Senate Community Affairs Committee

ANSWERS TO QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

INQUIRY INTO COMPLIANCE AUDITS

6 May 2009 Question: 2

OUTCOME 3: Access to Medical Services

Topic: APPEAL PROCESSES

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- **Senator Moore** asked: I have two questions. One can go on notice. That is looking at the indemnity issues that were raised in detail in their evidence on the issue of the process of appeal. I would like to get the department's view on that.

Answer:

- There is only one issue which may be disputed under the draft Health Insurance Amendment (Compliance) Bill (the draft Bill) and hence be subject to appeal. That is, whether a debt is owed to the Commonwealth.

- At present any person who disputes that they owe a debt to the Commonwealth has a right to contest the matter in court, and this will not change under the new provisions.

- The decision in regard to whether a person has substantiated a Medicare benefit paid in respect of a service is a matter of fact. Issues which are not a matter of fact will not be the subject of audits under the Increased MBS Compliance Audits (IMCA) initiative.

- The facts contained in the information or documents provided to Medicare Australia will be assessed against the rules for interpretation of the relevant Medicare item.

- These are set out in tables prescribed under the *Health Insurance Act 1973* (the HIA) and include the items of medical services, the amount of fees applicable in respect of each item and the rules for interpretation.

- The appeal process in relation to debt recovery under the draft Bill will be the same as those which apply to debt recovery under the current provisions in the HIA.

- There are a number of avenues of appeal under existing arrangements. A practitioner may lodge a compliant with Medicare Australia or a practitioner may seek formal judicial review of administrative decisions and actions taken by Medicare Australia.

- At present when a practitioner makes a complaint about the conduct of staff, the outcome of a compliance process or the process itself, Medicare Australia's existing policy is to conduct an independent internal review. This review is conducted by staff who are not involved in the compliance activities and who do not conduct casework.

- Medicare Australia's policy is to acknowledge all complaints within 2 working days with responses within 10 working days.

- Upon passage of the proposed legislation Medicare Australia will include information on how practitioners may make complaints about a compliance audit when a notice to produce documents is issued.

- Practitioners (and other persons) may also seek Federal Court review of administrative decisions and actions taken by Medicare Australia under the *Administrative Decisions (Judicial Review) Act 1973* or the *Judiciary Act 1903* (s.39B).

- Federal Court review is appropriate and commensurate with current arrangements for practitioners who seek review of Professional Services Review processes.

- Decisions made by Medicare Australia officers may also be reviewed under legislation which affects the whole of government such as the *Freedom of Information Act 1982* or *Ombudsman Act 1976*.

- Under the HIA, review by the Administrative Appeals Tribunal is generally restricted to those decisions which impact on a practitioner's ability to provide Medicare services. That is, where the sanction imposed may involve disqualification from participation in Medicare and /or the Pharmaceutical Benefits Scheme for a period of time.

- Examples of these include decisions relating to the acceptance of undertakings given by approved pathology authorities, approved pathology practitioners and optometrists; the accreditation of podiatrists and determinations by the Medicare Participation Review Committee.