



AMA

AMA Submission: Increased MBS Compliance Audits

January 2009

Executive summary

As the peak professional organisation representing medical practitioners in Australia, the AMA is a strong supporter of the Medicare benefits arrangements. Through the payment of Medicare rebates, based on fees set out in the Medicare Benefits Schedule (the MBS), all eligible Australian residents have access to high quality, affordable medical services.

The AMA is committed to working with the Government to maintain the integrity of the MBS. We have a long history of being involved in the development of item descriptors through the Medicare Benefits Consultative Committee (MBCC). Under this process, the medical profession works with Government to ensure MBS item descriptors, and consequently Medicare rebates, reflect modern medical practice.

The AMA supports appropriate audit activity to ensure the integrity of the MBS. However, it has the following concerns with the propositions set out in the information sheet on Increased MBS Compliance Audits (the information sheet):

- The interpretation of MBS items, and therefore whether a claim is “incorrect”, is often subjective;
- Medicare Australia has not provided any evidence, or a regulatory impact statement, to demonstrate that compliance by the medical profession with the MBS is worsening and that production of evidence and financial penalties are warranted;
- The requirement for doctors to produce evidence to “verify their claims” will inevitably involve providing confidential patient records to Medicare Australia; and
- A system of administrative penalties will be unfair if non-medically trained bureaucrats have authority to determine items have been claimed incorrectly where the clinical requirements of the items are unclear, even with a system of appeal.

Interpretation of MBS items

It is important to understand how the (non-conscripted) medical profession finds itself accountable to a Government program that provides financial assistance to the public.

The MBS arrangements centre on the payment of benefits to patients to assist them with the cost of their medical care. To facilitate the payment of benefits to patients by Medicare Australia, almost all medical practitioners include MBS item numbers for services rendered on their accounts. As stated in the information sheet, this allows Medicare Australia to process the payment of benefits “with minimal up-front verification so that individuals can receive their rebates quickly”.

Yet doctors are under no obligation to include MBS item numbers on their accounts. In accordance with regulation 13 of the *Health Insurance Regulations 1975*, doctors could choose to describe the professional service sufficient to identify the item that

relates to the professional service. It is an administrative convenience for Government and patients that doctors interpret item descriptors and include the relevant MBS item numbers on their accounts.

In selecting an MBS item number for the purposes of a patient rebate, and to permit informed financial consent for a service, doctors put themselves at risk of “claiming incorrectly”.

In its infancy the MBS was conceptually simple and item descriptors were straightforward. Many of the procedural items retain their original simplicity. For example, the descriptor for item 30597 is *splenectomy*, and leaves the clinical indications for and approach of the service to the medical expertise of the doctor rendering the service.

However, over the past decade the number of items has grown considerably and the item descriptors now direct the clinical circumstances under which the service is provided. This is particularly so for the attendance items.

The proliferation of items and the complexity of their descriptors have made the task of interpreting when Medicare benefits are, and are not, payable for a service more difficult for the medical profession. A decision by Medicare Australia that a claim for a benefit is incorrect, particularly when the item descriptor is equivocal, is at best subjective.

Further, the morass of claiming rules adds to the difficulty of making legitimate claims.

The AMA is concerned that the “incorrect claiming” element of the Increased MBS Compliance Audits initiative will have financial consequences for patients. Doctors who are not confident in their interpretation of item descriptors and therefore nervous of being:

- the subject of a Medicare Australia audit;
- required to hand over their patients’ medical records; and
- fined, in addition to the repayment of benefits, for claims deemed to be incorrect

may be less inclined to claim items where there is doubt about their interpretation. The consequence of this will be higher out-of-pocket costs for patients through reduced benefits.

The AMA does not condone doctors making claims for Medicare benefits for their patients for services they did not perform. Medicare Australia compliance processes that ensure this does not occur have the full support of the AMA. Further, the AMA fully supports the Professional Services Review (PSR) process to protect the Medicare arrangements from inappropriate practice, and the peer review element of the PSR has the confidence of the medical profession.

The key to ensuring the Medicare benefits arrangements continue to meet its policy objectives is to make sure that the MBS is simple and clear in its construct, and that it reflects current medical practice.

Doctors must be supported by the Department of Health and Ageing (DoHA) and Medicare Australia in their role of submitting claims for Medicare rebates on behalf of patients and for the administrative convenience of the Government. Doctors need access to clear information about the circumstances in which MBS items can, and cannot, be claimed. The AMA welcomes the announcement that the provision of information, support and education to providers will be increased and enhanced, but notes the withdrawal of the printed MBS Book by DoHA is counter-productive in this regard, and particularly in light of the implementation of this initiative.

In addition, the medical profession and DoHA must make better use of the MBCC process to ensure MBS items reflect current medical practice. The MBCC process ensures a wider cross section of the medical profession is consulted on and involved in the development of items, thereby extending the knowledge base about the intention of the items and associated rules. The AMA would like to meet with DoHA to discuss ways of making the MBCC process more efficient to address shortcomings with existing items.

Further, a more timely mechanism needs to be introduced to deal with Medicare funding for changing and emerging medical technologies. There should be a rapid response by DoHA to recognising and allowing the payment of benefits for new services as they emerge in Australia, pending a final assessment of the service. For its part, the medical profession needs to facilitate that assessment by establishing and contributing to data collection in the Australian setting during the early days of funding. The AMA hopes that the Government's review of Health Technology Assessment will consider this issue.

The compliance problem

The information sheet seeks to justify the increased MBS compliance audits initiative because of the growth in the number of items and individual providers. The AMA notes that both these factors are a result of government policies. The increase in Medicare expenditure is a direct result of those policies, and because an ageing population and a high incidence of chronic disease means that Australians require more health care.

The AMA notes that increasing the number of audits and requiring doctors to provide evidence to verify claims will impose additional time and administrative burdens on busy medical practices. Medicare Australia has not made available evidence to demonstrate that compliance with the MBS is worsening, or that increasing the number of audits will produce a greater number of "incorrect claims" from which benefits can be recouped.

At the very least, the AMA expects DoHA and Medicare Australia to provide a regulatory impact statement to fully outline the extent of the compliance problem and

to examine and assess the appropriate remedies, and their impact on medical practices.

In addition, after the initiative is implemented it should be monitored and evaluated to assess its effectiveness, as well as the resulting impact on medical practice. The relevant legislation should require Medicare Australia to provide a report on the evaluation of the initiative to Parliament.

Production of evidence

The information sheet states that the audits will be simple administrative checks to ensure providers are fulfilling the MBS item requirements, confirmed by information provided to Medicare Australia by the doctor. Given the difficulty with the interpretation of a large number of MBS item descriptors as explained above, it is hard to envisage that most audits will not require clinical interpretation by Medicare Australia.

Further, the information sheet states that most of this “information” will be in the form of referrals and requests, appointment books, and receipts. If this is the case, then Medicare Australia should produce a list that matches these types of information with the MBS requirements it will satisfy in order to verify claims for particular items. For the remaining items, Medicare Australia should similarly list the clinical information that would satisfy the item requirements.

This would be a simple way to make it clear to the medical profession about what information Medicare Australia would seek to verify particular claims.

Patient consent

Given that the very nature of a claim for Medicare benefits is for a professional medical service, the AMA is of the view that inevitably the information to verify the claim will be held in the patient medical record, and not in other documents.

Consequently, the patient would need to consent to the doctor making the patient’s personal information available to Medicare Australia. The AMA is very concerned that this undertaking will compromise the doctor/patient relationship and trust because a patient will know that his or her doctor is the subject of an audit, even if there is no case to answer.

It is reasonable to assume that very few Australians would appreciate that their doctor effectively makes a claim against the MBS on their behalf, nor perhaps understand that a compliance audit by Medicare Australia has anything to do with the doctor’s medical skills and expertise. It is important that patient education by Medicare Australia about MBS billing practices is part of the implementation of this initiative.

Given the potential impact on the doctor/patient relationship and the additional administrative burden on the doctor’s practice, doctors should not be required to obtain consent from patients to provide personal information from the medical record to Medicare Australia. The relevant legislation will need to protect doctors in this regard.

Instead, the Government will need to explain to the Australian people why it wants/needs Medicare Australia to see their medical records as part of the MBS claiming process. The AMA notes that in 1994 Parliament protected the confidentiality of patient medical records when the then Health Insurance Commission sought to gain the powers that Medicare Australia now seeks.

Review of patient records

While the AMA notes that Medicare Australia is the custodian of personal information, we believe most people will not want their most personal health information seen by bureaucrats. Further, it is not appropriate that non-medically trained administrative staff use medical records to undertake a “simple administrative check” to determine that an item requirement has been satisfied.

There is no explanation in the information sheet about how the audits will be conducted and how a simple administrative check will be escalated to a clinical interpretation of an item requirement. Medicare Australia should provide more information about this and seek further comments from stakeholders.

The legislation should ensure that in the event that a doctor is required to provide a medical record to Medicare Australia, only a medically trained employee can view that record and consider the “incorrectness” of the claim. This would accord with the PSR processes that have the support of the medical profession.

Penalties

The information sheet provides little information to explain how the proposed system of financial penalties will operate and what the procedural fairness and natural justice elements will be. Again, Medicare Australia must provide more detail to stakeholders on this aspect of the initiative in order for proper consultation to occur.

At this time the AMA can only comment that a system of administrative penalties will be unfair if non-medically trained bureaucrats have authority to determine items have been claimed incorrectly where the clinical requirements of the items are unclear, even with a system of appeal.