. Doctors are therefore unable to decline to undertake this work and should charge the appropriate fee issued by the Secretary of State.

It should also be noted that under schedule 4 of the NHS (General Medical Services) Regulations 2004 and schedule 3 of the NHS (General Medical Services) (Scotland) Regulations 2004, NHS GPs (England, Scotland and Wales) must provide certificates in connection with incapacity and council tax without charge.

Superannuation for work under the collaborative arrangements

Prior to April 2004 fees paid under the collaborative arrangements were only pensionable if paid on a sessional basis. Under the new GMS contract fee based payments (net of expenses) are pensionable from April 2004 which means that fees paid under the collaborative arrangements directly to a GP provider or GP practice by an employing authority are now pensionable. General practitioners should pension these either as an individual through form SOLO or, if pooling the income into the practice, through the annual certificate of pensionable profit. This arrangement applies to England, Wales and Northern Ireland and should be considered when doctors are setting their fees. Doctors working in Scotland, however, should check with the Scottish Public Pensions Agency about the procedures for pensioning such income.

Where hospital doctors carry out work under the collaborative arrangements, fees are only pensionable if paid on a sessional basis.

Advice from NHS Employers and position of the BMA regarding DDRB recommendations

NHS Employers is seeking confirmation from the Department of Health on its position regarding the DDRB recommendation that doctors should set their own fees for work under the collaborative arrangements. It is the view of NHS Employers that, until they have received confirmation from the Department, doctors should continue to use the 2005/06 fee rates, as detailed in the pay circular (M&D)2/2005.

The 2006 DDRB report, however, unequivocally recommended that doctors engaged in this work should set their own fees for 2006/07 and seemed likely to continue with this recommendation in the future; the government has accepted the DDRB report in its entirety, with one change relating to implementation of consultant salary scales. It is the BMA's position that there is no need for clarification and that doctors should implement the recommendation and set their own fees. The DDRB seems likely to continue with this recommendation in the future and the association has made no alternative suggestion in its evidence to the DDRB this year. The BMA therefore maintains the position outlined above that individual doctors and GP practices should establish their own fees for this work. If PCOs have unilaterally issued fee rates for work under the collaborative arrangements, a practice has no obligation to accept these rates and may seek remuneration at their own fee level.

Situation on family planning and sessional work

Family planning clinics are run by local authorities or PCOs and doctors can be contracted to provide these services (including work concerned with contraception, IUD insertions, vasectomy sessions and domiciliary visits for family planning purposes) either on a salaried or sessional basis. Although these services are run by local authorities, they have been paid for under the collaborative arrangements since 1974, and the fees for this work (in England, Scotland and Wales) have been included within the collaborative arrangements NHS fee circular. The recommendation made by the DDRB in 2006 that doctors set their own fees for work performed under the collaborative arrangements therefore also applies to local authority family planning work and doctors should charge at their own rate for each session (a short session is normally considered an hour and a full session up to two and a half hours). As noted above, it is the decision of individual doctors whether to use the 2005/06 fee rates as a reference point and then apply an annual increase based on their own rate. This guidance, however, does not apply to family planning work carried out in hospitals.

It should be noted that in some areas family planning activities continue at a local practice level, but in other areas the majority of family planning services are provided by PCOs or secondary care providers. Doctors are advised to consult with the PCO in the first instance to clarify the position and consult their terms and conditions of service if they are NHS employed staff.

The BMA's evidence to the DDRB for 2006/07

The professional fees committee has submitted written evidence to the DDRB for 2006/07 for sessional fees for doctors in the community health services and fees for work under the collaborative arrangements between health and local authorities. The BMA has proposed that doctors should continue to set their own rates over the next year. The BMA has previously proposed that the fees for collaborative arrangements should be based on the BMA 'Treasury' rate, but the Department of Health has not accepted this proposal in the past and therefore the BMA has had no option but to invite doctors to charge on an individual basis. Collaborative arrangements have become a significant area of NHS work not subject to formal contract and the BMA believes that remuneration levels must be equivalent to those paid to doctors working in the NHS.

Summary

The BMA's advice to individual doctors and GP practices, following the DDRB's recommendation in the 2006 report, is that they should establish their own fees for work under the collaborative arrangements and notify their PCO that any request for collaborative work received after a set date will be charged at their own fee rate (the BMA recommends that a notice period of at least three months be set).

The BMA is unable to suggest fees rates for work under the collaborative arrangements, but if members have any further queries please contact *askBMA* at askbma@bma.org.uk / 0870 60 60 828. GPs may also wish to contact their LMC for further assistance.