
Australian Government

# GOVERNMENT RESPONSE

# TO

# THE SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE

# REPORT

# ON

# COMPLIANCE AUDITS ON MEDICARE BENEFITS

# Government Response to the Senate Community Affairs Legislation Committee Report on Compliance audits on Medicare Benefits

## Government Response

| Recommendation | Government Response |
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| **Recommendation 1**<br>The committee recommends that the Department of Health and Ageing and Medicare ensure that as part of the Medicare compliance audit process, specific measures are detailed in the regulations to ensure that patient clinical records are only required to be accessed where necessary. | **Accepted**<br>The Bill has been amended to make clear that:<br>• practitioners should only provide clinical records if they are necessary to substantiate the service; and<br>• if clinical records are provided, they may be provided to a Medicare Australia medical adviser (an employee of Medicare Australia who is a medical practitioner). Medicare Australia will have qualified medical practitioners available to receive documents in all audits.<br>Medicare Australia is also working with relevant stakeholders, including the Australian Medical Association, to develop guidelines for practitioners on the kind of information that will substantiate particular services or groups of services. These guidelines will be publicly available and will emphasise that clinical information is not to be provided unless it is absolutely necessary to substantiate the claim. The commencement date of the Bill will be 1 January 2010 to allow time for these guidelines to be developed. |

## Coalition Senators' Minority Recommendations

Coalition Senators do not agree with the Majority Report recommendation.

| Recommendation | Government Response |
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| **Recommendation 1**<br>The Government conduct a review of the Medicare Benefits Schedule with the view to rationalising or simplifying individual schedule items. | A Review of the MBS primary care items was announced on 9 December 2008. Key stakeholders including general practitioners were consulted during the course of the Review. In addition to individual meetings, an all day GP Working Party meeting comprising the major GP organisations took place in Melbourne on 21 January 2009.<br>The aim of the Review is to reduce red tape for GPs, encourage prevention and simplify the primary care items in the Schedule. Specific areas of focus for the Review include:<br>• general practice attendance items;<br>• after hours attendance items; |

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| | • out of surgery attendance items;<br>• health assessment items;<br>• chronic disease management items;<br>• GP multidisciplinary case conference items; and<br>• emergency attendance items.<br><br>The Government has already simplified requirements for chronic disease care planning items by removing the requirement from 1 January 2009 for a rebate for a care plan to be claimed before the rebate for allied health services may be paid.<br><br>Further outcomes from the Review are currently being considered by the Government. |
| **Recommendation 2**<br><br>The Government develop a training/information program in consultation with relevant professional associations to improve the accuracy of Medicare billing practices among health care professionals. | **Accepted**<br>Medicare Australia will continue to conduct education and training to improve billing practices among healthcare professionals. The education and training resources will be updated to address issues that arise during compliance audits. These resources will continue to be developed in consultation with key stakeholders. At present more than 30% cent of practitioners receive some form of targeted information, educational or training support from Medicare Australia each year. |
| **Recommendation 3**<br><br>If the Medicare CEO remains unsatisfied with the responses of the medical provider or has further questions that the CEO believes may only be resolved through reviewing a patient's record, then the matter should be referred to the Professional Services Review Board to be reviewed by a committee of the Practitioner's peers.<br><br>A report prepared by the PSRB could then be submitted to the Medicare CEO for consideration. | **Accepted in substance**<br><br>The key issue here is the involvement of a medical practitioner when clinical records are produced to substantiate a service.<br><br>The Bill has been amended to make clear that:<br>• before a notice to produce documents may be issued, the CEO must take into account advice from a medical adviser (an employee of Medicare Australia who is a medical practitioner) on the kind of documents that a person may need to provide to substantiate a service;<br>• a practitioner should only provide clinical records if they are necessary to substantiate the service; and<br>• if clinical records are provided, they may be provided to an employee of Medicare Australia who is a medical practitioner. Medicare Australia will have qualified medical practitioners available to receive documents in all audits.<br><br>These changes have been made because the PSR scheme is a peer review process designed to manage |

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| | inappropriate practice. It was not constructed to manage a large volume of matters. Implementing this recommendation would require significant revision of the PSR provisions of the *Health Insurance Act 1973*. It risks shifting the focus of PSR to the detriment of the management of inappropriate practice.<br><br>The compliance audit process is designed to be a simple, administrative mechanism to manage incorrect payments. Involving PSR in the compliance audit process would be likely to significantly increase the time required to complete a compliance audit. It could also considerably increase the cost of the process for the practitioners who are audited and taxpayers.<br><br>At present information produced as a result of a notice to produce documents under the Bill, may not be used to refer a practitioner to PSR for investigation of inappropriate practice. This protection would need to be removed if PSR was made responsible for the assessment of some or all of the documents produced. |
| **Recommendation 4**<br><br>The Office of the Privacy Commissioner should be consulted to develop protocols and guidelines for the protection of patient history record confidentiality during any Medicare compliance audit activity. | **Accepted**<br><br>The Privacy Guidelines for the Medicare Benefits and Pharmaceutical Benefits Programs issued by the Privacy Commissioner under section 135AA of the *National Health Act 1953* will apply to documents containing clinical details about an individual provided to Medicare Australia during a compliance audit.<br><br>In addition Medicare Australia will work with the Office of the Privacy Commissioner to develop further administrative guidelines to ensure patient confidentiality during Medicare compliance audit activities. |

## Australian Green Senators' Additional Comments

The Australian Greens support the Committee recommendation that further measures are adopted to ensure that patient clinical records are only required to be accessed where necessary.

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| **Comment 1**<br><br>Medical Advisors have oversight of all audits involving clinical information. | **Accepted in substance**<br><br>The Bill has been amended to make clear that:<br>• before a notice to produce documents may be issued, the CEO must take into account advice from a medical adviser (an employee of Medicare Australia who is a medical practitioner) on the kind of documents that a person may need to provide to substantiate a service; |

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| | • practitioners should only provide clinical records if they are necessary to substantiate the service; and<br>• if clinical records are provided, they may be provided to an employee of Medicare Australia who is a medical practitioner. Medicare Australia will have qualified medical practitioners available to receive documents in all audits. |
| **Comment 2**<br>Provision of a clear definition of what constitutes 'a reasonable concern' to conduct a review of the health provider against which a determination is made | **Not accepted**<br>It is not feasible to further define 'reasonable concern' in legislation. The Medical Benefits Schedule changes constantly to keep up with clinical practice and medical technology so 'fixing' the definition of reasonable concern could unacceptably limit the ability to protect the integrity of the Medicare scheme from emerging compliance risks. However the Department of Health and Ageing and Medicare Australia will investigate the possibility of developing further guidance for practitioners on what constitutes a 'reasonable concern'. It may be possible to distribute any such guidance each year when Medicare Australia publishes the National Compliance Program. |
| **Comment 3**<br>The decision to investigate patient records is made by senior officers delegated by the Medicare CEO, with oversight by Medical Advisors. | **Accepted in substance**<br>The Bill requires the decision to issue a notice to produce documents to be made by the CEO or the CEO's delegate.<br>Medicare Australia will not be requesting clinical records from practitioners. Medicare Australia will outline the reasonable concern in relation to a service and ask the person to provide documents to substantiate the service. It will be up to the person who receives the notice to decide what documents they have which substantiate the service.<br>However the Bill has been amended to make clear that:<br>• before a notice to produce documents may be issued, the CEO must take into account advice from a medical adviser (an employee of Medicare Australia who is a medical practitioner) on the kind of documents that a person may need to provide to substantiate a service; and<br>• practitioners should only provide clinical records if they are necessary to substantiate the service; and<br>• if clinical records are provided, they may be |

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| | provided to an employee of Medicare Australia who is a medical practitioner. Medicare Australia will have qualified medical practitioners available to receive documents in all audits. |
| **Comment 4**<br>If it is decided 'reasonable concern' exists, a Privacy Impact Assessment (PIA) is made to justify accessing patient records including that there is no other way to obtain the necessary information and that the investigation is in the public interest. | **Not accepted**<br>This is not the function of a Privacy Impact Assessment (PIA). A PIA is an assessment tool to allow agencies to identify and analyse privacy impacts during a project's design phase. In addition, Medicare Australia will not be requesting clinical records from practitioners. Medicare Australia will outline the reasonable concern in relation to a service and ask the person to provide documents to substantiate the service. It will be up to the person who receives the notice to decide what documents they have which substantiate the service. However, in determining that there is a reasonable concern, and asking the person to respond, Medicare Australia will provide the person with assistance and guidance to ensure that only information necessary to substantiate the service is collected. |
| **Comment 5**<br>The PIA will include assessment of whether the necessary information can be gained by de-identified records without undermining the integrity of the audit process. | **Not accepted**<br>It is not possible to de-identify records without undermining the integrity of the audit process. The audit will be conducted on specified Medicare services provided by a particular practitioner to a particular patient. Wherever possible the identity of a person will occur through a Medicare number (rather than name) and the medical service will be explained by reference to the Medicare item (rather than a detailed description of the service). |
| **Comment 6**<br>The patients, or their authorised decision maker, should be advised that their personal health record is to be accessed for the purpose of a compliance audit. | **Not Accepted**<br>The are significant disadvantages to individual patient notification including risks that notification may:<br>• compromise the patient's privacy;<br>• unreasonably disrupt the therapeutic relationship (a patient may lose confidence in the practitioner); and<br>• cause unnecessary anxiety to some patients (a patient may think that the medical care their practitioner is providing is not appropriate);<br>However Medicare Australia has accepted recommendation 2 of the PIA and will:<br>• conduct a broader information campaign for patients to raise awareness that excerpts of their |

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| | medical records may potentially be provided to Medicare Australia during a compliance audit; and/or<br>• provide information on assignment of benefit forms and patient receipts; and/or<br>• work with stakeholders to provide practitioners with notices to put up in their medical practices. |
| **Comment 7**<br>That if the patient or their authorised decision maker objects to the use of their personal medical record and provides reasons, the decision to access information is subject to an internal review and the patient is provided with written reasons for the decision. | **Not accepted**<br>This would undermine the integrity of the compliance audit program because an "opt out" provision would mean that some services for which there is a compliance risk could not be audited. It may also lead to situations where access to the necessary information could be prevented by a practitioner who is able to convince patients to withhold their consent. |