

Tess

Post draft pre-determination meeting submission

I attended the ACCC pre-determination meeting recently.

I appreciate that Medicines Australia want the ACCC to authorise the Code of Conduct because if the Code receives authorisation then any practices arising from the Code by Medicines Australia member companies that could be seen to be anti-competitive would be protected from prosecution.

The ACCC is charged to make the determination concerning provision of authorisation based on the public interest - a judgment that a practice that may be anti-competitive can be allowed if the public interest is served by the arrangement. In this case it means that any anti-competitive actions arising from the Medicines Australia Code can be allowed if the public interest is served by the arrangement.

The recent draft ruling by the ACCC recommends authorisation of the Code subject to the Code having a public interest requirement that includes transparency features where significant transfers of value to health care practitioners are made transparent by regular public disclosure of individual practitioner's accumulation of transfers of value (converted to money amounts) over set periods of reporting time. This will allow conflicts of interest to be identified that were previously held secret.

Most participants at the pre-determination meeting agreed that the transparency arrangements should be mandatory. That is, if a health care practitioner (eg. doctor) is offered a gift (or transfer of value or other form of payment) and the practitioner accepts the gift, then this gift (in monetary amount) would be made public, not in aggregate form, but in terms of an accounting of the value to the individual practitioner.

The new model would be on the basis that any contractual arrangement between a practitioner and a pharmaceutical company would include these transparency terms. Therefore, any practitioner entering into an agreement with a company involving a transfer of value would be clear that acceptance would mean that the transfer of value would be made publicly transparent on a regular reporting schedule as identified payments to that particular practitioner.

No consent is required and therefore no consent given can be withdrawn. The Privacy Commissioner's advice has confirmed that this is an appropriate way to avoid the transparency arrangements conflicting with privacy law.

At the pre-determination meeting Medicines Australia tried to argue that it was better if a practitioner gave consent first to have transfers of value made public. But then Medicines Australia argued that if a practitioner accepted and used the gift, but then later on withdrew consent, then the transfer of value should be kept secret from public disclosure. This of course would make a mockery of the transparency arrangements as companies and practitioners would avoid public scrutiny of potential conflicts of interest via this means.

This proposal by Medicines Australia was termed the 'opt-out clause' by other non-pharmaceutical company attendees at the meeting. All these meeting participants strongly disagreed that his 'opt-out' method should be included in the ACCC authorised Code.

The second main matter discussed at the meeting was how long it should be before the transparency arrangements should be implemented. Medicines Australia wants the transparency

parts of the Code to be delayed for one year from October 2015 (ie. to October 2016). In my view (and in the view of many others at the meeting) the reasons given for this delay were not persuasive.

Once the ACCC makes a final determination in early 2015 it would not take more than six months for Medicines Australia companies and health care practitioners to be made aware of the new arrangements and to implement methods of complying with the arrangements. Therefore a start-up deadline of no longer than the end of 2015 should only be acceptable.

Finally, work will be required by Medicines Australia to set up a centralised repository or data base for making public all transfers of value to individual practitioners. This could take some time, perhaps up to two years. In the meantime I believe the best way forward is for all Medicines Australia companies to start recording transfers of value to individual practitioners and making this information available in a PDF file (or similar) on a three to six monthly basis to Medicines Australia to be published on its website in one location. This would then make the information available to patients (and their advocate organizations) and to the wider health professions to scrutinize when assessing conflicts of interest.

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