

Submission to the

**Senate Community Affairs Committee  
Inquiry into Compliance Audits  
on Medicare Benefits**

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## **About the APS**

The Australian Psychological Society (APS) is the peak national body for the profession of psychology, with over 17,000 members, representing over 60% of registered psychologists. Approximately 35% of psychologists work in private practice, with over 94% of these having Medicare Provider Numbers.

The APS operates through its National Office located in Melbourne. Members are supported within the APS by 9 professional Colleges, 32 Interest Groups and 40 Branches throughout Australia. The APS has a number of health related specialist Colleges consisting of experts in the assessment and treatment of people with physical and mental health problems.

As the representative body for psychologists, the APS has access to a vast pool of psychological expertise from both academic and professional service delivery perspectives. It is represented on a number of advisory groups involved in the planning, implementation and ongoing monitoring of Government policy initiatives. The Executive Director of the APS has been extensively involved in the development of Medicare items for psychology, allied health under the Enhanced Primary Care (EPC) program and the Better Access to Mental Health Care Initiative.

## **Introduction**

The APS welcomes the opportunity to comment on the Exposure Draft of the Health Insurance Amendment (Compliance) Bill 2009 in relation to the increased *“compliance audits on Medicare benefits by increasing the audit powers to Medicare Australia to access the patient records supporting Medicare billing and to apply sanctions on providers”*. The APS believes that the compliance audit process is an essential component of Medicare to ensure the scheme’s integrity and accountability. We trust the Committee will find the input by APS of value in its considerations of the Draft Exposure Bill.

The Exposure Draft Bill and the associated Explanatory Material goes into considerable lengths to outline the proposed increased compliance audit process. While the APS is supportive of the rationale for increased compliance audits, we believe there are three particular issues that need further clarification.

### **1. Conflicting role of compliance auditing and the Professional Services Review process**

The most serious concern from the APS in relation to the Exposure Draft Bill is the blurring of the lines between the proposed compliance audit process and the existing Medicare Australia Professional Services Review (PSR) process. It is the understanding of the APS that the compliance audit is an administrative process while the PSR is focused on decisions about clinical appropriateness.

The Bill presented provides contradicting information regarding the access to clinical information in the proposed compliance audit process. For instance, on page 19 of the Explanatory Notes (2.32), it states that *“practitioners will, in some cases, be required to produce documents... containing clinical information”*; which is in contrast to notes 1.26 and 1.27 (page 7) where it is noted that the compliance audit process *“is a question of fact which does not require any clinical assessment of the service”* and *“does not assess whether the service was clinically appropriate”*.

The APS has significant concerns regarding the requirement to provide clinical information particularly under Section 7 of the Exposure Draft that allows Medicare Australia as part of the compliance audit to require production of a document, extract or copy containing health information (within the definition of the Privacy Act 1988) about an individual.

The relationship between a treating psychologist and their patient is built on trust and the confidence that the details that are provided during treatment remain private. While this will be the case for many treating clinicians it is particularly salient when the person has a mental illness. There is a lengthy history of people with mental health problems being discriminated and stigmatised against. The APS Code of Ethics requires psychologists to keep client records confidential. While

there is a section that allows access to these records where there is legal obligation to do so, the APS would not consider it appropriate for access to be granted as part of a compliance audit process. We believe that privacy and confidentiality of clinical information are paramount in a provider – client relationship and must not be overridden by an administrative audit process. The PSR program should remain the sole process where clinical information can be accessed, and only by qualified practitioners in the specific disciplines of the clinical service provider from whom the information is requested.

As the proposed process will require providers to comply with the compliance audit request, it will be much easier for the administrative audit to gather sufficient information for its purpose and then to refer to the PSR process for further investigation. Therefore, the APS sees no need for Medicare Australia to access clinical information under the proposed compliance audit process.

The removal of any references to the access of clinical information will maintain the intended purposes of both the compliance audit and the PSR processes. It will also ensure that privacy and confidentiality of client clinical information are maintained under the proposed process, removing any requirement for Medicare Australia or providers to inform clients that their files are being accessed.

*Recommendation: Remove all references to access to clinical information as part of the compliance audit process in the Exposure Draft Bill.*

## **2. Need clearer guidelines on substantiating information**

The Exposure Draft Bill places onus of proof wholly on providers to demonstrate that they have not defrauded Medicare Australia in the compliance audit process. This is outlined on Page 8 of the Bill, (1C), part (c) where “*information contained in the document, extract or copy does not properly substantiate (wholly or partly) the amount paid... the amount is recoverable as debt due to the Commonwealth...*”. The judgment as to what constitutes proper substantiation of claims made rests entirely with Medicare Australia under the draft Bill. The lack of strict guidelines outlining what constitutes substantiating information places providers at considerable disadvantage under the proposed compliance audit process. It is therefore possible, for fear of under-substantiating their claims or not keeping the required type of substantiating information, for providers to produce excessive information, including sensitive, private and confidential clinical information.

*Recommendation: Specify in the Draft Bill the type of document, extract or copy required by providers to wholly substantiate their claims made.*

## **3. Providers liable for administrative errors under the proposed process**

The APS is equally concerned that providers will be made liable for administrative errors of Medicare Australia under the proposed compliance audit process. While we appreciate that Medicare Australia processes large volumes of claims, driven by the increases in the provider population and the corresponding increase in the number of services provided, we believe that administrative errors by Medicare Australia should be rectified by Medicare Australia.

For example, in order to waive (100% reduction) the administrative penalty (p. 13 of Exposure Draft Bill), providers must have notified Medicare Australia CEO, “*in approved form*”, before they were contacted, that they were overpaid by Medicare Australia. Alternatively, if providers volunteer information regarding overpayment after contact by Medicare Australia, but before any formal notifications, their administrative penalty amount is reduced by 50%. This section assumes that the providers are actively defrauding the claiming process, places providers solely responsible for any overpayments, and does not take into account the potential for administrative error by Medicare Australia for such over payments. The APS believes that providers must not be made liable for any penalties due to errors not of their doing.

*Recommendation: Remove any references to administrative penalties on top of base penalties, unless it can be demonstrated that Medicare Australia is absolutely error free in its administrative and payment processes.*

**Conclusion**

While the APS is supportive of a Medicare compliance audit process, we are concerned about changes that allow access to confidential clinical information as part of this process, lack of clarity regarding substantiating information required and the use of administrative penalties upon providers even when these have been incurred due to Medicare Australia's error. We urge the Committee to closely examine the issues raised, as well as our recommended solutions. We will be happy to appear before the Committee should any aspect of this submission require further clarification.