

# Chapter 6

## Department of Health

### Fee for Service Physicians’

### Retention Fund

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# Department of Health Fee for Service Physicians' Retention Fund

**6.1** While our Office was performing regular year end procedures for the March 31, 2008 audit of the Province, back-up was requested for the Fee for Service Retention Fund amount of \$15 million. When this was not readily available, additional procedures were performed to assess the reasonableness of the fund balance. Subsequent to our year end audit, we made further inquiries to gain an understanding of how the retention fund works, to determine if it is functioning properly, to ensure its accounting treatment is correct and to further ensure the balance is accurate. Our findings and recommendations with respect to the retention fund are outlined below.

## **Establishment of the fund**

**6.2** The Fee for Service Master Agreement between the New Brunswick Medical Society (NBMS) and the Province of New Brunswick, represented by the Minister of Health was signed on July 20, 2006. Schedule H of the agreement establishes a fund that aims to “maximize retention of New Brunswick Participating Medical Practitioners,” the Retention Fund.

**6.3** According to the agreement, contributions will be made by the Department of Health on a yearly basis to a fund administered by an independent party agreed upon by the NBMS and the Department. A Board of Management (BOM) minute from May 1, 2007 allowed the retention fund to be held on the balance sheet of the Province until a trust fund can be established. It also directed that the Department report the progress of the establishment of the permanent trust fund by April 30, 2008.

**6.4** Currently, the retention fund is still being administered by the Department; it is accounted for under deposits held in trust in the Province's books, because a separate trust has not yet been established. There was no progress to report to the BOM on the

required date. We were told that the parties involved (Department of Health and NBMS) are negotiating a new Fee for Service Master Agreement that may include a structure change for the retention fund.

**6.5 We recommended the fund be established as intended, or if the structure is not suitable, alternatives should be investigated and an agreement reached with the NBMS as soon as possible.**

## Terms of the agreement

**6.6** According to the agreement, any income earned will be left in the fund for the benefit of the physicians. Also, investment policy is required. Any expenses incurred including audits, administration and taxation are to be deducted from the amount in the fund.

**6.7** Currently, interest is being earned quarterly and is being administered by the Treasury Division of the Department of Finance and then transferred into the deposits held in trust account. The interest being earned is the 90-day T-bill rate; there is no investment policy in place. If this fund was being administered by an independent party, as it is intended to be, the fund would likely have to pay income tax on the interest earned.

**6.8 We recommended an investment policy be put into place for the fund.**

## Contributions to the fund

**6.9** According to the agreement, there will be a contribution made by the Department for each physician “annually by the end of the first quarter based on an estimate for the current fiscal year and adjustment for variance of prior year estimate.” The amount is based on years worked in the Province and whether the physician’s office location is considered urban or rural. Each physician will receive a share corresponding to the contribution made every year. For example, if the physician has worked less than 5 years and is in a city, the contribution by the Department would be \$2,000/year and the physician will receive 2 shares.

**6.10** Contributions began in 2005-06 with an amount of \$4.67 million. This was calculated using estimates of the number of doctors who are working in urban and rural areas and their years of service as per the agreement. Both the 2006-07 and 2007-08 contribution amounts used this initial estimate as a base and added a percentage increase from the fee distribution of the Department, which ended up being \$85,000 and \$100,000 respectively. There were no adjustments made for actual numbers in either 2006-07 or 2007-08. As a result,

the contract is not being enforced as agreed upon; the contributions are being based on estimates.

**6.11 We recommended the contributions be made in accordance with the agreement; adjustments should be made annually to reflect actual numbers from the prior year and estimations for the current year.**

## Redemption of shares

**6.12** When a physician closes their practice and meets the criteria agreed upon (at least 15 years of continuous service or 20 years of interrupted service in the Province, provided any interruption in service does not exceed three years) they are paid out an amount from the fund based on their number of shares. For example, if the fund has \$1 million in it, 1,000 shares have been issued and the retiring physician has 10 shares, the physician would receive \$10,000. The amount paid out and the shares retired are deducted from the fund balance and outstanding shares. If a physician is to retire or move away from the Province before he or she meets the qualifications of the retention fund, their shares are forfeited but the contributions stay in the fund to the benefit of the other physicians in the Province.

**6.13** There have been physicians who have retired between when the agreement was signed and now. These physicians have yet to be paid out of the retention fund and no calculations have been made to determine how much each retired doctor is owed. When settling obligations, the Department will have to recalculate the fund balance after each payment is made, taking into account the retired shares and payments to ensure the physicians are receiving their proper entitlement.

**6.14 We recommended the doctors who are owed money under this agreement be paid their entitlement in a timely fashion, and that all efforts be made to properly recalculate the fund taking into account each payout.**

## Reports and accuracy of fund balance

**6.15** According to the agreement, "the trustee will provide the parties with quarterly reports detailing fund activity." As there is no trustee in place, the Department is essentially acting as the trustee. There have been no quarterly reports as required. According to the agreement, the Department "will provide appropriate reports at the beginning of the fiscal year. Data will include physicians practicing in the Province as of March 31, urban/rural, # years of continuous service and income." We were told that there is no system in place to produce this information.

**6.16** We are uncertain as to the accuracy of the fund balance. Proper calculations have not been performed for the provincial contributions required by the fund. Administrative expenses and redemption of shares have not yet been deducted from the fund balance. Interest has been calculated on the entire fund balance, not taking into account any deductions.

**6.17** We recommended the quarterly reports be issued in a timely matter.

**6.18** We recommended a system be put in place immediately that can make the required calculations, as the entire framework of the retention fund is dependant on it.

## Canada Revenue Agency (CRA)

**6.19** The CRA has issues with the physicians receiving shares in the retention fund and believe they should be paying a taxable benefit for them annually. If the physician does not work long enough for their payout, they would receive a deduction from the CRA for the amount they had been taxed. This issue remains unresolved.

**6.20** Originally, the NBMS believed that the physicians would not be taxed until after their payout at retirement. We were told that due to time constraints during the negotiations of the agreement, both parties agreed to forego an advance ruling from the CRA on the issue.

**6.21** We recommended CRA be contacted immediately for a ruling in this matter.

## The future of the fund

**6.22** The Department and the NBMS are currently in contract talks for the Fee for Service Master Agreement. The retention fund, we understand, is part of that discussion.

**6.23** We recommended that once a new agreement is in place, the retention fund be administered in full compliance with the agreement.

## General comments

**6.24** This agreement was entered into and a fund established without a sufficient amount of research. There was no advanced CRA ruling to ensure the intended tax treatment was allowed. There is no system or framework in place to accurately calculate the provincial contribution. There is no system or framework in place to maintain this fund, pay administrative expenses, and accurately calculate payments to physicians. The Province is currently in an agreement

for which many of the conditions are not being met. Violating terms of a signed agreement could have several negative consequences.

**6.25 We recommended that, before any agreements are entered into, proper due diligence be performed.**