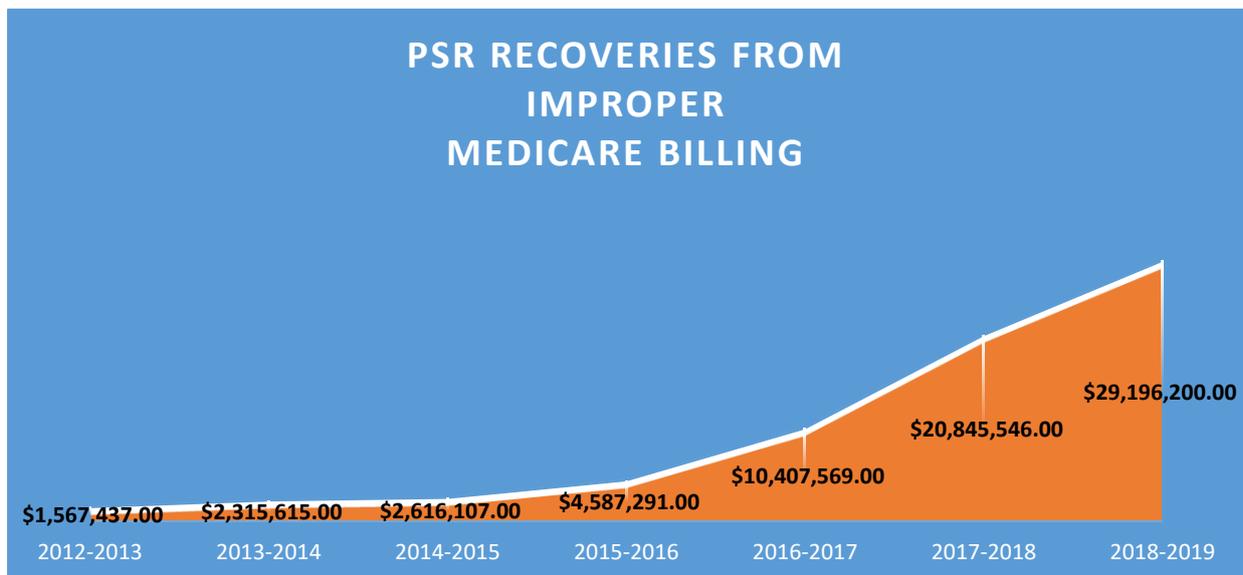




Keeping safe in an ever changing compliance environment: in a nutshell

## KEEPING SAFE IN AN EVER CHANGING COMPLIANCE ENVIRONMENT: IN A NUTSHELL

Keeping our medical billing clients safe in the ever changing compliance environment has been the focus of Medical Billing Experts for the 10+ years we have been working with doctors across Australia. This has become increasingly important over the past few years with the rapid increase in compliance activities by the Department of Health. DOH initially focussed on General Practitioners and is now branching into the various specialties. The increase in DOH compliance activities has led to increased referrals from the Department of Health to the Professional Services Review (PSR) and a flow-on impact of increased recoveries of fees from inappropriate doctor billing.



## Systematic Specialist Audits

In June, the PSR published a statement that:

*“PSR has been advised that the Department of Health is systematically auditing the various medical specialty groups. As PSR receives referrals in new disciplines, it will be necessary to appoint specialists in those disciplines onto the PSR Panel.”*

The PSR went on to state that the following specialists have recently joined the PSR Panel or are being recruited currently:

- One Haematologist
- Two Obstetrician & Gynaecologists
- Three General Surgeons
- Two Respiratory and Sleep Medicine Physician
- Two Rheumatologists
- One Rehabilitation Medicine Physician
- Actively recruiting three Oncologists
- Actively recruiting two Endocrinologists

### **What does this mean for your billing?**

With the Department of Health systematically auditing specialists, all doctors need to update their knowledge of what billing is appropriate for their particular speciality and how to ensure that all elements of MBS items billed have been met. The recent recruiting activities of PSR panel members is an indicator of some of the specialties that are currently undergoing billing reviews or are likely to be reviewed in the near future. All specialists should seek expert advice or compliance focussed outsourced billing services such as those offered by Medical Billing Experts to ensure that all future billing and billing processes are compliant to avoid unnecessary audits.

## Shared Debt Recovery

There has also been a very significant development that doctors and medical practices need to be aware of - Shared Debt Recovery.

The Shared Debt Recovery Scheme (the Scheme) commenced on 1 July 2019 but applies to all billing for dates of service **from 1 July 2018** forward. The Scheme enables the Commonwealth to hold both a practitioner and another party responsible for repayment of compliance debts which arise as a result of incorrectly claiming of Medicare benefits through the making of a shared debt determination.

Shared debt recovery was introduced because Medicare billing is often delegated to non-practitioners, administered through centralised billing areas and can be influenced by organisational processes and policies. Thus, the scheme seeks to apportion the responsibility for incorrect billing practices between the practitioner and the organisation that participated in the billing process.

The scheme does not remove the primary responsibility for appropriate Medicare claiming from the health practitioner providing the service as the practitioner is the only person who can determine that a Medicare service has been delivered in accordance with the requirements of the Medicare Benefits Schedule (MBS). Organisations such as hospitals and private practices (or groups) who are submitting claims, are directly or indirectly receiving Medicare benefits, and are undertaking administrative duties related to Medicare claiming also have an obligation to ensure that claims which are submitted are not false or misleading based on the information they have available. By sharing the responsibility for debts arising from improper Medicare billing, the Scheme was created to encourage practitioners and organisations to work together to minimise incorrect Medicare billing.

#### COMPLETE MEDICAL SERVICE QUICK CHECK

When you are choosing the most appropriate MBS item number to bill, ask yourself three questions:

- ① Does the service rendered comply with all time and content requirements of the MBS item number descriptor?
- ② Would a review by the majority of my peer accept that the treatment provided during the service was clinically appropriate for this patient? and
- ③ Have I adequately documented the service?

#### How does Shared Debt Recovery work?

The Shared Debt Recovery Scheme applies to debts arising from Department of Health Medicare compliance audits. Most audits are performed to determine whether all element of MBS items billed have been met. **Where a claim has been submitted and the requirements of the item descriptor and/or legislation have not been met, a false or misleading statement has been made.**

If the practitioner being audited is in an employment or contractual relationship with another party or organisation, the practitioner can request DOH consideration of a shared debt. The DOH sends a notice to the other party to notify them that they are a potential secondary debtor. During the audit process, the DOH may then request documents from both parties in relation to the debt, the contractual arrangement and other documents relevant to determining whether there should be a shared debt recovery.

After considering all the information received, the Department may make a shared debt determination.

#### In what circumstances will Shared Debt Recovery apply?

In order for a shared debt determination to be made, the following three criteria must apply:

- There is a recoverable amount (a debt) arising from an audit determination that there has been inappropriate Medicare billing (i.e. the making of a false or misleading statement to obtain a Medicare benefit);
- There is a relationship between the practitioner and the organisation (the secondary debtor); and
- The secondary debtor could have controlled or influenced the making of the false or misleading statement(s) relating to the Medicare claiming, obtained a direct or indirect financial benefit from the making of those false or misleading statement(s), and/or there are other factors that make it fair and reasonable for DOH to make a shared debt determination.

## **In what circumstances will Shared Debt Recovery NOT apply?**

The Scheme will **not** apply to:

- claims adjustments where a practitioner alerts Medicare to an error to correct the claims record;
- a voluntary acknowledgement by a practitioner of incorrect billing following a targeted campaign (i.e. a DOH letter asking the practitioner to review their billing);
- debts arising as a result of inappropriate practice following referral to the Professional Services Review;
- debts arising as a result of a false or misleading statement which can be shown to have been made by someone other than the practitioner; or
- debts arising where one party has, without knowledge of the other party, engaged in fraud in relation to Medicare claims or billing.

## **How is the debt shared?**

The legislative default percentage is a debt apportionment of 65% to the practitioner (the primary debtor) and 35% to the other party/organisation (the secondary debtor).

The primary and/or the secondary debtor can request a review of the default percentage during the course of the DOH audit. The factors that can be considered by the DOH include:

- whether there were any arrangements between the parties for apportioning the benefits paid; and if so, what proportion of the benefits paid for the services were received by the primary debtor and the secondary debtor; and
- what influence or control the secondary debtor may have had over the billing for the services under audit.

## **A few key points which are particularly worth highlighting**

- Where a claim has been submitted and the requirements of the item descriptor and/or legislation have not been met, a false or misleading statement has been made.
- A false or misleading statement does not require dishonesty or an intention to defraud on the part of the person making the claim. It can arise from unintentional errors in claiming and is determined by a factual assessment of whether the correct amount was paid to the practitioner, including whether the professional service rendered met all of the elements of the MBS item descriptor.
- The secondary debtor will, in most circumstances, be the person (or organisation) who employs or engages the health practitioner whose provider number was used to make the Medicare claims for which a debt is owed.
- If an organisation does not receive benefits directly from Medicare (i.e. if the Medicare benefits are paid directly to the practitioner), the organisation may still be held responsible for a percentage of the debt.
- In the case of practitioners who are employees or salaried staff, unless the practitioner can show that another party is solely responsible for the claims (for example if another person has falsified claims), the practitioner will be required to pay a proportion of the debt. This applies even if the practitioner receives a salary or is employed or contracted on a "100% donation model" basis.
- If during the course of an audit, a health practitioner submits a voluntary acknowledgement, the organisation may still be required to repay a percentage of the debt.
- Shared Debt Recovery will only apply to audits commenced from 1 July 2019 but applies to services provided from 1 July 2018 onwards.
- There is no provision in the Health Insurance Act that enables either party to be indemnified from the Shared Debt Recovery Scheme. The DOH is not bound to any terms or conditions in a contract between the primary and secondary debtor including those that would seek to indemnify either party.

## Outsourcing to Protect Your Practice

The Department of Health audits are increasingly catching specialists by surprise. Most specialists have been billing the same item numbers using the same administrative and documentation processes for many years and are now discovering during audit processes that they actually have not been fulfilling the requirements of the item numbers they have been billing. This is often due to the fact that the practitioners and their administrative staff have limited opportunity to obtain information or skills to ensure that the processes and documentation standards required by the DOH are met. This is certainly not helped by the constantly shifting goalposts.

To avoid unnecessary audits, specialists should ensure that all future billing and billing processes are compliant by seeking expert advice and/or compliance focussed outsourced billing services such as those offered by Medical Billing Experts.

Medical Billing Experts offers a full range of support services for specialists in all stages of the development of their private practice. We provide our clients with ongoing advice and support to help them avoid unnecessary Medicare audits and clawbacks of funds resulting from improper billing. We are committed to keeping all of our clients compliant with Medicare, Health Fund and Legislative requirements.

Keep an eye out for the next Medical Billing Experts article to make sure that you stay up to date with billing compliance, medical billing news and updates. If you have any questions about your medical billing or medical billing compliance, **please feel free to contact me directly by email at [loryn@medbill.com.au](mailto:loryn@medbill.com.au)**

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