RACGP

Review of Medicare Integrity and Compliance

Feedback on compliance activities and MBS complexity

1. Purpose

This document provides some examples of and commentary on recent Medicare compliance campaigns undertaken by the Department of Health and Aged Care (the Department) and the complexity of the Medicare Benefits Schedule (MBS), which often gives rise to compliance concerns. It also includes data from surveys undertaken by the RACGP, which highlight the extent of the regulatory burden currently facing the general practice profession, and the need for more education on Medicare and compliance to alleviate this.

2. 2021 telehealth compliance campaign

2.1. Background

In February 2021, the Department wrote to the RACGP advising of an imminent compliance campaign around COVID-19 MBS telehealth items. The compliance activity related to changes introduced in July 2020, which restricted the ability of GPs to provide MBS-subsidised telehealth services where the patient has not been seen by that GP or another medical or health professional at the same practice face-to-face at least once in the previous 12 months. The activity was initiated in March 2021, examining billing between July 2020 and January 2021.

While the Department initially identified close to 30,000 GPs who had exhibited potentially non-compliant behaviour, the scope of the compliance activity was scaled down. The campaign directly targeted approximately 500 GPs through targeted letters and audits.

2.2. Key concerns

The RACGP had significant concerns with the telehealth compliance campaign and its impacts on GPs and practice teams. We communicated these to the Department in emails, letters and during meetings over several months in 2021. The concerns raised by the RACGP regarding this campaign also apply to many other compliance campaigns initiated by the Department in recent years.

Key issue	RACGP commentary
Timing of the campaign	The compliance campaign was rolled out at a time when GPs were continuing to care for their patients in a rapidly changing pandemic environment, and as the COVID-19 vaccination program was being established. In early 2021, the COVID-19 vaccine rollout was in its infancy, and COVID-19 outbreaks and border closures were still commonplace. GPs were – and remain – central to the vaccination rollout, with the public seeking information about and quick access to the

Key issue	RACGP commentary
	vaccine. Many GPs offered out-of-hours services to accommodate usual business and COVID-19 and influenza vaccinations. The mass compliance campaign was very disruptive and placed undue pressure on GPs, owing to the time involved in preparing relevant documentation for the compliance activity. However, it also had effects for the broader profession, causing significant distress and disengagement and potentially promoting behaviour change amongst GPs to avoid scrutiny. The Department further embedded its focus on telehealth and vaccine administration as compliance priorities in its *Health Provider Compliance Strategy 2021–22*, released in August 2021. The RACGP questioned the timing of this announcement, as at this stage GPs were still having to manage periodic outbreaks and continual changes to vaccine eligibility.
Inconsistent and confusing rules	Implementation of the established clinical relationship rule for telehealth has been inconsistent and confusing. Ambiguity around exceptions to this requirement were evident in 2020, constant changes to the rules because of intermittent lockdowns and border closures generated confusion and it took providers time to adapt. The level of misunderstanding became more evident when GPs received targeted compliance letters. The RACGP received enquiries from several Victorian-based members, who advised that telehealth services provided during the state's 2020 lockdown (from July to October, during the second wave of COVID-19 infections) were not excluded from the list of claims they were asked to review. This was despite patients being exempt from the existing relationship rule during this time, and therefore able to access telehealth from any GP or practice. As a result, GPs had to work out various lockdown dates themselves to assess whether their claims were compliant. The RACGP was also made aware of claims being included for review where the patient had been seen by another medical/health professional at the same practice, meaning they were eligible for telehealth rebates. Although the Department did make educational materials available, they were not always accurate. Responses to enquiries around situations where exceptions would apply were neither prompt nor consistent, with the definition of a 'COVID-19 impacted area' particularly confusing. It was only in December 2020, approximately five months after the rule was introduced, that the Department issued guidance around the existing relationship requirement via an AskMBS Advisory. Yet subsequent to this, an RACGP member identified in May 2021 that the Department's *COVID-19 Telehealth Items Guide* did not specify that the service provided in the past 12 months for the purpose of establishing a relationship needed to be a face-to-face service. Another area of confusion related to the expected response from GPs who received a targeted compliance letter. Several members contacted the RACGP seeking clarification about whether they were required to respond to the letters or repay funds. It took considerable time to get confirmation from the Department that GPs were not required to respond, although it was preferred. The delay caused considerable stress for GPs, who were unsure how to proceed.

Key issue	RACGP commentary
	A lack of clear communications around the established clinical relationship rule and exemptions remains an issue today. In December 2022, the RACGP sought clarification from the Department regarding the future of the exemption status for COVID-positive patients beyond December 2022. While the Department confirmed via email that current arrangements will be temporarily extended to 31 December 2023, the AskMBS Advisory has not yet been updated to reflect this.
Data integrity	The RACGP was particularly concerned about the way in which GPs were identified for the compliance campaign and the timeframes applied to the data collection. Initially, the Department identified almost 30,000 GPs who had potentially breached MBS telehealth rules and intended to undertake a tiered compliance campaign that would have affected over 10,000 GPs: • Targeted awareness raising letter (9,470 providers identified, who had engaged in 10–74 potentially non-compliant services) • Targeted compliance letter (737 providers identified, who had engaged in 75–300 potentially non-compliant services) • Audit program (33 providers identified, who had engaged in 300+ potentially non-compliant services). The criteria the Department used in the data extraction was unclear, despite the RACGP's calls for greater clarity. The timeframe indicated for the data integrity was also questionable. There was considerable ambiguity and uncertainty about exemptions over the identified period of review, with regular changes because of intermittent lockdowns and border closures. As outlined above, the Department did not provide formal advice on this until December 2020 via an AskMBS Advisory, yet the decision to pursue these compliance activities suggests there was an expectation that GPs would be able to bill these items correctly without formal advice or guidance. The RACGP acknowledges that the Department accepted feedback on the nature and approach to data analysis. As a result, the compliance campaign was adapted to focus on broader awareness raising and the number of GPs who received targeted letters or were audited was scaled down. While this was a positive outcome, it did not address the fundamental issues with the approach to data collection and analysis.
Punitive nature of the compliance activities	The RACGP has repeatedly stressed to the Department that increased compliance activities should be balanced with corresponding educational activities. Where reasonable, health professionals must be given an opportunity to adapt their billing practices prior to being subject to an audit. On several occasions the RACGP sought to communicate our concerns to the Department – see for example this media release. The RACGP has been contacted by numerous GPs concerned about this compliance activity. GPs noted that: • they were providing care to their usual patients but were caught out by a technicality, and wrongful claiming was never their intention • they were told to repay any incorrect claims to the Department despite having met the intent of the existing relationship rule • they believed the existing relationship rule only applied to the 12 months preceding the commencement of telehealth, and a usual patient of the practice

Key issue	RACGP commentary
	would be able to continue to access telehealth from their practice after meeting the initial threshold requirement. The RACGP sought and received assurances from the Department that GPs who had genuinely misunderstood the rules and provided services in good faith to long-term patients of their practice would be considered on a case-by-case basis. However, feedback received by GPs indicates this was not the reality of their experience, as they were made to repay Medicare funding for providing telehealth services to ongoing patients of their practice who did not technically meet the existing relationship rule. Given the circumstances GPs found themselves in during the review period for the compliance campaign, these principles should have been considered prior to launching the activity. Although the Department willingly worked with the RACGP on the scale and scope of the campaign, we were disappointed that flexibility was not applied. Clearly, there is precedent for this, as the Department did commit to excluding GPs in flood-affected areas in New South Wales and South East Queensland from telehealth compliance activities until a later date.

3. 2022 bulk billing incentives compliance campaign

3.1. Background

On 25 August 2022, the Department advised the RACGP of its intention to undertake a targeted letter campaign relating to bulk billing incentive items 10990, 10991 and 10992 where patient eligibility requirements have not been met. The Department was concerned the items may have been billed for patients who are not under the age of 16 or a concessional beneficiary. A targeted letter, fact sheet and schedule of claims would be sent to 566 practitioners on 22 September 2022.

3.2. Key concerns

GPs may not be aware of a patient's eligibility during a consultation or in instances where other members of the practice are responsible for checking this information. Inadvertent non-compliant billing may occur because of potentially outdated information in their practice system for example.

The RACGP has also received feedback from providers who were unsure how to access information about patient eligibility more than 12 months after the initial consultation, to be able to respond to the targeted letter.

The bulk billing items factsheet sent to providers states: '[t]he Department is unable to advise on the administrative processes for you to determine patient eligibility'. Yet, it is the Department and Services Australia that set the eligibility requirements and can monitor up-to-date eligibility for concession cards and patient age. It would be administratively easier if billing claims were rejected automatically.

4. 2022 COVID-19 vaccinations compliance campaign

4.1. Background

On 10 November 2022, the Department advised the RACGP of its intention to undertake an early intervention compliance letter activity relating to COVID-19 vaccinations in late November.

The Department advised it would be sending 132 letters to health providers relating to high levels of claiming MBS COVID-19 vaccine suitability assessment items with an attendance item and/or practice nurse item.

- Letter 1 – 58 providers will receive letters relating to the claiming of MBS COVID-19 vaccine suitability assessment items with professional attendance items.
- Letter 2 – 74 providers will receive letters relating to the claiming of MBS COVID-19 vaccine suitability assessment items with practice nurse MBS item 10997.

4.2. Timing of the activity

The RACGP wrote to the Department on 24 November to express concern about the timing of this activity. COVID-19 cases were once again increasing across Australia due to the spread of new variants, and the activity was scheduled at the start of the very busy holiday period. The RACGP understands that the number of providers who received a letter was scaled down, and the Department had already deferred the activity once before while it monitored claiming patterns. However, this was simply not the right time to be writing to providers who will need to take time away from delivering patient care to review a schedule of claims. The rise in COVID cases resulted in more patients seeking care from their GP, while long COVID proved to be a growing issue that GPs continue to contend with.

The RACGP recognises that COVID is likely to be with us for months if not years, but more effort must be made to ensure these types of compliance activities do not align with peaks in cases. The RACGP urged the Department to once again defer this activity until the current COVID wave had passed and recommended an alternative approach.

The RACGP recommended that the Department instead let those providers identified know that they have been flagged as having potentially incorrectly co-claimed COVID-19 vaccination items, and advise these providers to familiarise themselves with the rules associated with COVID-19 co-claiming, noting that they may be asked to review their co-claiming in the future if the Department identifies that incorrect co-claiming is still occurring. As part of this alternative approach, we encouraged the Department to ask providers if they require any additional support in understanding the rules associated with co-claiming COVID-19 vaccination items.

This would be an opportunity for the Department to recognise and support the significant role health providers have played in Australia's COVID-19 response. Unfortunately, the RACGP's suggestion was rejected by the Department and the campaign proceeded as planned.

4.3. Claiming rules

Claiming rules for MBS COVID vaccine items are highly complex, as evidenced by the 18-page fact sheet on MBS Online and another 15-page fact sheet which outlines 25 different scenarios for billing the items. An educative approach on these items, including condensed fact sheets, is essential. Even better would be simplification of the items, so that they do not require 33 pages of explanatory material.

4.4. Opportunistic vaccination

The RACGP also advised the Department that episodes of co-claiming standard time-based attendances with COVID-19 vaccine items are likely to increase as GPs are being urged to opportunistically vaccinate by their local Primary Health Network (PHN).

For instance, a recent update from the Darling Downs and West Moreton PHN stated the following:

Please continue to utilise the opportunity to vaccinate patients, if you do have someone who is eligible and requires a COVID-19 vaccine, do not delay, open a vial and vaccinate them. While the Department of Health and Ageing (sic) encourage sites to continue to try to minimise wastage, they understand that wastage is an inevitable part of the program moving forward as practices move to a more opportunistic model of vaccination.

While we would expect the total number of vaccinations being administered to decrease given where we are in the pandemic, the proportion of co-claiming is likely to rise rapidly. This is part of good opportunistic care and is being actively encouraged to boost uptake of vaccines. Opportunistic preventive care is one of the benefits of comprehensive

general practice care, and this campaign could be seen as actively deterring quality care at a time when other bodies such as PHNs are encouraging it.

5. Changes to MBS cycle of care items

5.1. Background

On 10 October 2022, the RACGP wrote to the Department to highlight confusion around upcoming changes to MBS cycle of care items on 1 November 2022 (items in Subgroup 8 of Group A7 and Groups A18 and A19).

These items were previously attached to Practice Incentives Program (PIP) payments which ceased on 31 July 2019. The RACGP assumed that the items would be removed from the MBS, however we were advised at the time by AskMBS that they would continue on the schedule and be claimable after the incentives cease.

5.2. Key issues

The continuation of these items for more than three years has created confusion for our members and added to the complexity of the MBS. The RACGP is aware of GPs who have co-claimed cycle of care items with chronic disease management (CDM) services. While co-claiming of chronic disease and general consultation items is not permitted, the cycle of care items were not included in the consultation items listed in MBS Note AN.0.47. Services Australia also have a list of consultation items that cannot be co-claimed with CDM services, but again the cycle of care items were not included.

Despite this, GPs who had been co-claiming the cycle of care items with CDM services started to have their claims rejected earlier in 2022. While instantaneous rejection of the items is welcome (if appropriate), they received no explanation as to why this had occurred. The RACGP understands this was due to a system error, and providers are now able to resubmit these claims. However, it appears there had been a gradual effort by the Department and Services Australia to stop providers from billing the cycle of care items before they were removed from the MBS.

It is unclear why these items were retained for so long when they essentially became redundant following the removal of the PIP incentives. We understand that some providers received a letter during 2022 instructing them not to bill the cycle of care items, and were informed a message would be added when the items are billed to remind providers what constitutes appropriate claiming. If it was considered inappropriate for GPs to bill these items, they should have been removed from the MBS three years earlier. Our members have not engaged in inappropriate practice if they are billing items that remain available on the MBS.

The RACGP has also seen several incorrect references to PIP payments still being available for completing a cycle of care – even in the most recent MBS Book published in November 2022. The book states that use of the cycle of care items will initiate a Service Incentive Payment (SIP) through the PIP, which is incorrect. MBS Notes AN.0.53, AN.0.54 and AN.0.55 (which have now been deleted) also referred to incentive payments as still being available. Errors such as these contribute to the confusion experienced by GPs around what they can bill and when changes to item numbers are due to take effect.

Any change to MBS items or billing rules must be clearly communicated to providers in a timely manner, and updates to MBS Online and other materials should be made as soon as possible.

6. Inappropriate use of the Professional Services Review mechanism to address policy issues

6.1. Background

On 1 October 2022, a new prescribed pattern of services rule was introduced for telephone consultations (the 30/20 rule). Under this rule, any GP who claims 30 or more relevant telephone attendance services on each of 20 or more days in a rolling 12-month period will be referred to the Director of the Professional Services Review (PSR) for having breached the rule.

While the 30/20 rule is a policy decision rather than a compliance activity, it highlights the overreach that has become synonymous with how successive governments approach compliance. Using unnecessary compliance mechanisms adds to the red tape and complexity of Medicare, without benefit.

6.2. Key issues

The RACGP and the Australian Medical Association (AMA) wrote to the Minister for Health in September 2022 calling for the rule to be postponed. The letter stated that Australia is still in a pandemic and a further wave of infections is expected. Being able to switch to telephone-based services for patients remains an important tool for GPs to deploy when they are infected or a close contact or when their practice is hit by multiple staff infections. Additionally, many patients are still unable or unwilling to use videoconferencing software, so telephone remains an essential service.

The Minister's response stated that the 30/20 rule 'is intended to support patient safety by ensuring that patients receive high-quality care, and to deter telephone-only business models'. However, this is precisely what the established clinical relationship rule for telehealth services is intended to achieve. Under this rule, patients need to have had a face-to-face attendance in the 12 months preceding their telehealth consultation to access Medicare rebates, with some exceptions. The rule is designed to prevent telehealth-only business models from profiting from Medicare and ensures patients can maintain a relationship with their regular GP which supports optimal care.

It is therefore unclear to us why an extra layer of regulation is needed to deter telephone-only models. While the Minister's response noted that GPs provide an average of 23 services a day across all modalities, some days may be dedicated to telehealth consultations to provide referrals, prescribe medications, and discuss test results with patients. On days such as these GPs may exceed the 30-service threshold, and the fact they are only able to do this 20 times in a 12-month period will require significant adjustments to appointment schedules.

The 30/20 rule is an example of compliance mechanisms being used poorly to address policy issues, and as a result presents another barrier to delivering care.

7. Data from 2022 Health of the Nation report

A concerning new theme that emerged in the RACGP's 2022 *General Practice Health of the Nation* report is the administrative and regulatory burden that GPs face in their roles. Regulatory burden was reported as a challenge by two-thirds (60%) of GPs who responded to the 2022 Health of the Nation survey.

Other key results from the survey relating to Medicare compliance are outlined below.

- Medicare compliance is a concern for most GPs, although only 23% have personally experienced a Medicare compliance activity.
- Almost two-thirds of GPs (61%) indicated that the complexity of Medicare is something that worries them outside of their work day, and this was much higher among GPs in training (80%).
- More than three-quarters of GPs (77%) stated that ensuring compliance with Medicare takes time away from delivering care to patients.
- Nearly half of GPs (47%) stated that their awareness of Medicare compliance activities has impacted how they bill or what services they provide.
- Sixteen per cent of GPs limit the services they provide to avoid the consequences of non- compliance, and 42% of GPs have not claimed certain Medicare items, despite legitimately providing services due to fear of being targeted in a compliance campaign.

See pages 42–45 of the report for more information.

Underbilling of MBS items is a serious issue and points to the fear generated by Medicare compliance activities, even if GPs are not directly involved themselves. Avoiding billing certain items means that patients are missing out on subsidies they are entitled to and may be paying more in out-of-pocket fees for services they receive.

The RACGP is disappointed that the Terms of Reference for the Review of Medicare Integrity and Compliance did not contain any mention of the widespread impact of underbilling, and were instead predominantly focused on quantifying the value of fraud and non-compliance. Furthermore, there was no commitment to examining the effectiveness of compliance education approaches which could reduce the regulatory burden on GPs.

8. RACGP compliance education survey

8.1. Background

In late 2021, the RACGP surveyed members to collect feedback on the value of existing Department resources and what topics GPs would like to see covered in future resources. More than 230 responses were received.

8.2. Key findings

- There is a lack of awareness of eLearning programs developed by the Department. When asked how useful each program is, 52% selected 'Don't know/Not applicable' for the Introduction to compliance within Medicare program. This increased to 60% for Medicare Billing Compliance (introductory module on Doctorportal Learning) and 77% for Billing Medicare in public hospitals.
- Other resources are similarly underutilised. When asked how useful each resource is, between 45% and 56% of respondents selected 'Don't know/Not applicable' for each of the following resources:
    - Health professional guidelines (45% selected 'Don't know/Not applicable')
    - Administrative record keeping guidelines for health professionals (49%)
    - Record keeping – quality improvement guide (53%)
    - Medicare billing assurance toolkit (56%)
    - Other fact sheets/infographics (50%)
- The survey asked what types of compliance resources would be most useful in helping you to bill Medicare correctly. The most popular choices were fact sheets/guidelines/brochures (23%), billing case studies (18%) and frequently asked questions (16%).
- Respondents were asked what topics they would like to see covered in Medicare compliance resources. The most popular choices were rules around co-claiming MBS items (14%), rules around claiming multiple MBS items on the same day (12%) and MBS chronic disease management items (11%).
- Themes that emerged in free text responses are listed below.
    - The MBS is overly complex and difficult to interpret. It is difficult to keep up with regular changes to item numbers and claiming rules.
    - Often the first time GPs become aware of a change is when a claim is rejected.
    - GPs are time poor and administrative work is increasing.
    - GPs are unaware that compliance education resources even exist as these are not well promoted.
    - Education is key for new doctors and resources need to be updated regularly.
    - Conflicting advice on MBS interpretation is provided by different sources.
    - Clearer information on compliance processes would be helpful (eg what happens during an audit).
    - GPs want to be able to ask questions and get direct answers.
    - Compliance activities can be extremely stressful and need to be more focussed on education.

- GPs may underbill due to a fear of compliance activities or avoid billing more complex item numbers due to confusion around claiming rules.