RACGP
Royal Australian College of General Practitioners

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Medicare Compliance – Shared Debt Recovery Scheme

February 2019

1. Introduction and scope of submission

The Royal Australian College of General Practitioners (RACGP) thanks the Department of Health for the opportunity to respond to the consultation on the Shared Debt Recovery Scheme (the Scheme).

2. About the RACGP

The RACGP is Australia's largest general practice organisation, representing over 39,000 members working in or towards a career as a Specialist General Practitioner (GP). The RACGP advocates for and supports GPs, general practice registrars and medical students.

The RACGP is responsible for:

- defining the nature and scope of the discipline
- setting the standards, curriculum and training
- maintaining the standards for quality general practice
- supporting Specialist General Practitioners (GPs) in their pursuit of excellence in patient and community service.

3. Scope of the submission

The RACGP understands that the Scheme will be applied to a range of professions that are eligible to bill items via the Medicare Benefits Schedule (MBS), as well the organisations or practices in which they work. For the purpose of this submission, we refer only to the GPs and general practices providing general practice services.

The RACGP submission therefore solely concentrates on incorrect billing of MBS items only. When referring to incorrect billing or influence on billing practices, the submission is not referring to the decision to charge a fee, or the value of, a fee in addition to the MBS patient rebate – unless specifically stated. This is discussed further in section seven of this submission.

The RACGP submission reflects feedback provided by RACGP members on several aspects of the consultation paper, including:

- employment and contractual arrangements
- the role and obligations of secondary debtors
- the forms of evidence used when making a shared debt determination
- the appropriate percentage for debt recovery.

4. RACGP understanding of legislation intent

There is currently no mechanism in place that allows the government to recover debt accrued by practices as a result of incorrect Medicare billing. GPs are therefore responsible for 100% of the repayment for debt accrued as a result of incorrect Medicare billing. Currently, this occurs even in circumstances where there is strong evidence that their practice was responsible for the incorrect billing.

Under the proposed scheme, primary responsibility for correct claiming will continue to rest with the GP. However, the Scheme will allow the government to recover debt from practices where there is evidence that they have influenced the Medicare billing practices of practitioners.

Overall, the RACGP supports the intent of the Shared Debt Recovery Scheme as a mechanism to enable the Commonwealth to recoup debt from practices where there is clear evidence that they have influenced, or are responsible for, incorrect Medicare billing.

5. RACGP recommendation

In reviewing the proposed Scheme, a range of issues have been identified which require thorough exploration before being finalised and implemented on 1 July 2019.

The general practice landscape is complex. While the RACGP supports the intent of the Scheme, it must be recognised that this reflects a significant change, and as such these issues need to be considered further – particularly in relation to how the change will affect and likely increase practice costs.

The RACGP is concerned that implementing the Scheme from 1 July 2019 will not provide ample time to carefully consider these issues and address the nuances of shared debt recovery between practices and practitioners. The RACGP therefore strongly recommends that the introduction of the Scheme is delayed to allow for further consultation.

6. Response to consultation questions

6.1 What types of employment or contractual arrangements should the Minister be aware of when determining which classes of persons (or organisations) will be included in or excluded from the Scheme?

As outlined in the discussion paper, there are two key arrangements between GPs and practices; employment or contractual arrangements (independent contractor). The level of influence a practice has over a GP's billing can vary significantly between and within these two arrangements.

There are situations where a practice may have some influence over a GP's billing, regardless of the type of employment or contractual arrangement that exists. It is therefore appropriate that the Scheme is set up in a way that would allow any practice, regardless of employment or contractual arrangement, to bear some responsibility for incorrect billing where there is compelling evidence that they have had an influence over the GP's billing.

While influence over billing may be clear in some circumstances and arrangements – there will be many circumstances in which it will not, including where:

- a GP is contracted out to another branch of the same organisation by their employing practice

- the primary debtor is a GP registrar (GP trainee), as under their employment and contractual arrangements there are variations in liability when compared with Specialist GPs
- the GP subject to incorrect billing is also the practice owner (either the sole practice owner or as part of a business partnership)
- the practice is aware of incorrect billing, but does not have any influence or responsibility for that billing
- a GP shares a Medicare item number with another member of the practice staff (such as a practice nurse).

6.2 Are there circumstances where the secondary debtor could control or influence a primary debtors Medicare claim?

The findings from the Department of Human Services' Large Practices Project indicated that practice managers and non-clinical practice staff increasingly have responsibility for Medicare billing.

This aligns with feedback from our members, who have advised that in some circumstances, employed or contracted GPs may:

- not have access to a practice's billing records
- work in a large corporate practice that employs a billing officer
- be influenced by the practice owner(s), other practice staff or practitioners who instruct them to bill in a particular way

As identified earlier, current legislation implies that the entirety of Medicare billing responsibility rests with the GP and that practices do not have a legal responsibly to monitor billing. The Scheme therefore represents a significant change to current practice, greatly expanding on practice responsibility with regard to billing. The potential for unintended consequences of the Shared Debt Recovery Scheme must therefore be considered along with the issues already identified.

An increase in responsibility for practices with regard to billing, could increase:

- practice influence over GP billing - as practices introduce mechanisms or policies to restrict billing independence and autonomy in effort to reduce risk
- practice indemnity costs - as insurers adjust their policies to account for increased risk
- administrative burden and costs for practices - through increased management of contracts, auditing or training of providers as a mechanism to reduce risk.

Any increase in costs for practices will place further pressure on the viability and sustainability of smaller general practices, and could in turn lead to a growth in out-of-pocket costs for patients.

6.3 What forms of evidence should be considered to determine whether a secondary debtor obtained a financial benefit from an incorrect Medicare claim?

When making a shared debt determination, it will be vital to establish whether the practice has influenced incorrect billing processes, and to what extent. There are a number of methods and/or sources of evidence that could be considered, including:

- practice mapping as an indication of practice involvement – where the billing practices of other GPs in a practice are reviewed to determine if there are similar billing patterns, or if there is an individual anomaly
- who is responsible for submitting billing to Medicare:

- in instances where the practice is responsible, it would be appropriate to check whether the original advice on billing put forward by the GP to the practice staff member responsible for Medicare billing aligns
- in instances where the billing was put forward by the GP who has sole responsibility for their own Medicare billing practices, there could be an assumption that the practice has minimal influence and responsibility for billing.

- whether any advice has been provided to the GP by the practice with regard to billing, and whether that advice is related to incorrect billing.

GPs themselves are likely to have a copy of their contract with a practice which they may produce as evidence of the billing relationship, but may be unable to access other documentation concerning how items are billed or who is responsible for billing. As previously mentioned, employment type may not be a full indication of the level of billing influence a practice has over a GP. The RACGP therefore considers that further clarification of the evidence that GPs can reasonably obtain should be included in the Scheme.

6.4 Is 65/35 (primary/secondary) an appropriate prescribed percentage for debt recovery? Under what circumstances should the Department consider varying the percentage of the debt that is recoverable from the secondary debtor?

The RACGP considers that the percentage for debt recovery due to incorrect Medicare billing should reflect the level of billing responsibility, and the influence of both the primary and secondary debtor. Therefore, flexibility in determining an appropriate percentage for debt recovery is required and should be established on a case-by-case basis.

Where a secondary debtor is no longer in operation at the time of debt recovery, but has found to be liable for a portion of a debt, the primary debtor should not be responsible for the secondary debtor's deficit. In such situations, the primary debtor should only be responsible for paying back their portion of the debt.

7. Additional feedback

The Scheme must clarify that the influence over billing refers to Medicare billing only – not private fees

GPs are entitled to set fees in addition to the Medicare rebate for the services that they provide and for products and services that don't attract a Medicare rebate, in addition to submitting a claim to Medicare. These fees aim to, at a minimum, recover the full cost of the services provided by the GP where Medicare does not achieve this.

The legislation must therefore clearly state that the Shared Debt Recovery Scheme applies only to the billings for which a rebate can be received, and not the additional fees that GPs are entitled to set for their services.

The need for compliance education targeted towards both primary and secondary debtors

In addition to establishing appropriate debt recovery practices, the RACGP strongly recommends that Medicare compliance education is made available to primary and secondary debtors, including practice managers and non-clinical practice staff.

With improved training as well as the implementation of a mechanism to share debt repayments, practices and practitioners would also be encouraged to share the responsibility of monitoring billing processes, decreasing rates of incorrect billing.

8. Opportunity for further discussion

As indicated, the RACGP believes that significantly more time is required to work through potential issues with the Scheme, and welcomes further opportunities for discussion to ensure that it will operate optimally for all parties involved.

Should you require any additional information from the RACGP, please contact Ms Susan Wall, Program Manager – Funding and Health System Reform, on (03) 8699 0574 or susan.wall@racgp.org.au