

4 February 2022

Ms Pothida Youhorn
Committee Secretary
Senate Standing Committees on Community Affairs
Parliament House
Canberra ACT 2600

Via email: community.affairs.sen@aph.gov.au

Dear Ms Youhorn,

Inquiry into the Health Legislation Amendment (Medicare Compliance and Other Measures) Bill 2021

Thank you for the opportunity to provide a submission to the Senate Community Affairs Legislation Committee (the Committee) on the Health Legislation Amendment (Medicare Compliance and Other Measures) Bill 2021 (the Bill).

The Royal Australian College of General Practitioners (RACGP) is Australia's largest professional general practice organisation, representing over 43,000 members working in or toward a career in general practice including four out of five general practitioners (GPs) in rural Australia.

RACGP response to the Senate inquiry

The RACGP understands the amendments put forward in the Bill are designed to:

- expand the scope of the Professional Services Review (PSR) to enter into agreements with corporate entities
- ensure consistency across the *Health Insurance Act 1973* (HIA), the *Dental Benefits Act 2008* (DBA), and the *National Health Act 1953* (NHA) on the Commonwealth's debt recovery processes and in relation to the giving of false or misleading information.

While the RACGP provided input to the Department of Health (the Department) during the drafting of this Bill, we did not have an opportunity to review the draft legislation prior to its introduction into Parliament.

In principle, the RACGP supports measures aimed at preserving the integrity of Medicare and use of health resources by preventing wrongful claiming. We have concerns about the proposed expansion of PSR powers as outlined in the Bill in view of feedback from RACGP members, which indicates issues around procedural fairness and transparency of PSR operations. However, we acknowledge that extending the remit of the PSR through a legislative instrument enables better oversight and direction of PSR activity.

We note that the Department is currently undertaking a review of section 92 of the HIA, a function that falls under the purview of the PSR. The review will examine a range of issues, including whether the operation of the section 92 agreement process is fair and transparent. The outcomes of the review must be considered in the assessment of amendments to the Bill.

The Committee may also consider the impact that proposals such as these have for the broader profession. Feedback from our members indicates that increased Medicare compliance activities and the fear of being audited is distracting GPs from their primary focus of delivering high-quality patient-centred care. This creates a significant conflict between the obligations GPs need to adhere to (as set out in legislation) and their commitment to patient care.

We do not have any concerns about minor amendments to terminology in compliance legislation to ensure consistency, provided these do not increase the scope of Medicare compliance activities.

Additional comments on the amendments in question are outlined below.

1 Changes to the scope of the Professional Services Review

The RACGP remains concerned about the proposed amendments that will enable the Director of the PSR to enter into agreements with non-practitioners and body corporates. It is reasonable to have aligned accountabilities and regulations for individual practitioners and corporate entities, however the potential for unintended consequences needs to be further explored.

Feedback from RACGP members indicates that most general practices are privately owned by GPs, however there are many other ownership models including publicly listed companies that are shareholder-owned.¹ Different approaches are needed to deal with corporate entities of varying sizes and resources. Our understanding of the definition of corporate entities is that it is quite broad and as a result, smaller practices might be caught up in the process. There is a risk of an increased compliance burden on smaller practices, particularly in rural areas, with less capacity to continue providing high-quality care to patients while under investigation.

We acknowledge the elements of the Bill that aim to protect individual practitioners from being prejudiced or penalised should their employer come under scrutiny.

The RACGP recommends clarifying the role and obligations of individual practitioners during an investigation with dual lines of inquiry (individuals and corporates) to avoid confusion and concerns regarding culpability. For example, in an instance where an individual is referred to the PSR, however as part of the investigation it becomes apparent that a corporate entity may have engaged in inappropriate practice.

1.1 Increased penalties for the refusal or failure to produce documents or information

While these proposed changes are not targeted at practitioners, the Committee may wish to consider the effect that increasing penalties for refusal or failure to produce documents or information as part of an investigation will have on the broader profession. The increase in sanctions suggests a focus on cost recovery and punitive approaches to compliance, which may exacerbate existing concerns amongst the profession about the intent of compliance activities.

1.2 Expansion of the power of the Director to publish information about a person

The RACGP believes that publishing the particulars of a person who has not fulfilled their obligations under a section 92 agreement is an unreasonable breach of privacy. There is no evidence provided that this type of action will result in the desired behavioural change. We recommend a supportive and educative approach to ensuring individuals meet their requirements under a section 92 agreement.

2 Review of certain debt recovery decisions and miscellaneous debt recovery amendments

Although seemingly minor amendments, the Committee may consider the effects of expanding debt recovery powers and increased penalties for the broader profession.

As outlined above, the increase in sanctions and broader debt-collecting powers suggest a focus on cost recovery and punitive approaches to compliance, rather than an educative focus that supports practitioners to bill correctly.

3 False or misleading information

In November 2020 the RACGP provided a [submission](#) to the Committee on the Health Insurance Amendment (Compliance Administration) Bill 2020 (the Bill). The Bill modernised terminology in the Act by replacing 'statement' with 'information' to reflect the electronic claiming of Medicare payments.

As this change did not expand the capacity of the Department to undertake compliance activities, nor increase the administrative burden for GPs in the event of any compliance activity, we had no immediate concerns about the passage of the Bill. The RACGP therefore has no concerns regarding parallel amendments to the Dental Benefits Act 2008 and the National Health Act 1953.

4. Additional feedback

In addition to the proposed amendments, the RACGP strongly recommends that Medicare compliance education is prioritised alongside legislative changes, including for practice managers and non-clinical practice staff.

The RACGP contends that improving compliance with Medicare obligations would be better achieved by adopting a more supportive and educative approach. Where reasonable, health professionals must be given an opportunity to adapt or rectify their billing prior to being subject to compliance action. Providers require clear and consistent information around Medicare claiming rules, and timely updates when changes are enforced.

The RACGP seeks to work collaboratively with both the Department and the PSR on Medicare compliance and welcomes further opportunities to discuss these legislative amendments.

Should you require any additional information from the RACGP, please contact Ms Leonie Scott, National Manager – Policy and Advocacy, on

Yours sincerely

Dr Karen Price
President

¹ The Royal Australian College of General Practitioners. General Practice: Health of the Nation 2020. East Melbourne, Vic: RACGP, 2020.