



4th November 2016

Tom Akhgar
Competition & Market Authority
Victoria House
Southampton Row
London
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Dear Tom

CMA Notice to vary the Private healthcare Market Investigation Order and implement Article 22

I am writing in response to the CMA's request for consultation issued on 10 October 2016 in connection with the above Order.

Bringing into force Article 22 – information requirements

AXA PPP notes the proposals to vary Articles 22.1 and 22.7 and would comment as follows:

1. AXA PPP's experience is that the vast majority of consultants perform a very small variety of standard procedures and already have contracts in place with insurers which contain fixed prices for both consultations and standard procedures, with a further fixed daily rate for inpatient care. While around [X] surgical procedures for which AXA PPP was invoiced are at fixed rates, AXA PPP's small team investigating specialists' agreed increased fees for only [X] such requests (around [X]) in the year to 30 September 2016. Thus AXA PPP's experience is that the need for uplift is very small and the market can live with a fixed price by specialists.
2. Further, AXA PPP considers it is not standard practice generally amongst consultants to vary fees for coexisting morbidities, age or other factors except in extreme cases. In built within fees is a recognition of swings and roundabouts; whilst some cases may take longer or are more complicated than average others will be shorter and less complicated.
3. AXA PPP considers that to be of value to patients seeking to aggregate or compare prices with hospital charges, procedure definitions need to be consistent with pricing approaches adopted by private hospitals, which are not subject to the remedy. Accordingly, AXA PPP suggests that where appropriate already established pricing practices (based on CCSD coding) should be used and the use of package prices (which consultants already work with) should also be encouraged.

4. AXA PPP considers that the definition of a procedure should not be complex or contentious work – it should be based on the industry standard CCSD code definition or a layman’s interpretation of this. The definition should include any other additional charges which are usually or routinely made, as well as the initial routine aftercare of a minimum of ten days of post-operative care. For example if a surgeon who performs anterior cruciate ligament repair routinely bills for repair or removal of the meniscus, this should be encompassed in the fee. AXA PPP considers that the amount quoted should represent the patient’s total self pay liability, For insured patients, AXA PPP would recommend that the amount to be paid by the insurer eg. ‘the AXA rate’ particular to that patient is provided for the purpose of a personal estimate, together with a statement that the patient should check with their insurer that the treatment cost will be covered – as we would expect insurer processes to require).
5. AXA PPP is concerned that the flexibility required for a very small proportion of non-standard procedures is seemingly driving undue complexity and obfuscation in the wider approach to fee disclosure and undue delay to the publication of procedure prices and requests that the CMA maintains appropriate challenge in this respect. AXA PPP considers that the apparent complexity of defining non-standard procedures could be overcome by a simple statement that in extremely complex or non standard cases, a higher fee may be charged - with some indication as to what that might be.
6. More specifically in relation to 22.1, AXA PPP has a general concern over the CMA permitting choice to consultants in providing either a fixed fee or an hourly rate for outpatient consultation fees. An hourly rate is not common in the market and risks unhelpful practices of exaggerating or extending the consultation. AXA PPP considers that a fixed price fee is surely a preferable approach for providing clear information to patients and their families to enable direct comparison between specialists. In this respect, AXA PPP observes that a consultation is a recognised and standardised service – in most practices patients are booked into standardised time slots in a consultant’s schedule. As a result there is little real flexibility for extending or reducing consultation times which does not happen in practice.
 - a) Whilst an argument could be made that an hourly rate might be appropriate for a limited number of specialties eg psychiatry, AXA PPP does not consider that hourly rates are usually appropriate for surgical procedure pricing and are not appropriate to give effect to the CMA’s remedial objectives: as patients do not know how long a procedure or related service takes, they are clearly in no realistic position themselves to estimate consultation times; as such, it is invidious to expect patients to be able to make a meaningful comparison of actual costs payable (time multiplied by the hourly rate). In addition, consultants’ work on hourly rates can be performed slowly when there are not enough patients and some clinicians operate faster than others. Where an hourly fee is quoted (for limited specialties), AXA PPP would recommend that a time estimate is also provided and further that the multiplication is performed to provide the patient with an explicit total price estimate.
 - b) While it is fair to assume that self-pay patients are far less well-placed than PMIs to assess and compare costs where time estimations are involved, it is noteworthy that even AXA PPP’s current practice is to pay a fee based on the service provided

rather than the time incurred, save only for the following two exceptions where the hourly rates are considered:

- to calculate a fee for uncoded services which have no close equivalent against which to benchmark. AXA PPP currently recommends an approach along the following lines of say, £500/hour for 2 hours and £350/hour thereafter for the primary operator. If a second operator is needed this is uplifted by 50% and the total split between the two. For anaesthetics AXA PPP works on [x]/hour;
- the second use is to sense check a claim by a doctor that a service was unduly prolonged and difficult and to consider an additional fee request.

AXA PPP often requests the anaesthetic record or theatre records which show times in and out of theatre and in our experience the time claimed by the surgeon in such cases is frequently exaggerated (sometimes by a considerable degree). AXA PPP is therefore mindful that hourly rates can and do lead to over-charging.

7. AXA PPP also has a fundamental concern about how price lists can diverge significantly from actual charges and believes strongly that published prices for self pay patients need to be meaningfully representative of actual self pay prices expected to be charged to be of relevance to patients. AXA PPP would recommend that the actual divergence of average prices charged from the relevant published list prices should also be reported (and auditable). As noted above, AXA PPP considers that for the vast majority of standard procedures a single price is normal practice for contracts with insurers and should be achievable for self pay patients, as opposed to a price range.
8. AXA PPP expects that published price lists are those for self pay patients only as insurer prices are commercially sensitive and expected to be kept confidential. AXA PPP believes that the specialist should say which insurers it works with and if their fees are met in full by the insurer. In the event that an insured customer needs to pay any additional or top up fees this should be advised based on the amount the patient is expected to pay. As noted further above, AXA PPP would recommend that the specialist advises the patient that they should check with their insurer as to the cover they have to help them determine if the patient will incur any such additional charges.

Other practical considerations

9. In respect of Article 22.3b AXA PPP notes the requirement for specialists to provide details of financial interest (of any kind) which the consultant has in the medical facilities and equipment used at the premises. AXA PPP urges that such information is transparent and specific for patients and would wish to have the opportunity to review any recommended wording or presentation guidance being developed.
10. As envisaged in Article 22.3d, AXA PPP supports in principle a standard statement that the patient should check with their insurer the terms of their policy, with particular reference to the level and type of outpatient cover they have.
11. In respect of Article 22.4, AXA PPP notes the CMA's requirement that contact details for other consultants not included in the pathway quote should be provided. AXA PPP believes that this is unduly onerous and will simply support the lack of transparency

which is an existing feature of the market. Hospitals do not have difficulty publishing all-inclusive prices for self-paying patients and there is no reason that consultants cannot do the same.

12. AXA PPP considers that the price for the fee for anaesthesia should most appropriately be included as part of a procedure price and that this fee should include:
 - a) Pre-operative assessment;
 - b) Charges for care during the operation itself; and
 - c) Provision of postoperative care including pain relief.

Such transparency is already in place for fixed price packages so AXA PPP contends that the arguments against it simply perpetuate the current lottery where patients find out the anaesthetic fee late in the process and are unable to compare it with other providers. The anaesthetic fee can be on occasion as high as 50% of the surgical fee which makes the comparison of surgical fees less meaningful if there is a further and substantial fee which is predictable yet cannot be compared at the point in time when the patient makes a decision.

13. AXA PPP would wish to be involved in the further consultation processes given the importance that any standard template for patients confines itself to necessary information in a clear way. AXA PPP would request that such documentation is made available for consultation.

New dates for compliance

14. AXA PPP fully supports the requirement for estimated price and other related information under Articles 22.3 and 22.4 to be provided in advance to self pay patients. For insured patients AXA PPP would expect that patients are referred to their insurer.
15. AXA PPP remains disappointed with the delay that the CMA now proposes to allow for consultation on outpatient consultation fees and the further extended delay for procedure prices and related T&Cs.
16. AXA PPP considers that allowing 12 months principally for defining procedures is at the outer bounds of reasonableness given the existing market practices (as noted in paragraphs 3 and 4 above). AXA PPP also expects that to ensure compliance under Article 21 of the Order, definitions of procedures would have already been reviewed by PHIN, working with the operators of privately owned private healthcare facilities, subject to the appropriate alignment as noted above.
17. AXA PPP would also urge the CMA to resist any further delays and would also expect that PHIN will already have put in place tested interfaces for the collection of data in 2017, such that the implementation and testing time for this latter data collection expansion can be minimised.

Material change in circumstances

18. AXA PPP believes there has been no material change in the market since the Final Report and that this remedy remains fundamental to fostering appropriate transparency for patients in the interest of increased price competition.

AXA PPP would be happy to discuss the points above with you if useful.

Yours sincerely

Fergus Craig

Commercial Director