

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 199

Minute No. 16 of 2006 – Minister for Health and Ageing

Subject - *Health Insurance Act 1973*

*Health Insurance (Professional Services Review) Amendment Regulations 2006
(No. 1)*

Section 133 of the *Health Insurance Act 1973* (the Act) provides, in part, that the Governor-General may make regulations prescribing the matters that are required or permitted by the Act to be prescribed, or that are necessary and convenient to be prescribed for carrying out or giving effect to the Act.

Part VAA of the Act establishes the Professional Services Review (PSR) Scheme and the position of Director of PSR. The purpose of the PSR Scheme is to protect the integrity of the medicare benefits and pharmaceutical benefits programs. This includes protecting patients and the community from the risks associated with inappropriate practice and protecting the Australian government from having to meet the cost of services provided as a result of inappropriate practice.

The purpose of the Regulations is to refine the prescribed arrangements applying to the PSR Scheme in two respects: amends the definition of “professional attendance” for the purposes of determining what constitutes a prescribed pattern of services and therefore deemed inappropriate practice; and prescribes the bodies to which the Director of PSR may refer practitioners under review for failure to comply with professional standards. This is explained in greater detail below.

Subsection 106KA(3) of the Act provides that the regulations may prescribe a prescribed pattern of services in relation to the PSR Scheme. Part 3 of the *Health Insurance (Professional Services Review) Regulations 1999* (the Principal Regulations) currently provides that general practitioners or other medical practitioners rendering 80 or more “professional attendances” per day on each of 20 or more days in a 12 month period constitutes a prescribed pattern of services. Subsection 106KA(1) in effect deems the conduct of a person in relation to a prescribed pattern of services to be “inappropriate practice” and provides for it to be referred to the PSR Scheme.

In relation to the first amendment to the Principal Regulations, the definition of “professional attendance” is updated to include several groups of services that were introduced on the general medical services table after the Principal Regulations were made. This includes items 2497-2578 (General practitioner attendances associated with Practice Incentives Program payments) and items 2721-2727 (Focussed psychological strategies). The full list is at Attachment A.

The medical profession generally accepts that high volume provision of services by a practitioner prevents adequate clinical input. The report of the Review Committee of the

Professional Services Review Scheme in 1999 recommended introducing a deeming provision developed in consultation with the profession, whereby a general practitioner who has provided 80 or more consultations per day on 20 or more days in a year would be deemed to have engaged in “inappropriate practice” unless he or she can demonstrate that there were exceptional circumstances.

(2)

Medicare Australia may request the Director of PSR to review the services provided by a medical practitioner who is deemed to have exceeded the 80/20 provision. The Director of PSR will determine whether to conduct a review based on the Medicare report and other relevant material. If the medical practitioner cannot demonstrate that there existed exceptional circumstances, he or she will be deemed to have engaged in inappropriate practice and be subject to disciplinary actions such as counselling and reprimand, repayment of Medicare benefits, or partial or full disqualification from Medicare for up to 3 years.

In relation to the second change to the Principal Regulations, section 106XB of the Act requires the referral of a person under review to the appropriate regulatory body if the person fails to comply with professional standards. For the purposes of this section, subsection 106XB(3) provides that the regulatory bodies are prescribed by regulation. No such bodies were previously prescribed, so the Regulations now prescribe regulatory bodies for general practitioners and other practitioners.

An overview of the Regulations is at [Attachment A](#) and details are set out in [Attachment B](#).

The Australian Medical Association has been consulted in the preparation of the Regulations.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered.

Authority: Section 133 of the
Health Insurance Act 1973

ATTACHMENT A

OVERVIEW OF THE *HEALTH INSURANCE (PROFESSIONAL SERVICES REVIEW) AMENDMENT REGULATIONS 2006 (No. 1)*

Item [1] of Schedule 1 of the Regulations amends the definition of “professional attendance” in the Principal Regulations for the purposes of determining what constitutes a prescribed pattern of services, and therefore deemed inappropriate practice.

Regulation 7 amends the definition of “professional attendance” for the purposes of Part 3 - Prescribed pattern of services, as meaning “a service of a kind mentioned in group A1, A2, A5, A6, A7, A11, A13, A14, or A 15 of Part 3 of the general medical services table”.

The new definition of “professional attendance” adds the following items to the existing definition:

- Group A9 Items 10801-10816 (Contact lenses);
- Group A16 Items 444-449 (Attendance by a medical practitioner who is a sports physician in the practice of sports medicine and to which no other item applies);
- Group A17 Items 900-903 (Domiciliary medication management review);
- Group A18 Items 2497-2578 (General practitioner attendances associated with Practice Incentives Program (PIP) payments)
- Group A19 Items 2598-2708 (Other non-referred attendances associated with Practice Incentives Program (PIP) payments to which no other item applies);
- Group A20 Items 2721-2727 (Focussed psychological strategies);
- Group A21 Items 501-536 (Emergency physician attendances to which no other item applies);
- Group A22 Items 5000-5067 (General practitioner after-hours attendances to which no other item applies);
- Group A23 Items 5200-5267 (Other non-referred after-hours attendances to which no other item applies).

Item [2] of Schedule 1 to the Regulations inserts a new Part 4 into the Principal Regulations, the purpose of which is to specify the appropriate bodies for the purposes of section 106XB. The bodies are specified in listings included in new Schedules 1 and 2 to the Principal Regulations. To comply with subsection 106XB(3) it is necessary to specify separately:

- in accordance with paragraph 106XB(3)(a), bodies for general practitioners (Schedule 1); and
- in accordance with paragraph 106XB(3)(b), bodies for other practitioners (Schedule 2).

Regulation 3A of the *Health Insurance (Vocational Registration of General Practitioners) Regulations* establishes the General Practice Recognition Eligibility Committee (GPREC) and the General Practice Recognition Appeal Committee (GPRAC) as specified bodies for the purposes of paragraph 3F(6)(b) of the Act. In accordance with paragraph 106XB(3)(a) these bodies are prescribed for the purposes of section 106XB.

ATTACHMENT B

Details of the *Health Insurance (Professional Services Review) Amendment Regulations 2006 (No. 1)*

Regulation 1 – Name of Regulations

Specifies the title of the Regulations is the *Health Insurance (Professional Services Review) Amendment Regulations 2006 (No. 1)*.

Regulation 2 - Commencement

Provides that the Regulations commence on the day after they are registered.

Regulation 3 – Amendment of Health Insurance (Professional Services Review) Regulations 1999

Provides that Schedule 1 to the Regulations amends the *Health Insurance (Professional Services Review) Regulations 1999* (the Principal Regulations).

Schedule 1 – Amendments

Item [1] – Regulation 7, definition of *professional attendance*

Substitutes a new definition of “professional attendance” to include Groups A9, A16, A17, A18, A19, A20, A21, A22 and A23 of the General Medical Services Table.

Item [2] – Inserts a Part 4 – “Appropriate regulatory and other bodies for referral of professional issues” into the Principal Regulations.

Part 4 contains a regulation 12 “Appropriate body for non-compliance with professional standards”

Subregulation 12(1) provides that, for the purposes of paragraph 106XB(3)(a) of the Act, the appropriate body is a body specified in column 2 of an item in proposed Schedule 1 to the Principal Regulations that, in the State or Territory in which the general practitioner practises his or her practice:

- (a) is responsible for registering or licensing general practitioners or for regulating the practice of the profession; and
- (b) has the power to take action against the general practitioner in relation to the practitioner’s failure to comply with professional standards.

Subregulation 12(2) provides that, for the purposes of paragraph 106XB(3)(b) of the Act, the appropriate body is a body specified in column 2 of an item in proposed Schedule 2 to the Principal Regulations that, in the State or Territory in which the general practitioner (being a practitioner other than a general practitioner) practises his or her practice or specialty:

- (a) is responsible for registering or licensing practitioners for practice in the profession or specialty to which the practitioner belongs or for regulating the practice of that profession or specialty; and
- (b) has the power to take action against the practitioner in relation to the practitioner's failure to comply with professional standards.

(2)

Schedule 1 Regulatory and other bodies to which non-compliance by general practitioner may be referred

Schedule 1 specifies the bodies, under subregulation 12(1), to which a person under review may be referred in accordance with paragraph 106XB(3)(a) of the Act.

Schedule 2 Regulatory and other bodies to which non-compliance by practitioner other than a general practitioner may be referred

Schedule 2 specifies the bodies, under subregulation 12(2), to which a person under review may be referred in accordance with paragraph 106XB(3)(b) of the Act.