香港醫學會
The Hong Kong Medical Association
FOUNDED IN 1920•INCORPORATED IN 1960 AS A COMPANY LIMITED BY GUARANTEE
MEMBER OF WORLD MEDICAL ASSOCIATION AND CONFEDERATION OF MEDICAL ASSOCIATIONS IN ASIA & OCEANIA
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2013年5月20日立法會衛生事務委員會會議討論文件
香港醫學會就規管醫療中介服務的意見

1. 這些醫療中介服務公司的業務模式雖與保險公司相似，但卻不受同類規條規管。

2. 客戶沒有選擇服務提供者的自由。

3. 一旦這些公司面臨財務危機，客戶將無法取得他們應享的服務。

4. 他們所收取的行政費缺乏透明度。病人不知道他們所享服務的價值，因而構成病人和醫生之間的誤會。

5. 政府文件（CB（2）1135/12-13（03））內提供的資料並不正確。第5段指*『根據「醫生註冊條例」.....這份責任不受網絡醫生與病人或付費者之間的付款安排影響，也不會改變。』*雖然醫生向病人提供的服務標準、專業標準、診斷技能或專業意見都應該是相同的，但這群病人在選擇藥物和檢驗時極可能會受到支付費用的限制，即是，為可用資源所限。

6. 在同一文檔中，有關醫院服務的第7段亦出現同樣的誤導信息。

7. 這次從去年開始進行的監管私營醫療設施檢討，亦未將這些中介服務公司納入檢討範圍，將是醫療服務行業的一個大漏洞。

8. 多年前，香港醫學會已提出過類似的擔憂，可能因未有人因為缺乏監管而死亡，所以未能引起政府的關注。

9. 現附上附件A和附件B，是本會年前就這問題提交的意見，以供參考。

Call for Regulation of HMOs by Legislation 籲立例管制醫療集團

Following the two discussion sessions with the LegCo Panel on Health Services in February and March 2006 and the meeting with the Secretary for Health, Welfare & Food, Dr. York CHOW, on 6 April 2006, a working group has been appointed by the Department of Health to look into the ways and means of regulating health maintenance organizations or medical groups with a view to bringing them into level playing field with registered medical practitioners. The Association's views (as follows) were submitted to the Department of Health for the reference of this working group. A meeting with the Department of Health was held on 29 May 2006 to present our views in more detail.

本會在本年二月和三月與立法會衛生事務委員會進行兩次討論，再於四月六日與衛生福利及食物局局長周一嶽醫生開會磋商醫療集團的問題，之後，衛生署決定任命一個工作小組跟進如何規管醫療集團的經營模式，使他們與執業西醫在對等的層面上競爭。會董會於是將意見（見下文）提交衛生署作為參考，然後在五月廿九日與衛生署的會議上，解釋我們的觀點。

26 May 2006

Dr. York Y.N. Chow, SBS, JP
Secretary for Health, Welfare & Food
Health, Welfare & Food Bureau
29/F, Murray Building
Garden Road
Hong Kong

Dear Dr. Chow,

Regulation of HMO/Medical Groups by Legislation

As suggested by you during a dinner meeting with us in early April, our Association has now come up with some suggestions on how to regulate the HMOs or medical groups by legislation and herein submit them to you for consideration.

Background

As rightly pointed out in the government's discussion paper, LC Paper No.CB(2)1036.05-06(05), presented to LegCo Panel on Health Services, there is no universally accepted definition of HMO. However, the managed care groups that concern us most usually have their business model in the following forms:

1. **Incorporated Company Model -** The managed care group is in the form of an incorporated company, the owners of which may or may not be doctors. These companies provide medical services with or without other associated services to patients directly through their doctor employees. This business model may be seen as an incorporated form of medical practice where doctors are under complete control by their employers. In this model, the doctor would lose their professional autonomy and may be forced to practice substandard or unethical medicine.

2. **Agent model -** In this case the managed care group is just an ordinary company with a valid business registration, which has contracted with individual physicians to provide services for members of its plans. These companies would not provide direct medical services to patients. In fact, they act as agents between patients and doctors. Their mode of sales practice, their lack of transparency of the scope of benefits provided and price disputes are our main concern. These companies may:

   (i) receive a fixed prepaid capitation fee from clients and then contract out the medical services to individual doctors and reimburse them retrospectively, charging an "administrative fee" from the doctors, without the patient knowing about it; or

   (ii) just receive a fix "entrance fee" and an "annual subscription" from patients in exchange for a list of doctors who are willing to offer discounts to these patients who would pay these contract doctors directly with each visit.

Both business models listed above are not under any regulations. The Medical Council had explicitly stated at a meeting of the LegCo Panel on Health Services that with the existing Medical Registration Ordinance (Cap. 161), nothing could be done against these managed care groups.

Our Suggestion

Our suggestion is to put these managed care groups under control by legislation. And, we consider that **the Medical Council is in the best position to act as the Authority overseeing these groups**, to ensure all individuals or incorporations, which provide medical services directly or indirectly will perform with the same standard as individual medical practitioners and compete on a level playing field with them.

In order to put the incorporated companies under the jurisdiction of the Medical Council, **there has to be a section in the Medical Registration Ordinance (Cap. 161) with the provisions for incorporation of Medical Companies**, similar to Section 12 (Dental Companies) of the Dentists Registration Ordinance (Cap 156), which stipulates:

(1) A body corporate may carry on the business of dentistry if-

(a) it carries on no business other than dentistry or some business ancillary to the business of dentistry; and

(b) a majority of the directors and all persons practising dentistry are registered dentists:

Provided that a body corporate which was carrying on the business of dentistry before the date of commencement of this Ordinance shall not be disqualified from carrying on the business of dentistry under this section by reason only that it carries on some business other than dentistry or a business ancillary to that business, if that other business is a business which the body was lawfully entitled at the date of coming into operation of this Ordinance to carry on.

(2) Save as aforesaid it shall not be lawful for any body corporate to carry on the business of dentistry, and any body corporate which carries on the business of dentistry in contravention of the provisions of this section and every director and manager thereof, subject to subsection (2A), commits an offence and is liable on summary conviction to a fine of $2,000 for each offence. (Amended 68 of 1986 s. 11)

(2A) Where a person is charged with an offence under subsection (2) by reason of being a director or manager, it shall be a defence for him to prove that the offence alleged to be committed by the body corporate was committed without his knowledge. (Added 68 of 1986 s. 11)

(3) Every body corporate carrying on the business of dentistry shall within 7 days of 1 January in every year transmit to the Registrar a statement in the prescribed form containing the names and addresses of all persons who are directors or managers of the company, or who perform dental operations in connection with the business of the company, and, if any such body corporate fails so to do, it shall be deemed to be carrying on the business of dentistry in contravention of the provisions of this section.

(4) Nothing in this section shall prevent the carrying on of the business of dentistry by the operating staff of any hospital of any description (including an institution for out-patients only), or of any dental school, which is approved for the purposes of this section by the Chief Executive in Council. (Amended 37 of 2000 s. 3)

The Medical Registration Ordinance could be amended to add provisions for an incorporated company to carry out the business of providing medical services, including any medical diagnosis, prescription of any medical treatment or performing any medical treatment (including surgery) in relation to a person. The company should be registered with the Registrar of the Medical Council to get a licence and the licensee should be a registered medical practitioner with a valid practising certificate. The licensee would be held responsible for all the operations of the company. The Medical Council would set up appropriate codes of practice for this kind of companies to ensure that they are performing in the same standard as individual medical practitioners. It would be desirable to specify that **the majority of directors of a body corporate should be registered medical practitioners as well,** as provided in the Dentists Registration Ordinance (Cap 156).

However, the above legislation may be insufficient to control companies, which do not carry out the business of providing medical services; as described in the "Agent model" above. In these cases, we suggest the bureau could take reference from the Estates Agents Ordinance (Cap 511). Section 15(2) of the Estates Agents Ordinance stipulates that:

(1) Subject to this Ordinance, an individual shall not, either by himself or as a member of a partnership -

(a) exercise or carry on or advertise, notify or state that he exercises or carries on, or is willing to exercise or carry on, the business of doing estate agency work as an estate agent; or

(b) act as an estate agent; or

(c) in any way hold himself out to the public as being ready to undertake, whether or not for payment or other remuneration (whether monetary or otherwise), estate agency work as an estate agent, unless he is a licensed estate agent

(2) Subject to this Ordinance, a company shall not-

(a) exercise or carry on or advertise, notify or state that it exercises or carries on, or is willing to exercise or carry on, the business of doing estate agency work as an estate agent; or

(b) act as an estate agent; or

(c) in any way hold itself out to the public as being ready to undertake, whether or not for payment or other remuneration (whether monetary or otherwise), estate agency work as an estate agent,

unless it is a licensed estate agent.

There could be a section in the Medical Registration Ordinance prohibiting any individual or company to exercise or carry on or advertise, notify or state that it exercises or carries on, or is willing to exercise or carry on; or in any way hold itself out to the public as being ready to undertake, whether or not for payment or other remuneration (whether monetary or otherwise), the business of providing medical services; whether directly or indirectly through contracts or agreements with companies or registered medical practitioners, unless it has registered with the Medical Council. And the licensee should also be a registered medical practitioner with valid practising certificate. The proportion of directors may also be similarly specified as in the suggested section for Medical Companies. This new suggested section could be combined or adjacent to Section 28 of the Medical Registration Ordinance (Cap161) "Unlawful use of title etc. and practice without registration".

Our purpose is to put these medical groups under the jurisdiction of the Medical Council. It is more desirable, more efficient and more cost effective than to enact a new legislation and try to put these groups under the jurisdiction of any other government departments. And, it could be done much faster.

We sincerely hope that you could consider our suggestion carefully. We are more than happy to answer any question or hear your feedback. Please feel free to contact our secretariat for any further communications. Thank you.

Yours sincerely,
Dr. CHOI Kin
President
The Hong Kong Medical Association

Regulating Health Maintenance Organizations 規管醫療集團

A meeting on the discussion on the regulation of HMOs was organized by the Health Welfare and Food Bureau and chaired by Dr. York CHOW at 4:30pm on August 24, 2006 at Murray Building, Central, Hong Kong. Dr. LAM Tzit Yuen and Dr. TSE Hung Hing reported on what were transpired at the meeting.

The Insurance Industry did not consider it necessary to regulate the activities of HMOs because of a high prevailing quality of medical care provided by them. Most HMO representatives boasted the presence of a variety of internal control and claimed the presence of a hierarchy of supervision of senior doctors overseeing junior doctors. They admitted indirectly that the measures in place were on customer services and areas other than professional standard and hinted that professional standard of doctors are left to the control of the Medical Council of Hong Kong. Some boasted they encouraged their doctors to pursue higher qualifications and CME. All HMOs present maintained they have not intruded into doctors' professional autonomy.

衛生福利及食物局於二零零六年八月廿四日下午四時半假中環美利大廈舉行會議，討論監管醫療集團。會議由周一嶽局長主持。香港醫學會代表林哲玄醫生和謝鴻興醫生報告會議的討論事項如下：

保險界聲稱保險計劃所提供的醫療服務質素一直維持高水平，所以認為沒有規管醫療集團運作的需要。大部份醫療集團的代表都誇讚其集團擁有各項內部規管，並聲稱他們由資深醫生監督初級醫生。有些則吹噓他們鼓勵所屬醫生修讀更高學歷和持續進修。其實，他們現有的措施主要是針對顧客服務及其他非專業水平的範疇。至於專業水平則暗示由醫務委員會來監控。所有醫療集團代表都否認干預醫生的專業自主權。

Dr. LAM Tzit Yuen's response:
林哲玄醫生的回應：

1. Dr. CHOW should listen to the representative of the various doctors and dentists association because these are the people who face patients everyday and take care of their health. These are the people who understand the pros and cons of each business model of the HMOs.

   周局長應聆聽各醫生 / 牙醫組織代表的意見，因他們是每日接觸及照顧病人的前線醫療人員。他們最清楚了解醫療集團各種經營模式的利弊。

2. The high quality of medical care provided through HMOs are the diligence of DOCTORS and has nothing to do with the insurance companies, or the businessmen. Sometimes this diligence is taken to the financial detriment of the doctors.

   醫療集團提供的醫療服務質素能維持高水平，有賴醫生的努力。此成果與保險公司或各商家無關。醫生為保持高水平的專業服務，甚至不惜犧牲部份收入。

3. The so-called quality assurance boasted by the HMOs are "customer services", which has little bearing on the professional standard of medical care. No HMO has Medical Audit.

   醫療集團口中誇耀的品質保證，其實是指顧客服務，而絕非醫療服務的專業質素。沒有一間醫療集團會實行醫療專業評審。

4. If the HMOs have not intruded into doctors' professional autonomy at the moment, it was a respect out of their goodwill. Goodwill may be withdrawn anytime. In order to perpetuate the non-interference of professional autonomy, regulations must be laid down to protect professional autonomy from potential intervention of employer HMOs and payers.

   即使醫療集團現時沒有干預醫生的專業自主權，這只是出自他們憑良知對醫生的尊重。但良知可隨時被埋沒。為確保專業自主權繼續不受干預，政府必須制訂法例予以保障，以防止醫療集團僱主及其財主作任何形式的介入。

5. Transparency of fees is crucial. End users of healthcare should be well informed how their dollar is spent on their treatment and how much is grabbed by businessmen.

   收費的透明度尤為重要。醫療服務使用者應清楚知道他們所付的一分一毫有多少是用在治療上，又有多少落在商人的口袋裡。

Dr. H.H. TSE's comments
謝鴻興醫生的回應：

1. It is nice to hear the principle of the government is to treat group practices and solo practices in exactly the same way. But the current situation is far from this principle. These medical groups or HMOs are not under any regulation.

   很高興得知政府的原則是要對醫療團體和獨立執業的醫生一視同仁。但現時情況卻大大偏離這項原則。醫療團體或集團並未受任何法例監管。

2. In the evidences presented by the representatives of HMOs in the meeting, it was repeatedly pointed out that all the front line doctors or employees have their own professional indemnity insurances, which mean that they have to bear their own professional liability. And they all claimed that there were no contractual arrangements or written agreements that would affect the management of patients by the employee doctors or front line doctors. Yet there were "guidelines", "internal CMEs" or "quality assurance measures" imposed on these doctors. Who knows what these guidelines are? Would these "guidelines" etc. affect the way these doctors practice? Yet the liabilities were only on the employees or front line doctors.

   根據會上醫療集團代表所提出的證供，所有於前線工作或受聘的醫生都要各自購買獨立的專業責任保險，即表示他們需各自負起個人的專業責任。而所有代表都聲稱沒有任何合約安排或協議會影響前線或受聘醫生對病人的作出診治。但大部份都表示會有一些「指引」、「內部進修」或「品質保證措施」等加諸在醫生身上。但這些「指引」是什麼呢？這些「指引」會否影響醫生對病人的診治？而責任卻只由在前線工作或受聘的醫生獨自承擔。

3. The issue of whether to regulate the HMOs or not had already been concluded in the Health panel of the Legislative Council in March 2006. HKMA would be more than happy to assist the government to formulate rules or legislations to regulate the medical groups or HMOS. To re-visit the issue of whether or not to regulate the HMOs is a waste of everybody's time.

   應否規管醫療集團的問題於二零零六年三月立法會的衛生事務委員會已有定論。香港醫學會很樂意協助政府制定規則或法例以管制醫療團體或集團。再重複討論醫療集團是否需要規管這問題實在是浪費大家的時間。

After hearing all the presentations, Dr. York CHOW concluded:
在聽取所有意見後，周一嶽局長有以下總結：

- Healthcare is not an entirely commercial entity. It should be provided as a service.
  醫療並非一項純商業的個體。需看作為一項服務。
- There exists different models of healthcare business and a healthy competition should be allowed.
  社會內存有不同的醫療服務模式，因此應容許良性的競爭。
- Clear transparency of professional practice is crucial.
  專業操作保持良好的透明度十分重要。
- Whether the control of HMO is by an extension of the function of MCHK or otherwise is to be decided.
  醫療集團是否歸納由香港醫務委員會監管，還是需作進一步討論。