**MMC Position Paper Revision 2022**

**MANAGED CARE**

## 1. Introduction

Historically, the first MCO in Malaysia became operational in 1995, after which some insurance firms were registered as MCOs. [1,2.]

In 1996, the MOH established an MCO Committee, comprising four sub-committees: Administration, Registration, Legal, and Ethics. This Committee has met on a few occasions with MCOs and stakeholders.

The interpretation of managed care organisations is in section 82(1) of the Private Healthcare Facilities and Services Act 1998 (PHFSA)[3].

The first few managed care organisations were identified by the Ministry of Health as Third-Party Payers, as they were mainly involved in payment made to healthcare providers engaged by corporate organisations for management of their employees. The Minister of Health is empowered by Part XV in section 3.1(2) of the Private Healthcare Facilities and Services Act 1998 (PHFSA).

Thus, the term 'managed care organization' (MCO) encompasses a spectrum of managed care models ranging from TPAs to HMOs. However, the initial term (MCO) was retained in Part XV of the Private Healthcare Facilities and Services Act 1998 (PHFSA).

This Position Paper addresses the subject of managed care, and specifically to the organisations involved in providing "managed care" in the country, and referred to, interchangeably, as Managed Care Organisation (MCO) or Third-Party Payer (TPP) or Third-Party Administrator (TPA) or Health Maintenance Orgnisation (HMO).

The Malaysian Medical Council's Position on Managed Care is guided by existing statutes and code and guidelines adopted by the Council.

The statutes referred to are the Medical Act 1971 and Regulations 2017 [4], and Private Healthcare Facilities and Services Act 1998 [5].

The MMC also takes into consideration guidelines issued by the Medical Practice Division of the Ministry of Health in 2013.[6]

The MMC documents referred to are the MMC Code of Professional Conduct [7], and MMC guidelines on Good Medical Practice [8], Confidentiality [9], Consent for Treatment of Patients by Registered Medical Practitioners [10] and Standing Orders for Conduct of Inquiries of the Malaysian Medical Council[11]. These are highlighted in relevant parts in the Position Paper.

## 2. Medical Act 1971 and Medical Regulations 2017

The disciplinary powers and jurisdiction of the MMC are enshrined in the Medical Act 1971[4] under the following sections:

> *p.7 "An Act to consolidate and amend the law relating to the registration of medical practitioners, the control and regulation of the practice of medicine….and to make provisions for matters connected thereto."*
>
> *s 29 (2) (b), by substituting for the words "guilty of infamous conduct in any professional respect" the words "alleged to have committed serious professional misconduct as stipulated in the Code of Professional Conduct and any other guidelines and directives issued by the Council*".

## 3. Private Healthcare Facilities and Services Act 1998 (Act 586) - PHFSA

The Council relies on the statute on Managed Care Organisation in **Part XV of the Private Healthcare Facilities and Services Act 1998 (Act 586), and the Fee Schedule – Professional Fee in the Thirteenth Schedule [Regulation 433] of the Private Healthcare Facilities and Services (Private Hospitals and Other Private Healthcare Facilities Regulations 2006 [P.U.(A) 138/2006].**

### *3.1 Section 82. Interpretation of managed care organisation.*

*(1) For the purpose of this Part, "managed care organization" means any organization or body, with whom a private healthcare facility or service makes a contract or has an arrangement or intends to make a contract or have an arrangement to provide specified types or quality or quantity of healthcare within a specified financing system through one or a combination of the following mechanisms:*

*(a) delivering or giving healthcare to consumers through the organization or body's own healthcare provider or a third-party healthcare provider in accordance with the contract or arrangement between all parties concerned;*

*(b) administering healthcare services to employees or enrolees on behalf of payors including individuals, employers or financiers in accordance with contractual agreements between all parties concerned.*

*(2) The Minister may from time to time by notification in the Gazette declare any type of healthcare delivery arrangement other than those specified in subsection (1) to be managed care organization.*

### *3.2 Section 83. Contracts between private healthcare facility or service and managed care organization.*

*(1) The licensee of a private healthcare facility or service or the holder of a certificate of registration shall not enter into a contract or make any arrangement with any managed care organization that results in -*

*(a) a change in the powers of the registered medical practitioner or dental practitioner over the medical or dental management of patients as vested in paragraph 78(a), and a change in the powers of the registered medical practitioner or visiting*

*registered medical practitioner over the medical care management of patients as vested in paragraphs 79(a) and 80(a);*

*(b) a change in the role and responsibility of the Medical Advisory Committee, or Medical and Dental Advisory Committee as provided under section 78, the Midwifery Care Advisory Committee as provided under section 79 or the Nursing Advisory Committee as provided under section 80;*

*(c) the contravention of any provisions of this Act and the regulations made under this Act;*

*(d) the contravention of the code of ethics of any professional regulatory body of the medical, dental, nursing or midwifery profession or any other healthcare professional regulatory body; or*

*(e) the contravention of any other written law.*

The MMC Code of Professional Conduct[7], the MMC Good Medical Practice[8] and MMC Confidentiality[9] cover aspects of the responsibility for standard of medical care to patients by medical practitioners.

### 3.3 Written Consent

The Private Healthcare Facilities and Services (Private Hospitals and Other Private Healthcare Facilities) Regulations 2006 states in Part VIII Consent under section 47:

(3) "Consent obtained or caused to be obtained under this regulation shall be in writing."

"Without prejudice to the above, which relates to practice in private healthcare facilities and services, written consent when not taken in a standard consent form, should nevertheless be recorded in the patient's case notes/record that the patient had been informed and had consented to a particular stated procedure. This is to safeguard against any unexpected outcome and possible complaint."

The MMC has adopted the Guideline on Consent for Treatment of Patients by Registered Medical Practitioners.[10]

### 3.4 Fee Schedule

The Regulations 2006 to the PHFSA also contains a professional Fee Schedule – Professional Fee - in the Thirteenth Schedule.

The Fee Schedule provides a comprehensive list of professional fees for:

I. Consultation (a) General Practitioners (non-specialist), (b) Specialist Fee, and
II. Procedure Fees for General Procedure and Specific Procedures and
III. Miscellaneous for Medical reports, House calls and Court Attendance.

## 4. Guideline issued by Medical Practice Division, MOH in 2013

In 2013, the Medical Practice Division, MOH, (Bahagian Amalan Perubatan KKM) issued a guideline elaborating on the role of MCO under the provisions in Part XV of PHFSA, based on the information furnished by 32 MCOs to the Ministry of Health.[6]

In Introduction, it states in section 1.5 “this guideline is specifically prepared to ensure adherence to all related provisions under Act 586 by the stakeholders.”

This MOH guideline interpretes and further clarifies in definitive and mandatory terms various sections in Part XV MANAGED CARE ORGANISATION of the PHFSA Act 586 (as reproduced above).

The Guideline interpretes section 82 of the PHFSA on MCO and is reproduced below:

“*2. Interpretation*

*Section 82 on interpretation of MCO*

*“Managed care organisation” means any organisation or body, with whom a private healthcare facility or service makes a contract or has an arrangement or intends to make a contract or have an arrangement to provide specified types or quality or quantity of healthcare within a specified financing system through one or a combination of the following mechanisms:*

*(a) delivering or giving healthcare to consumers through the organisation or body’s own healthcare provider or a third-party healthcare provider in accordance with the contract or arrangement between all parties concerned;*

*(b) administering healthcare services to employees or enrolees on behalf of payers including individuals, employers or financiers in accordance with contractual agreements between all parties concerned, and the Minister may from time to time by notification in the Gazette declare any type of healthcare delivery arrangement other than those specified in the interpretation above.*

Section 4 of the Guideline provides a variation of the interpretation of Section 82 of the PHFSA, as follows:

*“4. Variation of MCOs*

*“4.1 Section 4.* ***Variation of MCOs***

*“Based on the information furnished by 32 MCOs to the Ministry of Health, the following variations were identified:*

*4.1. Any organisation including insurance companies (via letter of guarantee) or their subsidiaries having a contract or an arrangement with any private healthcare facility or services to provide healthcare services to enrolees or employees.*

*4.2. Any third party or agent for local or overseas-based insurance companies having a contract or an arrangement with any private healthcare facility or services to provide healthcare services to enrolees or employees.*

*4.3. Any third-party administrator managing the medical benefits of personnel in a company and having a contract or an arrangement with any private healthcare facility or services to provide healthcare services to the employees.*

*4.4. Any organisation selling membership for clients to take part in any wellness package and enters into a contract or makes an arrangement with selected PHFS to provide healthcare to these members.*

## 5. Guideline for Private Healthcare Facilities or Services

### 5.1 Licensee or holder of certificate of registration of a private healthcare facility of Service

(a) A licensee or a holder of certificate of registration of a private healthcare facility or service shall ensure that the contract or arrangement with any MCO shall –

i. comply with the standards of professional practice of the medical, dental, nursing or midwifery profession;
ii. not breach the Malaysian Medical Council's Code of Professional Conduct, its guidelines "Good Medical Practice" and "Confidentiality" and other directives or guidelines issued out by MMC;
iii. prioritise the patients and does not pose a conflict of interest between the practice of registered medical practitioner (RMP) and the provision of healthcare for his patients, before, during and after the term of the agreement;
iv. guard the continuity of patient's care and treatment;
v. guard patients' confidentiality at any times;
vi. monitor from time to time the computing of professional or healthcare facility or services' charges to ensure adherence to the written policy on quantum of fees to be charged by the private healthcare facilities and services;
vii. establish a grievance mechanism plan and grievance procedure for addressing any grievance on monetary arrangement or payment or reimbursement of professional or healthcare facility or services' charges in the contract or arrangement.

(b) A licensee or a holder of certificate of registration of a private healthcare facility or service shall ensure any monetary arrangement or payment or reimbursement of professional or healthcare facility or services' charges in the contract or arrangement shall not –
   (i) compromise professional healthcare; or
   (ii) breach any professional code of ethics

### 5.2 Registered Medical Practitioners engaged or privileged to practice

(a) Irrespective of whichever health care delivery system a Registered Medical Practitioner practises in, he shall always place the best interests of the patients first;
(b) Good clinical practice shall be the basis of efficiency rather than enticement with financial incentive or disincentives;
(c) Informed written consent shall be obtained, without coercion from the patient before any information is disclosed to a third party, including insurance companies, MCOs or employers; and
(d) A RMP shall –

i. not participate in schemes that encourage or require him to practise below his professional standards or beyond his competence;
ii. avoid actions or commitments which can endanger the doctor-patient relationship, breach of patients' confidentiality or involve the RMP either directly or indirectly to advertising;
iii. not engage in any fee-splitting or kick-back arrangement when referring patients to another colleague;

iv. *adhere and honour any obligation contained in any contractual agreement entered into by the RMP with any licensee or holder of certificate of registration which is made with his consent and in accordance with related provisions in Act 586 and its regulations and the MMC's Code of Professional Conduct;*

v. *not discriminate between "fee for service" "cashless" and "pay and file" patients in computing his professional fees; and*

vi. *at all times, in any contract or arrangement with MCOs, comply with the MMC's Code of Professional Conduct, its guidelines "Good Medical Practice" and "Confidentiality and other directives or guidelines issued out by MMC.*

## *6. Guideline for MCOs*

6.1 *All MCOs shall be transparent and ensure that all enrolees and employees have access to information regarding the offers, non-offers, limitations, maximum coverage and exclusions of the medical benefit packages purchased.*

6.2 *All MCOs shall not remove any RMP from the "cashless" benefits without establishing and adhering to an orderly and adequate procedure that is applicable uniformly in all cases which shall include reminder and opportunity for his defence.*

6.3 *All MCOs shall ensure that their actions shall not allow for or cause or compel any RMP to breach the MMC's Code of Professional Conduct and other directives or guidelines issued out by MMC.*

6.4 *All MCOs shall respect the confidentiality of the doctor-patient relationship.*

6.5 *An informed written consent shall be obtained from all patients before any patient's information can be divulged to any third-party including insurance companies, MCOs or employers and the consent may be in the forms used by the MCOs to indicate attendance at a clinic or hospital and shall be limited to matters related to payment or reimbursement of professional or healthcare facility or services' charges.*

6.6 *All MCOs shall ensure that the listing of providers shall be limited to the purpose of selection of provider by the enrolees and employees and done in accordance with the MMC and the Medical Advertising Board's (MAB) guidelines on advertisement.*

6.7 *All MCOs shall not, at all times, interfere with the management of any patient by the RMP which include the rights to refer a patient to any other suitable RMP to assist in the provision of healthcare to the patient.*

6.8 *All MCOs shall ensure that their Management Boards shall appoint, as far as possible, an independent panel consisting of at least two RMPs to provide the clinical leadership and guidance on related issues including medical practice, payment and reimbursement.*

6.9 *All MCOs shall ensure that all visits or auditing shall be conducted on scheduled and appointment basis and limited to matters related to payment or reimbursement of professional or healthcare facility or services' charges.*

6.10 *All MCOs shall comply with the following:*

a. *The written policy on the quantum of fees to be charged by any private healthcare facility or services, subject to the Thirteenth Schedule of the Private Healthcare Facilities and Services Regulations (Private Hospitals and Other Private Healthcare Facilities) Regulations 2006;*

b. *The written policy on the quantum of fees to be charged by any private medical clinic or private dental clinic, subject to the Seventh Schedule of the Private Healthcare Facilities and Services Regulations 2006;*

c. *Any guidelines or directive issued under the Director General or the Minister in the exercise or the performance of any power, duty or function conferred or imposed on the Director General or the Minister under Act 586;*

d. *Any related provision under Act 586 and its regulations;*

e. *Any guidelines issued by the Bank Negara Malaysia and the Insurance Control Department;*

f. *Any related legislation, directive and guideline issued by the Ministry of Domestic Trade and Consumer Affairs;*

g. *Any guidelines issued by the Life Insurance Association of Malaysia (LIAM) or General Insurance Association of Malaysia (PIAM); and*

h. *The Personal Data Protection Act 2010.*

*6.11 All MCOs shall establish a grievance mechanism plan and grievance procedure for addressing any grievance on monetary arrangement or payment or reimbursement of professional or healthcare facility or services' charges in the contract or arrangement.*

*6.12 Any grievance pertaining fees shall be first submitted by the MCO to the private healthcare facility or services concerned and, in the case, where the reply is not to the full satisfaction of the MCO, the MCO may then refer the matter to the Director General in writing.*

## 7. **General Guiding Principles of the Malaysian Medical Council**

7.1 Pursuant to the Acts and Regulations, Guidelines issued by the Ministry of Health (Practice Division), and MMC Code of Professional Conduct and guidelines and directives, the Registered Medical Practitioners who enters into any contract with a MCO is bound to adhere strictly to these regulatory stipulations and ethical requirements, and is liable to disciplinary procedures in the event of any breach of these, if complaints are submitted to the Ministry of Health or the Malaysian Medical Council.

7.2 The procedures for the inquiries are laid out in the MMC Standing Order for Conduct of Inquiries[11].

7.3 The Ministry of Health has legal jurisdiction over complaints lodged to it on all relevant areas of the Medical Act 1971 Amended 2012, Regulations 2017, the Private Healthcare Facilities and Services Act 1998 and Regulations 2008, and Guidelines issued by the Practice Division (Bahagian Amalan) of the Ministry of Health, and by the Director General of Health.

7.4 Such complaints when directly involving the Registered Medical Practitioner, the Person in Charge of Private Healthcare Facilities and Services, or the registered medical practitioner who is a licensee or the holder of a certificate of registration of a managed

care organisation, and which breach the MMC Codes and Guidelines, may be referred by the Director General of Health to the Malaysian Medical Council.

7.5 However, any contravention of the Managed Care statutes in the above Acts by the licensee or the holder of a certificate of registration or a managed care organisation, who is not a registered medical practitioner will be dealt with through other legal avenues under s 83(1) (2) and (3), 84, and 85 of the PHFSA 586.

7.6 This Position Paper on MCO is a revision, and replacement, of the initial position Malaysian Medical Council's Position on Managed Care Practice 2012 [12]

## REFERENCES


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2. Fox, D. & Kongstvedt, P.R. (2015). A history of managed health care and health insurance in the United States. From Chapter 1 The Essentials of Managed Health Care. 6th ed. Burlington, MA: Jones & Bartlett Learning; 2013 https://www.coursehero.com/file/20732137/Chapter1/

3. Private Healthcare Facilities and Services Act 1998

4. Medical Act 1971

5. Private Healthcare Facilities and Services Act 586 1998 and Regulations 2006

6. Medical Practice Division of the Ministry of Health Guideline 2013 https://medicalprac.moh.gov.my/wp-content/uploads/2022/04/MCO-Guideline-V.8.pdf

7. MMC Code of Professional Conduct 2019

8. MMC Good Medical Practice 2019 https://mmc.gov.my/wp-content/uploads/2019/12/GMP-Final-Edited-Amended-Version.pdf

9. MMC Confidentiality 2011

10. MMC Consent for Treatment of Patients by Registered Medical Practitioners 2017

11. MMC Standing Order for Conduct of Inquiries https://mmc.gov.my/wp-content/uploads/2020/03/Standing-Order-for-Conduct of Inquiries 2019

12. MMC Position Paper on Managed Care Practice 2012 http://mmc.gov.my/images/contents/ethical/MMCs%20Position%20on%20MCP.pdf



Adopted by Council at its meeting on 20th June 2023

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|---|---|---|
| First Revision | : | 19 September 2017 |
| Second Revision | : | 11 December 2022 |
| Revised by | : | Dato' Dr. Abdul Hamid Bin Abdul Kadir |
| Assisted by | : | Dr. Lim Kuan Joo |


**The review of all guidelines shall not exceed five (5) years.**