

EXPOSURE DRAFT

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Health Insurance Amendment (Compliance) Bill 2009

No. , 2009

(Health and Ageing)

A Bill for an Act to amend the *Health Insurance Act 1973*, and for related purposes

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1 **A Bill for an Act to amend the *Health Insurance Act***
2 ***1973, and for related purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Health Insurance Amendment*
6 *(Compliance) Act 2009*.

7 **2 Commencement**

8 This Act commences on 1 July 2009.

9 **3 Schedule(s)**

10 Each Act that is specified in a Schedule to this Act is amended or
11 repealed as set out in the applicable items in the Schedule

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1 concerned, and any other item in a Schedule to this Act has effect
2 according to its terms.

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Amendment of the Health Insurance Act 1973 **Schedule 1**

1
2 **Schedule 1—Amendment of the Health**
3 **Insurance Act 1973**
4

5 **1 Subsection 3(1)**

6 Insert:

7 *medicare number* has the same meaning as in subsection 84(1) of
8 the *National Health Act 1953*.

9 **2 After section 129AAC**

10 Insert:

11 **@129AAD Notice to produce documents**

12 *When section applies*

- 13 (1) This section applies if the Medicare Australia CEO has a
14 reasonable concern that an amount paid, purportedly by way of
15 benefit or payment under this Act, in respect of one or more
16 professional services may exceed the amount (if any) that should
17 have been paid.

18 Note: The Medicare CEO may, for example, have a reasonable concern
19 about benefits or payments made in respect of:

- 20 (a) professional services rendered by individual practitioners; or
21 (b) professional services rendered by particular kinds of
22 practitioners; or
23 (c) the rendering of services to which specific items, or groups of
24 items, relate.

25 *CEO may require person to produce document etc.*

- 26 (2) If the CEO believes on reasonable grounds that:
27 (a) a person who rendered a professional service, or on whose
28 behalf a professional service was rendered; or
29 (b) subject to subsection (5), another person;
30 has possession, custody or control of one or more documents
31 relevant to ascertaining whether the amount paid in respect of the
32 professional service should have been paid, the CEO may, by

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1 written notice given to the person, require the person to do any or
2 all of the things mentioned in subsection (4).

3 (3) However, a notice may only be given in respect of a professional
4 service that was rendered in the period of 2 years immediately
5 before the notice is given.

6 (4) The CEO may require the person, in relation to each professional
7 service specified in the notice:

8 (a) to produce to the CEO any document, or extract of any
9 document, that is relevant for the purpose set out in
10 subsection (2); or

11 (b) to make a copy of any such document or extract and to
12 produce to the CEO that copy.

13 Note: For a person referred to in paragraph (2)(a), failure to comply with a
14 notice may lead to recovery action (see section 129AC) and an
15 administrative penalty may be applied (see sections @129AEA,
16 @129AEB and @129AEC). For a person referred to in
17 paragraph (2)(b), failure to comply with a notice may lead to a civil
18 penalty (see section @129AAE).

19 *CEO not to give notice to certain persons*

20 (5) A person referred to in paragraph (2)(b) does not include:

21 (a) the person in respect of whom the professional service was
22 rendered; or

23 (b) the person who incurred the medical expenses in respect of
24 the service.

25 *Content of notice*

26 (6) The notice must specify:

27 (a) details of each professional service (including the item, date
28 on which the service was rendered and medicare number of
29 the person in respect of whom the service was rendered) that
30 is the subject of the CEO's concern; and

31 (b) the reason or reasons for the CEO's concern; and

32 (c) how the document, extract or copy is to be produced; and

33 (d) the period within which, and place at which, the document,
34 extract or copy is to be produced.

35 The period specified under paragraph (d) must be a period ending
36 at least 21 days after the day on which the notice is given.

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1 *Health information*

2 (7) The power under this section to require a document, extract or
3 copy to be produced includes the power to require the production
4 of a document, extract or copy containing health information
5 (within the meaning of the *Privacy Act 1988*) about an individual.

6 *Section not limited*

7 (8) This section is not limited by:
8 (a) any other provision of this Act; or
9 (b) any provision of the *Medicare Australia Act 1973* or any
10 other Act;
11 that relates to the powers of the Medicare Australia CEO to require
12 the production of documents.

13 **@129AAE Civil penalty—failure to comply with requirement in**
14 **notice**

15 (1) A person referred to in paragraph @129AAD(2)(b) contravenes
16 this section if:
17 (a) the person is given a notice under section @129AAD
18 requiring the person to do something in respect of a
19 professional service; and
20 (b) the person fails to comply with the requirement within the
21 period specified in the notice; and

22 Civil penalty:

23 (a) for an individual—20 penalty units; and
24 (b) for a body corporate—100 penalty units.

25 (2) It is a defence to subsection (1) if:
26 (a) the failure to comply is brought about by another person over
27 whom the person has no control or by a non-human act or
28 event over which the person has no control; and
29 (b) the person could not reasonably be expected to guard against
30 the failure.

31 Note: The defendant bears the onus of proving the matters necessary to
32 establish the defence.

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1 **@129AAF Self-incrimination etc.**

- 2 (1) A person is not excused from producing a document, extract or
3 copy when required to do so under section @129AAD on the
4 ground that doing so would tend to incriminate the person or
5 expose the person to a penalty.
- 6 (2) However, the production of the document, extract or copy, and any
7 information obtained as a direct or indirect result of the production
8 of the document, extract or copy, are not admissible in evidence
9 against the person in:
- 10 (a) any criminal proceedings, other than:
- 11 (i) proceedings for an offence against this Act dealing with
12 false or misleading information or documents; and
- 13 (ii) proceedings for an offence against section 137.1 or
14 137.2 of the *Criminal Code* (which deals with false or
15 misleading information or documents) that relates to
16 this Act; or
- 17 (b) any civil proceedings, other than a civil proceeding arising
18 under Part VIA or this Part.

19 **@129AAG Medicare Australia CEO may deal with documents etc.**
20 **produced**

- 21 (1) If a document, extract or copy has been produced under section
22 @129AAD in respect of a professional service, the Medicare
23 Australia CEO may do all or any of the things mentioned in
24 subsection (2) for the purpose of ascertaining whether the
25 information contained in the document, extract or copy properly
26 substantiates an amount paid, purportedly by way of benefit or
27 payment under this Act, in respect of the service.
- 28 Note: If the information does not properly substantiate the amount, recovery
29 action may be taken (see section 129AC) and an administrative
30 penalty may be applied (see sections @129AEA, @129AEB and
31 @129AEC).
- 32 (2) The Medicare Australia CEO may:
- 33 (a) inspect the document, extract or copy; and
- 34 (b) make a copy of, or take an extract from, such a document or
35 extract; and
- 36 (c) retain the document, extract or copy in his or her possession
37 for such reasonable period as he or she thinks fit.

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- 1 (3) The person otherwise entitled to possession of the document or
2 extract is entitled to be supplied, as soon as practicable, with a
3 copy certified by the Medicare Australia CEO to be a true copy.
- 4 (4) The certified copy must be received in all courts and tribunals as
5 evidence as if it were the original.
- 6 (5) Until a certified copy is supplied, the Medicare Australia CEO
7 must, at such times and places as he or she thinks appropriate,
8 permit the person otherwise entitled to possession of the document
9 or extract, or a person authorised by that person, to inspect and
10 make copies of, or take extracts from, the document or extract.
- 11 (6) This section is not limited by:
12 (a) any other provision of this Act; or
13 (b) any provision of the *Medicare Australia Act 1973* or any
14 other Act;
15 that relates to the powers of the Medicare Australia CEO to deal
16 with a document, extract or copy as described in subsection (2) of
17 this section.

18 **3 Application**

19 Section @129AAD of the *Health Insurance Act 1973* applies in respect
20 of a professional service that is rendered on or after the commencement
21 of that section.

22 **4 After subsection 129AC(1)**

23 Insert:

24 *Failure to produce document*

- 25 (1A) Subject to subsection (1B), if:
26 (a) a person referred to in paragraph @129AAD(2)(a) is
27 required, by a notice given under section @129AAD, to
28 produce a document, extract or copy in respect of a
29 professional service; and
30 (b) the person does not comply with the requirement within the
31 period set out in the notice;
32 the amount paid in respect of the service, purportedly by way of
33 benefit or payment under this Act, is recoverable as a debt due to
34 the Commonwealth from the person, or the estate of the person,
35 whether or not the amount was paid to the person.

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1 (1B) Subsection (1A) does not apply if the person concerned satisfies
2 the Medicare Australia CEO that the person's non-compliance is
3 due to circumstances beyond the person's control.

4 *Amount not properly substantiated—notice to person referred to in*
5 *paragraph @129AAD(2)(a)*

6 (1C) Subject to subsection (1D), if:

- 7 (a) a person referred to in paragraph @129AAD(2)(a) is
8 required, by a notice given under section @129AAD, to
9 produce a document, extract or copy in respect of a
10 professional service; and
11 (b) the person complies with the requirement within the period
12 set out in the notice; and
13 (c) the information contained in the document, extract or copy
14 does not properly substantiate (wholly or partly) the amount
15 paid, purportedly by way of benefit or payment under this
16 Act, in respect of the service;

17 then, to the extent that the amount is not properly substantiated, the
18 amount is recoverable as a debt due to the Commonwealth from
19 the person, or the estate of the person, whether or not the amount
20 was paid to the person.

21 (1D) Subsection (1C) does not apply if the person concerned satisfies
22 the Medicare Australia CEO that the reason that the information
23 contained in the document, extract or copy does not properly
24 substantiate the amount is due to circumstances beyond the
25 person's control.

26 *Amount not properly substantiated—notice to person referred to in*
27 *paragraph @129AAD(2)(b)*

28 (1E) Subject to subsection (1F), if:

- 29 (a) a person (the **notice recipient**) referred to in paragraph
30 @129AAD(2)(b) is required, by a notice given under section
31 @129AAD, to produce a document, extract or copy in
32 respect of a professional service; and
33 (b) the notice recipient complies with the requirement within the
34 period set out in the notice; and
35 (c) the information contained in the document, extract or copy
36 does not properly substantiate (wholly or partly) the amount

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1 paid, purportedly by way of benefit or payment under this
2 Act, in respect of the service;
3 then, to the extent that the amount is not properly substantiated, the
4 amount is recoverable as a debt due to the Commonwealth from:
5 (d) the person who rendered the service, or on whose behalf the
6 service was rendered; or
7 (e) the estate of that person;
8 whether or not the amount was paid to that person.

9 (1F) Subsection (1E) does not apply if the person from whom the
10 amount concerned is recoverable satisfies the Medicare Australia
11 CEO that the reason that the information contained in the
12 document, extract or copy does not properly substantiate the
13 amount is due to circumstances beyond the control of the person
14 and the notice recipient.

15 *Administrative penalty*

16 (1G) If:
17 (a) a person is given a notice under section @ 129AEC of the
18 person's liability to pay an administrative penalty; and
19 (b) the person does not pay the penalty by the day set out in the
20 notice as the day by which the penalty becomes due for
21 payment;
22 the amount set out in the notice is recoverable as a debt due to the
23 Commonwealth from the person or the estate of the person.

24 *Recovery once only*

25 (1H) To avoid doubt, an amount paid purportedly by way of benefit or
26 payment under this Act is recoverable under this section once only.

27 Note 1: The heading to section 129AC is replaced by the heading "**Recovery of amounts**
28 **overpaid etc. and administrative penalties**".

29 Note 2: The following heading to subsection 129AC(1) is inserted "*False or misleading*
30 *statements*".

31 **5 At the end of paragraph 129AC(2)(a)**

32 Add ", (1A), (1C), (1E) or (1G)".

33 Note: The following heading to subsection 129AC(2) is inserted "*Interest on amounts*".

34 **6 At the end of paragraph 129AC(2)(a)**

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1 Add “and”.

2 **7 Subsection 129AC(4)**

3 Repeal the subsection, substitute:

4 *Set-off*

5 (4) Despite any other provision of this Act, if:

6 (a) an amount (the *recoverable amount*) is recoverable from a
7 person under subsection (1), (1A), (1C), (1E) or (1G); and

8 (b) an amount (the *later amount*) of benefit or payment later
9 becomes payable to the person under this Act; and

10 (c) the person so agrees;

11 the Medicare Australia CEO may, on behalf of the

12 Commonwealth, set off all or a part of the recoverable amount

13 against all or a part of the later amount.

14 **8 Application and saving**

15 (1) Subsection 129AC(4) of the *Health Insurance Act 1973* as amended by
16 this Act applies in relation to amounts recoverable under subsection
17 129AC(1) of that Act before, on or after the commencement of this
18 item.

19 (2) If a person’s agreement referred to subsection 129AC(4) of the *Health*
20 *Insurance Act 1973* is in force, in relation to an amount, immediately
21 before the commencement of this item, that agreement is taken to be in
22 force for the purposes of:

23 (a) that amount; and

24 (b) that subsection as in force immediately after that
25 commencement.

26 (3) Subitem (2) does not prevent the person withdrawing the agreement.

27 **9 After section 129AE**

28 Insert:

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1 **@129AEA Liability for administrative penalty**

2 *Subsection 129AC(1) applies*

- 3 (1) A person is liable for an administrative penalty in respect of a
4 professional service rendered by, or on behalf of, the person if:
- 5 (a) the Medicare Australia CEO has served a notice on the
6 person claiming an amount (the **total amount**) as a debt due
7 to the Commonwealth under subsection 129AC(1); and
 - 8 (b) the total amount consists of, or includes, an amount (the
9 **recoverable amount**) in respect of the service; and
 - 10 (c) no part of the total amount became due more than 2 years
11 before the notice was served; and
 - 12 (d) the total amount is more than:
 - 13 (i) \$2,500; or
 - 14 (ii) if a higher amount is prescribed by the regulations—that
15 higher amount.

16 *Subsection 129AC(1A) or (1C) applies*

- 17 (2) A person is liable for an administrative penalty in respect of a
18 particular professional service if:
- 19 (a) a notice was given to the person under section @129AAD
20 requiring the person to produce a document, extract or copy
21 relevant to the particular professional service; and
 - 22 (b) subsection 129AC(1A) or (1C) applies to the person and the
23 particular professional service; and
 - 24 (c) if the notice specifies one or more other professional
25 services—either or both of subsections 129AC(1A) and (1C)
26 apply to the person and any other professional service
27 specified in the notice; and
 - 28 (d) the sum of the amounts that may be recovered from the
29 person under those subsections in respect of the particular
30 professional service, and any other professional service that
31 is specified in the notice, is more than:
 - 32 (i) \$2,500; or
 - 33 (ii) if a higher amount is prescribed by the regulations—that
34 higher amount.
- 35 (3) If subsection (2) applies, the **recoverable amount** in respect of the
36 particular professional service is:

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- 1 (a) if subsection 129AC(1A) applies to the particular
2 professional service—the amount that may be recovered from
3 the person under that subsection in respect of the service; and
4 (b) if subsection 129AC(1C) applies to the particular
5 professional service—the amount that may be recovered from
6 the person under that subsection in respect of the service.

7 *Subsection 129AC(1E) applies*

- 8 (4) A person (the *practitioner*) who rendered a particular professional
9 service, or on whose behalf a particular professional service was
10 rendered, is liable for an administrative penalty in respect of the
11 service if:
12 (a) a notice was given to another person under section
13 @ 129AAD requiring the person to produce a document,
14 extract or copy relevant to the particular professional service;
15 and
16 (b) subsection 129AC(1E) applies to the practitioner and the
17 particular professional service; and
18 (c) if the notice specifies one or more other professional
19 services—subsection 129AC(1E) applies to the practitioner
20 and any other professional service specified in the notice; and
21 (d) the sum of the amounts that may be recovered from the
22 practitioner under that subsection in respect of the particular
23 professional service, and any other professional service that
24 is specified in the notice, is more than:
25 (i) \$2,500; or
26 (ii) if a higher amount is prescribed by the regulations—that
27 higher amount.
- 28 (5) If subsection (4) applies, the *recoverable amount* in respect of the
29 particular professional service is the amount that may be recovered
30 from the practitioner under subsection 129AC(1E) in respect of the
31 service.

32 **@129AEB Amount of administrative penalty**

- 33 (1) The amount of the administrative penalty in respect of a
34 professional service is worked out in accordance with this section.

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Base penalty amount

- 1
- 2 (2) Subject to subsections (3), (4), (5) and (6), the amount (the **base**
3 **penalty amount**) of the administrative penalty is 20% of whichever
4 of the following applies in respect of the professional service:
5 (a) the recoverable amount referred to in @129AEA(1)(b);
6 (b) the recoverable amount referred to in paragraph
7 @129AEA(3)(a) or (b);
8 (c) the recoverable amount referred to in subsection
9 @129AEA(5).

10 *Reductions in base penalty amount*

- 11 (3) A person's base penalty amount for a professional service is
12 reduced in accordance with the table.

Reductions of base penalty amount

Item	If ...	the base penalty amount is reduced by ...
1	before the Medicare Australia CEO contacts the person (whether by notice under section @129AAD or otherwise) about the professional service, the person voluntarily tells the Medicare Australia CEO, in the approved form, that an amount paid, purportedly by way of benefit or payment under this Act, in respect of the service exceeds the amount (if any) that should have been paid	100%
2	(a) after the Medicare Australia CEO contacts the person about the service; and (b) before the CEO gives a notice to the person under section @129AAD that specifies the service; the person voluntarily tells the CEO, in the approved form, that an amount paid, purportedly by way of benefit or payment under this Act, in respect of the service exceeds the amount (if any) that should have been paid	50%
3	(a) after the Medicare Australia CEO gives a notice to the person under section @129AAD that specifies the service; and	25%

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Reductions of base penalty amount

Item	If ...	the base penalty amount is reduced by ...
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(b) before the end of the period specified in the notice;
the person tells the CEO, in the approved form, that an amount paid, purportedly by way of benefit or payment under this Act, in respect of the service exceeds the amount (if any) that should have been paid

Increases in base penalty amount

1
2 (4) A person's base penalty amount for a professional service is
3 increased by 25% if:

- 4 (a) the Medicare Australia CEO gives a notice to the person
5 under section @129AAD that specifies the service; and
6 (b) the person does not comply with the notice in respect of the
7 professional service, or any other professional service
8 specified in the notice, within the period specified in the
9 notice.

10 (5) A person's (the *practitioner*) base penalty amount for a
11 professional service (the *latest professional service*) rendered by,
12 or on behalf of, the practitioner is increased by 50% if:

- 13 (a) any of the following apply:
14 (i) the Medicare Australia CEO gives a notice to the
15 practitioner under section @129AAD that specifies the
16 latest professional service;
17 (ii) the Medicare Australia CEO serves a notice on the
18 practitioner claiming an amount as a debt due to the
19 Commonwealth under subsection 129AC(1) and that
20 amount consists of, or includes, an amount in respect of
21 the latest professional service;
22 (iii) the Medicare Australia CEO gives a notice to another
23 person under section @129AAD that specifies the latest
24 professional service; and
25 (b) any of the following apply:
26 (i) in the 24 months immediately before the notice is given
27 or served, the Medicare Australia CEO has given to the

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- 1 practitioner one or more other notices under section
2 @ 129AAD specifying other professional services
3 rendered by, or on behalf of, the practitioner;
- 4 (ii) in the 24 months immediately before the notice is given
5 or served, the Medicare Australia CEO has served on
6 the practitioner one or more other notices claiming an
7 amount as a debt due to the Commonwealth under
8 subsection 129AC(1) consisting of, or including, other
9 professional services rendered by, or on behalf of, the
10 practitioner;
- 11 (iii) in the 24 months immediately before the notice is given
12 or served, the Medicare Australia CEO has given to
13 another person one or more other notices under section
14 @ 129AAD specifying other professional services that
15 were rendered by, or on behalf of, the practitioner; and
- 16 (c) the total of:
- 17 (i) the sum of the recoverable amounts (see subsection (2))
18 in respect of each other professional service; and
- 19 (ii) the sum of the base penalty amounts for each other
20 professional service as reduced or increased in
21 accordance with this section (if relevant);
- 22 is more than:
- 23 (iii) \$30,000; or
- 24 (iv) if a higher amount is prescribed by the regulations—that
25 higher amount.
- 26 (6) If both subsections (4) and (5) apply in relation to a professional
27 service, apply subsection (4) and then subsection (5). In applying
28 subsection (5) in that case, the base penalty amount is that amount
29 as increased under subsection (4).

30 *Interaction between reduction and increase*

- 31 (7) If a base penalty amount is subject to both a reduction and an
32 increase, apply the reduction first.

33 **@129AEC Notice of administrative penalty**

34 The Medicare Australia CEO must give to a person who is liable
35 for an administrative penalty written notice of the following:

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- 1 (a) the person's liability to pay an administrative penalty in
2 respect of one or more professional services;
- 3 (b) the professional service to which each administrative penalty
4 relates;
- 5 (c) if there is more than one professional service—the total of
6 the administrative penalties;
- 7 (d) the day by which the penalty becomes due for payment
8 (which must be at least 14 days after the day on which the
9 notice is given);
- 10 (e) the fact that the notice is given under this section.
- 11 The notice may also deal with a debt due to the Commonwealth
12 under section 129AC arising in relation to the professional service.

13 **10 Application**

14 Sections @129AEA, @129AEB and @129AEC of the *Health*
15 *Insurance Act 1973* apply in respect of a professional service that is
16 rendered on or after the commencement of those sections.