Conflicts of interest in the new commissioning system: Doctors as providers

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Key messages for doctors as providers

- GP practices are legally obliged to be a member of a Clinical Commissioning Group (CCG). The CCG constitution is an important legal document and will impact on practices as members of the CCG.
- If a GP is referring a patient to an organisation in which they or a close family member has a financial interest they must inform the patient.
- Doctors must not accept financial inducement to change prescribing, referral or treatment of patients without a clinical evidence base. If a doctor is considering participating in an incentive scheme they must assure themselves that the behaviour the scheme is rewarding has a clinical evidence base and is in the best interests of patients.

What membership of a CCG means for GP practices

Every GP practice in England is required by law to be a member of a CCG. Each CCG will have a constitution that will define the operating arrangements of the CCG.

The CCG constitution is an important legal document and will impact on practices as members of the CCG. The constitution will contain general principles that the practice is expected to act in the spirit of as a member of the CCG. The constitution may also contain specific obligations (i.e. where something must be done).

When considering the CCG constitution, GPs should seek to address any potential conflicts and pre-empt any future issues to ensure that conflicts are avoided in the future. Such conflicts should be notified in writing with the CCG.

If a doctor feels that the CCG's policies or constitution conflict with their obligations under Good Medical Practice they should immediately seek advice from their LMC, and notify this in writing to both the CCG and NHS England. Ultimately, GPs must always make the patient's best interest the highest priority.

Get more guidance on CCG constitutions and what they mean for practices

'What is commissioning and how is my doctor involved?' - explaining to patients

Patients may have questions about their doctor's involvement in commissioning. It is important that you provide clear information about your involvement in the new structures.

Making referrals to a company in which a doctor has a financial interest

Policies to increase patient choice and plurality of provision, such as Any Qualified Provider, may mean that doctors are more likely to have a financial interest in companies they may be referring to.

In order to ensure that patients' interests remain central to the referral process, GPs must always refer patients to the most clinically appropriate service, whilst responding to the wishes and choices of the patient.

Paragraph 78 of Good Medical Practice states:

"You must not allow any interests you have to affect the way you prescribe for, treat, refer or commission services for patients."

Where the most appropriate service to which the patient is to be referred happens to be one in which the GP has a vested financial interest, then the GP must inform the patient of this fact. Any unavoidable conflict of interest should be recorded in the patient record.

A financial interest in an organisation providing healthcare must not affect decisions about a patient's care. In particular, GMC guidance, Financial and commercial arrangements and conflicts of interest, states:

"You must not try to influence patients' choice of healthcare services to benefit you, someone close to you, or your employer"

Primary care incentive schemes

CCGs are taking on their commissioning responsibilities at a time of huge financial pressure. A number of primary care incentive schemes designed to achieve QIPP objectives through a reduction in referrals or prescribing activity have been brought to the attention to the BMA in recent months. The BMA has significant concerns about the professional and ethical implications of these schemes.

Three examples:

- A scheme rewarding practices in the top 25% of outpatient referrers to reduce their referral rate per 1,000 population by 10% or to the 75th quartile where clinically appropriate. No assessment of whether the reduction in referrals was achieved through clinically appropriate means. Practices to be paid £1 per head to achieve the reduction in referrals with no restrictions on how this money is spent
- A scheme rewarding practices for an arbitrary 5% reduction in referrals to Accident and Emergency and non-elective admissions
- A scheme rewarding practices for referring fewer patients to outpatient appointments or for elective procedures by diverting them to community or primary care settings instead. Payments proposed to be made to individual practices based on the level of savings achieved with 'very few' restrictions on how the money can be used

The BMA urges any doctor considering commissioning or participating in an incentive scheme to consider the schemes carefully. Any GP with concerns about a proposed incentive scheme should seek advice from their Local Medical Committee.

The GMC recommends that doctors should, where possible, review the evidence base for the schemes and should satisfy themselves that in participating, they will not be compromising patient care. The GMC could take action against doctors participating in or commissioning incentive schemes that are deemed to breach a doctor's duties as outlined in Good Medical Practice.

Commissioning strategies should use NHS resources responsibly and unnecessary or inappropriate referrals should be avoided. Designed appropriately, initiatives can improve patient care whilst enabling investment in service through resourcing process and rewarding beneficial outcomes, such as in QOF and many prescribing incentive schemes. However, the types of scheme outlined above raise serious ethical and professional concerns.

Some of the schemes we have seen appear to reward arbitrary reductions in clinical activity without evidence that this is in the best clinical interests of individual patients and sometimes with no restrictions on how this incentive is used.

Key messages for doctors commissioning an incentive scheme…

- All doctors have a responsibility to use NHS resources responsibly; this is particularly pertinent for doctors with commissioning responsibilities. However, decisions about allocation of resources must be based in clinical evidence and be fair and transparent.
- Doctors commissioning incentive schemes should satisfy themselves that the scheme is based in clinical evidence.

- Commissioners should be satisfied that the scheme does not constitute an inducement to others that may affect, or be seen to affect, the way they treat patients (see paragraph 80 of Good Medical Practice).

Key messages for doctors participating in an incentive scheme:

- Doctors should satisfy themselves that any incentive scheme does not constitute an inducement that may affect, or be seen to affect, the way they treat patients (see paragraph 80 of Good Medical Practice).
- Doctors participating in a scheme should satisfy themselves that the scheme is based in clinical evidence.
- GMC guidance states that doctors should raise concerns if they think patient safety is compromised by an incentive scheme.

Incentive schemes MUST:	**Incentive schemes MUST NOT:**
▪ Have good clinical evidence ▪ Be of benefit to a community of patients or to individual patients ▪ Ensure that patients continue to receive the clinical care to meet their individual needs ▪ Reward decisions or outcomes for large groups or populations of patients ▪ Ensure that payments arising from the scheme are used to improve patient services	Change clinical activity without a sound evidence base ▪ Compromise patient safety ▪ Encourage a uniform or blanket approach to all patients with the same condition ▪ Directly reward decisions relating to individual patients