Increased MBS Compliance Audits
Information Sheet

What has been announced?

In the 2008–09 Federal Budget the Australian Government announced its plan to refine and enhance the MBS audit process undertaken by Medicare Australia.

The Increased MBS Compliance Audits initiative has three components:

1. increasing the number of audits undertaken by Medicare Australia;
2. compelling Medicare providers to produce evidence to verify their claiming when audited; and
3. introducing administrative sanctions for Medicare providers who claim incorrectly.

For the purposes of this initiative a Medicare provider is any person who renders or initiates a service for which a Medicare benefit is payable.

Why are these changes being made?

In 2007–08, expenditure on the Medicare scheme was over $13 billion and there were 280 million transactions generated by over 60,000 Medicare providers. This initiative is the first significant investment in the Medicare compliance program in over ten years. In the last five years alone, Medicare expenditure has increased by 43% and there has been considerable growth in both the number of items (23%) and the number of individual providers (15%).

The Government recognises that most Medicare providers try to do the right thing and Medicare benefits are currently paid with minimal up-front verification so that individuals can receive their rebates quickly. As part of ensuring the integrity of the system, a small percentage of providers will occasionally be asked to verify their claims.

What is proposed under the increased audit component?

Commencing in January 2009 the coverage of Medicare Australia's audit program for the Medicare scheme will increase from 0.7% to 4% of the total active provider population. This means that the number of audits conducted each year will increase from 500 to 2,500.

The program will also be expanded to include allied health providers, and increase the proportion of specialists audited. This is important because to date, the audit program has predominantly focused on GPs, although they only comprise around one-third of the total active provider population.

The audits conducted by Medicare Australia under this initiative will be a simple administrative check to ensure that providers are fulfilling the MBS item requirements for which a Medicare benefit has been paid. Medicare Australia's current risk assessment processes, incorporating the use of artificial intelligence and data reviews to identify anomalous claiming patterns, will continue to be used to identify claims for audit.

Medicare Australia will continue to focus on the provision of information as its primary response to compliance concerns and has announced that it is both increasing and enhancing the provision of information, support and education to providers.

What is proposed under the access to evidence component?

The Government intends to amend legislation to introduce a general obligation on Medicare providers to respond to a Medicare Australia audit request.

Why does Medicare Australia need this new authority?

Medicare providers currently self-determine which service they have supplied and what payment their patients are entitled to receive. When a provider itemises an MBS item they are effectively stating that the conditions of the indicated item have been met. The Government trusts providers to get these details right – and whilst key requirements such as patient eligibility and provider details are checked – payments are made quickly without additional verification of the claim details. This offers convenience for both providers and patients. To balance this Medicare Australia needs to conduct post-payment audits to confirm that claims and payments are correct in order to give some level of assurance that government expenditure is directed appropriately.

There is currently no legal framework to set out either Medicare Australia's or the practitioner's rights and responsibilities in relation to the provision of information to Medicare Australia. It is not clear what Medicare Australia can ask for or what practitioners are obliged to provide in response to a Medicare Australia request. Whilst most practitioners respond co-operatively to Medicare Australia's requests for information some do engage in protracted negotiations with Medicare Australia through Medical defence unions, industry bodies, and legal firms. In some circumstances practitioners have provided Medicare Australia with too much information, the wrong type of documents or not all the information necessary to confirm the accuracy of the claims.

This is particularly relevant to those issues which can only be confirmed by reference to clinical information. The intent of this new authority is to make it clear what information can be requested and what a practitioner's obligations are in responding to medicare Australia requests.

This initiative will give practitioners and Medicare Australia greater certainty by providing a legislative framework about practitioner rights and obligations in verifying MBS billing. This will reduce unnecessary drains on the resources of both the practitioner and Medicare Australia.

What power will Medicare Australia have to access information?

In most cases Medicare providers will be able to verify their claims using documents such as referrals and requests, appointment books, and receipts. However, some MBS items may require information from a clinical record to confirm that the content requirements have been met. For example Item 2622 is only payable for consultations for a patient with diabetes, Item 2668 is only payable for consultations with a patient with asthma, and Item 16590 is only payable for the planning and management of a pregnancy that has progressed beyond 20 weeks. Item 2517 requires a practitioner to demonstrate that they have completed a range of checks (eg. HbA1c, weight, height, BMI, blood pressure etc). In these cases a provider may be asked to present evidence to confirm that the patient meets these conditions or that the tests were performed. This will not require any clinical interpretation by Medicare Australia, just the verification of a matter of fact already supplied.

In these situations Medicare Australia will only have the ability to request the relevant excerpt that substantiates the claim and Medicare Australia will not have unfettered access to complete patient records or files. It is also envisaged that the authority to access relevant excerpts from a clinical record during an audit would only be exercised infrequently, and in circumstances where there is no other method of verifying the claim.

Medicare Australia already receives and manages a considerable amount of sensitive information relating to both patients and providers and maintains the highest standards of professionalism in protecting the privacy of this information. The Australian Privacy Commissioner, in announcing Medicare Australia as the first recipient of the Grand Award for Privacy, noted that "Medicare Australia's dedication to protecting the privacy of its customers is a model for other government agencies and for the Australian marketplace as a whole."

How will the Government protect privacy and patient-doctor confidentiality?
The legislative amendments will include appropriate safeguards on the collection and use of health information. These safeguards will be developed in consultation with the Privacy Commissioner and stakeholders and will be governed by both the *Privacy Act 1988*, and section 130 of the *Health Insurance Act 1973*. As a starting point it is proposed that the legislation require that:

- only a few select authorised staff will be given the power to request clinical information;
- these authorised staff will be given additional training in the use and storage of sensitive information; and
- Medicare Australia will only be able to seek information that verifies the details of an identified claim and will be restricted in using the information solely for that purpose.

Isn't this more red tape on providers?
No. The Government does not anticipate introducing any new record keeping or document retention requirements. Medicare providers are already required to keep adequate and contemporaneous records under section 82(3) of the *Health Insurance Act 1973*. Records that meet this requirement should suffice for the purposes of this initiative.

How does this affect the role of the Professional Services Review (PSR)?
PSR exists to protect the integrity of Medicare and the PBS and in doing so:

- protect patients and the community in general from the risks associated with inappropriate practice; and
- protect the Commonwealth from having to meet the cost of services provided as a result of inappropriate practice.[1]

It does this through a peer review process which investigates practitioners who may have engaged in inappropriate practice in relation to Medicare or the PBS schemes. Broadly, this involves a committee of the practitioner's peers determining if the rendering or initiating of Medicare or PBS services by the practitioner would be considered clinically relevant and appropriate by the general body of members of the profession.

This initiative will not alter or change the role of PSR in reviewing practitioners who may have engaged in inappropriate practice. Medicare Australia will continue to refer matters relating to inappropriate practice to the Director of PSR. Medicare Australia will not be determining the clinical relevance or appropriateness of services that a practitioner provides.

What is proposed under the administrative penalties component?

The Government has indicated that Medicare providers found to be repeatedly billing items incorrectly will receive education to assist them claim MBS items correctly. In addition, under certain circumstances, providers found to be claiming incorrectly may be subject to administrative penalties. The penalties are intended to act as an additional incentive to encourage providers and their staff to be vigilant about complying with the MBS requirements.

While providers who make one-off mistakes will not be penalised, it is envisaged that those who repeatedly bill Medicare services incorrectly will be subject to a financial penalty. It is envisaged that the financial penalty will be an additional percentage of the amount to be recovered.

The exact nature of the penalty and the actual penalty amounts will be developed following stakeholder consultation. However, in cases of genuine misunderstanding or inadvertent error it may be possible to provide the Medicare CEO with the authority to remit the full amount of the penalty. Alternatively, the penalty could be described so that it would not apply to any amount below a threshhold amount.

It is also possible to include 'discounts' to the penalty for self disclosure before or during an audit.

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[1] Inappropriate practice is defined in s.82 of the *Health Insurance Act 1973* (HIA) as conduct in the rendering or initiating of services that is considered 'unacceptable to the general body of the members of the specialty (profession peers)'.

Why are administrative penalties being introduced?
Making factually incorrect claims through carelessness is against the law. Administrative penalties are appropriate for managing this type of non-compliant behaviour because:

1. the bulk of the non-compliance within the MBS is non-criminal in nature;
2. the seriousness of the majority of breaches rarely warrants court action (either civil or criminal);
3. the Government wants to encourage voluntary compliance rather than taking a strict, strong-handed, technical and/or inflexible approach to enforcement; and
4. administrative penalties are effective and efficient, reduce the court's workload and do not strain the resources of the provider concerned.

At present providers audited by Medicare Australia do not have formal rights to have the merits of their case reviewed by an independent authority. They may apply to the Federal Court or Federal Magistrates Court for a review under the *Administrative Decisions (Judicial Review) Act 1977.* However, this review is limited to ensuring that the decision maker used the correct legal reasoning or followed the correct legal procedures.

It is anticipated that the introduction of administrative penalties will be accompanied by the provision of additional formal appeal rights for providers. This will be developed following stakeholder consultation, but is likely to enable providers to appeal both the assessment of a claim and any penalty notice through cost effective mechanisms such as an independent reviewer with Medicare Australia and the Administrative Appeals Tribunal. The current rights of appeal to the ADJR and Ombudsman will remain.

What legislation changes will be required?

Changes to the *Health Insurance Act 1973* will be required to introduce the obligation to provide evidence and create the administrative penalties.

What consultation is proposed?

The Government will be consulting with organisations representing the medical profession, allied health professionals and health consumers throughout the development of this package. Further discussions will also be conducted with the Office of the Privacy Commissioner.

The Government is now seeking your views on how these changes should operate. Stakeholders are invited to write to the Department of Health and Ageing (DOHA) with their views on how the changes should be implemented. Senior representatives from DOHA and Medicare Australia will also meet with organisations representing key stakeholders during October 2008 to discuss the development of this package. If you would like to provide feedback or arrange a meeting to discuss these changes you should contact:

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The views of stakeholders will be used to design how the production of evidence and administrative penalties will work in practice, and will be incorporated into the draft legislation during December 2008 and January 2009.

It is anticipated that this consultation process will be ongoing with key stakeholders being contacted regularly up until the Bill for these legislative amendments is introduced into the Parliament. At this stage, it is expected that this will occur during the Autumn 2009 sitting.