



Australian Government
Department of Health

Consultation Paper: Improving Medicare Compliance

September 2017

Introduction

In the 2017-18 Budget, the Government announced that it would be introducing legislation to strengthen Medicare compliance, including to:

- address billing practices associated with the increasing corporatisation of medical practice;
- improve debt recovery rates; and
- streamline administrative processes associated with billing and compliance.

The Department of Health (the Department) is now seeking stakeholder input into the proposed changes to the *Health Insurance Act 1973*, the *National Health Act 1953* and the *Dental Benefits Act 2008*. These three Acts govern the Medicare Benefits Schedule (MBS), the Pharmaceutical Benefits Scheme (PBS) and the Child Dental Benefits Scheme (CDBS) respectively.

Background

The nature of health practice is changing from small owner-operated medical practices to larger business enterprises. However, the current legislative framework is focused on individual providers, rather than the corporate entities and organisations that are increasingly billing Medicare on their behalf.

Providers under the MBS continue to receive full payment of benefits while they have outstanding debts arising from incorrect claiming, inappropriate practice and in a very small number of cases, fraud. Compulsory offsetting powers under the *National Health Act 1953* and the *Dental Benefits Act 2008* allow such debts to be compulsorily recovered for PBS and CDBS debts. It is proposed that compulsory offsetting of up to 20 per cent of future payments be applied to the MBS.

Other inconsistencies among the three Acts mean that doctors and other MBS providers, pharmacists and dentists face different accountabilities and penalties for similar actions. These inconsistencies include record keeping requirements, administrative penalties and requirements to produce documentation to support claiming.

The proposed legislative changes are to harmonise compliance and administrative arrangements across MBS, PBS and CDBS to ensure consistency in approach for pharmacists, dentists, doctors and other health providers.

Details of the proposals follow.

The Proposals

It is proposed that the *Health Insurance Act 1973* (HIA), the National Health Act 1953 (NHA) and the Dental Benefits Act 2008 (DBA) be amended to:

- better address the reality of practices, corporations and hospitals billing on behalf of individual providers;
- allow the Department to offset up to 20 per cent of future MBS payments made to providers who have debts to Medicare; and
- improve the consistency of administrative arrangements across the three Acts.

A. Organisation Billing

The current legislation places all of the liability for Medicare claiming against a Medicare provider number on the individual provider. However, the Department's experience over recent years is that practices, hospitals and corporations are either claiming directly on behalf of the individual provider or significantly influencing their claiming behaviour. In a number of compliance cases considered by the Department, the practice or other employing or contracting organisation has claimed benefits on behalf of health providers without provider knowledge.

The proposed changes would amend the HIA, the NHA and the DBA to:

- A1** allow the Department to directly collect information from employing organisations, corporations and hospital authorities such as practice records, details of business structures and details of employed or contracted health providers to support compliance action;
- A2** require health providers as part of a compliance activity to advise the Department of their working practice locations, relevant bank accounts and the employment or contractual arrangements they have with organisations, corporations and hospital authorities (information about whether or not the provider is employed or contracting with an organisation may be included in provider registration processes in the future);
- A3** share the liability for debts between the provider and the practice or employing/contracting organisation, corporation or hospital where

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the practice or employing/contracting organisation, corporation or hospital has claimed incorrectly on the provider's behalf.

- depending on the circumstances, a debt might be raised against the practice or employing/contracting organisation, corporation or hospital only or might be split equally or in some agreed proportion (*the Department would particularly appreciate input on administratively simple approaches to identifying when it may be appropriate to attribute some liability for debts to an organisation rather than the provider and the arrangements for determining the split of any liability between the organisation and the provider*); and

A4 clarify the powers of the Director of the Professional Services Review to cover not only organisations and corporations that employ providers but corporates and organisations who engage providers otherwise than as employees.

B. Compulsory offsetting

In 2014-15, the Department of Human Services was able to recover Medicare debts that were only 20 per cent of the amount of debts raised that year arising from incorrect claiming, inappropriate practice or fraud.

To help improve debt recovery rates:

B1 strengthened powers to compulsorily offset MBS debts from future MBS payments are needed under the HIA to match the existing powers in the NHA and the DBA. To avoid hardship for providers, compulsory offsetting would only be applied if agreement could not be reached on a voluntary repayment plan within 30 days. Only up to 20 per cent of each future payment would be withdrawn to pay down the debt.

B2 further, in line with practice at the Australian Taxation Office, the legislation will provide for payments to be sought from third parties through a garnishee notice scheme.

C. Administrative changes and strengthened recovery provisions

Additional changes to harmonise administrative arrangements across the three Acts so that the same standards and administrative penalties apply to all health providers, including pharmacists and dentists.

It is proposed the legislation will:

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- C1** introduce provisions under the NHA to allow for a PBS debt to be recovered when a pharmacist claims a benefit but does not supply the prescribed medicine;
- C2** apply the same two year record keeping period for all health providers, including pharmacists and dentists;
- C3** make it faster and easier for providers to repay MBS debts where they self-report that they have claimed incorrectly. This will be achieved by amending the HIA and the DBA by removing the requirement to offer a review of decision where a provider voluntarily acknowledges incorrect payments.
- C4** apply compulsory administrative penalty provisions to dentists and pharmacists, consistent with the conditions that apply to other health providers for incorrect billing under the MBS. The administrative penalty will follow the same principles as the current HIA provisions and can go up or down from a base rate of 20 per cent depending on the conduct of the provider. Providers can ensure they pay no penalties by voluntarily acknowledging any incorrect billing before being contacted by the Department for an audit. No penalty applies to debts of \$2,500 or less.
- C5** seek a change to the NHA to provide a notice to produce power requiring pharmacists who do not voluntarily provide documents to substantiate claims, consistent with provisions applying to health providers in the HIA and DBA; and
- C6** introduce a debt raising power in the NHA that applies to pharmacists where they have made false or misleading statements, consistent with provisions applying to dentists and other health providers in the other two Acts.
- C7** clarify the documentation required to substantiate that subsidised services were provided to a patient (currently described in the Health Professional Guidelines), by allowing the Minister to prescribe the records that must be kept – including the records needed to substantiate that a patient is an admitted public or private patient at the time that professional services are rendered.

[How to Participate](#)

Your organisation can use the following private link to provide a written submission through the Department's consultation hub:

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<https://consultations.health.gov.au/health-provider-compliance-division/e86b653a/>

The online submission process will open on Friday 15 September 2017 at 9:30am and close on Sunday 8 October 2017 at 11:59pm.