

Member of the public 3

16 September 2013

Dear Sirs

PMI Market Review – Consultant Incentives

I write as a member of the public and wish to remain anonymous - please find my submission in respect of consultant incentives.

As a PMI customer, it is my opinion that the remedy is entirely reasonable, practical and urgently required. Lessons from the US show us that consultants (or any other practitioner) should not be allowed to invest in healthcare facilities under any circumstances. Similarly, they should be able to accept any incentive from insurers. The remedy should wholly apply to GP's, labs, diagnostic imaging providers and also to private medical insurers without exception. **ALL** incentives of any kind should be outlawed between any clinician and other body involved in providing or funding care. I also include in this the incentives / agreements that exist between Doctors and Insurers. Similar to the incentives between hospitals and doctors described in the report, any 'deal' struck with a doctor or doctors group and insurer also has the potential to 'affect' clinical referral and/or treatment protocol. This has to work all ways and for the benefit of the patient / customer.

The thought that any equity shareholding does not have the potential to influence patient care is naive. Lessons learnt from the US show this where the False Claims Act had to be developed to include a specific anti-kickback statute (and other sanctions such as tainted claims and the one person test). The Stark Law (US False Claims Act) was a piece of legislation to tackle the endemic problems with issues in the US. So widespread was the issue of consultant kickbacks, this federal legislation was forced to include a specific anti-kickback statute that outlawed the practice en mass. It also goes a step further in terms of outlawing self-referral and allows a range of criminal sanctions relating to the whole related practice of the clinician.

A combination of Office of Inspector General (OIG), FBI and local law enforcement continue to fight the battle against healthcare fraud in the US and totally outlawing kickbacks for clinicians is a key part of this. A UK equivalent body such as the OIG would be required to enforce this.

Even with effective legislation, clearly the GMC as a self-regulator does not have the capacity or capability to accept responsibility for the management of these issues. A number of 'financial cases' have been referred to the GMC, however, whilst the Fitness to Practice panel may often view a doctors' behaviour as misleading, the definition of misconduct can be more difficult to prove within the definition of the Medical Act. This states that it must be linked to the practice of medicine, or serious enough to otherwise bring the profession into disrepute. This legislation and regulation is too weak for practical use in this context.

As you are no doubt aware, the HMRC focused specifically on the private earnings of doctors from 2008-2010 but to date has proven ineffective in terms of identifying or dealing with the issue of kickbacks. The only way to deal with this issue is criminally; to outlaw all kickbacks so there are no grey areas and to enforce through the courts.

What would be the cost of unwinding existing arrangements? A better question is what is the cost and risk to the patient of not doing so.

To argue that a consultant with an investment in a facility will be more motivated to perform better is naive. I certainly would not want to be treated by a doctor who is motivated to up his game because he's got a piece of the pie! Any clinician should perform to the best of their ability irrespective of this and having no vested financial interest means the avoidance of doubt.