



**medicare**

## Health Insurance Amendment (Compliance) Act 2011

The *Health Insurance Amendment (Compliance) Act 2011* started on 9 April 2011.

### Information for Health Professionals

#### Background information

The *Health Insurance Amendment (Compliance) Act 2011* (the Act) started on 9 April 2011. The Act amends the *Health Insurance Act 1973*.

Key features of the new law are as follows.

- The Department of Human Services can now issue a notice to a health professional, or a person in charge of the professional's records, if there is a reasonable concern that a Medicare benefit has been paid that exceeds the amount that should have been paid. This notice will require a health professional to produce documents to substantiate services.
- Health professionals can seek a review of a decision to recover funds where a Medicare service has not been substantiated.
- An administrative penalty with a base rate of 20 per cent for unsubstantiated amounts that total over \$2500 has been introduced. This penalty is automatically decreased where a health professional voluntarily tells the Department of Human Services about incorrectly claimed amounts. However, it can be increased where a health professional does not tell the Department about incorrectly claimed amounts and does not substantiate services.

The new law is not retrospective and only applies to professional services that are provided on or after 9 April 2011.

#### Notice to produce substantiating documents

The Department of Human Services can now issue a notice requiring a health professional, or the person in charge of the professional's records, to produce documents to substantiate services provided under the Medicare program. However, before a notice is issued the health professional will be given an opportunity to voluntarily provide documents to substantiate services. Health professionals will be contacted in writing at the start of a compliance audit about the services that need to be substantiated and will be given a timeframe to respond that will be at least 21 days.

The Department of Human Services must identify a reasonable concern that the Medicare benefits paid for a professional service or services may be more than the amount that should have been paid. The concern must not relate to the clinical relevance of a professional service.

The Department of Human Services is required to get advice from its own medical advisers about the types of documents that may help substantiate Medicare services. The Department of Human Services must also take reasonable steps to consult with a relevant professional body about these documents.

A notice to produce documents must contain details of the services to be substantiated. The notice can only relate to services rendered in the two years immediately prior to the notice being issued (but not prior to 9 April 2011).

A health professional is not expected to produce documents containing clinical details unless necessary to substantiate a service. A health professional who receives a notice may elect to provide documents containing clinical information to a Department of Human Services medical adviser.

If a notice is issued to a person in charge of a health professional's records, failure to comply with the notice can make the person liable to a civil penalty. A notice cannot be issued to a patient.

If a health professional chooses not to provide documents to substantiate services when requested, the amount paid for those services can be recovered by the Department of Human Services. Administrative penalties may also be applied.

### Application for a review of a decision to recover unsubstantiated amounts

The Department of Human Services is required to notify a health professional about the outcome of a compliance audit, including if it decides to recover amounts that have not been substantiated. The health professional will have the right to seek a review of the decision.

To apply for a review, a health professional must complete an approved application form available on the Department of Human Services' website and provide any additional information to substantiate services. An application for review must be lodged within 28 days after the person is notified of the decision.

The Department of Human Services will review the decision and advise the health professional of the outcome within 28 days after receiving an application.

### Administrative penalty for unsubstantiated services

An administrative penalty applies where services are not substantiated. A base penalty of 20 per cent will apply to unsubstantiated amounts totalling more than \$2500. This penalty is increased or decreased depending on the following circumstances.

If a health professional:

- advises us that an incorrect amount has been paid before being contacted by the Department of Human Services, no penalty applies;
- advises us that an incorrect amount has been paid after the Department of Human Services has contacted them about the commencement of a compliance audit, but before a formal notice to produce documents is issued, a 10 per cent penalty applies;
- advises us that an incorrect amount has been paid after a formal notice to produce documents was issued but before the end of the period to respond to the notice, a penalty of 15 per cent applies;
- does not comply with a notice to produce documents, a 25 per cent penalty applies; or
- has been unable to substantiate an amount paid for services in the previous two years and the total amount recoverable was more than \$30 000, a 30 per cent penalty applies.

The approved form is available on the Department of Human Services' website for you to voluntarily provide details about incorrect payments.

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For more information:

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**For health professionals >  
Doing business with  
Medicare Australia >  
Compliance > IMCA Initiative**

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humanservices.gov.au](mailto:compliance.legislation@humanservices.gov.au)

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