

06/114
D10/2756



AUSTRALIAN MEDICAL
ASSOCIATION
ABN 37 008 426 793
T | 61 2 6270 5400
F | 61 2 6270 5499
E | info@ama.com.au
W | www.ama.com.au
42 Macquarie St Barton ACT 2600
PO Box 6090 Kingston ACT 2604

Ms Samantha Robertson
Assistant Secretary
Medicare Benefits Branch
Department of Health and Ageing
GPO Box 9848
Canberra ACT 2601

Dear Ms Robertson

**Health Insurance Amendment (Professional Services Review) Bill 2010 –
comments on exposure draft**

Thank you for the opportunity to comment on the draft amendments. We appreciate the Department's efforts to consult with the AMA during the review of the PSR scheme and in this current process to amend the Health Insurance Act.

We continue to support a PSR scheme that provides a fair, peer-reviewed process for doctors. We also support continuing education activities that help doctors understand the legislative requirements of the Medicare benefits arrangements to minimise their risk of being referred to the PSR.

The AMA supports most of the amendments proposed in the exposure draft. However we:

- oppose the amendments under Part 6 that would compel persons under review to produce 'objects';
- seek to confirm that the effect of the amendments under Part 8 would allow the Director of PSR and the Determining Authority (DA) to disqualify for up to five years those practitioners who would otherwise have been referred to the Medicare Participation Review Committee (MPRC) under section 106X of the current legislation; and
- wish to be consulted on the development of regulations concerning the various circumstances that would warrant the Director of PSR making referrals to the chief medical officers or equivalent in each state and territory rather than medical boards.

Part 6 – Power to compel production of objects

It appears that this amendment is not supported by evidence that it is necessary. The Department has referred to 'one occasion' where a person under review wanted to present an object as evidence but was not able to do so because the current legislation did not allow it. However, no examples have been provided to the AMA where the

need to examine objects has been necessary in past investigations or where it has impacted on the ability of the PSR committee to complete an investigation of inappropriate practice.

Without any evidence or examples, the AMA cannot support the amendment as drafted. Given the rationale provided for the amendments was based on allowing a person under review to produce an object as part of their defence, we believe the Bill should be amended so that the PSR Committee can receive objects to examine them, but that there be no provision for the Director or PSR Committee to compel the production of an object.

Part 8 – Powers to disqualify a person for up to five years

The AMA agreed to and continues to support recommendation 9 of the 2007 report of the PSR review in respect of practitioners with an effective determination of inappropriate practice on two or more separate occasions. The recommendation was that ‘PSR cases currently referred to the MPRC be directly referred to the DA and that the DA be given the power to enforce relevant sanctions equivalent to those currently available to the MPRC’.

However, the proposed amendments also provide the Director of PSR with powers to disqualify these people from the Medicare arrangements for up to five years.

We note that the Director and the DA already have powers to disqualify people for up to three years. We understand that the amendments would allow the Director and the DA to disqualify for up to five years only those practitioners who would otherwise have been referred to the MPRC under section 106X of the Health Insurance Act, i.e. only people with an effective determination of inappropriate practice on two or more separate occasions.

We also understand the proposal to allow the Director as well as the DA to disqualify someone of up to five years is so that persons dealt with by ‘agreement’ with the Director, and persons dealt with by a determination of the PSR Committee, can be dealt with equally. We also understand that when the Director makes an agreement with a person under review (which may include disqualification from Medicare), this agreement must be ratified by the DA before it can take effect.

We seek confirmation that our understanding of the provisions is correct.

Regulations

The Department has undertaken to consult with the AMA on the development of the regulations related to these amendments. We understand that in respect of medical practitioners, the regulations will provide for the Director to make referrals to the chief medical officers or equivalent in every state and territory. We think this needs careful consideration about the various circumstances that would warrant the Director to refer to a chief medical officer rather than the Medical Board of Australia which is currently provided for in section 106XA of the Health Insurance Act. We look forward to discussion about this in due course.

If you have any questions about our comments, please contact Georgia Morris, 6270 5466 or gmorris@ama.com.au, in the first instance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Pesce', written in a cursive style.

Dr Andrew Pesce
President
Australian Medical Association
13 May 2010