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## Senate Community Affairs References Committee Review of the Professional Services Review Scheme

### **Introduction**

The AMA supports the current legislative framework for the Professional Services Review (PSR) scheme and peer review of inappropriate practice as defined in s.82 of the *Health Insurance Act 1973* (the Act).

Peer review is the correct mechanism for ensuring the integrity of the Medicare arrangements and Pharmaceutical Benefits Scheme. Only medical practitioners are trained and qualified to make judgements about inappropriate medical practice by other medical practitioners.

The PSR process must be fair and just, so that medical practitioners can be confident in the peer review process. The operation of the scheme must also be certain, so that there is no ambiguity for medical practitioners about the bounds of appropriate medical practice as defined by the Act for Medicare benefits purposes. It must also be clear to the profession that senior, respected members of the medical profession are selected for membership of the Panel.

The AMA recently identified concerns regarding transparency and the provision of natural justice in the operation of the PSR scheme. As a result, the AMA identified a number of areas to improve the operation of the PSR scheme and communication with Persons Under Review (PUR).

### **Issues identified by the AMA**

In recent years, the PSR process has suffered from a perceived failure to afford natural justice to the PUR. AMA members who have been reviewed by the PSR have complained that:

1. PURs could not prepare adequately for the Director's investigation because they were not informed about what services were being investigated and why;
2. PURs were not given a clear explanation of the review process and their rights at the beginning of an investigation;

3. PSR Committees were comprised of medical practitioners who have not practised for some time or who practised in a different specialty to the PUR;
4. the initial meeting between the PUR and the Director was intimidating. Further, the AMA identified a lack of consistency in the procedures followed at these meetings.
5. written decisions made by the Director or Committee did not appear to consider evidence the PUR had provided during the review, or explain how the evidence was considered, or why it was dismissed; and
6. written decisions did not actually explain the reasons for the decision of the Director or Committee.

The AMA's overarching concern was that there was a lack of transparency that PSR investigations followed due process. As the operational protocols used by the Director and the Committees when reviewing the PUR were not publicly available, PURs could not be certain that their matters were properly conducted.

### **AMA Solutions**

#### **1. Lack of information for the PUR about what services were being investigated.**

The AMA requested that PURs be given more information at the commencement of a PSR investigation about the services the Director had identified as being of concern and the reasons for that concern. The PSR agreed to make significant changes to the Director's letter confirming his/her initial meeting with the PUR.

The letter will now include an attachment which sets out the item numbers the Director has identified for review, an example from the records provided by the PUR and an explanation for each item number of the reasons for the Director's concerns.

#### **2. Explanation of the review process and the rights of the Person under Review**

The AMA argued that the solution to this problem requires:

- A resource guide for PURs explaining in detail the PSR process; and
- Publicly available guidelines governing the conduct of the Director's investigation.

Consequently, the PSR has produced, in consultation with the AMA, a resource guide for PURs, 'Your Guide to the PSR Process'.

The Resource Guide provides the PUR with a very detailed road-map of the stages of a PSR review. This will both inform the PUR and allow them and their legal advisors to ensure that the process is being properly conducted.

The first edition of the Resource Guide is available on the PSR website. A second edition, incorporating further comments made by the AMA is in preparation. The existence of this document provides a mechanism for further refinements to the operating protocols.

The AMA is discussing with the Department of Health and Ageing and the PSR the need for guidelines governing the conduct of the Director's investigation. These Guidelines should cover both the procedures to be followed by the Director in conducting an investigation, the circumstances in which a section 92 agreement should be offered, and protocols for the negotiation of that agreement.

As with the Resource Guide, these guidelines will ensure consistency of practice across all Director's investigations, and will assist PURs and their legal counsel in ensuring correct procedure is followed.

### **3. Composition of PSR Committees**

The AMA identified two aspects of PSR Committees that needed to be addressed:

- The PSR Panel from which Committees are formed must comprise currently practising medical practitioners of sufficient and appropriate experience and standing; and
- Committees formed must include Panel members from the same specialty as the PUR.

The AMA advocated that the PSR produce publicly available guidelines to address both these issues. As a result the PSR has produced two documents.

#### ***(a) Guidelines for the Appointment of Medical Practitioners as Panel Members, Deputy Directors and Consultants to Professional Services Review Matters***

The Guidelines include provisions that ensure (in respect of reviews of medical practitioners):

- the medical practitioners selected by the Director PSR as Panel members and Deputy Directors are currently practising and appropriately qualified and experienced to conduct peer review of medical practitioners;
- the diversity of medical practice is appropriately reflected on the Panel;
- regard is had to the gender balance, cultural diversity and geographic spread of the Panel;
- a biennial recruitment round for the Panel will be undertaken which includes an open call for applications in appropriate public forums; and

- Consultants are appropriately qualified and experienced to provide advice on the practice of medical practitioners.

The AMA and the PSR agreed the final version of the Guidelines on 16 March 2011.

***(b) Guidelines for the selection of specific panel members and Deputy-Directors when forming a PSR Committee***

This document is currently being drafted by the PSR. The AMA has reviewed several initial drafts and the document is near completion.

These Guidelines will ensure that the Committee formed to conduct the review of a PUR is comprised of the most appropriate Panel members, having regard to the PUR's specialty, gender, cultural background and mode of practice. They specify the rights of PURs to object to the appointment of proposed Panel members on the ground of bias. The Guidelines also specify that two Panel members must be from the same specialty as the PUR.

Medical specialty is generally accepted by the medical profession as the fields of medical practice that have been recognised as medical specialties by the Australian Medical Council (AMC). The Medical Board of Australia has adopted the AMC recognised specialties for the purposes of specialist registration. Medical practitioners from the same specialty are well placed to consider issues of inappropriate medical practice even where the PUR identifies their practice as a 'special interest' area of that specialty. Where the Medical Colleges recognise special interest areas of their respective specialties, these could be reflected in the Panel membership.

#### **4. Initial Meeting between the Director and the PUR**

To better enable PURs to prepare for this meeting the AMA proposed that they be given more detail about the Director's investigation prior to this meeting. As discussed in item 1 above, the letter from the Director to the PUR will now include this information.

Further, to lessen the PUR's perception of intimidation, the meeting will no longer be held in the offices of the PSR's legal representatives.

As mentioned in item 2 above, the AMA is discussing with the Department of Health and Ageing and the PSR the development of guidelines governing the conduct of the Director's investigation that would include this initial meeting.

## **5. Statements of Reasons**

The PSR scheme could be strengthened by the inclusion of requirements for the Director and the Committees to provide a statement in writing setting out their findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

The AMA is currently in discussions with the Department of Health and Ageing and the PSR about the best way to ensure that this fundamental aspect of administrative law principles is guaranteed in the operation of the PSR scheme.

## **Conclusion**

The AMA believes that the legislative framework for the PSR is sound and that peer review is the correct mechanism for ensuring the integrity of the Medicare arrangements and Pharmaceutical Benefits Scheme.

The AMA has been working with the Department of Health and Ageing, the PSR and Medicare Australia to improve the transparency and natural justice of the PSR scheme. The Professional Services Review Advisory Committee (PSRAC) has provided a useful forum for pursuing these improvements. This process is well underway, but not yet complete. We are confident that the improvements we are working on with the PSRAC will address the concerns identified by the AMA about the PSR process and restore the confidence of the medical profession in the PSR scheme.

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