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SUBMISSION ON THE NATIONAL HEALTH REFORM AMENDMENT (NATIONAL HEALTH PERFORMANCE AUTHORITY) BILL 2011

The AMA fully supports a stronger framework of transparent reporting against national standards and performance indicators. More detailed and open reporting will provide greater transparency about the cost, quality and performance of publicly funded health care services across Australia.

Audits of health data at the state level continue to uncover examples of data manipulation and gaming. While this occurs, the true volume of public hospital services is not accurately recorded or monitored. Further, there is no transparency of the real impact on public patients waiting for medical care. Consequently, we cannot currently be confident that government decisions about public hospital funding, including decisions about staffing levels, capital funding, number of beds, and so on, are based on accurate information.

In this context, the legislation underpinning the National Performance Authority (the Authority) should include powers to improve data integrity and stamp out data manipulation.

Specifically, we seek amendments to the legislation that will:

- require the Authority to include in its reports, information about state and territory governments that do not provide the Authority with nationally consistent data;
- empower the Authority to commission audits, by the Auditor-General, of state and territory health service and performance data;
- empower the Authority to investigate cases where it suspects state and territory government officials have submitted incorrect (or manipulated) data; and
- impose civil penalties on the state and territory government officials that are found to have knowingly submitted incorrect data.

We are also concerned that the legislation does not provide for appropriate interaction between the Authority and the Australian Commission on Safety and Quality in Health Care (the Commission) or the proposed Independent Hospital Pricing Authority. There will be important synergies between these organisations that should be reflected in the legislation. For example, it is reasonable to expect that the performance indicators formulated by the Authority would be contingent upon the indicators relating to health care safety and quality matters that the Commission formulates – see subclause 9(1)(g) of the National Health and Hospitals Network Bill 2010.

Further, there should be explicit provisions in the Bill for the Authority to ensure that medical practitioners are directly engaged in the formulation of performance indicators, the analysis of the data and public reporting of data. This could be accommodated by requiring a member of the Authority to be a practising medical practitioner and in explicit provisions requiring the Authority to obtain advice from Lead Clinician Groups.

Further comments regarding particular elements of the Bill are detailed below.

Clause 60 Functions of the Performance Authority

Impact on private hospitals and other privately owned health care service providers

The functions of the Authority include monitoring and preparing reports on matters relating to the performance of private hospitals and other bodies or organisations that provide health care services (subclause 60(1)(a)(iii) and (v)). The explanatory memorandum states that these measures will have no regulatory impact on business and individuals (page 3). We do not believe this is a true statement.

The collection and provision of data to the Authority by smaller private hospitals and organisations that provide health care services such as medical practices will potentially have a significant impact on them, especially if it requires the development of new systems to collect and report the data.

The full regulatory and cost impact for these entities should be properly assessed. We have to be certain that the activity of data collection and reporting by health care providers is not onerous and does not detract resources away from direct patient care. It may also be appropriate for the Government to provide financial assistance to these entities for the additional costs of collecting and reporting against performance indicators. But this cannot be considered until the regulatory impact of the requirements that this Bill places on them is assessed and provided to the Parliament.

Further there is no certainty yet on the information to be collected. The legislation makes no provision for the type and scope of data to be collected. Details of the data to be provided by health care providers should be included in a disallowable legislative instrument and be made publicly available prior to the passage of this Bill.

Therefore, we recommend the passage of legislation be deferred until a regulation impact assessment is done and the detail of what data must be provided to the Authority is available.

Publication of Authority reports

The Bill should be amended to require the Authority, as a modern agency, to publish its reports on the internet within a particular timeframe so that contemporaneous information is

publicly available. Publication of reports within 6 months of receipt of the data would be a reasonable time to allow the Authority to carry out its functions.

Consultation on the formulation of performance indicators

The AMA recommends that the Authority be required to undertake consultation on the formulation of performance indicators, including with practising medical practitioners. Lead Clinician Groups could be used to provide advice and expertise on the formulation of performance indicators. We note that subclause 9(1)(m) of the National Health and Hospital Network Bill 2010 provides for the Commission to consult on health care safety and quality matters. There is an equal expectation that the Authority would consult on performance indicators and this should be included in the functions of the Authority under clause 60 of the Bill.

Performance indicators and additional functions subject to Parliamentary scrutiny

The AMA considers that the performance indicators formulated by the Authority and the written instrument conferring additional functions on the Authority by the Minister should be subject to Parliamentary scrutiny. Accordingly, subclauses 60(4) and (5) should be removed from the Bill, thereby making the respective instruments subject to disallowance by the Parliament.

Clause 62 Additional provisions about reports

Clause 62 of the Bill requires the Authority to consult with health care providers where it has prepared a report that indicates poor performance. There is no requirement in the Bill for the Authority to routinely feedback reports to health care providers.

The AMA recommends that the Authority be required to contemporaneously provide direct feedback to all providers of data to allow them to compare their performance against similar providers. Health care services cannot improve in a vacuum: prompt feedback on the outcomes of data analysis will allow providers to review their performance and respond proactively.

Clause 63 Additional provisions about performance indicators

There should be an open and transparent process to develop performance indicators that includes consultation with the providers of data. The effect of subclause 63(2) is not clear, but it appears to allow the Authority to adopt or incorporate other performance indicators that the Authority has not itself developed. The AMA questions the purpose of this clause given the central function of the Authority. Further, it is not clear from the clause itself or the explanatory memorandum when the Authority would use this provision and why. Therefore, the AMA recommends this clause be removed from the Bill.

72 Appointment of members of the Performance Authority

The process for appointing the Chair of the Authority should be clear in the Bill. The legislation as currently worded does not specifically describe who will appoint the Chair or what process will be followed, although this is described for the Deputy Chair. It can only be assumed that the appointment of the Chair is covered in subclauses 72(1) and (3) and is therefore the same as for ordinary members.

The AMA seeks an amendment to subclause 72(4) to ensure that at least one member of the Authority is a practising medical practitioner who is nominated by the AMA. It is essential that the Authority is advised by a practising medical practitioner on the reasonableness of proposed performance indicators, the appropriate data sets that demonstrate that services meet the performance indicators and to highlight when raw data presented doesn't reflect experience on the ground.

87 Decisions without meetings

The catch-all subclause 87(1)(c) suggests that any decision could be made at any time by anyone if 'reasonable efforts were made to inform all Authority members of the proposed decision'. Who exactly will be making 'reasonable efforts' to inform the members, and who is then making the decision on behalf of the Authority? This clause should clarify in more detail the circumstances under which it appears that anyone can make any decision, regardless of impact, on behalf of the Authority.

We do not consider that subclause 87(2) is sufficient to address the above concerns.

90 Delegation by the Performance Authority

The function in subclause 60(1)(c) to formulate performance indicators should not be able to be delegated to a single member of the Authority or to staff of the Authority. It must remain with the Authority and clause 90 should be amended to ensure this occurs.

108 Minister may require the Performance Authority to prepare reports or give information

It should be a requirement that all reports required by the Minister under subclause 108(1) are published on the internet. Accordingly, subclause 108(4) should be amended to require all reports to be published. If there are particular circumstances when a report should not be published, this should be made clear in the legislation. Reports to the Minister should be published within 30 days of being provided to the Minister.

We would be happy to expand on any of these points for the Committee. As we understand the Committee is not conducting public hearings, the Committee Secretariat may contact Ms Belinda Highmore on (02) 6270 5439 if the Committee requires further information or clarification about this submission.

Yours sincerely



Dr Andrew Pesce
President

11 March 2011

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