IMO IRISH MEDICAL ORGANISATION

10 Fitzwilliam Place
Dublin 2 Ireland
Telephone
(01) 676 72 73
Facsimile
(01) 661 27 58
E mail: imo@imo.ie
Website: www.imo.ie

IMO Submission re Draft Under 6 Contract

21st February 2014

Introduction

The Irish Medical Organisation is the Trade Union on behalf of Doctors in Ireland and the holder of a Negotiating License entitling it to negotiate it on behalf of General Practitioners. The Irish Medical Organisation (hereinafter referred to as "IMO") has written to the Minister for Health and the Minister of State on the 13th of February 2014 in connection with the draft Contract for the provision of services to children under 6 years of age. The IMO makes this submission without prejudice to the terms of the letter to the Minister. A copy of the letter is **attached** herewith as an appendix to this Submission and, for the avoidance of doubt, we confirm that this Submission adopts the points raised therein as if same were set out seriatim in this Submission. The IMO notes with regret that it has not received a response to the points raised in its letter.

The IMO wishes to state at the outset of this Submission that the IMO is supportive of the principle of GP Care which is free at the point of access for all patients but this support is subject only to such proposals being properly planned, resourced and negotiated with the IMO as Trade Union and holder of a Negotiating License on behalf of General Practitioners. It is clear that due to the failure to negotiate with the IMO at the outset, the draft Contract which has been produced is regrettably unworkable in its entirety.

Regrettably the manner in which the Department and the HSE have proceeded in relation to the draft Contract (abandoning negotiation in its entirety in favour of a consultation process) has undermined the belief of Medical Practitioners that the Department or the HSE is serious in its intention to produce a properly planned, resourced or negotiated agreement, notwithstanding the willingness of the IMO to do so. The IMO asserts its right to fully negotiate on behalf of General Practitioners and confirms that it does not accept the contention that the Department of Health or the HSE are not entitled to enter into such negotiations due to restrictions which it is alleged the Competition Law imposes on the activities of the IMO. Those alleged restrictions are themselves the subject of a dispute which is due before the High Court on the 30th of April and the IMO takes issue with the attempt to proceed with the draft contract in the absence of negotiation while that

matter is before the Courts and the IMO reserves its rights in connection therewith as set out in the appended letter.

The IMO (formerly The Medical Union) has been involved in numerous negotiations with Government, The Minister for Health and other State entities, including the HSE since 1962. The IMO has always sought to work with the Government and the Department of Health in achieving advances in Health Policy and these advances have come through negotiations with the Irish Medical Organisation negotiating on behalf of Medical Practitioners. Indeed this is implicate in the Departments own overview document which stated that it is *"acknowledge(ed) that GP's play important roles in the Health Service delivery and the contractual arrangements with GP's are key elements of the Health Reform Programme".*

Submission

Notwithstanding the foregoing, the IMO wishes to highlight a number of key observations on the draft Contract on the following basis:

1. It is clear that due to the failure to negotiate with the IMO at the outset, the draft Contract which has been produced is regrettably **unworkable** in its entirety. The examples and issues highlighted below are merely a small fraction of the myriad of difficulties with the draft Contract, including legal, technical, operational and patient care issues. The IMO will be in a position to provide detailed feedback on commencement of full and real negotiations on the introduction of free G.P. care for under 6's.

2. The draft Contract refers to draft Legislation which has itself not been furnished. The IMO calls upon the Department to immediately publish the draft Legislation and submits the requirement that parties comment upon the contents of a draft Contract referring to such draft Legislation, without furnishing the draft Legislation itself, renders the consultation process, frankly, untenable.

3. It is extremely difficult to comment on the draft contract in the absence of the following details as requested by letter to Minister Reilly on 5th November 2013;

    - The rationale behind the decision including the medical evidence underpinning the decision

- The rationale behind the decision to obtain the funding for this initiative from the current GMS budget and details as to the precise methodology to be used to obtain this funding
- Detail of the demographic of the eligible population to be covered including total number of children and breakdown by age, gender, and morbidity on a county by county basis
- Detail of the projected number of eligible population for the next 5 years including details of analysis of birth rates, death rates and migration of this population
- The cost analysis of the introduction of this initiative including the projected costs for next 5 years based on question 3 above
- Detail of analysis of current GP visitation rates for the eligible population
- The precise timeline for implementation including drafting and enactment of legislation and the practical nationwide roll-out, detailed on a county by county basis
- Detail of how this implementation plan fits into the planned introduction of Universal Health Care
- Detail of when the White Paper on Universal Healthcare will be published

4. While the significant increased workload and resource implications are apparent from even a cursory review of the draft contract, in the absence of any information on the practical arrangements for implementation of the contract, particularly with regard to the onerous administrative, reporting and compliance requirements, the IMO is limited at this time to providing general comments under the following five key implications of the draft contract;

   a. ***Impose a new range of duties and onerous responsibilities on GPs & Significantly increase workload (clinical & administrative)***
   b. ***Increase the number & complexity of consultations***
   c. ***Seriously undermine clinical independence of GPs***
   d. ***Require significant additional resources & expenditure in terms of infrastructure and staffing levels- medical & administrative***
   e. ***Negative impact on Patient Care***

Impose a new range of duties and onerous responsibilities on GPs & Significantly increase workload (clinical & administrative)

- As noted by the Department of Health in the explanatory document accompanying the draft contract, the draft contract for Under 6s expands on the current GMS contract and "reorients the focus of primary care towards active health promotion, disease surveillance, prevention & management of chronic conditions". This expansion and reorientation comes **in addition** to the current GP role of diagnosis and treatment and combined with the significant broadening of Section 13 scope of services, will have an enormous impact on both clinical and administrative workload.
- One example of this increased workload is the requirement to maintain a population register and undertake periodic wellness assessments including recording of centiles and BMI, tasks which are currently under the remit of community health doctors and public health nurses. There is no rationale for the transfer of this already quality and resourced service to an overstretched general practice. These "tick box" consultations will inevitably become the priority over acute consultations as GPs struggle to meet the onerous demands of the contract.

Increase the number & complexity of consultations

- At present 24+million consultations take place in general practice in Ireland per annum and this is provided by 3,800 full and part time GPs (3,250 fte and 2,740 GMS contract holders). This amounts to 545,455 consultations per week in general practice, each doctor doing 33 consultations a day. This does NOT include repeat prescriptions, giving results or administrative work with letters, form filling, GMS application letters for our patients which could amount to as much again.
- GMS patients visit approximately 2.5 times as often as private patients and private patients under 6 years visit between 2-3 times year giving GMS visiting rates under 6 years at between 5-7 visits per year.
- A review of the proposed terms of the draft contract for under 6s would indicate a need for up to 11 extra consultations on top of the treatment of acute illnesses and an enormous bureaucratic work load. This will require extra doctors, nurses, receptionist staff, premises, computers and HSE Administrators.

- These statistics take limited cognisance of the extra burden of workload in deprivation areas, urban and rural where significant co-morbities prevail to ensure greater consultation rates.
- The draft contract makes no mention of deprivation and its consequences for care provision that a modern, sophisticated contract should provide for
- The onerous recording and reporting mechanisms will considerably increase consultation times and the required focus on administration will undoubtedly interfere with the nature of the patient doctor relationship

Seriously undermine clinical independence of GPs

- The burden of **bureaucratic administrative compliance** is a fundamental change in general practice which will only serve to change and undermine the doctor – patient relationship. Furthermore the bureaucratic compliance required of GPs to comply with the draft contract will inevitably result in the substitution of clinical work for administrative work. The treatment received by children treated under the draft contract will not necessarily be what the GP would ordinarily decide as priority consultations will become those that are required to meet the terms of the contract with inevitable delays in acute consultations.
- The key role of GPs as **patient advocates** it totally undermined by clause 28.4.4 "The service provider shall not do anything to prejudice the name or reputation of the HSE" which interferes with GPs ethical obligation to act as an advocate for patients and to promote the provision of appropriate healthcare resources and facilities. This effective gagging clause completely contradicts the HSE's Open Disclosure policy as cited in Mr Tony O'Brien's letter of 6 February 2014 to all HSE staff which promotes open communication to patients when things go wrong. Of note are the recent findings of the Francis Report into the Mid Staffordshire NHS trust scandal in the UK. The report highlights the "Duty of Candour" that every healthcare organisation and everyone working for them must be honest, open and truthful in all their dealings with patients and the public, and organisational and personal interests must never be allowed to outweigh the duty to be honest, open and truthful. It goes further to state that gagging clauses or non-disparagement clauses should be prohibited in the policies and contracts of all 22 healthcare organisations, regulators and commissioners; insofar as they seek, or appear, to limit bona fide disclosure in relation to public interest issues of patient safety and care.
- The restrictions on GPs **prescribing** activity as set out in clause 14 seriously undermines doctors clinical independence as they will be obliged to adhere to HSE clinical guidelines,

such as the Medicines Management Programme and to prioritise economic concerns potentially ahead of their obligations to provide the best and most appropriate care for patients in terms of prescribing.

Require significant additional resources & expenditure in terms of infrastructure and staffing levels- medical & administrative

- The onerous practice premises requirements as set out in section 12 are far more detailed than the HIQA criteria and significant numbers of practices may be unable to fulfil the requirements for infrastructural and other reasons resulting in the potential closure of practices around the country
- The significant investment required to meet premises requirements may be impossible for GPs to make given the limited 5 year contract term
- Additional clinical and support staff will be required to meet increased the workload and administrative/reporting requirements. It is estimated that an additional 3000 staff will be required within General Practice to undertake the increased administrative work with the equivalent numbers in the HSE required to process the information.

Patient Implications

- It is clear from the contract that the HSE are seeking to take over General Practice, the only part of the health service that is working effectively with same day service, no discrimination between public and private patients and high patient satisfaction ratings.
- Rather than improving care these proposals seek to ensure GPs become administrators for the HSE to gather information in what can only be described as an exercise in senseless bureaucracy.
- With the increased workload GPs will have less time for all patients and less time to do what they are trained to do – deliver high quality healthcare not reports to the HSE.
- Patient confidentiality will potentially be undermined as GPs are required to report new and additional information about patients to the HSE but there is no detail on how the HSE will ensure confidentiality of this information
- Continuity of patient care will be damaged with the short 5 year contract tenure with no guaranteed renewal

APPENDIX

Dr. James Reilly
Minister for Health
Hawkins House
Hawkins Street
Dublin 2

Mr. Alex White
Minister of State at the Department of Health
Hawkins House
Hawkins Street
Dublin 2

13 February 2014

Re: Draft contract for the provision of services to children under six years of age

Dear Dr. Reilly and Mr. White,

I refer to the draft contract for the provision of services to children under six years of age, a copy of which was furnished to the Irish Medical Organisation ("*IMO*") for the first time on 31 January 2014. I also refer to our letter dated 5 November 2013 to which we have had no response.

A contract in the terms of the draft furnished to the IMO on 31 January 2014 would have profound implications for the provision of General Practitioner services in this country at multiple levels. In the Departmental overview document which was also furnished to the IMO on 31 January 2014, it is "*acknowledge[ed] that GPs play an important role in health service delivery and that the contractual arrangements with GPs are key elements of the health reform programme.*" Notwithstanding that acknowledgement, it appears that your Department and the Health Service Executive ("*HSE*") do not propose to engage meaningfully with the IMO in relation to the terms of the contractual arrangements at issue and, in particular, it appears that no negotiations whatever with the IMO in relation to the terms are proposed. It is a source of disappointment and surprise to us that you are seemingly prepared to circumvent the normal processes of collective bargaining that are usually brought to bear on the introduction of significant alterations to the terms and conditions under which persons contracting with the State are to be required to work.

The apparent basis – or at least the asserted basis – for the position of the Department and the HSE in relation to negotiating the draft contract is that competition law precludes negotiation with GPs and the IMO. In this regard, I note that in the Departmental overview document, it is asserted that "*[t]he development of the contract involves a public consultation process with relevant stakeholders followed by the offering of a contract to suitably qualified GPs in a manner that is in compliance with the provisions of the Competition Act, 2002*". I also note that, during the course of a meeting of the Select Sub-Committee on Health on 28 January 2014, Dr. Reilly stated that there would be *consultation*, as distinct from *negotiations*, with the IMO "*because under competition law the IMO is prohibited from negotiating*".

With respect, your position in this regard and that of your Department and the HSE is fundamentally incorrect. The IMO is not prohibited from negotiating by virtue of competition law or any law. On the contrary, the IMO has an *entitlement to negotiate*, both under statute and under the Constitution. The IMO (formerly the Medical Union) was registered as a trade union on 15 February

1962 and a Negotiation Licence was granted to the IMO / Medical Union by the Minister for Industry and Commerce pursuant to section 10 of the Trade Union Act, 1941 on 19 October 1962 which authorises the IMO to carry on negotiations for the fixing of wages or other conditions of employment. The position adopted by you now, seemingly, seeks to deny the legal entitlement which has been expressly conferred upon IMO by virtue of that statutory licence.

As you are well aware, the IMO / Medical Union has been involved in numerous negotiations with the Government, the Minister for Health and other State entities, including the Health Service Executive, on diverse occasions since 1962. In September 2005, the Department and the HSE committed to a full review and negotiations of the GMS Contract under the auspices of Labour Relations Commission. Moreover, following the statement issued by the Competition Authority on 20 October 2008 in which it set out its views on the restrictions which competition law imposes on negotiations with the IMO, the Government issued a statement on the following day in which it stated that "*the scope of the engagement by general practitioners in the delivery of primary health care and the significance of primary health care for the overall efficacy of the public health system makes a more direct form of engagement with the representatives of general practitioners* ***both necessary and desirable***" (emphasis added).

Your recent assertions and the recent assertions of the Department and the HSE in relation to the impact of competition law on the entitlement of the IMO to negotiate appears to be based on the position which the Competition Authority has adopted in relation to the restrictions which competition law imposes on the activities of the IMO and, in particular, its entitlement to negotiate on behalf of its members. I assume that you are aware that the contentions of the Competition Authority are the subject of proceedings presently pending before the Competition Division of the High Court, that those proceedings are listed for a hearing commencing on **30 April 2014** and that the IMO gave certain undertakings pending the determination of the proceedings by the High Court in order to ensure that the proceedings are heard as expeditiously as possible. Those undertakings do not affect our entitlement to negotiate in respect of the new contract. For the avoidance of any doubt in relation to the issues which arise in the proceedings, I enclose a copy of the pleadings which have been exchanged in the proceedings. As you will see, the IMO has delivered a Counterclaim in the proceedings and it seeks relief to the effect that the position adopted by the Competition Authority in respect of our client's right to negotiate in the same manner as any other trade union is wrong in law.

In short, the IMO believes that the position adopted by the Competition Authority and in consequence of which you have refused to negotiate with us, is as fundamentally wrong in law, as it is contrary to common-sense. General Practitioners, as you will fully appreciate, do not operate in a 'market' for GMS services – they engage in an activity pursuant to a uniform contract issued by the State. They do not 'compete' for GMS patients, and are not in a position to negotiate individually with the State in respect of the terms of their contracts. The proposition that competition law has any role to play in preventing their representative body and registered trade union from negotiating on their behalf is untenable as a matter of policy and misconceived as a matter of law.

We note that a 21 day period for what is asserted to be a "*consultation process*" has been fixed and that the deadline for receipt of submissions is 21 February 2014. Quite apart from the fundamental issues which arise in relation to the failure / refusal to engage in negotiations in relation to the draft contract and the misconceived basis for the position which you, the Department and the HSE have adopted in that regard, it speaks volumes about the interest in engagement and the level of engagement which is proposed with the people who are central to the implementation of the proposed contract and their representatives that such an entirely inadequate timeframe has been

allowed for "*consultation*" on a contract which has such profound implications for the provision of health care and, in particular, GP services in this State. The draft contract contains 39 pages of dense text that was clearly prepared over many months, if not years. It has 44 separate clauses, many of which have multiple sub-clauses and sub-sub-clauses. It has three schedules, two of which have 8 clauses and a number of sub-clauses. It manifestly requires careful and detailed analysis by the IMO and its members in conjunction with other public contracts (including the GMS Contract) and the provisions of the Health Acts. Moreover, we are told that the contract will require new legislation and, indeed, the draft contract is entitled "*Draft Agreement for the provision of services pursuant to [cite new legislation] (under 6 year olds)*". As yet, however, we have not had sight of the draft legislation, less still had an opportunity to consider the impact thereof. In the circumstances and quite apart from the critical need to negotiate the terms of this draft agreement, the so-called "*consultation process*" on the terms of the draft contract is utterly meaningless.

It appears to the IMO that you, the Department and the HSE are intent on bulldozing ahead with this draft contract, regardless of the interests and entitlements of people who will be most affected by it and other similar contracts which also appear to be envisaged by its terms and regardless of the implications which this demonstrably deficient approach will have for the provision of health services in this country in the short, medium and long term. It appears that you do not propose to negotiate with the IMO and that you are content to use the misplaced and ill conceived position of the Competition Authority in relation to the asserted restraints which competition law imposes on negotiations with the IMO as a fig leaf for avoiding having to engage meaningfully with the IMO and negotiating the terms of the draft contract. The window dressing of what is asserted to be a "*consultation process*" does not in any way constitute a substitute for the meaningful engagement and negotiation which is required for such a significant public contract.

Quite apart from the matters addressed above, it is clear from our review of the draft contract that it constitutes a fundamental variation and modification of the terms of the Doctor Only Visit Card Contract within the meaning of clause 9 thereof. It is also clear that the draft contract is intended to vary, modify and ultimately pave the way for replacing in its entirety the GMS Contract. It is equally clear, therefore, that the Department of Health and the Health Service Executive are precluded from entering into the proposed contracts without first consulting, negotiating and agreeing their terms with the IMO.

Accordingly, the IMO hereby requests confirmation that the Department and the HSE will now engage in meaningful negotiations with the IMO in relation to the terms of the draft contract. We have a right under the existing GMS contract to, amongst other things, negotiate in respect of any variation of that contract which, on any version, the new contract is.

The contention that it would breach competition law for you to honour your contractual obligation to us and engage in negotiations is incorrect and we have been advised accordingly. If you proceed to purport to implement the suggested contractual terms without negotiation, you will not only be breaching those pre-existing contractual obligations, you will also be causing irreparable harm to this organisation and its members, as well as to the public at large. Accordingly, if you do not within fourteen days of receipt of this letter undertake to suspend the consultation process in respect of the new contract and embark upon proper negotiations with IMO, we will upon the expiry of that period, institute the appropriate proceedings without further notice to you.

Yours sincerely,

Susan Clyne
Chief Operating Officer