



The Royal Australasian
College of Physicians

Review of the Professional Services Review (PSR) Scheme
Submission by The Royal Australasian College of Physicians
August 2011

The Royal Australasian College of Physicians (the RACP) welcomes the opportunity to provide a submission to the Senate Standing Committees on Community Affairs regarding the Professional Services Review (PSR) Scheme.

The RACP understands that the PSR Scheme is provided for under Part VAA of the *Health Insurance Act 1973* (the Act) to protect the integrity of the Medicare Benefits Scheme (MBS) and the Pharmaceutical Benefits Scheme (PBS). The PSR Scheme provides a peer review process to determine if a health practitioner has engaged in inappropriate practice with regard to providing services under the MBS or prescribing under the PBS. In essence, the PSR Scheme serves to ensure that patients are not put at risk from inappropriate practice and to protect the Commonwealth from the cost of the provision of inappropriate and/or unnecessary services.

Executive Summary

The PSR Scheme operates in a dynamic healthcare environment. Regular review of the PSR Scheme is essential to ensure it continues to meet the needs of health practitioners, patients, the Government and the broader community and is responsive to changing conditions and the development of new technologies and new business models.

The RACP supports the retention of the PSR Scheme and the peer review process as a legitimate means of protecting the integrity of the MBS and PBS, whilst also ensuring procedural fairness for health practitioners under review by the Scheme.

The RACP welcomes the opportunity to review the process of appointments to the PSR Scheme.

Recommendations

The PSR Scheme and the peer review process should be retained with consideration of the following recommendations. Specifically that:

1. The College supports the retention of the PSR Scheme and the peer review process as a legitimate means of protecting the integrity of the Medicare Benefits Scheme (MBS) and the Pharmaceutical Benefits Scheme (PBS).
2. The statutory appointment process to the PSR Panel, Directorship and Deputy Directorships should be transparent. Information relating to selection criteria, vacancies, appointments and reappointments to the Panel, including directors, should be publicly available. There should be an open process to ensure that all eligible health practitioners are given the opportunity to participate in the PSR Scheme as a Panel member or Director.
3. The Director's selection of peers from the Panel to the PSR Committee should be transparent, with appropriate regard for the nature of the particular health practitioner's practice. The RACP is available to provide information to the Director with regard to the selection of peers on a fair and reasonable basis.
4. The operating procedures and processes of the PSR Scheme should be streamlined and simplified as far as possible to ensure procedural fairness.
5. The continuing education of the medical profession to ensure understanding of and compliance with the regulatory requirements of the PSR Scheme is essential.

Structure and Composition of the PSR

The Act broadly sets out the process for the Minister's appointment of the PSR Director, Deputy Directors and Panel members, and includes provisions relating to the terms and conditions of these appointments.¹ The RACP considers that there are opportunities to enhance the openness and transparency of statutory appointments to the PSR Scheme, including clarification of the process for the selection and reappointment of practitioners to these positions.

¹ *Health Insurance Act 1973* (Cth), Part VAA, Div 2 and Div 6.

In particular, eligible health practitioners should be provided with the opportunity to participate in the PSR Scheme through an open and transparent recruitment process for vacancies as they arise on the Panel or to the Directorship. The criteria on which selection to the Panel and to the Directorship is based should be clearly defined and publicly available. The process for the reappointment of the Director and Panel members following the end of their statutory term, and the criteria for reappointment, should also be publicly available and apparent.

It is important that the relevant organisation that represents the interests of the particular profession of the practitioner to be appointed to the Panel is consulted in the appointment process. Panel members are selected by the Director to form the Committee of peers that determines whether the conduct of the practitioner under review would be unacceptable to the general body of the profession.

Operating procedures and processes

The PSR Scheme assesses whether the health practitioner has engaged in inappropriate practice with regard to the provision of services.² Provision of services under the MBS and PBS involves professional medical judgment and may relate to the specific circumstances of the health practitioner's profession and practice. It is thus important that the decision about whether the practice is appropriate is made by professional peers with adequate understanding of the practice and profession of the health practitioner under review.

The PSR Scheme requires the Director to establish a PSR Committee to undertake a full investigation into the practice of the health practitioner once the Director has made a preliminary determination about the substance of the complaint. The Committee is often referred to as a Committee of peers because Panel members selected to the Committee must belong to the profession of the health practitioner under review.³

Fellows of the RACP engaged in medical practice are subject to the PSR Scheme but are infrequently subject to investigation by the Scheme. As per the *PSR Report to the Professions 08-09*, of the 136 referrals by Medicare Australia to the PSR, 119 referrals related to general practitioners (GPs). Given the relatively small numbers of specialist physicians and paediatricians referred to the Scheme, and the array of specialties and sub-specialties, it is

² *Health Insurance Act 1973* (Cth), Part VAA, s 80.

³ *Health Insurance Act 1973* (Cth), Part VAA, s 93 and s 95.

necessary that the selection of Panel members to the Committee of peers is open and transparent, with appropriate regard for the specific circumstances of the practitioner's practice and profession. The RACP is available to provide information to the Director about the selection of appropriate peers from the Panel to the Committee where a specialist physician or paediatrician is under review.

Procedures for investigating alleged breaches

It is important that PSR operating procedures and processes are as efficient as possible, whilst also affording the health practitioner procedural fairness. The PSR process can be lengthy and can put the health practitioner under considerable stress.

The former Director of the PSR Scheme acknowledged that the "staged review process has the potential to be confusing and complex" and that the "process is not intended to be adversarial".⁴ A guide to the PSR process was published in June 2011 to provide clarification to health practitioners about the Scheme but there remain ongoing concerns about its complexity. The RACP recommends comprehensive examination of each step of the PSR process to identify redundancies or duplication of effort and opportunities to streamline the process.

Other matters

The PSR Scheme, and its associated structure and processes, are complex. The legislative basis for the PSR Scheme and the staged process prescribed by the Scheme can be confusing and difficult to comprehend. Health practitioners may find it difficult to adequately understand the nature and intent of the Scheme, as well as its interface with other regulatory bodies.

There is a need for ongoing education and support for health practitioners to understand the nature of the PSR Scheme processes and the basis for referral to the Scheme. Consideration should be given to innovative methods to communicate important information and concepts to health professionals.

Health practitioners can also experience uncertainty about PSR-defined inappropriate practice. The *PSR Report to the Professions 2006-2007* stated that "it is a requirement that the doctor fulfil the item descriptor pertaining to the content of the item claimed". Of key concern for many health practitioners is their appropriate use of MBS item numbers and the interpretation of item

⁴ Australian Government Professional Services Review. (June 2011). Your Guide to the PSR Process p5.

descriptors. Adequate and contemporaneous records for the consultation must also be kept to provide justification for the item claimed and can be reviewed by the Committee.

There is a need to ensure that health practitioners subject to the PSR Scheme are well-educated about the requirements of the MBS and PBS, and the appropriate use of item numbers and interpretation of item descriptors. It would be helpful for health practitioners to receive profession-specific guidance about MBS compliance. There may also be a role for professional representative bodies to be involved in drafting and reviewing MBS descriptors relevant to their profession or specialty.