

Dissenting Report

Coalition Senators

Introduction

1.1 The Chronic Disease Dental Scheme (CDDS) was introduced by the Howard Government to fill a gap in the provision of health services in Australia. Since its inception in 2007, many thousands of people suffering persistent and complex dental conditions associated with chronic disease have benefited from access to the CDDS.

1.2 When the Rudd Government came to power, it sought to dismantle the CDDS and replace it with its own scheme. Its first attempt at bringing a halt to the scheme was through the introduction of a repeal Determination in May 2008. This failed as the Senate voted for disallowance of the Determination. Again, in September 2008, the Senate rejected the Government's attempt to have the disallowance rescinded. The decision by the Coalition to block the cessation of the CDDS was not taken lightly. As Senator Richard Colbeck stated at the time:

The opposition has considered this question very carefully before taking the serious action of moving this disallowance. We did not move this motion capriciously, but we are strongly of the view that the enhanced primary care dental access scheme, colloquially called Medicare dental, has, since its establishment last year, been of immense benefit to many Australians suffering chronic and complex dental conditions.¹

1.3 After these defeats, it appears that the Government changed tack and Medicare Australia began a wide-ranging program of compliance audits aimed at discrediting the scheme. These audits were not only aimed at fraudulent activity but also at non-compliance with administrative requirements under section 10 of the Health Insurance (Dental Services) Determination 2007.

1.4 The Health Insurance (Dental Services) Bill 2012 [No. 2] was introduced in the House of Representatives by Shadow Minister for Health, the Hon. Peter Dutton, and by Senator David Bushby in the Senate. It aims to redress past and future inequities regarding Medicare's auditing of dental practitioners participating in the CDDS. The inequities addressed arise from the pursuit by Medicare of dentists and dental prosthetists who have provided desperately needed services to those who have suffered from chronic dental conditions but who have failed to comply with administrative requirements.

1 Senator Richard Colbeck, *Senate Hansard*, 19 June 2008, p. 2814.

1.5 The undertaking of these audits has resulted in adverse outcomes for dentists, dental prosthetists, their employees, their patients and the reputations of highly regarded health professionals. The Australia Dental Association made clear how dentists have been treated by the Government:

The comments published in the press by ministers have painted the dental profession in a bad light by the use of the words 'rotting' and 'overservicing', when in fact what has occurred is some administrative paperwork noncompliance and expenditure incurred that has exceeded government expectations. If dentists are going to participate in ongoing schemes to help deliver care to the needy, some significant bridge-building needs to be done.²

1.6 The Australian Dental Association (NSW) (ADANSW) informed the committee that:

The ADA New South Wales endorses this bill because it seeks to redress an injustice. Dentists should not be penalised if they have provided appropriate dental treatment in a timely fashion to patients with chronic disease simply because they failed to comply with paperwork requirements they misunderstood or even were unaware of. This profession would never assert it is immune from scrutiny, audit or review, nor will it ever condone fraudulent activities against the crown or defective and inappropriate delivery of care.³

Issues

1.7 This Government has done nothing but try to denigrate a scheme which has delivered around 11 million treatments to more than a million Australians. Of great concern has been the way in which audits have been conducted. There were many reports of delays in communication of outcomes, the distress caused to patients and families and the undermining of reputations. The Australian Dental Prosthetists Association reported:

The audit process in itself has caused a lot of stress for members. There are members whose audits have not been finalised despite its seeming that the actual audit activity has been complete for some months. So those members are in limbo with the fear of possible financial ruin. They have had no closure on that. It also appears that there is a contravention of Medicare's own compliance philosophy where in their compliance brochure they talk about cases of accidental noncompliance being treated with the recognition that people make honest mistakes and that the response is that they provide counselling and feedback.⁴

2 Dr Shane Fryer, Australian Dental Association, *Committee Hansard*, 1 May 2012, p. 1.

3 Dr Mark Sinclair, Australian Dental Association (NSW), *Committee Hansard*, 1 May 2012, p. 10.

4 Ms Sara Harrup, Chief Executive Officer, Australian Dental Prosthetists Association, *Committee Hansard*, 1 May 2012, p. 18.

1.8 One submitter indicated that family members of deceased patients were contacted as part of an audit:

I have unfortunately had a couple of patients pass away during treatment but I was very disappointed to see from my Audit outcome that family members have indicated that NO services were conducted. This isn't fair and isn't true.⁵

1.9 The Committee has received more than 400 written submissions in three weeks, the vast majority of them supporting the Bill and many containing personal accounts of the stress caused by audits.

1.10 Coalition senators note the completed audits show that 70 per cent of dental practitioners have been deemed to have failed to comply with the administrative compliance requirements of the scheme. The Department of Human Services has suggested that dentists simply failed to properly read and understand educational material on the scheme. It provided the Senate with documents which it argued made it clear that adequate information was provided.⁶

1.11 Coalition Senators dismiss this assertion. It is highly unlikely that a large number of highly educated professionals would not understand these requirements, if sufficient information had, indeed, been provided. In addition, closer examination of the documents reveal that some have only passing reference to the CDDS and do not in any way provide targeted information on the compliance requirements of the CDDS. The ADA NSW commented:

...those six documents that we outline in our submission were specifically referred to on numerous occasions in various previous Senate committee hearings by both the Department of Health and Ageing and the Department of Human Services, where they have been asked a question about what education was provided—what correspondence was sent to dentists or dental practitioners to alert them to the requirements of the scheme? There is constant reference to six documents.

If these are the best that they can come up with, two of them really only say, 'We're going to close this scheme.' One of them talks more about the Medicare Teen Dental Plan. Really the only one that we have identified as being of any substance was very early on, the second occasion, on 17 October, when the Medicare Benefits Schedule was sent to dentists. We note the fact that at the time there were probably 13,000 registered dentists in Australia but according to Medicare they only sent it to 9,000 people.⁷

5 Dr Dragan Flajnik, *Submission 147*, p. 3.

6 Mr Ben Rimmer, Department of Human Services, *Committee Hansard*, 1 May 2012, p. 35.

7 Mr Bernard Rupasinghe, Australian Dental Association (NSW), *Committee Hansard*, 1 May 2012, p. 12.

1.12 Coalition senators do not believe that the education process undertaken to ensure that dentists and dental prosthetists understood the requirements of the CDDS, in particular, section 10 requirements, was adequate. Some witnesses considered that because of the supposed imminent closure of the CDDS, the Government may have failed to devote sufficient effort to educate dentists. The ADA submitted:

The department seemed content to do as little as possible to educate members, perhaps thinking that, as the scheme was to close, education expenditure could be saved. Indeed, if you look at the material allegedly distributed to dentists before this time, as identified by the department in the material it presented to the Senate, you will see that almost as many letters were sent advising of closure of the scheme as were sent with details of compliance requirements with the scheme.⁸

Admission by the Government

1.13 Representatives from the Departments of Health and Ageing and Human Services acknowledged mistakes have been made throughout the Federal Labor Government's aggressive pursuit of dentists. The Department of Human Services stated that 'with the benefit of hindsight there are always opportunities to improve in most things that we do in government'.⁹ While this may be true, it is dentists and dental prosthetists who are feeling the brunt of inadequate provision of information. The Government is demanding the repayment of some \$21.6 million of benefits paid to dental practitioners who have provided services but who failed to comply with administrative requirements and this is likely to grow as the results of further audits become apparent.

1.14 Under questioning from Senator Concetta Fierravanti-Wells, the Shadow Minister for Ageing and Mental Health, and Senator for Tasmania, David Bushby, officials confirmed that Minister Kim Carr has identified a need to examine the audit process and its impacts:

The minister has asked us to advise the committee that, notwithstanding the government's intention to close the scheme completely, he accepts that some but not all of the concerns that have been raised do require further consideration and that is a matter that is now underway within normal departmental processes.¹⁰

8 Dr Shane Fryer, Australian Dental Association, *Committee Hansard*, 1 May 2012, p. 2.

9 Dr Shane Fryer, Australian Dental Association, *Committee Hansard*, 1 May 2012, p. 2.

10 Mr Ben Rimmer, Department of Human Services, *Committee Hansard*, 1 May 2012, p. 26.

1.15 Furthermore, it was revealed that the Government has sought legal advice to determine what level of discretion can be exercised when seeking repayments from dentists.¹¹ It is not surprising that Minister Carr has needed to obtain legal advice. Further Coalition senators call on the Government to ensure that any reconsideration of the audit process includes all those who have already been audited.

Conclusion

1.16 The evidence received by the committee has thrown light on an injustice inflicted on a highly professional and dedicated group of health practitioners. While it is acknowledged that there was non-compliance, the non-compliance was of an administrative nature. It was not because of fraud or roting and it arose primarily because of inadequate information and education about compliance requirements.

1.17 Finally, Coalition senators note that there has been an acknowledgment from the Government that they've mishandled this witch-hunt. It is up to Minister Carr to immediately halt the Medicare Audit Taskforce and waiver any demands for repayments.

Recommendation 1

1.18 That the Health Insurance (Dental Services) Bill 2012 be passed.

Senator Concetta Fierravanti-Wells
Senator for NSW

Senator David Bushby
Senator for Tasmania

11 Mr Ben Rimmer, Department of Human Services, *Committee Hansard*, 1 May 2012, p. 28.