

4 April 2012

**Finance and Public Administration Committee**

**Senate Inquiry into Health Insurance (Dental Services) Bill 2012 [No. 2]**

**SUBMISSION**

**Too much success blows the budget.** *As tens of thousands of eligible patients validly and appropriately receive dental treatment under the Chronic Diseases Dental Scheme, the labor government appears to be looking to dentists to pay for the blowout. Medicare has issued demands to a significant proportion of all dentists who completed a voluntary self-audit to repay benefits paid to their patients despite their patients having received appropriate treatment. It appears that in the majority of these cases, the demands are made for minor administrative oversights, such as not sending a dental plan to the referring doctor, that both senior members of the AMA and ADA, with whom I held discussions, admit have little value to either dentists or doctors in their respective overall care of their patients. One may suspect the 3-year delay in the government conducting audits and taking action on a technicality is a tactical move in what can only be described as an ambush to circumvent the budget blowout due to the uncalculated and yet remarkable success of the scheme.*

**Dear members of the committee,**

I am a general dentist and have participated as a provider under the Chronic Diseases Dental Scheme.

I need to express my grave concern at the action of the Federal Government in insisting that Medicare demand dentists to make full repayment of any rebates paid, albeit to their patients, for dental treatment under the Dental Services scheme, as a result of minor paperwork errors or omissions that are insignificant in the care and treatment of the patients under the scheme. These demands are irrespective of the dentists having in fact provided necessary treatment to patients appropriately referred to them by medical practitioners, and irrespective of the fact that in most cases the patients received the rebate, not the dentists directly.

I have conducted a self-audit of my practice, which established that I have been compliant with the requirements under the scheme since I became aware of the requirements. There have been instances though where I was not FULLY compliant due to minor oversights in paperwork requirements. Being acutely aware of the unfair treatment by Medicare of dentists, such as myself, I have declined Medicare's request for voluntary self-audit. As a result, Medicare had contacted many of my patients and referring doctors to establish whether or not I have been compliant. To date I have NOT been found non-compliant. Patients described Medicare's approach as being aggressive, but for the most part, confusing. I am concerned by how Medicare's approach affected my reputation by making me look like I have been doing something wrong.

## Position Summary

- ▶ As a Dental Care Provider I am not accustomed to dealing with Medicare. As such the failure to comply with certain paperwork requirements under the scheme may have easily occurred due to a non familiarity with those requirements;
- ▶ Medicare did NOT take adequate steps to educate me of the intricate paperwork requirements under the scheme;
- ▶ I do not condone fraud or intentional rorting such as invoicing patients for treatment they will never receive;
- ▶ The paperwork requirements are insignificant as to the true intentions of the scheme and are NOT in tune with the cold face reality of day-to-day private dental practice in that,

### *In respect of the Written Treatment Plan requirement,*

Providing patients with dental treatment plans, in one form or another, and obtaining informed consent has always been standard practice and part of my obligations under the Dental Practices Act. In respect of the chronically ill, however, the treatment plans may be complex and necessarily fluid. Diagnostic procedures or preliminary treatment may be required before finalising any definitive treatment plan, it is therefore often impractical to issue patients with a written treatment plan before we know what the treatment plan is going to be;

### *In respect of Correspondence with referring GP requirement,*

I refer to page 17 of the Medicare Benefits Schedule of 1 November 2007, which states:

“The content of the treatment plan ...is a matter for the treating dental practitioner, having regard to the usual clinical reporting practices within the dental profession.”

As a member of the dental profession I note that,

(a) Corresponding with a patient's GP is NOT standard practice, except for extenuating circumstances. We have always treated patients with chronic illnesses such as hypertension, diabetes, and periodontitis and would typically communicate with GP's on a need basis and by phone; and,

(b) GP's have a limited understanding of dental treatment and a written dental treatment plan has little or no value for a GP in their overall management of chronically ill patients. GP's wish nothing more than to know that their patient is receiving dental treatment as deemed appropriate by the treating dentist. There can be no dispute that a GP would reasonably anticipate such treatment when giving their patient a referral;

- ▶ The paperwork requirements appear to be purely bureaucratic in nature as there is no requirement further for dentists to issue revised paperwork or write to GP's should there be a change in the treatment plan, no matter how significant;
- ▶ As there is no formal agreement between dentists and Medicare, a dental care provider in a private setting could unwearingly and unintentionally be first drawn into the scheme when a patient presents with a referral for Dental Services under Medicare.

Whilst I have concerns about the loose eligibility criteria, guidelines and many other aspects of the scheme, tens of thousands of chronically ill patients validly and appropriately received treatment that, in many cases, they would otherwise not be able to access.

**I am in support of the notions to:**

- ▶ Retrospectively apply exceptions where non-compliance is related only to the paperwork requirements, - until such time that dentists who participate in the scheme can be sufficiently educated as to the requirements;
- ▶ Consider the relative insignificance of the GP Correspondences and Written Treatment Plans for chronically ill patients as being administrative oversights or minor non-compliances, and as such require Medicare to seek correction with a warning before deciding to hand down heavy-handed penalties or demands for refunds;
- ▶ Require Medicare to take steps to facilitate dentists' compliance, either by a modification to the referral form or in another simple way, where dentists can acknowledge the fulfilment of each individual paperwork requirement (in a similar manner to what GP's are required to do) PRIOR to the payment of a Medicare Rebate.

## **Background**

I would like to give you some background and bring to your attention the following:

1. Prior to the Dental Services Under Medicare scheme dentists had no involvement with Medicare;
2. Dentists are used to dealing with Health Funds where in most cases there are no specific requirements on the dentist's behalf apart from providing the patient with an appropriate invoice. The patient's entitlement as to the rebate is dependent on the contract that the patient has with the health fund and NOT on anything, apart from a valid invoice, that the dentist must provide;
3. When the Medicare scheme was put in place, eligible patients were able to claim a Medicare rebate for Dental Services Under Medicare. It was up to the GP to establish whether the patient was eligible for a Care Plan Arrangement that typically included a number of relevant referrals

including, when appropriate to dentists. So as to satisfy the requirements, the GP would provide a referral to a Dentist for dental treatment under the scheme;

4. Medicare did not adequately or diligently advise Dentists, including myself, who were knowingly not accustomed to dealing with Medicare, of the further extensive bureaucratic paperwork requirements under the scheme. As the onus was on the patient's GP to satisfy the requirements for a referral for Dental Services Under Medicare, when the dentists received the referrals they treated these in the manner that they are used to, that is, providing the patient with a valid invoice for the service so that they can claim a rebate from Medicare. The assumption was that, like with health funds, the patient's entitlement for a Medicare rebate was between the patient's and Medicare. To my knowledge, in the vast majority of cases, including my own, the patients paid their dental bills in full and then claimed a rebate from Medicare. It was not unless the patient did not pay their bill in full that the Medicare Rebate would be addressed to the dentists themselves, but even in those cases, the patient would be required to pay the balance of their account after the rebate has been received. The contract for dental services has always been treated as being between the patient and their dentist, whether under the scheme or otherwise, and patients were clearly advised of this and understood that like with their health funds, if Medicare did not provide a rebate they would still be required to settle their accounts in full. It then follows that since the vast majority of dentists do NOT Bulk Bill for their services, should Medicare demand dentists who may not have been fully compliant with the paperwork requirement to repay rebates paid to their patients, the dentists would then in turn be looking to pursue the refunded moneys directly from their patients;
5. Throughout the availability of the scheme, Medicare did not take sufficient steps to inform dentists or to otherwise allow them to easily identify whether or not they complied with the paperwork requirements. Whereas on the GP Referral Form (for Dental Services Under Medicare) to the dentist, the GP is required to acknowledge that both items 721 and 723 have been satisfied and hence the patient is suitable for a Medicare Rebate under the scheme, which also helps the GP confirm that they have completed the relevant paperwork; as for what dentists must satisfy, the only requirement noted on the referral form is the requirement to make a file note if the patient was to be referred on to another dental practitioner or specialist (see referral form for Dental Services under the heading 'IMPORTANT NOTE TO DENTISTS AND DENTAL PROSTHESISTS'). However, there is NO information on this referral form instructing dentists to comply with the paperwork such as that:
  - a. A written Treatment Plan must be given to patients before commencing any treatment
  - b. A letter must be sent to the referring GP
6. In respect of the above, I note the following:
  - a. Treatment plans are quite often provided to patients by their dentists, however the type of patients that are referred under this scheme often have special needs and often would require some treatment and diagnostic measures to be performed before a definitive written treatment plan can be issued. According to Medicare, however, if the dentist has not provided the patient with a treatment plan BEFORE commencing any

treatment or diagnostic procedures, then they effectively do not comply with the requirements under the scheme;

- b. Dentists do not typically correspond in writing with their patient's GP's. When information is required from/to a GP, means of contact have always been by phone with relevant annotations in the clinical files. Also, providing the GP with a patient's dental treatment plan is most often of no use for the GP because many do not readily understand the technical aspects or nature of the dental treatment proposed. As a result, it appears that many GP's have thrown away any dental treatment plans sent to them, because they too were unaware of the requirement for dentists to send them their plans. Nevertheless, Medicare has been contacting GP's and if they are unable to produce a copy of an appropriately dated dental treatment plan sent to them BEFORE the date of the dental treatment, then the dentist are deemed non compliant and are required to reimburse Medicare any rebates paid;
7. During the audit that Medicare has been conducting, it has become apparent in many instances that I am personally aware of that Medicare has made numerous administrative errors such as not identifying the treating dentist correctly from a clearly marked invoice on which a Medicare rebate was paid; and making payments to patients on item numbers that are not in accordance with the amounts specified in the Medicare Benefits Schedule (MBS). This is particularly significant because such errors on Medicare's behalf unfavorably prejudice the outcome of any audit by the dentist being audited having no option but to respond unfavorably to Medicare's simplified 'yes or no' questionnaire. Furthermore, the payments being pursued are not in accordance with the payments that Medicare should have paid the patients under the scheme according to the MBS.

The letters of demand being sent to some practitioners threaten the dental profession's involvement with publicly funded dental care and are potentially going to shut down these small dental practices. This is a disproportionate response to minor administrative errors. In delivery of dental care to patients in need, many dentists have become liable to refund all fees despite the treatment being appropriate and provided to a high standard.

There has been a significant amount of media attention surrounding the 'MBS fraud crackdown', but there must be a clear distinction between dentists who are alleged to have issued invoices or claimed for services they did not provide or intend to complete and those who simply missed the fact that they were required to provide their GP's with a dental treatment plan. I note that the vast majority of dentists fall into the later category, and I understand that most of the dentists caught in the audits, who failed to comply with new "red tape" requirements, actually provided necessary care to patients who had been appropriately referred to them by a medical practitioner under the scheme.

The government has used words like 'rorting', 'misused taxpayers funds', but these are misleading. 'Rorting' would imply awareness, and yet there was NO awareness of the extent of the paperwork requirements by an overwhelming majority of dentists who provided treatment under the scheme. In

addition, failure to submit paperwork on time is an administrative oversight, and must not be confused for intentional 'Rorting' or fraud.

As I declined a voluntary self-audit, Medicare sent audit forms to patients for completion. These forms were confusing for patients who, in many cases, told us they had no recollection themselves as to whether they received the particular treatment listed on the date listed, let alone the precise date when their treatment plan was given to them. In one of many instances, when the details that one of our patient's provided were not consistent with what Medicare expected, largely because of the administrative error's on Medicare's behalf in relation to the treating dentist, they apparently contacted the patient and interrogated her in relation to the confusing information. They also told the patient that she was by law required to comply with the Medicare audit, a fact that was not true for that patient who was treated prior to the time that the compliance law took effect in May 2011. The patient was very distressed by the interrogation and conveyed this to us. She also thought that we had done something wrong, whereas we did not. I have become somewhat concerned by the potential deprecating implications to my practice of any such conduct by Medicare.

People with chronic diseases often have more dental problems than healthy people. Some publicly funded patients have been waiting years for access to care, and it is not surprising that there have been high use of the Medicare scheme given this pent up demand.

There is a high degree of anxiety and discussions at gatherings of dentists concerned that the approach being taken with audits of dentists who provided treatment to eligible patients under the scheme is unfairly leading to prospects of bankruptcy and insolvency for dentists who – in good faith – have provided the care required by eligible patients.

Poor administration within Medicare and lack of information about the scheme for doctors and dentists may explain the extent of the problems being experienced. In my own audit I found numerous very clear administrative errors on behalf of Medicare that are now known to unfairly prejudice the results of any audit including my own.

The unfair treatment of dentists has the potential of having far reaching negative implications to the public by, at the very least, (a) making the private dental sector reluctant to accept or participate in any future schemes; and, (b) the potential financial implication for patients who appropriately received treatment under the scheme and may be required to repay money themselves.

Furthermore, I suspect that certain requirements by Medicare may be unconstitutional on the collective basis of all of the following:

- ▶ For full compliance with their audits Medicare requires that dentists provide the referring doctor with a treatment plan, and the referring doctor would then rely on this to create their own 'master' plan for the patients;
- ▶ Medicare appears to have no provisions to reimburse the dentists nor the referring doctors for providing their treatment plans. In other words Medicare appears to demand

'Conscription' of doctors and dentists to provide a treatment plan at no fee at all, albeit such treatment plans may be quite complex and take significant time to complete.

**Dentists who have provided appropriate treatment under the scheme deserve to be treated fairly.**

Yours sincerely,

Dr Alex Fibishenko

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