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Department of Health
and Aged Care

Health Insurance Amendment (Professional Services Review Scheme) Bill 2023

Submission from the Department of Health and Aged Care
to the Senate Community Affairs Legislation Committee



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Introduction

The Department of Health and Aged Care (the department) welcomes the opportunity to provide a submission to the Senate Community Affairs Legislation Committee *Inquiry into the Health Insurance Amendment (Professional Services Review Scheme) Bill 2023*.

The submission provides a brief background on the health provider compliance framework and the Independent Review of Medicare Integrity and Compliance, which provide context for the proposed amendments in the Bill.

The measures in the Health Insurance Amendment (Professional Services Review Scheme) Bill 2023 (the Bill) amend the *Health Insurance Act 1973* (the Act) to:

- remove the requirement for the Australian Medical Association (AMA) to agree to the appointment of the Director of the PSR;
- amend consultation requirements for appointing other statutory office holders of the PSR to enable consultation with relevant peak bodies directly;
- establish the new statutory office of Associate Director of the PSR; and
- remove the requirement for the Chief Executive Medicare (CEM) to consult with stakeholder groups prior to issuing a notice to produce documents.

The measures in the Bill will improve public confidence in the integrity of Medicare by strengthening the operation of the PSR and allowing for continuity of proceedings, removing any perception of inappropriate influence over the professional review process, and improving the effectiveness of the current process for the auditing of payments relating to Medicare services.

Background and Context

Health Provider Compliance

The department is responsible for protecting the integrity of Australia's health payments system comprising the Medicare Benefits Schedule (MBS), the Pharmaceutical Benefits Scheme (PBS) and the Child Dental Benefits Schedule (CDBS). The ongoing viability of these programs is of the utmost importance to the Commonwealth. These programs have a significant impact on the Commonwealth's finances (for example, expenditure in 2020–21 ran to more than \$42 billion) and are integral to Australia's world class health system.

The department fulfils its responsibility through the prevention, identification and treatment of incorrect claiming, inappropriate practice and fraud by practitioners and other health care providers. The department's and the PSR's compliance activities protect Commonwealth expenditure enabling further investment in Australia's health programs.

Independent Review of Medicare Integrity and Compliance

The Bill implements priority changes arising from recommendations of the independent Review of Medicare Integrity and Compliance¹ undertaken by Dr Pradeep Philip (Philip

¹ Independent Review of Medicare Integrity and Compliance (Philip Review),
<https://www.health.gov.au/resources/publications/independent-review-of-medicare-integrity-and-compliance>



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Review). The Philip Review was commissioned in November 2022 by the Minister for Health and Aged Care in response to media allegations of widespread Medicare fraud. The scope of the review specifically included an assessment of the effectiveness, transparency and independence of the functions of the PSR.

The Review made specific recommendations about the Professional Services Review which have been addressed in the Bill:

“...the inclusion of only the AMA as a professional body that can veto the appointment of a PSR director no longer reflects the fact that there are a range of professionals who will be referred to PSR and either all professions should be reflected in Director appointment decisions, or none at all. ...I believe [legislative change] could bring about a measurable enhancement to the perception of the PSR by the sector and any perceived conflicts of interest.”²

One final recommendation for the PSR, that would require legislative changes, is the introduction of an ‘associate’ or other alternative second-in-command role for the Director of the PSR. Currently, there are a range of roles and responsibilities that can only be completed by the Director of the PSR including decision making. In addition, if the Director feels that there is a conflict of interest the only options are either to continue with the process or to take a leave of absence so that an acting Director can be appointed. Having the opportunity for an associate or second Director to be available would help to share the load of the work, ensure that conflicts can be handled more appropriately, and potentially assist with succession planning and training for future Directors.”³

Proposed amendments

Remove the requirement for the AMA to agree to the Director of the PSR and amend consultation requirements for appointing other statutory office holders of the PSR

The PSR is an independent statutory agency responsible for investigating and addressing inappropriate practice by health professionals to maintain the integrity of the Medicare program. The PSR Scheme, set out in Part VAA of the *Health Insurance Act 1973*, uses a process of peer review to examine the possible inappropriate practice of a referred person.

Currently the Act prohibits the Minister from appointing a person as Director of the PSR unless the AMA agrees, effectively giving the AMA a ‘veto power’ over the appointment of the Director. The current arrangement is inconsistent with public expectations regarding the independence of the PSR and may undermine public confidence in its role as a regulator. Given the potential conflict between the PSR’s objective to safeguard Medicare and the AMA’s role in representing the interests of medical practitioners who may be subject to PSR review, it is appropriate for the veto power to be removed.

² Philip Review, page 56

³ Philip Review, pages 35



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The Bill will also enable direct consultation with relevant peak bodies regarding appointments of medical practitioners as Deputy Directors and Panel members of the PSR, instead of making arrangements for the AMA to provide advice, as is the current requirement. Similarly, the Bill removes the requirement to consult with the AMA on the appointment of the Chair and other members of the Determining Authority. Instead, the Minister is to consult directly with relevant peak bodies on appointments of medical practitioner members of the Determining Authority, which is consistent with current requirements for other health practitioners.

Although consultation with the medical profession is important to assess the suitability of candidates and to maintain the profession's confidence in the system, the Minister should not be constrained by the current legislative requirement for consultation with specific organisations. The amendments in the Bill will remove potential conflicts of interest to enhance public perceptions of the PSR and ensure the PSR process can operate with impartiality and independence.

[Establish the new statutory office of Associate Director of the PSR](#)

The Bill also creates a new statutory office of Associate Director of the PSR. Associate Directors would be able to exercise the same powers as the Director for particular cases as necessary.

Under the current Part VAA of the Act, the majority of the Director's functions, duties and powers cannot be exercised by another person. This includes key aspects of the PSR Scheme, including the threshold question of whether to undertake a review, and if a review is undertaken, whether to negotiate a written agreement with the person, to refer them to a Committee of peers, or to take no further action.

There are currently no provisions in the Act in the event that the Director has a conflict of interest or is otherwise unable to make decisions on a case. The appointment of Associate Directors will assist with managing conflicts of interest, unexpected absences and workload pressures.

[Remove the requirement for the CEM to consult with stakeholder groups prior to issuing a notice to produce documents](#)

The Bill also removes the requirement for reasonable steps to be taken to engage with stakeholder groups prior to issuing a notice to produce documents during an audit of whether Medicare benefits should have been paid.

This is an unusual requirement that is not found in most regulatory settings and is of limited practical benefit as there is a general understanding with the health profession as to the range of documents that may be provided. The Philip Review noted that including specific requirements for consultation in the legislation might be restrictive to compliance activities, burdensome to professional bodies, and could unintentionally increase timeframes for activities such as audits. This amendment will streamline the audit process without limiting the documents or other information that a person may provide.



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This amendment will allow the department to take more timely action to audit potential incorrect claiming undermining the integrity of Medicare and in doing so, protect the Commonwealth from expenditure that does not improve health outcomes for Australians.

There will be no impact on procedural fairness requirements during an audit. A person being audited will continue to have the opportunity to make submissions about their matter and to provide any information or documents they consider relevant. There may indeed be a benefit for the person being audited due to the shorter timeframes.

Consultation

The Philip Review consulted with a broad cross-section of the health industry – including health professional bodies, medical defence organisations and government agencies – in making its recommendations. A list of stakeholders consulted is available in the report.⁴ The amendments were also discussed with the AMA prior to introduction of the Bill.

Impact on Practitioners and Patients

The Bill does not adversely affect patients.

The Bill does not change obligations on healthcare practitioners – changes relate more broadly to the operations of the PSR and consultation for notices to produce documents.

There will be no impact on persons undergoing the PSR process, nor will there be an impact on procedural fairness for persons being audited as they will continue to have the opportunity to make submissions about their matter and to provide any information or documents they consider relevant. In fact, the Bill is likely to result in faster PSR and audit processes: the appointments of Associate Directors will assist with managing unexpected absences and workload pressures, and the removal of the requirement to consult with stakeholders prior to issuing a notice to produce documents will speed up the process.

Engagement with the health profession would remain an integral part of the PSR appointment process and departmental compliance program. Stakeholder groups would still be consulted as necessary to inform compliance activities.

More generally, non-compliance and inappropriate practice by health practitioners result in increased Commonwealth expenditure on health services. The PSR protects patients and the community from the risks associated with inappropriate practice by health professionals and protects the Commonwealth from having to meet the cost of services provided as a result of this inappropriate practice. The Bill supports the integrity of the Medicare program, which ensures that the Commonwealth's limited resources are directed to necessary and effective health services so health expenditure remains sustainable and health care continues to be accessed and enjoyed by the community.

Conclusion

The measures within the Bill will strengthen the department's health provider compliance framework, including the PSR Scheme, thus supporting the integrity of Australia's health programs.

⁴ Philip Review, Appendix B