



Uninsured Services: Billing and Block Fees

APPROVED BY COUNCIL: November 2017

PREVIOUS VERSIONS: May 2010, November 2004, September 2000

EXECUTIVE SUMMARY:

This policy sets out the College's expectations of physicians in relation to billing for uninsured services, including offering patients the option of paying for uninsured services by way of a block fee. Key topics and expectations include:

- *Charging for Services:* Physicians must not charge for the provision of insured services (including their constituent elements). Physicians are entitled to charge for the provision of uninsured services, unless the government has otherwise agreed to remunerate them.
- *Setting Fees that are Reasonable:* Physicians must ensure that the fees they charge are reasonable.
- *Communicating Fees:* Fees must be communicated before uninsured services are provided.
- *Combining Insured and Uninsured Services:* Physicians must be clear and impartial when proposing uninsured services as an alternative or adjunct to insured services. If physicians structure their practice in a manner that leads to faster access to insured services when combined with uninsured services, they must ensure that doing so complies with the legal prohibitions against granting preferential access to insured services.
- *Offering a Block Fee:* Physicians who offer a block fee must do so in writing, complying with the requirements set out in this policy. This includes indicating that block fees are optional and that decisions regarding how to pay for uninsured services will not impact access to care.

Physicians must also consider the patient's ability to pay when charging for uninsured services, individually or by block fee, charging for missed or cancelled appointments without the required notice, and collecting outstanding balances. In particular, physicians must consider whether it would be appropriate to reduce, waive, or allow for flexibility on compassionate grounds.



PATIENT
INFORMATION
SHEET



FREQUENTLY
ASKED
QUESTIONS

Uninsured Services: Billing and Block Fees

INTRODUCTION

Some physician services are not covered by the Ontario Health Insurance Plan (OHIP). These services, referred to as uninsured services, include but are not limited to prescription refills and medical advice over the phone, sick notes for work, the copy and transfer of medical records, immunization for the sole purpose of travel, the completion of insurance and/or medical forms, and a number of medical procedures. As payment for uninsured services is not subject to the same external monitoring system as insured services, patients paying privately for uninsured services are particularly vulnerable and rely on the honesty and integrity of physicians to ensure that their needs and interests are put first.

This policy sets out the College's expectations of physicians in relation to billing for uninsured services, including offering patients the option of paying for uninsured services by way of a block fee.

PRINCIPLES

The key values of professionalism articulated in the College's Practice Guide – compassion, service, altruism and trustworthiness – form the basis for the expectations set out in this policy. Physicians embody these values and uphold the reputation of the profession by:

1. Acting in the best interests of their patients;
2. Respecting and facilitating patient autonomy with respect to treatment decisions and decisions regarding payment for uninsured services;
3. Maintaining public trust by recognizing that the balance of knowledge and information about uninsured services favours physicians and not exploiting this imbalance for personal advantage;
4. Recognizing and appropriately managing any conflicts of interest;
5. Participating in self-regulation of the medical profession by complying with the expectations set out in this policy.

DEFINITIONS

Insured services:

Services listed in the *Health Insurance Act* and the Schedule of Benefits that are publicly funded under OHIP,¹ provided that the service is being rendered to an insured person.^{2,3}

All insured services include the provision of the service itself, as well as any constituent elements associated with the service. Examples of constituent elements of insured services include the referral of a patient to a specialist, the administrative processing for a new patient being accepted into a practice, and making arrangements for an appointment.⁴

Uninsured services:

Services provided by physicians that are not publicly funded under OHIP. This includes services provided to individuals not insured under OHIP.

Block fee:

A block fee is a fee that is charged to patients to pay for the provision of one or more uninsured services from a predetermined set of services during a predetermined period of time. At the time of payment it will not be possible for the patient to know how many, if any, services will be needed.⁵ This fee may also be referred to as an 'annual fee' if it covers a period of 12 months.⁶

PURPOSE & SCOPE

This policy articulates the College's expectations of physicians in relation to billing for uninsured services, including offering patients the option of paying for uninsured services by way of a block fee. These expectations apply regardless of practice area or specialty and regardless of the type of uninsured services for which the patient is charged.

1. The services paid for by the Ontario Health Insurance Plan (OHIP) are set out in Section 11.2 of the *Health Insurance Act*, R.S.O. 1990, c. H.6 (hereinafter, *Health Insurance Act*) and the Schedule of Benefits: Physicians Services under the *Health Insurance Act* (hereinafter, Schedule of Benefits).

2. An insured person is entitled to insured services as per provincial legislation and regulations. In Ontario the *Health Insurance Act* and its regulations set out the definition of insured persons who are covered by OHIP.

3. The College acknowledges that individuals not covered by OHIP may be covered by other insurance programs such as the Interim Federal Health Programme (which provides basic health care for refugees or refugee claimants), the Non-Insured Health Benefits program (which provides coverage for certain services to eligible First Nations and Inuit people), or by another provincial health insurance plan. As there are unique requirements, processes, and challenges related to each of these programs, for the purposes of this policy, the definitions of insured and uninsured services or persons are framed in relation to the *Health Insurance Act* and OHIP.

4. For a complete list of the common and specific elements of insured services that are considered to be constituent elements of the insured medical services covered by OHIP, see the preamble to the Schedule of Benefits.

5. Adapted from Section 18(4) paragraph (a) of the *Commitment to the Future of Medicare Act, 2004*, S.O. 2004, c.5 (hereinafter, *CFMA, 2004*).

6. This does not prevent physicians from calling the fee by another name (i.e., 'Patient Supplemental Plan', 'Block Billing Plan', etc.), provided that it is not misleading.



POLICY

Physicians who charge for uninsured services, either per service or by way of a block fee, must comply with the expectations set out in this policy, other relevant College policies,⁷ and applicable legislation.⁸

The first section of the policy sets out general expectations of physicians when charging for uninsured services, whether these services are paid for as they are provided or by way of a block fee. The second section of the policy sets out specific expectations of physicians who offer patients the option of paying for uninsured services by way of a block fee. Expectations of physicians who use a third party to collect payment for uninsured services and/or administer block fees are set out in the final section of the policy.

Charging for Uninsured Services

Charging for Services

Physicians are not permitted to charge for the provision of insured services (including the constituent elements of insured services),^{9,10} or to charge any amount in excess to what OHIP has paid or will pay (e.g., extra-billing, user fees).¹¹ Physicians are also prohibited by regulation from charging for services not performed¹² or for an undertaking to be available to provide services to a patient.¹³

Physicians are entitled to charge patients or third parties¹⁴ for the provision of uninsured services, unless the government has agreed to remunerate physicians for the provision of these services.¹⁵ Uninsured services are those that are not covered by OHIP. They include, but are not limited to, commonplace services such as sick notes and prescription refills over the

phone, through to medical procedures that are not covered by OHIP or are only partially covered by OHIP.¹⁶

Setting Fees that are Reasonable

Physicians must ensure that the fees they charge for uninsured services are reasonable. In accordance with regulation, it is an act of professional misconduct to charge a fee that is excessive in relation to the services provided.¹⁷ This requirement applies to block fees as well.

When determining what is reasonable to charge for individual uninsured services, physicians must ensure that the fee is commensurate with the nature of the services provided and their professional costs. As part of making this determination, physicians must consider the recommended fees set out in the Ontario Medical Association's Physician's Guide to Uninsured Services ("the OMA Guide")¹⁸ and any recommended fees set out by their professional specialty association(s). While physicians are not obliged to adopt the recommended fees set out in the OMA Guide, in accordance with regulation, it is an act of professional misconduct to charge more than the current recommended fees in the OMA Guide without first notifying the patient of the excess amount that will be charged.¹⁹ Physicians are also advised that in some instances, fees for uninsured services will be prescribed by law or set out in an order of the Information and Privacy Commissioner.²⁰

When determining what is reasonable to charge for a block fee, physicians must ensure that the amount charged is reasonable in relation to the services and period of time covered by the block fee.

7. Most notably, the College's Medical Records and Third Party Reports policies.

8. This includes, but is not limited to, the *Health Insurance Act*; the *Professional Misconduct*, O. Reg. 856/93 enacted under the *Medicine Act*, 1991, S.O. 1991, C.30 (hereinafter, *Professional Misconduct Regulation*); and the *CFMA*, 2004.

9. See the "Constituent and Common Elements of Insured Services" of the Schedule of Benefits and Sections 10(1) and (3) of the *CFMA*, 2004.

10. A physician may charge patients for services if the physician opted out of OHIP prior to December 23, 2004.

11. See Sections 10(1) and (3) of the *CFMA*, 2004 as well as Sections 18 and 19 of the *Canada Health Act*, R.S.C., 1985, c. C-6.

12. Section 1(1) paragraph 20 of the *Professional Misconduct Regulation*. Notwithstanding the prohibition on charging for services not performed, physicians are permitted to charge for missed or cancelled appointments in specific circumstances. See Section 1(1) paragraph 20 of the *Professional Misconduct Regulation* and below for more information.

13. Section 1(1) paragraph 23.2 of the *Professional Misconduct Regulation*.

14. For example, a representative from an insurance company or a lawyer. For more information see the College's Third Party Reports policy.

15. For example, while telemedicine is an uninsured service, the government has agreed to remunerate physicians providing telemedicine via the Ontario Telemedicine Network. Similarly, the Ontario Fertility Program remunerates physicians for some fertility services that are uninsured services.

16. See the Schedule of Benefits, Section 24 of the *General R.R.O 1990*, Regulation 552 enacted under the *HIA*, as well as the Ontario Medical Association's Physician's Guide to Uninsured Services for more information about the specific services that are or are not covered by OHIP.

17. Section 1(1) paragraph 21 of the *Professional Misconduct Regulation*.

18. The OMA Guide is typically updated annually, and so physicians must ensure they have reviewed the most recent edition.

19. Section 1(1) paragraph 22 of the *Professional Misconduct Regulation*.

20. See Section 37(5) of the *Workplace Safety and Insurance Act*, 1997, S.O. 1997 c.16, Sched. A and Information and Privacy Commissioner orders HO-009 and HO-14. See as well the College's Medical Records and Third Party Reports policies for further information.

Uninsured Services: Billing and Block Fees

Additionally, when determining what is reasonable to charge for individual uninsured services or a block fee, physicians must consider the patient's ability to pay.²¹ In particular, physicians must consider the financial burden that these fees might place on the patient and consider whether it would be appropriate to reduce, waive, or allow for flexibility with respect to fees based on compassionate grounds.

Communicating Fees

Physicians must ensure that a patient or third party is informed of any fee that will be charged prior to providing an uninsured service, except in the case of emergency care where it is impossible or impractical to do so.

While physicians are ultimately responsible for ensuring that fees are communicated in advance and must be available to offer explanations and/or answer questions, physicians may utilize office staff to inform patients or third parties about fees for uninsured services and to answer any questions they have. Similarly, while posting a general notice listing fees for common uninsured services in a physician's office is recommended and can assist in patient education, this is not a substitute for directly informing patients of the fees associated with uninsured services prior to providing them. The Patient Information Sheet appended to this policy may also be a helpful resource for patients and physicians are advised to direct patients to this document to further assist with patient education.

Combining Insured and Uninsured Services

Physicians sometimes propose or provide insured and uninsured services together or offer uninsured services as an alternative or adjunct to insured services. These situations are ripe for confusion and patients are particularly reliant on the honesty and integrity of their physicians to ensure

their needs and interests are being put first, and that they have clear information about their clinical options and any corresponding fees.

As such, in these situations physicians must clearly communicate which services or elements of a service are associated with the fee and which are not and must describe the patient's options in a clear and impartial manner.²²

Physicians who provide both insured and uninsured services sometimes structure their practice in a manner that leads to different wait times for the insured and uninsured services they provide. If this practice structure also leads to faster access to insured services when combined with uninsured services, physicians must ensure that doing so complies with the *Commitment to the Future of Medicare Act, 2004* prohibition on charging or accepting payment or benefit in exchange for preferential access to insured services.²³ If physicians are unsure of their legal obligations in this regard, the College advises them to obtain independent legal advice.²⁴

Physicians are also reminded that they must place the interests of their patients over their own personal interests and manage any real or perceived conflicts of interest that might arise in this context.²⁵ In particular, physicians must not refer a patient to a facility in which they or a member of their family has a financial interest without first disclosing that fact²⁶ and must not sell or otherwise supply any medical appliance or medical product to a patient at a profit.²⁷

Charging for Missed or Cancelled Appointments

In general, physicians are prohibited from charging for services that are not rendered. However, in accordance with regulation, physicians are permitted to charge for a missed appointment or a cancelled appointment where the cancellation is made

21. The Canadian Medical Association Code of Ethics #16 states that "In determining professional fees to patients for non-insured services, consider both the nature of the service provided and the ability of the patient to pay, and be prepared to discuss the fee with the patient."

22. It is an act of professional misconduct to make a misrepresentation respecting a remedy, treatment or device (Section 1(1) paragraph 13 of the *Professional Misconduct Regulation*) or to make a claim respecting the utility of a remedy, treatment, device or procedure other than a claim which can be supported by reasonable professional opinion (Section 1(1) paragraph 14 of the *Professional Misconduct Regulation*).

23. Section 17(1) of the *CFMA, 2004*.

24. For example, from the Canadian Medical Protective Association or other legal counsel.

25. See *General Regulation, Part IV, Conflicts of Interest, O. Reg. 114/94* enacted under the *Medicine Act, 1991, S.O. 1991, C.30.* (hereinafter, *Conflict of Interest Regulation*).

26. Section 17(1) of the *Conflict of Interest Regulation*.

27. Section 16(d) of *Conflict of Interest Regulation*.



less than 24 hours before the appointment time, or in a psychotherapy practice, in accordance with any reasonable written agreement with the patient.²⁸

Physicians who intend to charge patients in these circumstances must have a system in place to facilitate the cancellation process, must ensure that the patient was informed of the cancellation policy and associated fees in advance, and they must have been available to see the patient at the time of the appointment.

When determining what is reasonable to charge for missed appointments or cancelled appointments without the required notice, physicians must consider a variety of factors. This will include, but may not be limited to, considering what amount would constitute reasonable cost recovery,²⁹ as well as what amount would act as a reasonable deterrent to patients, recognizing the lost opportunity costs to other patients when appointments are missed or cancelled without the required notice. Physicians must also consider the patient's ability to pay the fee, as well as the circumstances that led to the missed or cancelled appointment, and consider granting exceptions where it is reasonable to do so (e.g., first or isolated incident, intervening circumstances, etc.) or on compassionate grounds.

Providing an Invoice

Physicians are advised to always provide an itemized invoice³⁰ for any uninsured services that are provided and for which fees are paid.³¹ Furthermore, physicians must provide an invoice whenever they are asked for one. In accordance with regulation, failure to provide an itemized invoice when asked is an act of professional misconduct.³²

Collecting Fees and Outstanding Balances

Sometimes patients may accrue a balance owing for uninsured services received. Physicians may take action³³ to collect any fees owed to them, but must always do so in a professional manner and in accordance with privacy legislation.³⁴ In so doing, physicians must consider the patient's ability to pay the outstanding balance and consider whether it would be appropriate to reduce, waive, or allow for flexibility in the amount owed based on compassionate grounds. Physicians who are considering ending the physician-patient relationship due to an outstanding balance must comply with the expectations set out in the Ending the Physician-Patient Relationship policy.

Offering a Block Fee

Assessing Whether a Block Fee is Appropriate

Physicians who charge for uninsured services may, but are not required to, offer patients the option of paying for uninsured services by way of a block fee.³⁵

A block fee may be a more convenient and/or economical way for patients to pay for uninsured services, and for physicians to administer fees for these services. However, a block fee may not be appropriate in all practice settings where uninsured services are provided. Appropriateness will depend on a number of factors, including but not necessarily limited to, the nature of the physician's practice and specialty. It is not permissible to charge a block fee in order to cover administrative or overhead costs associated with providing insured services;³⁶ rather, a block fee is merely a way of facilitating payment for uninsured services.

Physicians offering a block fee must ensure the fee covers a period of not less than three months and not more than 12 months.

28. Section 1(1) paragraph 20 of the *Professional Misconduct Regulation*.

29. This could include, for example, any lost opportunity to bill OHIP, as well as any costs incurred by the physician as a result of the missed or cancelled appointment.

30. Physicians must not charge for the production of an itemized invoice.

31. This would include any fees charged for missed or cancelled appointments and fees that are charged to patients who have chosen to pay a block fee, but where the fees for some services are merely reduced as a result.

32. Section 1(1) paragraph 24 of the *Professional Misconduct Regulation*.

33. This may include physicians or their office staff contacting patients or hiring a third party (i.e., collection agency) to assist in the process.

34. This includes, for example, the *Personal Health Information Protection Act, 2004*, S.O. 2004, c.3, Sched. A. (hereinafter *PHIPA, 2004*).

35. Although section 1(1) paragraph 23 of the *Professional Misconduct Regulation* lists "charging a block fee" as an act of professional misconduct, physicians are able to charge a block fee as this provision has been struck down by the courts in *Szmulowicz v. Ontario (Minister of Health)*, 1995 CanLII 10676 (ON SC) and is therefore not in effect.

36. See the "Constituent and Common Elements of Insured Services" of the Schedule of Benefits, read in conjunction with section 37.1 (1) of R.R.O. 1990, Reg. 552 *General*, enacted under the *Health Insurance Act* and Section 10 of the *CFMA, 2004*.

Uninsured Services: Billing and Block Fees

Ensuring Patient Choice and Access to Care

Physicians who offer the option of payment for uninsured services by way of a block fee must always provide patients with the alternative of paying for each service at the time that it is provided.

Moreover, patient decisions regarding whether to pay for uninsured services as they are provided or by way of a block fee must not affect their ability, or the ability of other patients in the physician's practice, to access health-care services.

Physicians must not:

- Require that patients pay a block fee before accessing an insured or uninsured service;³⁷
- Treat or offer to treat patients preferentially because they agree to pay a block fee; or
- Terminate a patient³⁸ or refuse to accept a new patient³⁹ because that individual chooses not to pay a block fee.⁴⁰

To ensure patients are able to make fully informed choices regarding payment for uninsured services, physicians who choose to offer a block fee must:

1. Offer a block fee in writing.⁴¹ In doing so, physicians must:
 - o Indicate that payment of a block fee is optional and that patients may choose to pay for uninsured services as they are provided;
 - o Indicate that the patient's decision to pay for uninsured services as they are provided or through a block fee will not affect their ability to access health-care services;
 - o Identify those services that are covered by the block fee, provide a list of fees that will be charged for each service should the block fee option not be selected, provide examples of those services (if any) that are not covered, and indicate for which services (if any) the fee is simply reduced if the block fee option is selected;⁴²

- o Use plain language and give consideration as to how to address language and/or communication barriers that may impede patients' ability to understand what is being offered;⁴³
- o Refrain from using language that is or could be perceived as coercive or which suggests that without payment of the block fee, services will be limited or reduced, or that quality of care provided in the physician's practice may suffer;
- o Invite patients to consider whether payment of a block fee is in their best interest given their needs or usage of uninsured services; and
- o Direct patients to the appended Patient Information Sheet.⁴⁴

2. Ensure that patient questions about the block fee are answered, ensure that help is available to patients to determine if the block fee is in their best interest, and be available to answer questions or provide assistance upon request.
3. Obtain written confirmation if the block fee option is chosen and maintain it as part of the patient's medical record.⁴⁵

Refunding a Block Fee

Patients must be given the opportunity to rescind the decision to pay a block fee within a week of their original decision.

Where a patient rescinds their decision to pay a block fee, physicians must refund the amount charged for the block fee and can then charge the patient for any uninsured services already provided.

Additionally, when a physician ends the physician-patient relationship or ceases to practice, or when a patient leaves a practice, physicians are advised to consider whether it would

37. Section 18(2) of the *CFMA, 2004*.

38. For more specific guidance on ending the physician-patient relationship, refer to the College's Ending the Physician-Patient Relationship policy.

39. For more specific guidance on accepting new patients, refer to the College's Accepting New Patients policy.

40. Section 18(2) of the *CFMA, 2004*.

41. This can include e-communication; however, physicians must provide information to patients by other means (i.e., mailed letter) if their patient(s) do not have access to the Internet. Physicians are reminded of the inherent risks in using e-communication with patients and are advised to refer to relevant privacy legislation, policies and guidelines for further direction.

42. Some uninsured services are particularly time consuming (e.g., complex medical reports). Physicians may choose to provide a discounted fee for these services to those patients who elect to pay a block fee.

43. See the College's Consent to Treatment policy and Frequently Asked Questions document for guidance on addressing language and/or communication barriers.

44. For example, physicians can direct patients to the College's website or refer patients to the College's Public Advisory Service (1-800-268-7096 ext. 603).

45. For more specific guidance on medical records requirements, refer to the College's Medical Records policy.



be reasonable to refund a portion of the block fee, taking into account, both the time remaining in the block fee and the services that have been provided to date.

Use of Third Party Companies

Physicians may find it helpful to utilize the services of a third party company to assist them in administering and managing block fees or payment for uninsured services more generally. Any communication between the third party company and patients must identify the third party by name and indicate that they are acting on the physician's behalf.

Third parties who administer block fees or manage payment for uninsured services are acting on the physician's behalf. As such, physicians are responsible for ensuring these companies adhere to the same standards required of physicians, as outlined in this policy, other relevant College policies,⁴⁶ and applicable legislation.⁴⁷

46. This includes, but is not limited to, the policies listed in Footnote 7.

47. This includes, but is not limited to, the legislation listed in Footnote 8 and *PHIPA, 2004*.

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