

## Health Insights

### Private Health Insurer audits – a reminder to exercise caution and to ask for help

The world of private health insurance is becoming increasingly competitive. As the marketplace burgeons with new providers, so too does the number of private health insurance audit requests issued to the health practitioners who service their members. Meridian Lawyers regularly assists practitioners to respond to requests for information from private health insurers (PHIs), which has enabled us to collate key learnings for health practitioners who receive audit requests going forward.

By way of a reminder, practitioners can become involved in a PHI audit either because the practitioner has entered a HICAPS agreement with the PHI, or because they have provided a service to a patient who is a member of the PHI and claimed a rebate for that service. The contractual nature of the relationship between the practitioner and the PHI fund provides the grounds for the fund to conduct the audit. It is critically important that any health practitioner who claims benefits from a PHI fund, takes the opportunity to make themselves familiar with the fund rules pertaining to that fund, and ensures that they are compliant with them. Each PHI fund has its own set of rules, and therefore practitioners need to be aware of the terms contained in each set of rules for the fund members that they treat. The same goes for the terms of any HICAPS agreement that the practitioner may have entered into with the fund.

#### Why have I been audited?

Commonly, PHI audits begin their life as a request for information or explanation. The request is often triggered because the practitioner has been identified by the PHI as a statistical outlier.

Each of the PHIs collect data and use that data to form statistical models to identify billing trends across the industry. If a practitioner falls outside the industry norms, they may be asked to provide an explanation as to why that is the case. For example, the average number of claims made by the practitioner over a period of time may be unusually high when compared with their peers, or the practitioner may claim an unusually high number of rebates for a particular item number. There are a number of different categories of statistical data used to identify outliers within the different health professions.

The response to an initial request for information such as this is often general in nature, and ought not provide specific patient examples to explain the anomalies. Often practitioners will be able to identify demographics within their locality to explain why their patients may require a certain type of health service. Alternatively, the working hours of the practitioner might be unusually lengthy when compared with their peers, which may explain claim volumes. The response will naturally vary from practitioner to practitioner depending on their circumstances, and we recommend seeking legal advice in the preparation of this letter.

Recently Meridian Lawyers has seen a rise in audits conducted on practitioners who have treated their own family members, in circumstances where the fund rules and/or the HICAPS agreement between the practitioner and the PHI fund state that benefits are not payable for treatment rendered by the practitioner to their family (or other related persons). When a practitioner is alleged to have breached a specific fund rule in relation to a particular patient such as this, the explanation provided to the fund will likely be more specific and ought to be considered within the context of legal advice as well.

Once the PHI reviews the response from the practitioner, it may decide that the explanation is satisfactory and require no further information, or it may proceed to conduct a more comprehensive audit of patient claims.

## What about patient privacy?

When a practitioner receives an audit request that requires them to provide specific information about a claim made for a patient(s), their immediate concern is often about protecting patient privacy. Ascertaining whether a patient has provided consent to the disclosure of their health information is important, and practitioners are right to be concerned about it.

As a general rule, most patients consent to the disclosure of their clinical records to the PHI for the purposes of substantiating the basis for a claim when they became a member of the PHI. However, if there is any doubt as to whether the patient has consented, the practitioner ought to ask the PHI to provide written confirmation that consent has been obtained before any clinical records are disclosed.

We also recommend that when preparing records for a PHI audit, practitioners identify whether any of the services recorded in the notes were not the subject of benefits paid by that particular PHI. Where this is the case, the entries ought to be redacted as the PHI is only entitled to health information regarding services for which it paid a benefit.

## How do I prepare my response to an audit?

Firstly, it is important to understand the scope of the audit, to ensure that any response provided is limited to only those matters in question. Ordinarily an audit letter will set the scope by providing the names of the patients concerned and details of the claims involved. If not, the scope needs to be clarified before any information is provided, so that the audit response can be quarantined to the relevant claims.

Once the scope is clarified, it is recommended that practitioners conduct a self-audit to review the clinical treatment notes and financial transaction reports for each patient and for each claim concerned in the audit. This process should identify whether there is a sufficient record of treatment to support the claims that have been made, and weed out any errors such as incorrect use of item numbers, or accidental double billing. Practitioners should also use this opportunity to reflect on whether the treatment provided to the patient was therapeutically justified in each case, in an effort to address possible allegations of over-servicing.

Once the self-audit is completed, any response to the audit should be thoughtfully and carefully prepared, and with the benefit of legal advice – particularly if any billing errors have been detected. The information and submission made in response to a PHI audit is often highly strategic and carries the risk of resulting in

significant consequences for the practitioner's business. It is therefore best to seek advice before submitting the response so as to maximise the chance that the audit will resolve with the optimal outcome.

## What are the possible outcomes of an audit?

The fund rules for the particular PHI, and/or the contractual relationship between the PHI and a health practitioner (such as a HICAPS agreement), generally provide the PHI with the right to terminate its relationship with the practitioner if a serious breach has occurred. If the PHI decides to "de-recognise" or "de-list" a practitioner, this will prohibit patients who are members of the PHI from claiming a rebate for services that the practitioner provides to them which could in turn impact upon the practitioner's business reputation.

PHIs may also require practitioners to repay claims which the PHI determines have been inappropriately or erroneously billed.

In very serious cases, such as where there is an allegation of fraud, there is also the risk that the PHI could refer the matter to statutory authorities.

## What can happen if I don't respond/co-operate with the audit?

While practitioners are not legally required to assist with or respond to a PHI audit, there could be significant business repercussions if they do not do so, depending on the wording of the PHI's fund rules and/or the agreement with the practitioner. These include a decision by the PHI to suspend billing privileges or terminate the relationship with the practitioner.

Meridian Lawyers assists health practitioners with audits and investigations by PHI funds into rebates claimed, including privacy advice, drafting submissions concerning derecognition of service and review processes. This article was written by [Nevena Brown](#) (Principal) and Anna Martin (Associate). Please contact Nevena if you have any questions or would like more information.



**Nevena Brown**

**Principal**

+61 2 9018 9933

[nbrown@meridianlawyers.com.au](mailto:nbrown@meridianlawyers.com.au)



**Anna Martin**

**Associate**

[amartin@meridianlawyers.com.au](mailto:amartin@meridianlawyers.com.au)

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