Representative Forum Backgrounder

April 15, 2020

Abstract: *This document provides an overview of relations between the AMA and government since summer 2019 to present day. Background information appears in subsequent pages: see annotations provided.*

Pre-Negotiations (Section 1)

The AMA reached out to the new government **(1.1)**, offering negotiations and collaboration to balance value for patients with fiscal sustainability. The Physician Compensation Strategy **(1.3)** was to be the engine toward objectives of equity, access, quality and productivity. The strategy is also the response to the MacKinnon Report **(1.4)** which government has used, despite flawed data, to argue that Alberta physicians are overpaid and despite extensive analysis **(1.5)** to the contrary provided by the AMA. As the parties prepared to sit down at the table, government tabled Bill 21 **(1.6)**, granting itself the ability to terminate the AMA Agreement and the ability to control physician supply. The AMA obtained legal counsel **(1.6.1).**

Negotiations 2020 (Section 2)

The parties came to the table with widely different positions. This is not unusual, but government's approach was **(2.1)**, with a narrow scope and a unilateral approach through the consultation proposals that particularly targeted primary care. The AMA **(2.2)** continued to press for an approach incorporating affordability/value/integration and an even-handed approach to sharing any budgetary reductions across the profession. The parties eventually resorted to mediation, which was unsuccessful; government refused to move from its original position.

Post Negotiations (Section 3)

Government terminated the AMA Agreement February 20 **(3.1).** The AMA weighed a readied media campaign **(3.2)** against the possibilities from further discussions and significant new AMA proposals **(3.3).** Government's rejection of these signals not only its fixation on a budget target, but a desire for a command-and-control approach to physicians without AMA interference **(3.4).**

The World Began to Change (Section 4)

Unanticipated events further complicated our environment. Although without an agreement, the AMA pushed for delayed implementation of the Physician Funding Framework **(4.1).** Some of the most controversial provisions have been delayed. The AMA has not ceased pushing for additional delays, but we have also refocused on the response to COVID-19 and ensuring that members are supported in the pandemic. Informal government discussions continue **(4.2).** The AMA launched its legal suit April 9 **(4.3)**. The RF will consider the current environment **(4.4)** and how to maintain strong public support **(4.5)** for the fight anticipated post-pandemic.

1 PRE-NEGOTIATIONS

1.1 BALANCING VALUE FOR PATIENTS AND FISCAL SUSTAINABILITY

- Began with a paper sent to the Minister on July 15th, 2019
- *A New Approach for Alberta* laid out the Board's Affordability/Value/Integration framework as the foundation for a relationship with a new government:
    - The problem of managing the health budget – affordability – is intertwined with maximizing value from the system.
    - The road to a sustainable health system lies in sensible innovations that capture and redirect resources from low value to high value activities. The AMA provided several proposals and examples of how to achieve this.
- We knew that If these negotiations couldn't connect these two concepts, and it was simply about the budget, it would be a very challenging negotiations.

1.2 NEGOTIATIONS OBJECTIVES

The Representative Forum, unanimously approved the following negotiations objectives at the September 28, 2019, Representative Forum:

1. The AMA's primary focus will be to ensure fairness for physicians and to improve value for Albertans
2. The government's health platform clearly identifies opportunities to improve care for patients in ways that have long been called for by the AMA. Mechanisms and strategies within the negotiated agreement should align with these opportunities:
    - A Medical Home for all Albertans
    - Reduced wait times for Albertans
    - Improved care to Alberta's Seniors
    - Mental Health
    - Addictions
3. As a way of putting Patients First®, the AMA will be promoting further engagements of patients within the system. This should include:
    - Empowering them through access to their own information
    - Bringing their voice to policy questions such as needs-based physician resource planning
    - Addressing challenges that patients experience in navigating the system and that create barriers for physicians in providing best quality care
4. The AMA is seeking a Physician Compensation Strategy for Alberta that balances value for patients (i.e., ensuring access, quality services and productivity) and fairness for physicians (i.e., competitive within the profession as well as to the broader market for physician services)
5. The parties should improve upon roles, responsibilities, authority and accountability with respect to the Physician Services Budget

- Physician compensation needs to be stable over time so that the system can accurately plan for the delivery of healthcare services
- The necessary incentives should bring physicians where Albertans need them, according to a needs-based physician resource plan
- The expansion of Alternative Relationship Plans in Alberta should be promoted with the required support for those physicians who choose to move away from fee-for-service

Each of the proposals the AMA made to government have honoured these objectives.

1.3 Physician Compensation Strategy

As directed by RF, the AMA Board and the AMA Compensation Committee have assembled a Physician Compensation Strategy with the objectives of equity, access, quality and productivity.

The Income Equity Initiative was derived from the Compensation Strategy and last fall, a set of Board-approved Milestones were presented to the RF. These Milestones include a set of timeframes for the data collection and finalization of each of the inherent studies: Overhead Measurement, Hours of Work, Career Length and Training, and a Market Assessment. These Milestones are set to conclude in December 2020. The Physician Compensation Strategy has been included in presentations and discussions throughout our negotiations process.

1.4 MacKinnon Report

As part of government's healthcare platform, the government established a Blue Ribbon Panel to provide advice to the government. The MacKinnon Report included the following points:

- Laid out the political ground work for government's next steps despite using flawed data to reach conclusions.
- Results concluded that:
    - Government spends too much on physicians; they're overpaid and the best paid in Canada. Alberta should move away from fee-for-service and onto ARPs. Government should consider terminating the AMA Agreement to achieve these goals

1.5 Economic Reviews

In response to the MacKinnon report, the AMA performed a number of extensive reviews on the economics of physician compensation in Alberta.

The intent of these reviews was to provide government with an accurate picture of physician compensation in Alberta. When physician compensation is properly measured, and placed *in an appropriate context,* with due regard for other provinces' expenditures, including economic differences, a more accurate understanding of physician compensation was derived.

These reviews concluded that physician compensation in Alberta is currently at a level that is competitive with other jurisdictions in Canada and largely provides the province with an appropriate supply of physicians in clinical practice. Furthermore, the comprehensive and in-depth reviews concluded that rapid and broad sweeping changes to the physician compensation system in the province is unwise and cannot be justified on the facts.

Following the in-house reviews, the AMA engaged a third-party consulting and analytics firm to do an unbiased assessment of how Alberta physicians compare relative to its true comparator provinces on the two items identified in the MacKinnon Report:

- Average Clinical Payments per Physician
- Clinical Payments Per Capita

The report found that the MacKinnon report was flawed in three significant ways that overstated its conclusions:

- The comparator jurisdictions selected
- The data sources used
- The benchmarking methodology applied

The conclusions in the Invictus Report was that compared to its actual comparator provinces Alberta has:

- 7.1% higher Average Clinical Payments per Physician vs. 35% in MacKinnon
- 6.4% higher Clinical Payments Per Capita vs. 21% in MacKinnon

These figures were calculated before government implemented its unilateral cuts on April 1, 2020.

1.6 BILL 21

An omnibus piece of legislation that gave the government the following powers:

1. Ability to Terminate AMA Agreement

- Bill 21 gives Cabinet the ability to terminate **any** agreement for physician compensation "between the Crown in right of Alberta and the Alberta Medical Association, or any other person."
- This bill effectively gives government the power of pre-approval to cancel any physician services agreement, without recourse.

2. Ability to Control Physician Supply

- Bill 21 enables the Minister of Health to restrict billing numbers as of April 2022.
- All physicians with PRAC IDs on that date will be grandfathered while all others will have to apply.
- Regulations will be developed by Alberta Health to support the new process.

- The legislation gives the government the ability to set unilateral terms and conditions on physician resource planning. It will give out a billing number only if the physician meets the practice requirements as defined by AH, which could include things like location of practice, method of remuneration, types of services provided, etc.

1.6.1 AMA Assesses Legal Options

- In November, the AMA engaged three independent law firms to evaluate legal options when Bill 21 was tabled by the government.
- At that time, all three of the firms essentially advised the same thing noting that there was nothing the AMA could do until government formally terminated the AMA Agreement, which they ultimately did on February 20th.

2 NEGOTIATIONS 2020

2.1 GOVERNMENT'S APPROACH

- Limit the scope of negotiations to Compensation Matters only
    - Rates in the SOMB and ARPs
    - Programs and Benefits which include things like CME, CMPA, ACTT, Maternity Leave, etc.
    - Government's budget management model was that physicians would be fully responsible for expenditures in excess of government's budget.
    - In this event the government could make any cuts it deemed necessary to achieve its budgetary target. An example of this was their Consultation Items.

- Consultation Items
    - On November 14, government tabled 11 proposals which, in their view, were outside of the scope of negotiations despite the AMA arguing that many of their proposals were in fact fee decreases that would need to be dealt with at the table
    - This narrowed the scope of negotiations significantly and made it less likely for a negotiated solution to be achieved
    - Government's proposals were very targeted at primary care for two main reasons:
        - They could get significant savings
        - They want to dis-incent fee-for-service to force physicians to choose ARPs, which is a mechanism that will give government greater cost certainty and management control
    - The AMA provided a detailed response to government on December 20.

2.2 AMA's Approach

- The AMA's approach was consistent with the AMA's July letter to the Minister. The approach laid out the Board's Affordability/Value/Integration framework as the foundation for a relationship with a new government.
- The road to a sustainable health system lies in sensible innovations that capture and redirect resources from low value to high value activities. The AMA's physician compensation strategy was part of this approach.
- The AMA made several proposals, in this regard, throughout the four months of negotiations each of which was consistent with the RF objectives mentioned previously.
- While recognizing the need for savings, from day one, the AMA also maintained that any reductions had to be shared by the entire profession and that no section should take an uneven cut.

2.3 Mediation

- After four months of failed negotiations, the parties agreed to engage the services of a mediator.
- After a few weeks of discussions with the mediator, the parties agreed that mediation was also unable to get the parties to come to any agreement.
- Despite many different proposals advanced by the AMA, the government never moved off its initial position that physicians had to hold 100% risk for any expenditures above government's budget amount.

3 Post Negotiations

3.1 Government Unilaterally Terminates the AMA Contract

- On February 20, 2020, the government unilaterally terminated the AMA Agreement despite the AMA communicating to government that it would be delivering a proposal on that Friday (one day after they terminated the agreement).
- The government terminated the contract because the AMA would have been in a position to file for binding arbitration on February 29, 2020 and government made it very clear throughout negotiations that it would not be going to arbitration.

3.2 AMA Development of Media Campaign

- Anticipating the potential breakdown of negotiations, the AMA prepared a public advocacy campaign to push back on government. The campaign included organic and targeted social media ads, Google Display network ads, newspaper ads, posters for clinics, videos, a public mobilization website, etc.).
- A campaign could not be launched while the AMA was at the table. Post-negotiations it was necessary to weigh the odds of success vs. disruption to any possible discussion.

3.3 AH/AMA Working Group to Explore Options

- Despite the breakdown of negotiations and mediation, the AMA and AH agreed to bring together a working group to see if there was any potential for an agreement
- What became clear is that the government is looking to actively manage both the Physician Services Budget and physician practices much more than they are now
- The parties explored different options that included the AMA taking on that management role that could include managing:
    - Alberta's Physician Compensation Strategy in conjunction with government
    - The physician supply and distribution in Alberta
    - Movement of physicians from fee-for-service to ARPs which provide more budget certainty
    - Undertaking a Peer Review process that had more teeth
    - A fixed budget for four years
    - A budget management mechanism that would guarantee to meet government's budget

Elements of the AMA's Proposal

- An across-the-board fee decrease to provide $1b in savings over 4 years
- Implement items such as Peer Education
- Joint review of AHS physician payments (e.g., stipends, on-call, overhead)
- All aspects of the government's Physician Funding Framework will be put on hold (including CME and MLR)
- AMA support for ARPs
- The parties agree to review the opportunities and challenges including the roles and responsibilities of the parties regarding a new approach to managing physician funding.

- The AMA made several proposals that recognized government's fiscal targets during the process which government rejected; however, we have yet to receive a fulsome response or understanding of exactly why these proposals were rejected.
- The characteristics of the AMA's proposal included:
    - A 5.0% across-the-board reduction in fees
    - Implementation of the Peer Education Program. This will work to encourage appropriate billing within the Schedule of Medical Benefits through peer education and support. It includes the identification of outlier billing practices.
    - The following may be implemented by government at its discretion:
        - Submission of Claims within 90 Days
        - De-Insure Drivers Medical
        - De-Insure DI Services Ordered by Non-Insured Providers
    - AMA and Alberta Health would work with Alberta Health Services to undertake a review of AHS physician payments (including stipends, on-call and overhead) to develop a more coherent set of policies and would be expected to achieve savings.
        - The AMA has requested that AH, AHS and AH meet to discuss the Strategic Agreement on a priority basis
    - All aspects of the Physician Funding Framework, including but not limited to the planned termination and reductions in CME and MLR, will be put on hold (with the exception of those within the Minister's discretion identified above).

- The AMA committed to work with government in its plans to increase the number of ARPs to its two-year target of between 20 to 30 percent of practicing physicians.
- The AMA and Alberta Health will explore the opportunities and challenges of a new approach for managing physician expenditures to stay within the budget, with a significantly enhanced role for the AMA. This would require a fundamental examination of the roles and responsibilities, accountabilities and authority for AMA, AH and AHS.
- The review will focus on ensuring Albertans review services they need and prompt value in the health care system. All available levers for managing expenditures will be considered.

3.4 What Is Government Really Seeking?

- Government was clearly looking to achieve its fixed budget of $5.4 billion over the four years. The actual physician services budget is $4.7 billion and the difference includes things like funding for Alberta Health staff, funding for Physician Residents, payments to AHS, non-clinical funding for the AMHSP, etc.
- The government clearly has an issue with a strong AMA and wants to limit its influence and perhaps its livelihood.
- In addition to meeting its fixed budget government wants to dis-incent fee-for-service, especially in primary care to push physicians into ARPs. Their goal is to achieve the national average over the next 2 years.
- Government wants to introduce a management mechanism for physicians and in all likelihood this is focused on community-based physicians. We are seeing subtle changes taking place such as AHS changing the name of its Primary Care group to an Integrated Care group. Government has previously shown support for medical homes; however, they want them to be more managed (e.g., defined hours of operations, types of services provided, etc.)
- The government is clearly anti-FFS and in addition they are questioning the independent practice of physicians
- The government believes it doesn't need the AMA nor physicians to manage the system and is determined that it can do it on its own (this is why they laid out their unilaterally imposed Physician Funding Framework).

4 The World Began to Change

In a very short time, some significant global events complicated an already challenging environment:

- Global pandemic
- Collapse in oil prices

- Massive layoffs due to isolation and forced government closures (although uncertain where the Premier got his numbers but he was estimating unemployment in Alberta could be as high as 25%, post-COVID)
- An estimated $20 billion deficit in Alberta this year (up from a forecast of $7 billion)
- Physician clinics struggling to stay afloat
- AHS provided their one-year notice of termination of the recently signed radiology contract and will undertake a RFP for these services

4.1 AMA Response

- Successful lobbying by the AMA contributed to:
  - Removal of the Complex (time) Modifier
  - Delay in AHS Stipends until August
  - Addition of virtual care codes to make it possible for physicians to provide virtual care during COVID-19
- Shifted the focus of the AMA's public advocacy campaign
- Launched a different public campaign that:
  - Reinforces that physicians are here for Albertans (for COVID-19 care and otherwise)
  - Builds the reputation of the profession and encourages the public to demonstrate the value they place on physicians
  - Ensures the profession is unassailable with the public
  - Encourages patients to reach out to their family physicians and specialists to stay healthy and maintain continuity while also keeping essential physician practices financially viable
- The rationale for this is:
  - DEPOSIT in the reputation bank
    - Once COVID-19 is over, the big fight with government will occur
    - How the profession positions itself with patients will matter
    - Do physicians want to be viewed by the public as "the firefighters after 9/11" or do they want to be seen by patients as not being there for them during the pandemic? How physicians position themselves during this time will impact the overall outcome with government

AMA Approach to Public Positioning

- DEPOSIT in the REPUTATION bank
- SUSTAIN physician practices during COVID and government's unilaterally imposed Physician Funding Framework
- SUSTAIN the AMA
- POSITION ourselves for the fight ahead

- SUPPORT coordination and dissemination of information to primary care and specialty care regarding recommended COVID 19 practices through participation in provincial committees.

- **Leadership, Partnership and support during COVID 19**

    - SUSTAIN physician practices through new virtual fee code changes and changing practice patterns during the pandemic:
        - Assessing practice patterns to determine individual impact of fee code changes
        - Educational webinar series to support physicians maintain a sustainable, effective and safe practice during a rapidly changing environment.
            - The first two sessions focused on virtual fee codes and virtual care implementation (privacy and technology). These sessions reached a total of 1,797 participants, including primary and specialty care physicians, who generated over 700 questions.
            - The third session focused on March 31 fee code changes with over 1,500 participants.
            - The fourth session focused on business sustainability with over 1,100 registrants.

    - SUSTAIN physician practices to maintain the foundations and principles of the Patient's Medical Home.
        - Public campaign to keep patients healthy and connected to their family physicians (e.g., rather than to use Telus Babylon, etc.)
        - Leverage practice facilitators and physician champions to reach out to practices and offer clinical process guidance.

    - Community Supports Working Group
        - Established with multi stakeholder leadership (AH, AHS, OIPC, CPSA, ACFP, AMA)
        - Objective is to maximize the contribution of community physician clinics to COVID crisis
        - Priorities include: keeping clinic doors/lines open, getting patients connected with those services, keeping everyone safe in delivering care and integrating these supports and getting information to physicians
            - Income stabilization proposal tabled at a sub group for practice stability during pandemic: must maintain practices as essential services during and post pandemic
            - Considerations for physician redeployment contracts and impact on sustainability of community capacity/sustainability
            - Coordination and communication of PPE for community practices
            - Coordination of real-time data collection on community practices operation and capacity
            - Coordination and agreement on public messaging on reaching out to your family physician (e.g., included in Dr. Hinshaw's address)

- Primary Care Incident Management Task Group established January 25, 2020
  - Group includes multi-stakeholder leadership (AHS, PCN zone dyads, ACFP, PCN EDs, ACTT)
  - Coordinate and prepare for upcoming pandemic specifically supporting PCNs, member clinics and non-member clinics
  - A sub-task group focused on communications, built a "source of truth" webpage housed at AHS with input from PCNs, physician lead executive and PCN zone dyads
  - Prepared a structure for PPE distribution to primary care clinics, both member and non-member
  - Discharge pathways coordinated through the PCNs and PCN zones to get patient back to family physician for follow up care
  - Coordination and gathering of information on physicians willing to be redeployed to assessment centers and Emergency Departments

- AMA and CPSA are supporting a U of A Occupational Health study of physicians on the impact of COVID-19 on physician health
  - Hoping to enroll up to 5,000 participants

- SUSTAIN the AMA
  - Maintain unity within the profession
  - Reflect the desires of the membership
  - Maintain a voice for the profession so government doesn't divide and conquer

- POSITION ourselves as stepping up being selfless in the face of a health crisis
  - Government will paint physicians to be the highest paid in Canada during a time when many Albertans will be unemployed
  - Our fight needs to be on issues of patient care and to do that we need patients on our side

4.2 CONTINUED DISCUSSIONS

- Despite the lack of a formal table, informal discussions continue to occur
- A Community Support Group has been established to deal with issues within the community since AHS is dealing with issues within its facilities
- AMA/AH Economic Discussion Group that deals with issues on physician payments within the Physician Funding Framework
- The AMA needs to have access to have any influence on the decision makers as they make decisions that will affect the future of medicine in Alberta

4.3 LEGAL

- The AMA determined that, at this time, a negotiated solution is not something the government is interested in pursuing.
- The only move left for the AMA at this point was to undertake a legal challenge especially since it will take around 24 months to get a decision.
- The AMA filed its legal challenge on April 9, 2020.

4.4 CURRENT ENVIRONMENT

- Not a lot of trust between the government, the AMA and its physicians
- Need to determine how to rebuild the trust with government
- How best to move forward in the time of COVID and while we're under assault by the government
- The real battle with government will be post-COVID
- How do we position ourselves especially with the public (who will be our biggest ally)?
- Some physicians want to fight back against government's actions
- Government doesn't value a contract with physicians and are convinced they can do it themselves
- The grant agreements for all programs (e.g., ACTT, ARP PSS) and benefits (MLR, Parental Leave, PFSP) expired March 31 and new grants are not yet in place. Until a new grant is signed, there is some risk that government could delay, alter, transfer or even cancel these programs and benefits.
- The sustainability of community practices is a key enabler for successfully fighting the pandemic. The challenge is working with government to provide that comprehensive support.

4.5 WHAT DO THE POLLS SAY?

We've been conducting public polling that is showing an extremely high level of support for physicians. Albertans are very aware of the dispute with government.

- Almost 80% of them think government should delay implementation of their Physician Funding Framework (the consultation proposals), at least until the pandemic has passed.
- The support for the AMA's position is double that for government (58% vs 22%).
- Physicians beat government almost 3:1 on being the most fair and reasonable (44% to 14%) in this whole debate
- An even bigger margin says government is to blame for the dispute in the first place (53% vs 15%).