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Health Insights

Professional Services Review (PSR) launches telehealth review

Professional Services Review (**PSR**) is a Commonwealth Agency whose objective is to protect the integrity of the Commonwealth Medicare benefits, dental benefits and pharmaceutical benefits programs and, in doing so, protect patients and the community from the risks associated with ‘inappropriate practice’, and protect the Commonwealth from having to meet the cost of medical and other health services provided as a result of ‘inappropriate practice’.

PSR’s recent investigation of telehealth services serves as a warning for healthcare practitioners to implement robust billing practices for telehealth consultations.

The Professional Services Review (**PSR**) recently released advice that it received its first referral for telehealth services. This referral to PSR was initiated only four months after the implementation of recently introduced COVID-19 telehealth item numbers. These temporary MBS items will be in place until at least 30 September 2020, after which the arrangements will be reviewed.

The PSR has released guidance that, in reviewing telehealth item numbers, the Director (Prof Julie Quinlivan), will consider whether a patient examination was a clinically relevant activity in connection with the rendering of a face to face MBS service such that this consideration will apply equally to telehealth services. As a result, not only could there be potential patient safety considerations associated with telehealth consultations with respect to not undertaking patient examinations in particular circumstances, but health practitioners under review could be subject to a potential finding of inappropriate practice, pursuant to section 82 of the *Health Insurance Act 1973* (Cth) should PSR determine that a patient examination was a clinically relevant activity for a service. This could result in potential exposure of healthcare practitioners to effect substantial repayment orders of MBS item numbers for services found by PSR to constitute ‘inappropriate practice’.

The MBS Item Descriptions for the new temporary telehealth items are designed to reflect the existing item number structures. This means practitioners must keep the same considerations in mind to avoid potential repercussions associated with falling short of MBS item number requirements. Health practitioners should carefully consider the need for patient examination in performing any telehealth consultations, as it seems clear that practitioners who are identified by Medicare and come to the attention of PSR with respect to the rendering of telehealth consultations, will be required to address this particular criteria in any investigation

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in relation to whether ‘inappropriate practice’ may have occurred. [Click here](#) for more information on the definition of ‘inappropriate practice’.

Practitioners should carefully review the criteria for billing Medicare item numbers which is accessible via [MBS online](#) to ensure that all MBS requirements are met. The fact that PSR has announced its first GP telehealth investigation may suggest that more investigations surrounding the use of telehealth item numbers may occur in the future.

A Medicare Benefits Scheme (**MBS**) Fact Sheet provides that the “*telehealth MBS items can substitute for current face-to-face consultations that [are] available under the MBS when the service/s cannot be provided due to COVID-19 considerations*”. However, the AMA has explicitly warned that the role of telehealth is not a substitute for face to face consultations, and its value lies in ensuring continuity of care to complement an existing relationship. A recently released [Department of Health COVID-19 Telehealth Item Guide](#) also cautions that:

“There is also an expectation underpinning the new items that if a face-to face attendance with a patient is clinically indicated during a telehealth attendance, then this can be arranged. Where possible, the face-to-face attendance should be performed by the same practitioner who provided the telehealth service, but the key point is that providers should ensure that they can arrange a face-to-face attendance if required.”

The Guide also cautions that where a single service, provided by the same practitioner, is comprised of a telehealth and face-to-face component, the appropriate item to bill—that is telehealth or face-to face—is determined by the type of service which took the greater amount of time. While it is acknowledged the rendering of COVID-19 telehealth item number and face-to-face item may be possible on the same day, this is only available if both are clinically necessary, the requirements for both are met, and the second attendance is not a continuation of the first. It also warns that COVID-19 telehealth services should not be used solely for triaging. It is anticipated the PSR will bear in mind this advice in considering whether a practitioner has engaged in ‘inappropriate practice’ in connection with telehealth MBS item numbers.

While there have been many changes to the eligibility and technical requirements of the applicable item numbers, according to AMA President Dr Tony Bartone, the introduction of telehealth for patients has been an “*outstanding success*” that supports the delivery of high quality patient care. Approximately 20 percent of all Medicare-funded consultations with medical practitioners are now provided over telehealth, and it would seem there is a likelihood this will become a permanent aspect of the healthcare landscape in Australia.

Notwithstanding the success of telehealth in the circumstances of the COVID-19 pandemic, it seems inevitable that its use will be the subject of greater scrutiny in the months and years to come, especially with regard to whether practitioners ought to have arranged a face to face examination with particular patients. In addition to Medicare billing requirements, the question of whether a face to face examination was necessary in particular instances is likely to be the subject of investigation by a range of bodies including the regulatory bodies such as the Medical Board and AHPRA – for example, if a face to face examination ought to have occurred, and particular pathology is missed which would or could have been diagnosed and treated, complaints to regulatory bodies may occur in the months to come. In this regard, see our [article from May 2020](#) about the risks and limitations for medical practitioners using telehealth.

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The PSR has clearly issued guidance as to its expectations regarding face to face examinations in the context of telehealth. It should be remembered the PSR has significant powers and its most recent annual report indicated that practitioners under review were required to refund repayments of \$29 million in benefits to the Commonwealth, with almost 70% of voluntary agreements involving repayments over \$200,000, representing a significant increase in refunds as compared to historical annual average refunds. The PSR's recent guidance provides a timely reminder to healthcare practitioners to bear in mind all MBS item number requirements for telehealth items and to ensure that face to face consultations are carried out where indicated.

Meridian Lawyers assists health care practitioners in responding to investigations by the PSR (on referral from Medicare), including with respect to attendances at PSR Committee hearings, which examine whether a health care practitioner may have engaged in 'inappropriate practice' in connection with rendering or initiating services in that the conduct would be unacceptable to the general body of their peers as defined in the *Health Insurance Act 1973* (Cth).

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