
Submission to the Senate Finance and Public Administration Legislation Committee inquiry into the Health Insurance (Dental Services) Bill 2012 [No. 2]

The Committee has been asked to ensure the Health Insurance (Dental Services) Bill 2012 [No. 2] (the Bill) addresses the wide concerns of the dental profession regarding the actions of Medicare. The AMA is not aware of the nature of the ‘wide concerns’ of the dental profession, nor are we aware of the specific ‘actions’ of Medicare that the dental profession has concerns with. Therefore we cannot comment specifically on whether the Bill addresses those two issues.

Nevertheless, the AMA does not support the Bill because it seeks to exonerate one class of health practitioner from the legal requirements applying to a particular set of Medicare items. If passed the Bill would create an inequity between dentists and other health practitioners (whose services attract Medicare benefits) to meet the legal requirements when billing Medicare items.

All health practitioners whose services attract Medicare benefits should be subject to the regulatory requirements of the Medicare Benefits arrangements.

Legal requirements of Medicare

The AMA is a strong supporter of appropriate compliance and audit activity to ensure the integrity of the Medicare benefits arrangements. We do not condone medical practitioners or any other health practitioners ascribing Medicare items for services they have not provided.

The Medicare benefits arrangements are rife with red tape. Our submission to the 2009 Senate Community Affairs Committee inquiry into Compliance Audits on Medicare Benefits highlighted the complexity of item interpretation and the significant red tape obligations imposed on medical practitioners by the Medicare Benefits Schedule (MBS) arrangements. The AMA is a persistent advocate for simplifying the MBS and removing red tape. This will relieve the burden for practitioners and allow them to focus on healthcare delivery. It will ensure legal requirements are easier to comply with, while still ensuring the integrity of the Medicare program.

We understand the Bill seeks to exonerate dentists from complying with requirements set out in the *Health Insurance (Dental Services) Determination 2007* (the Determination) to provide:

- the patient with a written treatment plan;
- the patient with a written quote for the services to be provided; and
- the referring GP with a written summary of the plan

on the basis that the dentist, at the time the service was provided:

- did not know about the legal requirement; or
- did not fully understand or appreciate the effect of the requirement; or
- was under a reasonable misapprehension about the need to comply with the requirement.

The application of the Bill to future payments made under the Determination is not appropriate. If the dental profession is concerned with the red tape requirements of the Determination, the Bill is not an appropriate way to address that. These issues should be addressed through Medicare policy, which is made by the Minister for Health and the Department of Health and Ageing.

Similarly, if the dental profession has concerns that dentists are not currently aware of these requirements it should ensure that Medicare and the relevant professional bodies undertake awareness and education activities now. We do not consider it appropriate that dentists can use “I did not know” as a defence against future non-compliance with the Determination. Nor do we consider it appropriate for Parliament to provide this defence by passing the Bill, particularly as we are not aware that this defence exists in any other Commonwealth law.

Medicare compliance activities

In respect of payments already made under the Determination, the AMA contends that there are remedies available within Medicare’s existing compliance approaches.

Medicare Australia’s National Compliance Program 2010-11 outlines the stepped approach to compliance, audit and investigation activities to identify, deal with and escalate varying types of non-compliance:

- risk detection to inform Medicare’s compliance strategies;
- education and support services to support voluntary compliance (such as eLearning, quick reference guides, provider percentile charts and enquiry lines);
- compliance audits where there is suspected non-compliance with item requirements;
- the Practitioner Review Program (under which cases may escalate to the Professional Services Review scheme) where there is suspected inappropriate practice; and
- criminal investigation by the Commonwealth Director of Public Prosecutions for suspected fraudulent behaviour.

The Medicare ‘*What is an audit?*’ fact sheet states that compliance audits can end with the provision of education and support to help providers who have made some minor infractions to avoid future mistakes. In cases where incorrect claims are identified Medicare may ask for the repayment of the benefits that should not have been paid. In other cases, Medicare may decide to take no further action.¹

The dentists who have been the subject of an audit for incorrect billing or non-compliance with the Determination may have acted in good faith, accidentally, opportunistically, inappropriately or fraudulently. Medicare compliance, audit and investigation activities are designed to provide appropriate redress for all of these actions. We assume that Medicare has taken the stepped approach described above when assessing the degree of any non-compliance by dentists.

¹ Medicare Australia, ‘*What is an audit?*’ <<http://www.medicareaustralia.gov.au/provider/files/what-is-an-audit-factsheet.pdf>> accessed 2 April 2012.

In 2010-11, Medicare identified more than \$28 million in incorrect payments². The amount of \$19.97 million has been identified as being incorrectly claimed from Medicare by dentists³. We are not aware of the recovery action Medicare has taken in respect of payments made to dentists (or medical practitioners for that matter). However, we are confident that Medicare does have and uses discretion to take recovery action. In 2009-10, Medicare identified more than \$10.29 million in incorrect payments to medical practitioners, pharmacists and members of the public, with only \$7.94 million recovered through repayment⁴.

The 'action' taken by Medicare in respect of compliance, audit and investigation activities needs to be fully understood before any assessment can be made that the dentists were subject to a different approach.

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² Department of Human Services, *Forum*, Summer 2011, p.4

³ The Hon Tony Zappia, MP, Second Reading Speech, National Health Reform Amendment (Independent Hospital Pricing Authority) Bill 2011 (Cth), House of Representatives, 2 November 2011.

⁴ Medicare Australia, *Medicare Australia's National Compliance Program 2010-11*, p 27.