



THE ROYAL  
AUSTRALIAN AND NEW ZEALAND  
COLLEGE OF PSYCHIATRISTS  
ABN 68 000 439 047

24 April 2009

Committee Secretary  
Senate Standing Committee on Community Affairs  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

By email to: [community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)

Dear Committee,

**Re: Submission to the Inquiry into Compliance Audits on Medicare Benefits**

Please find attached a copy of the Royal Australian and New Zealand College of Psychiatrists Submission to the Senate Inquiry into Compliance Audits on Medicare Benefits.

We look forward to the opportunity to attend a public hearing to speak to this submission, and provide further information about the scope of psychiatric practice in relation to the Medicare compliance framework.

Yours sincerely

Professor Ken Kirkby  
President, RANZCP

Enc.

REF: 1389



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**Submission to the Inquiry into Compliance Audits on  
Medicare Benefits**

**April 2009**

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## **Summary**

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is responding to the following matter referred to the Community Affairs Committee for inquiry:

“Any Government proposal to implement the Government's announced 2008-09 Budget measure to increase compliance audits on Medicare benefits by increasing the audit powers to Medicare Australia to access the patient records supporting Medicare billing and to apply sanctions on providers.”

- The RANZCP supports appropriate use of the Medicare Rebate for patients, and believes that reasonable audits for the system are appropriate and necessary.
- The RANZCP believes it is imperative that the type of information the service provider needs to produce as part of an audit must not compromise patient confidentiality. This is particularly pertinent in psychiatry since the treatment process involves highly personal information and the need for the treatment setting to be completely confidential for patient trust to develop.
- The RANZCP has offered to further investigate options whereby it could work with the Department of Health and Ageing and Medicare Australia to ensure the Medicare compliance framework and targeting activity is well informed about the scope of psychiatric practice, including sub-specialty practice.
- The RANZCP would welcome further discussions with Government regarding what is expected in terms of record making in the practice of psychiatry to assist in compliant practice.

## **About the RANZCP**

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is the principal organisation representing the medical specialty of psychiatry in Australia and New Zealand and has responsibility for the training, examining and awarding the qualification of Fellowship to medical practitioners. There are approximately 2900 Fellows of the RANZCP who account for approximately eighty-five per cent of all practicing psychiatrists in Australia and over fifty per cent of psychiatrists in New Zealand. There are branches of the RANZCP in each state of Australia, the ACT and New Zealand.

Through its various structures, the RANZCP accredits training programs and administers the examination process for qualification as a consultant psychiatrist; supports continuing medical education activities at a regional level; holds an annual scientific congress and various sectional conferences throughout the year; publishes a range of journals, statements and other policy documents; and liaises with government, allied professionals and community groups in the interests of psychiatrists, patients and the general community.

## 1. Patient confidentiality

The proposed draft legislative amendments to the *Health Insurance Act 1973* (the Act), which will give effect to the Increased Medicare Benefits Schedule Compliance Audits initiative, will require all Medical providers by law to produce evidence to verify a claim if audited by Medicare Australia. This will include all information recorded by doctors on individual patients including information which identify patients, their attendance, and the services which were rendered. This could also include the full patient record where Medicare determines necessary. These records will be able to be used in criminal matters.

The RANZCP believes it is imperative that the type of information the service provider needs to produce as part of an audit must not compromise patient confidentiality and safety. This is particularly pertinent in psychiatry since the treatment process involves highly personal information and the need for the treatment setting to be completely confidential for patient trust to develop. The RANZCP has consulted consumer and carer representatives through its Board of Professional and Community Relations on this matter.

Patients must have privacy and protection for their medical records. The safety and confidential security that patients should feel when they are telling a doctor their problems is essential to ensure the patient gets the best and the right care for their needs. This is particularly relevant to psychiatry where:

- the patient discuss highly confidential and personal information;
- the patient may have a history or past experience of difficulties in developing trusting relationships; and
- there is often stigma associated with mental illness and accessing psychiatrists when compared to physical illness.

Although the doctor/patient relationship is vitally important in all areas of medicine, it is particularly so in mental health and the practice of psychiatry. The therapeutic relationship becomes a vital part of treatment in the management of ongoing psychiatric conditions. Patients invest a great degree of trust in their psychiatrist and an aspect of this is the ability of the psychiatrist to hold their darkest, most shameful secrets in the strictest confidence. Breaches of this confidentiality produce particularly serious consequences for the psychiatrically impaired, due to the widespread and pernicious stigma accorded to mental illness, and the particular vulnerability of psychiatric patients due to their conditions. Under these circumstances, a breach of confidentiality can be extremely traumatising, and potentially devastating. It could even provoke a suicidal response. Further, it is not just information relating to the patient themselves that is a source of potential concern. Highly prejudicial information about third parties can be told to the psychiatrist and be noted down.

It is anticipated that the proposed Compliance Audit initiative will have an effect upon the relationship the psychiatrists have with all their patients, not just the ones that have their files examined. Since the public will become aware of the initiative, there will be a constant awareness that anything told to the psychiatrist can be read by a third party. Already the confidentiality that the patient believes exists between them and their psychiatrists has been severely impaired with a number of third parties allowed access. This initiative further intrudes into and weakens the therapeutic bond. It is considered likely that there will be a reluctance to disclose certain sensitive information on the part

of the patients with resultant effects on efficacy, particularly in psychotherapeutic relationships.

Whilst Medicare Australia states it may not be necessary to request the release of the full patient record, rather the information adequate to verify the service, it is uncertain how a psychiatrist can do this without providing the clinical record or transcript. Medicare Australia further notes that where clinical notes are provided to verify a claim, they may be censored so that only the details relevant to that audit are legible. This again raises the question of how this can be done for psychiatry other than by initially producing clinical records or transcripts for inspection. There are further concerns that, whilst Medicare Australia has clearly legislated and defined safeguards, these are not applied to the transference of that evidence. For example, if this information is transferred electronically or by Australia Post, there are insufficient safeguards at that stage.

The legislation does not require either Medicare Australia or providers to advise individual patients that an MBS services they have received is being audited. The RANZCP notes Medicare Australia's concern that notifying patients may compromise the provider's privacy because patients will know their doctor is being audited by Medicare Australia and this may cause unnecessary anxiety to some patients. However, this needs to be balanced against the patient's right to know that their file is being accessed. On one hand, it is important that patients are afforded the right to be informed that private and delicate details from their record are being accessed by a third party. On the other hand, psychiatrists develop special relationships with their patients, sometimes over many years, and, a patient knowing their record has been accessed by a third party, may risk this special relationship and be potentially devastating for the patient. The RANZCP believes that patients have a right to know that their file is being accessed. However, to ensure that this is conducted in a way which is least harmful to patients, it is recommended that appropriate precautions be put in place to limit release of sensitive confidential information, and that guidelines are developed on how to inform patients of psychiatrists when their records are under review as part of a compliance audit.

### ***Recommendations:***

In terms of confidentiality, the proposed legislation will have greater impact on consumers and carers than clinicians. Therefore, the RANZCP makes the following recommendations:

- That broad consultation is undertaken with consumer and carer mental health organisations regarding what is appropriate in respect to confidentiality of medical records. As part of this process, the RANZCP proposes that:
  - consumer and carer organisations have an ongoing role in monitoring compliance with confidentiality provisions within the Act;
  - consumer and carer organisations have an ongoing opportunity to advise on matters of confidentiality particularly where there are concerns about breaches.
- That appropriate precautions be put in place to limit release of sensitive confidential information.
- That guidelines are developed on how to inform patients of psychiatrists when their records are under review as part of a compliance audit. This would include

how the record will be used, and making it clear that the practice or practitioner was being audited, rather than the patient. The RANZCP would wish to be involved in the development of such guidelines.

- That appropriate checks and audits are put in place to ensure that information is managed and kept in accordance with the various regulations and legislation governing privacy. Further there should be a mechanism for appeal or complaint if confidentiality is breached.

## **2. Targeting activity**

The RANZCP has had initial discussions with the Department of Health and Ageing and Medicare Australia regarding engaging with appropriate Fellows of the RANZCP to help refine the compliance targeting arrangements. This would be mutually beneficial in that Medicare Australia would be better able to target limited compliance resources to anomalous practice, and minimise the risk of practitioners being identified for audit when they may be practising appropriately in a lesser known or less general area of sub-specialty practice.

### ***Recommendation:***

- It is essential that professional bodies (in this case the RANZCP) are consulted on what is determined as anomalous practice as past experience is that Medicare Officers have not always understood psychiatric practice and launched inappropriate investigations.

## **3. Record making**

The Department of Health and Ageing Increased Medicare Compliance Audit Initiative information sheet 2, states that the initiative will not introduce any new record making or retention requirements for Medicare providers. However, it subsequently states that practitioners should keep records that are “sufficiently comprehensive to communicate the details of the service provided”. The RANZCP should have a role in developing guidelines as to how to meet these requirements across the scope of psychiatric practice.

Some psychiatric practice involves long term intensive therapy often with patients who have suffered from childhood trauma, abuse or attachment difficulties. It is vital in such treatment that there be a framework for a trusting relationship between psychiatrist and patient. A very important aspect of the framework is privacy and confidentiality. This allows patients to build trust and talk about issues which create considerable fear and are very hard to acknowledge. After the initial consultations to diagnose the illness and treatment, both psychiatrist and patient may be unwilling to have notes, as their presence conveys the possibility of loss of confidentiality, which does indeed occur in legal, regulatory and other third party situations. On the other hand it is accepted that there are third party demands for appropriate notes, such as Medicare, and these conflicting demands have to be weighed up. There is a need for a balance between Medicare requirements, psychiatrists’ requirements for medical records, and the patient need for confidentiality.

The RANZCP is concerned that there is no consensus as to what is considered

appropriate to write in the clinical notes. This is found neither within the profession itself nor between the RANZCP and the Department of Health and Ageing. This is particularly seen in areas of the profession outside general adult psychiatry, i.e. sub-specialty areas that include different types of psychotherapy including long-term intensive psychotherapy and psychoanalysis. Examples of adequacy of records that are a part of general psychiatry, such as mental state examination, are simply not appropriate for sub-specialty practice. Detailed guidelines on this matter would also assist with determining and monitoring anomalous practice, and maintaining patient confidentiality.

***Recommendation:***

- Clearer guidelines on how to meet record making requirements across the scope of psychiatric practice should be developed. The RANZCP, as part of its discussions with the Department of Health and Ageing and Medicare Australia, has offered to develop examples of what would constitute adequate administrative record making in relation to some MBS items as a resource to educate and assist in compliant practice.

**Conclusion**

The Royal Australian and New Zealand College of Psychiatrists thank the Senate Community Affairs Committee for the opportunity to make a submission to this inquiry.

The RANZCP looks forward to working with the Department of Health and Ageing and Medicare Australia to ensure the Medicare compliance framework is well informed about the scope of psychiatric practice, and to ensure that the confidentiality of patient records is safeguarded.