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Mr. Dean Screpnek
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Ms. Leann Wagner
Assistant Deputy Minister
Health Workforce Planning and Accountability Division
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Dear Ms. Wagner and Mr. Screpnek:

Re: Bill 30, Including Proposed Amendments to: The Alberta Health Care Insurance Act; The Health Care Protection Act; The Health Professions Act; The Health Quality Council of Alberta Act; The Hospitals Act; The Mental Health Act; and The Regional Health Authorities Act

We are sending you our feedback, as requested in your July 6 letter, and proposing further changes to Bill 30, the *Health Statutes Amendment Act, 2020*. In discussion with each of you, we understand that Bill 30 has already been tabled on July 6 and by the time this letter reaches you, it will have already gone through a second reading. In the short amount of time since the legislation was announced, we have heard many concerns from physicians about the new legislation. As I'm sure you understand we have had limited time to fully review with our membership, however, given the importance of this Bill, we have held priority discussions with our Board of Directors and Executive.

Perhaps the most concerning aspect of Bill 30 is that these changes are being sought at a time when the health system, and physicians' fundamental relationship with it, appears to be getting dismantled through a series of government-led impositions (e.g., those affecting Practitioner IDs, Bill 21, termination of our Agreement, the Physician Funding Framework, Medical Staff Bylaws, limited access to community infrastructure stabilization supports during the pandemic, reducing and removing AMA's administration of the MLR, etc.). Understanding this perspective held by pretty much every physician in this province is important as we go through some of our specific concerns with respect to Bill 30.

We recognize that Alberta Health's rationale for the changes is in keeping with their broader mandate to improve the health system and make it more patient centric. While the rationale for the changes may be appropriate, some of the changes themselves will negatively impact physicians and patients from several perspectives, some greater than others, depending on how new policy is implemented.

Our concerns can be summarized into four main categories:

- Governance of Health Professions;
- Chartered Surgical Facilities;
- Contracting with Physicians (and others) for Medical Services;
- and Commercialization of Medicare and Physicians' Rights to Associate.

We respectfully note that physicians are affected by many of the amendments within Bill 30, including impacts directly related to the *Health Care Protection Act* or the *Alberta Health Care Insurance Act* or others, and sometimes these impacts are the result of changes that span across several Acts that various Divisions within Alberta Health may have responsibility for.

GOVERNANCE OF HEALTH PROFESSIONS:

Health Professions, by definition, are self-governing professions. The proposed amendment would increase the mandatory minimum number of public members on each Health Profession Council to 50%. It will also mandate that any complaint review committee or hearing tribunal, will also be composed of 50% public members. To be very clear, the AMA supports public representation on the CPSA's Council.

We must recognize that 50% public membership on each Health Profession Council, by definition, essentially means that health professions will no longer be self-regulated.

We would like to know what measures will be put in place during the appointment process to ensure that members of the public add value - with the appropriate skill sets and are true representatives of the population of Alberta through their diversity.

CHARTERED SURGICAL FACILITIES:

It is understood that the stated intent for the changes to the *Health Care Protection Act* is to ultimately increase the number of surgeries performed, thus reducing the surgical waitlist

(which has been steadily growing, particularly as a result of the COVID-19 pandemic and subsequent decision to halt elective surgeries).

While the concept of chartered surgical facilities is not new, the push for significant expansion, along with the potential to contract medical services outside of the physician realm, has raised legitimate concern amongst the profession.

Contracting is, and will continue to be, an integral component of the publicly-funded health care system. More can be done, however, and we must ensure that these contracts continue to serve the public interest. With the proposed amendments to the *Health Care Protection Act*, Albertans deserve assurances that the following roles will be protected or enhanced:

- Physicians are the agents and advocates of patients in the provision of medical services.
- AHS (and more recently, Alberta Health) are the agents of the public in contractual discussions with chartered health facilities.
- The provincial government is responsible for ensuring a sustainable public health care system that provides reasonable access to all Albertans with no direct, out-of-pocket, costs for insured services.

Albertans do not desire the introduction of American-style (commercialized) medicine that will interfere with the patient-physician relationship. Please be assured that the AMA will oppose any legislation or regulations that interfere(s) with:

- Clinical and professional autonomy of physicians.
- Current methods of directly funding physicians through fee-for-service or other means. For example, the AMA would not support providing all funds to a chartered company who would then contract with physicians.
- Physician compliance with code of ethics and conflict-of-interest guidelines of the CPSA.
- Patients' independent ability to choose their own physician/s.

At the same time, AHS and Alberta Health must be held accountable by the public for their contracts with chartered health facilities. We recommend the following:

- Transparency is paramount. AHS and Alberta Health should be required to report – on a standardized and comparable basis – the extent of their contracting, numbers and types of services being contracted, total amounts and rates, and any provisions that allow for additional, uninsured services. The public should have access to the details of these contracts.
- Contracts should specify all "enhanced services" (e.g., uninsured "add-ons" associated with the provision of the insured service) that are permitted. Contracts should also specify that the timeliness for patient access will in no way be related to the purchase of those enhancements.
- Conflict-of-interest – both real and perceived – must be addressed. Those responsible for awarding contracts must not have interests, direct or indirect, in the facilities receiving them. Furthermore, the health authority may face a conflict-of-interest dilemma in deciding whether or not to contract with a chartered facility that could compete with the

AHS itself in providing uninsured medical services, e.g., a group that also contracts with the Workers' Compensation Board of Alberta.

Finally, the Alberta Government needs to take on additional responsibilities and roles with respect to the publicly funded health system.

- Albertans have a right to know what services are available through the public system. While AHS should have flexibility in how services are delivered, there should be provincial standards on what services are covered and the level of access. Whether contracted out or not, the current method whereby AHS determines which services are covered results in an unacceptable level of fragmentation of care.
- Government is responsible for ensuring the public system is adequately funded. It must be recognized that more chartered health facilities will not significantly alleviate current levels of under-funding.
- All health facilities, whether providing insured or uninsured services, should be subjected to the same quality controls.
- The Alberta Government is responsible for ensuring the legislation does not threaten the basic tenets of our publicly-funded health care system. Consideration should be given to appointing an independent fact finder to sort through the conflicting material and to report to the public.

Dealing with these issues will require, at minimum, careful consideration for the implementation of Bill 30, as well as openness to consider further amendments to the legislation and/or regulations.

CONTRACTING WITH PHYSICIANS (and others) FOR MEDICAL SERVICES

As part of the negotiations process, the AMA expressed serious concerns with the use of Ministerial Orders as they place ultimate decision-making power with Alberta Health and offer no legitimate resolution mechanism for physicians in the event that a dispute arises. Amongst other important considerations, the AMA proposed that fairness would be improved within ARPs by removing the Ministerial Order and developing a contract with terms and timelines (including provisions for dispute resolution).

More recently, the Clinical Alternative Relationship Plan (cARP) Working Group held a meeting on June 29 that included the ADM from Health Workforce Planning and Accountability Division. At this meeting the physicians covered, among other things, the following points via discussion with the ADM (relating specifically to contracting with physicians in ARPs):

- Physician lack of trust and confidence in a closer relationship with government is the biggest barrier to broader uptake of cARPs.
- Contracts, with fair dispute resolution mechanisms, will help to address this lack of trust and confidence.

- Alberta is the only province to use Ministerial Orders to govern ARPs. All other provinces use contracts.
- Physicians want to be confident that Alberta Health won't unilaterally change terms, conditions and policies at will to the detriment of the physician.
- Connected with this issue is a need for commitment to the original cARP principles (e.g., voluntary participation, physician autonomy, ability to return to fee-for-service, etc.). We've seen recent actions by Alberta Health that are starting to undermine these principles.

We appreciate that, at least in part, the amendments proposed through Bill 30 address the points that were made by the cARP Working Group and we look forward to working with you on the next steps associated with developing a contract template that will ensure fairness to physicians and, ultimately, a broader physician uptake of ARPs for Alberta.

While the amendments allow for Alternative Relationship Plan (ARP) physicians to contract directly with government (versus via Ministerial Order), it will also allow a new ability for the Minister to contract with chartered companies for medical services. The Government's stated intent is to allow chartered companies to take over the administrative functions of physician clinics, thus allowing more time for the physician to spend with their patient. Our concerns for the diversion of limited medical dollars are covered further in the next section.

COMMERCIALIZATION OF MEDICARE and RIGHTS TO ASSOCIATE

The significant amendments to the *Alberta Health Care Insurance Act* appear to center on adding a third category to the list of those entitled to bill the Alberta Health Care Insurance Plan for the provision of insured services pursuant to an "arrangement" with the Minister. The new entity is a "person" (as opposed to a medical practitioner or dental surgeon). "Person" is specifically defined to exclude either an individual or a Professional Corporation, so clearly it is intended to be either a corporation, a partnership, a society or another recognized legal corporate entity. The requirements to be a "person" under this amendment are:

a) that the entity has entered into a contract with the Minister;
b) that the entity employs or has entered into service agreements with the physician(s) to provide the insured services; and
c) that the physician(s) is/are opted into the Alberta Health Care Insurance Plan.

If those conditions are met, then the corporation/partnership/corporate entity can bill the Plan directly and receive payments for insured services on behalf of its employees. It would then distribute those revenues in accordance with its own internal business plan and arrangements. It is not a stretch to consider that some of this money could be used to purchase non-medical services. Sometimes referred to as 'fee splitting', both CPSA and Government have for many years maintained that the SOMB are designated for medical care, to be used by the physician for the purposes of providing medical services. We ask that you clarify how we can ensure that inappropriate fee splitting does not occur in a way that further diverts the dollars away from the medical obligations to the patient.

Put another way, it is concerning that Bill 30 could allow the Minister to sidestep the profession (and government accountability) and contract directly with AHS, Covenant Health, or ABC company who in turn would determine which services and what physicians, or other providers, would be required to address the health needs of the population. This potential for the commercialization of medicare is challenging for the AMA, as clearly the Minister would be diverting Physician Services Budget dollars to another company (presumably the lowest bidder) for the purposes of providing insured services which, Alberta Health has previously maintained as "illegal".

Our perception is that the above scenario of diverting extremely limited Physician Services Budget dollars is going to:

- create further destabilization to the health system. Particularly when you consider the degree of destabilization that has already occurred from various government impositions, such as the Physician Funding Framework and termination of our Agreement.
- in the long run, cost Albertans more. Particularly when you consider that adding another corporate layer will require additional administrative expense, shareholders, profits, dividends, etc.
- result in less medical care to the patient and less access to the doctor. Particularly when you consider that government is looking to freeze annual physician budgets.
- be more difficult for the AMA to represent physicians. Particularly when you consider that legislated representation rights are less clear for regional health authorities and nearly absent for other organizations.

In our conversations, we have been reassured by you that the representation of physicians by the AMA will not be impacted, whatsoever, by the changes associated with Bill 30. Particularly since these representation rights are and will remain in legislation. As this concern has been raised repeatedly over the past few days, we are requesting your written confirmation of this important point to share with our membership. We are also seeking further legislative clarity with regards to our representation in those 'other' situations.

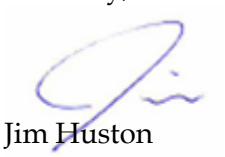
Bill 30 contains a provision that shows the intention to exempt the new arrangements from the Minister's right to terminate. From our perspective it seems at best inconsistent, and at worst inappropriate to propose such an exemption without first dealing with unfair and damaging legislative changes that were made with respect to Bill 21 and we are therefore again requesting the appropriate amendment (or repeal) of Bill 21.

We strongly believe that the relationship between physicians and government is fundamental to a well-functioning health system. Regrettably, this relationship has been critically damaged over the past 4 months, and we therefore question the timing for this new legislation which is being interpreted as further attempts to erode that important tenet to every successful health system.

We have identified several areas for improvement to the *Health Statutes Amendment Act, 2020* and the subsequent implementation of new policy. Most importantly, and as I mentioned to you by phone, there are priorities that must be addressed immediately, before any new Bill 30 changes can be affected to the betterment of our health system, including the reinstatement of the AMA Agreement or providing the profession access to fair dispute resolution mechanisms. If you wish to discuss these concerns further, please let me know.

Looking forward to your response.

Sincerely,



Jim Huston
Assistant Executive Director, Health Economics
Alberta Medical Association

CC: AMA Board of Directors
Ms. Lorna Rosen, Deputy Minister, Alberta Health
Mike Gormley, Executive Director, Alberta Medical Association