



Health Insurance Amendment (Professional Services Review) Act 2012

No. 76, 2012

**An Act to validate certain actions under Part VAA,
VB or VII of the *Health Insurance Act 1973*, and to
amend that Act, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to validate certain actions under Part VAA,
VB or VII of the *Health Insurance Act 1973*, and to
amend that Act, and for related purposes**

[Assented to 27 June 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Health Insurance Amendment
(Professional Services Review) Act 2012*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	27 June 2012
2. Schedule 1	The day this Act receives the Royal Assent.	27 June 2012
3. Schedule 2	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	27 December 2012
4. Schedule 3	The day after this Act receives the Royal Assent.	28 June 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Validation of certain acts

1 Validation of acts done under Part VAA, VB or VII of the *Health Insurance Act 1973*

- (1) This item applies to a thing purportedly done under Part VAA, VB or VII of the *Health Insurance Act 1973* at any time before the day this item commences, to the extent that the thing purportedly done would, apart from this item, be invalid because a person was not appointed or validly appointed as a Panel member or Deputy Director under Part VAA of that Act.
- (2) The thing purportedly done is as valid and effective, and is taken always to have been as valid and effective, as it would have been had the person been validly appointed as a Panel member or Deputy Director under that Part.
- (3) All persons are, by force of this subitem, declared to be, and always to have been, entitled to act on the basis that the thing purportedly done is valid and effective.
- (4) This item does not affect rights or liabilities of parties to proceedings for which leave to appeal to the High Court of Australia has been given on or before the day this item commences, if the fact that a person was not appointed or validly appointed as a Panel member or Deputy Director under that Part is in issue in the proceedings.
- (5) Subject to subitem (4), subitems (1), (2) and (3) have effect in relation to:
 - (a) proceedings (whether original or appellate) that begin on or after the day this item commences; and
 - (b) proceedings (whether original or appellate) that began before the day this item commences, being proceedings that had not been finally determined as at that day.

2 Re-referral to a Committee allowed in certain cases

- (1) This item applies if:
 - (a) proceedings relating to Part VAA of the *Health Insurance Act 1973* were brought before the day this item commences; and

- (b) those proceedings are finally determined, or otherwise disposed of (before or after the day this item commences), in favour of the person under review on the grounds that, or on grounds that include the ground that, a person was not appointed or validly appointed as a Panel member or Deputy Director under that Part.
- (2) Despite section 94 of the *Health Insurance Act 1973*, before the end of 12 months after the proceedings are finally determined, or otherwise disposed of, the Director may, by writing, set up a Committee in accordance with Division 4 of Part VAA of that Act, and make a referral to the Committee in accordance with section 93 of that Act in relation to the services provided by the person that were the subject of the proceedings.
- (3) If subitem (2) applies, the Committee may take into account:
 - (a) evidence given in relation to the review as investigated before proceedings were brought; and
 - (b) evidence given in the proceedings, as mentioned in subitem (1).
- (4) To avoid doubt, subitem (3) does not limit the evidence that the Committee may take into account.

3 Compensation for acquisition of property

- (1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this item:
 - acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.
 - just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

Schedule 2—Amendments relating to the Professional Services Review Scheme

Part 1—Prescribed pattern of services

Health Insurance Act 1973

1 Subsection 81(1)

Insert:

prescribed pattern of services has the meaning given by section 82A.

2 Before subsection 82(1)

Insert:

Unacceptable conduct

3 After subsection 82(1)

Insert:

Prescribed pattern of services

- (1A) Subject to subsections (1B) and (1C), a practitioner engages in *inappropriate practice* in rendering or initiating services during a particular period (the *relevant period*) if the circumstances in which some or all of the services were rendered or initiated constitute a prescribed pattern of services.
- (1B) A practitioner does not, under subsection (1A), engage in inappropriate practice in rendering or initiating services on a particular day during the relevant period if a Committee could reasonably conclude that, on that day, exceptional circumstances existed that affected the rendering or initiating of the services.
- (1C) Subsection (1B) does not affect the operation of subsection (1A) in respect of the remaining day or days during the relevant period on which the practitioner rendered or initiated services even if the circumstances in which the services were rendered or initiated on

that day or those days would not, if considered alone, have constituted a prescribed pattern of services.

- (1D) The circumstances that constitute exceptional circumstances for the purposes of subsection (1B) include, but are not limited to, circumstances that are prescribed by the regulations to be exceptional circumstances.

Causing or permitting inappropriate practice

4 Paragraphs 82(2)(a) and (b)

Omit “within the meaning of subsection (1)”, substitute “under subsection (1) or (1A)”.

5 Before subsection 82(3)

Insert:

Matters to which Committee must have regard

6 At the end of Division 1 of Part VAA

Add:

82A Meaning of *prescribed pattern of services*

- (1) The circumstances in which services are rendered or initiated by a practitioner constitute a ***prescribed pattern of services*** if they are circumstances prescribed by the regulations for the purposes of this section.
- (2) The circumstances prescribed may relate to services of a particular kind or description that are rendered or initiated by:
 - (a) practitioners in a particular profession; or
 - (b) an identified group or groups of practitioners in a particular profession.
- (3) The circumstances prescribed may include the rendering or initiation of more than a specified number of services, or more than a specified number of services of a particular kind, on each of more than a specified number of days during a period of a specified duration.

7 Division 3 of Part VAA (heading)

Repeal the heading, substitute:

Division 3—Role of Chief Executive Medicare

8 Section 86 (heading)

Repeal the heading, substitute:

86 Requests by Chief Executive Medicare to Director to review provision of services

9 Subsection 86(1)

Omit “The”, substitute “Subject to subsection (1A), the”.

10 After subsection 86(1)

Insert:

- (1A) If the Chief Executive Medicare becomes aware that the circumstances in which services were rendered or initiated by a person constitute a prescribed pattern of services, the Chief Executive Medicare must make a request under subsection (1) in relation to the services.

11 At the end of subsection 86(3)

Add:

- Note: If the request is made because of subsection (1A), it may include reasons other than the prescribed pattern of services.

12 At the end of subsection 93(6)

Add:

- Note: The reasons given by the Director may relate solely to the services being rendered or initiated in circumstances that constitute a prescribed pattern of services.

13 Section 106KA

Repeal the section.

14 Paragraph 106KB(1)(b)

Omit “106KA”, substitute “for the purposes of subsection 82(1A) or (1B)”.

15 Application

- (1) Despite the repeals and amendments of the *Health Insurance Act 1973* made by this Part, the old law continues to apply, in relation to a request to review the provision of services by a person that was made under section 86 of that Act before the commencement day, as if those repeals and amendments had not happened.
- (2) In this item:
commencement day means the day this item commences.
old law means:
- (a) section 106KA of the *Health Insurance Act 1973*, as in force immediately before the commencement day; and
 - (b) any regulations made for the purposes of that section that were in force immediately before the commencement day; and
 - (c) section 106KB of that Act, as in force immediately before the commencement day.

Part 2—Allied health practitioners

Division 1—Amendments

Health Insurance Act 1973

16 Subsection 81(1) (at the end of the definition of *practitioner*)

Add:

- ; or (i) a health professional of a kind determined by the Minister under subsection (1A) to be a practitioner for the purposes of this Part.

17 Subsection 81(1) (at the end of the definition of *profession*)

Add:

- ; (h) a vocation determined by the Minister under subsection (1A) to be a profession for the purposes of this Part.

18 After subsection 81(1)

Insert:

Practitioners and professions determined by Minister

(1A) The Minister may, by legislative instrument, determine:

- (a) that a health professional of a particular kind (being a health professional who provides a health service within the meaning of subsection 3C(8)) is a practitioner for the purposes of this Part; and
- (b) that a vocation engaged in by a health professional of a kind determined under this subsection is a profession for the purposes of this Part.

19 Before subsection 81(2)

Insert:

Meaning of provides services

20 Paragraph 106ZPA(1)(c)

Repeal the paragraph, substitute:

- (c) other members, of whom there is to be one of each kind of practitioner in relation to which the Professional Services Review Scheme established by this Part applies.

Note: See subsection 81(1) for the definition of *practitioner*.

21 Paragraph 106ZPB(2)(c)

Repeal the paragraph, substitute:

- (c) appoint a medical practitioner as a member of the Authority referred to in paragraph 106ZPA(1)(c);

22 Subsection 106ZPB(3)

After “a practitioner”, insert “(other than a medical practitioner)”.

23 Subsection 106ZPB(3)

Omit “any of subparagraphs 106ZPA(1)(c)(ii) to (vii)”, substitute “paragraph 106ZPA(1)(c)”.

24 Subsection 106ZPH(3)

Repeal the subsection, substitute:

- (3) The Minister must not appoint a person to act in an office of a member (the *relevant member*) of the Authority referred to in paragraph 106ZPA(1)(c) unless the person is a practitioner of the same kind as the relevant member.

25 Subsection 124B(1) (at the end of the definition of practitioner)

Add:

- ; or (i) a health professional of a kind determined by the Minister under subsection (7) to be a practitioner for the purposes of this Part.

26 At the end of section 124B

Add:

- (7) The Minister may, by legislative instrument, determine that a health professional of a particular kind (being a health professional who provides a health service within the meaning of subsection 3C(8)) is a practitioner for the purposes of this Part.

27 At the end of subsection 124EB(2)

Add:

- ; or (d) if the Committee is convened in relation to a chiropractor—a chiropractor; or
- (e) if the Committee is convened in relation to a physiotherapist—a physiotherapist; or
- (f) if the Committee is convened in relation to a podiatrist—a podiatrist; or
- (g) if the Committee is convened in relation to an osteopath—an osteopath; or
- (h) if the Committee is convened in relation to a person who is a health professional of a kind covered by paragraph (i) of the definition of *practitioner* in subsection 124B(1)—a health professional of the same kind as the person.

Division 2—Transitional and application provisions

28 Transitional—review of services rendered or initiated by certain allied health practitioners

The Chief Executive Medicare must not make a request under section 86 of the *Health Insurance Act 1973* to review the provision of services by a person during a period if:

- (a) the services were rendered or initiated by a health professional who is a practitioner for the purposes of Part VAA of that Act because of a determination that is in force under subsection 81(1A) of that Act (as inserted by item 18 of this Schedule); and
- (b) the period falls before the determination took effect.

29 Application—acts and omissions of certain allied health practitioners

- (1) This item applies in relation to a person who is a practitioner for the purposes of Part VB of the *Health Insurance Act 1973* because of a

Schedule 2 Amendments relating to the Professional Services Review Scheme

Part 2 Allied health practitioners

determination that is in force under subsection 124B(7) of that Act (as inserted by item 26 of this Schedule).

- (2) Part VB of the *Health Insurance Act 1973* does not apply in relation to acts and omissions of the person that took place before the determination took effect.
- (3) For the purposes of this item, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day the determination took effect, the act or omission is alleged to have taken place before the determination took effect.

30 Application of item 27

The amendment of the *Health Insurance Act 1973* made by item 27 of this Schedule does not apply in relation to a Committee that was established under subsection 124E(1) of that Act before the day this item commences.

Part 3—Meaning of service

Health Insurance Act 1973

31 Subsection 81(1) (paragraph (a) of the definition of service)

Repeal the paragraph, substitute:

- (a) a service that has been rendered if, at the time it was rendered, medicare benefit was payable in respect of the service; or
- (ab) a service that has been initiated (whether or not it has been or will be rendered) if, at the time it was initiated, medicare benefit would have been payable in respect of the service had it been rendered at that time; or

32 Application

The amendment made by this Part applies to a service that is rendered or initiated on or after the day this item commences.

Part 4—Extension of time for certain processes

Health Insurance Act 1973

33 Subsection 106G(3)

Repeal the subsection, substitute:

- (3) If a circumstance specified in column 1 of an item in the following table occurs, the Committee may determine, in writing, that the period of 6 months referred to in paragraph (2)(a) is extended for a period not exceeding the period specified in column 2 of that item.

Extension of period for giving final report		
Item	Column 1 Circumstance	Column 2 Period
1	The person under review is unable because of illness to attend a hearing being conducted by the Committee	The period during which the person under review is unable to attend the hearing
2	The person under review is fully disqualified under section 105	The period during which the person under review is fully disqualified under that section
3	A notice is given to a person under subsection 105A(2) and the person fails to comply with a requirement of the notice	The period during which the person to whom the notice is given fails to comply with the requirement
4	The Committee's consideration of the referral is suspended under paragraph 106N(2)(b) or because of an injunction or other court order	The period for which the Committee's consideration of the referral is suspended

34 After subsection 106G(4)

Insert:

- (4A) The period of 6 months referred to in paragraph (2)(a) may be extended under subsection (3) more than once.

35 Subsection 106S(2)

Repeal the subsection, substitute:

- (2) The Director may give information to the Determining Authority under subsection (1) on one occasion only.
- (2A) The Director must not give information to the Determining Authority under subsection (1) after the Authority has made its draft determination in accordance with section 106U.

36 Section 106SA

Repeal the section, substitute:

106SA Authority to invite submissions before making a draft determination

Invitation to make submissions

- (1) The Determining Authority must give the person under review a written invitation to make written submissions to the Authority, having regard to the Committee's final report and any information given by the Director under section 106S, about the directions the Authority should make in the draft determination relating to the person.

Note: Section 106U sets out the directions the Authority can make.

- (2) An invitation under subsection (1) must state that the person under review may make submissions within 1 month after the day on which the invitation is given to the person.

Note: The period for making submissions may be extended under subsection (5) and may be affected by section 106TB.

Invitation to be given after Committee's final report is given to Authority

- (3) The Determining Authority must give an invitation under subsection (1) within 1 month after being given the Committee's final report.

Note: The period for giving the invitation may be affected by section 106TB.

Further invitation to be given in certain circumstances

- (4) If the Director gives the Determining Authority information under section 106S after the Authority has given the person under review an invitation under subsection (1), the Authority must, within 14 days after being given the information, give the person a further invitation under subsection (1). Subsection (3) does not apply to the further invitation.

Note: The period for giving the further invitation may be affected by section 106TB.

Period for making submissions may be extended

- (5) The Determining Authority may extend a period within which the person under review may make submissions if:
- (a) the person applies, in writing, for the period to be extended; and
 - (b) the application is made before the end of the period; and
 - (c) the Authority considers that it is reasonable to extend the period.

37 Subsection 106T(1)

Repeal the subsection, substitute:

- (1) The Determining Authority must, after taking into account any submissions made by the person under review in accordance with section 106SA:
- (a) make a draft determination in accordance with section 106U relating to the person; and
 - (b) give copies of the draft determination to the person and to the Director.
- (1A) The Determining Authority must comply with subsection (1) within 1 month after the last day on which the person under review may make submissions in accordance with section 106SA.

Note: The period for making the draft determination may be affected by section 106TB.

38 At the end of subsection 106T(2)

Add:

Note: The period for making submissions may be affected by section 106TB.

39 Subsection 106T(4)

Omit “that paragraph”, substitute “subsection (1A)”.

40 At the end of subsection 106TA(1)

Add:

Note: The period for making the final determination may be affected by section 106TB.

41 After section 106TA

Insert:

106TB Time for doing act affected if court order operates

- (1) This section applies in relation to an act that is required or permitted by this Subdivision to be done within a particular period (the *original action period*) if an injunction or other court order prevents the act, or a further act of that kind, from being done within that period.
- (2) Despite any other provision of this Subdivision, and subject to any order of a court:
 - (a) the original action period stops running at the beginning of the period (the *suspension period*) during which the injunction or other court order prevents the act from being done; and
 - (b) a new period (the *new action period*) for doing the act, being a period of the same length as the original action period, starts running on the day after the end of the suspension period.
- (3) For the purposes of this Subdivision, if:
 - (a) the original action period was a period in which the person under review was permitted to make submissions in accordance with section 106SA or 106T; and
 - (b) the person made a submission within that period;then the person is taken to have made the submission during the new action period.

42 Application of items 35, 36, 37 and 39

Schedule 2 Amendments relating to the Professional Services Review Scheme
Part 4 Extension of time for certain processes

The repeals and amendments of the *Health Insurance Act 1973* made by items 35, 36, 37 and 39 of this Schedule do not apply, in relation to the making of a draft determination or a final determination in relation to a person under review under Part VAA of that Act, if the Committee's final report in relation to the person was given to the Determining Authority under subsection 106L(3) of that Act before the day this item commences.

Part 5—No further action to be taken in certain circumstances

Health Insurance Act 1973

43 Subsection 106G(6)

Repeal the subsection.

44 After section 106G

Insert:

106GA Notification by Director or Committee that proper investigation is impossible

- (1) The Director may give the Committee written notice that he or she is satisfied that circumstances exist that would make a proper investigation by the Committee impossible. The notice must set out the circumstances.
- (2) The Committee may give the Director written notice that it is satisfied that circumstances exist that would make a proper investigation by the Committee impossible. The notice must set out the circumstances.
- (3) If the Director or the Committee gives a notice under this section:
 - (a) this Division ceases to have effect in relation to the Committee; and
 - (b) the Director must, within 7 days after giving or receiving the notice (as the case may be), give a copy of the notice to the Chief Executive Medicare and the person under review.

45 Division 5 of Part VAA (heading)

Repeal the heading, substitute:

Division 5—Determining Authority

Subdivision A—Establishment etc. of the Determining Authority

46 Before section 106R

Insert:

Subdivision B—Ratification of agreements by the Determining Authority

106QA Application of Subdivision

This Subdivision applies if an agreement entered into between the Director and a person under review under section 92 is referred to the Determining Authority for ratification.

106QB Notification by Director or Authority that action in agreement cannot take effect

- (1) The Director may give the Determining Authority written notice that he or she is satisfied that circumstances exist that would make it impossible for an action specified in the agreement to take effect. The notice must set out the circumstances.
- (2) The Determining Authority may give the Director written notice that it is satisfied that circumstances exist that would make it impossible for an action specified in the agreement to take effect. The notice must set out the circumstances.
- (3) If the Director or the Determining Authority gives a notice under this section:
 - (a) section 106R ceases to have effect in relation to the agreement; and
 - (b) the Director must, within 7 days after giving or receiving the notice (as the case may be), give a copy of the notice to the Chief Executive Medicare and the person under review.

47 Section 106R (heading)

Repeal the heading, substitute:

106R Authority must ratify or refuse to ratify agreement

48 Subsection 106R(1)

Repeal the subsection, substitute:

- (1) The Determining Authority must, within 1 month after the day on which it receives the agreement, make a decision either ratifying or refusing to ratify the agreement.

49 After section 106R

Insert:

Subdivision C—Determinations by the Determining Authority

106RA Application of Subdivision

This Subdivision applies if a final report of a Committee is given to the Determining Authority under subsection 106L(3) in relation to a person under review.

106RB Notification by Director or Authority that proper draft or final determination is impossible

- (1) The Director may give the Determining Authority written notice that he or she is satisfied that circumstances exist that would make it impossible for a proper draft determination or final determination to be made by the Authority in relation to the person under review. The notice must set out the circumstances.
- (2) The Determining Authority may give the Director written notice that it is satisfied that circumstances exist that would make it impossible for a proper draft determination or final determination to be made by the Authority in relation to the person under review. The notice must set out the circumstances.
- (3) If the Director or the Determining Authority gives a notice under this section:
 - (a) this Subdivision ceases to have effect in relation to the person under review; and
 - (b) the Director must, within 7 days after giving or receiving the notice (as the case may be), give a copy of the notice to the Chief Executive Medicare and the person under review.

Part 6—Date of effect for final determinations

Health Insurance Act 1973

50 Subsection 106V(2)

Repeal the subsection, substitute:

- (2) If, before that 35th day, a proceeding is instituted in a court in respect of the final determination, the determination takes effect (subject to any order of the court) at the end of:
- (a) if the application instituting the proceeding is withdrawn or the proceeding is discontinued—7 days after the day on which the application is withdrawn or the proceeding is discontinued; or
 - (b) if the proceeding is dismissed or determined—the prescribed number of days after the day on which the proceeding is dismissed or determined; or
 - (c) if an appeal is instituted but the appeal is withdrawn or discontinued—7 days after the day on which the appeal is withdrawn or discontinued; or
 - (d) if an appeal is instituted and the appeal is dismissed or determined—the prescribed number of days after the day on which the appeal is dismissed or determined.

51 Application

The amendment of the *Health Insurance Act 1973* made by this Part does not apply in relation to a final determination that was made under section 106TA of that Act before the day this item commences.

Part 7—Referrals to Medicare Participation Review Committee

Health Insurance Act 1973

52 Subparagraph 19B(2)(a)(i)

Omit “, 124FAA(2)(e)”.

53 Subparagraph 19B(2)(b)(i)

Omit “, 124FAA(2)(d)”.

54 Subparagraph 19B(2)(c)(iii)

Omit “, 124FAA(2)(e)”.

55 Subparagraph 19B(2)(d)(iii)

Omit “, 124FAA(2)(d)”.

56 Subsection 19D(11) (paragraph (a) of the definition of *disqualified practitioner*)

Omit “, 124FAA(2)(d) or (e)”.

57 Paragraphs 92(2)(f) and (g)

Omit “of not more than 3 years”.

58 After subsection 92(2)

Insert:

(2A) For the purposes of paragraphs (2)(f) and (g), the period specified must not be more than:

- (a) if the person is a practitioner in relation to whom an agreement under this section, or a final determination under section 106TA, has previously taken effect—5 years; or
- (b) in any other case—3 years.

59 Paragraph 92(4)(e)

Omit “jurisdiction; and”, substitute “jurisdiction.”.

60 Paragraph 92(4)(f)

Repeal the paragraph.

61 Paragraph 106U(1)(g)

After “disqualified”, insert “, for a specified period starting when the determination takes effect”.

62 At the end of paragraph 106U(1)(h)

Add “for a specified period starting when the determination takes effect”.

63 Subsections 106U(3) and (4)

Repeal the subsections, substitute:

- (3) For the purposes of paragraphs (1)(g) and (h), the period specified must not be more than:
 - (a) if the person under review is a practitioner in relation to whom an agreement under section 92, or a final determination under section 106TA, has previously taken effect—5 years; or
 - (b) in any other case—3 years.

64 Section 106X

Repeal the section.

65 Subsection 106ZPR(2)

Repeal the subsection.

66 Subsection 124E(2A)

Repeal the subsection.

67 Subsection 124E(5)

Omit “106X or”.

68 Subsection 124E(5)

Omit “, (2A)”.

69 Subsection 124EA(1)

Omit “, (2A)”.

70 Section 124FAA

Repeal the section.

71 Subsection 124H(7)

Omit “124FAA(2),”.

72 Subsection 124J(8)

Omit “, (2A)”.

73 Subsection 124S(9)

Omit “or paragraph 124FAA(2)(d) or (e)”.

74 Application

The repeals and amendments of the *Health Insurance Act 1973* made by this Part do not apply in relation to a request to review the provision of services by a person that was made under section 86 of that Act before the day this item commences.

Part 8—Referrals to appropriate regulatory bodies

Health Insurance Act 1973

75 Paragraph 93(8)(a)

Omit “an appropriate body”, substitute “a person or body”.

76 Subsection 93(8)

Omit “the appropriate body”, substitute “the person or body”.

77 Section 106XA (heading)

Repeal the heading, substitute:

106XA Significant threat to life or health

78 Before subsection 106XA(1)

Insert:

Opinion formed by Committee or Determining Authority

79 Subsections 106XA(2) to (4)

Repeal the subsections, substitute:

- (2) If the Director receives, from a Committee or the Determining Authority, a statement and material under subsection (1) in relation to conduct by a person under review, the Director must send the statement and material to:
 - (a) a State or Territory body that is responsible for the administration of health services or the protection of public health and safety in the State or Territory in which the conduct occurred; and
 - (b) each appropriate person or body for the person under review (see subsection (4)).

Opinion formed by Director

- (3) If, in the course of or in connection with the performance of functions or the exercise of powers (whether by the Director, the

Director's nominee, a Committee or the Determining Authority) under this Part in relation to a person under review, the Director forms the opinion that any conduct by the person has caused, is causing, or is likely to cause, a significant threat to the life or health of any other person, the Director must:

- (a) prepare a written statement of his or her concerns; and
- (b) attach to the statement the material, or copies of the material, on which his or her opinion is based; and
- (c) send the statement and material to:
 - (i) a State or Territory body that is responsible for the administration of health services or the protection of public health and safety in the State or Territory in which the conduct occurred; and
 - (ii) each appropriate person or body for the person under review (see subsection (4)).

Meaning of appropriate person or body

- (4) For the purposes of paragraph (2)(b) and subparagraph (3)(c)(ii), an ***appropriate person or body*** for a person under review is a person or body that:
 - (a) is specified in the regulations; and
 - (b) has the power to take action against the person under review.

80 Section 106XB (heading)

Repeal the heading, substitute:

106XB Non-compliance by a practitioner with professional standards

81 Paragraph 106XB(2)(a)

Repeal the paragraph, substitute:

- (a) in the course of or in connection with the performance of functions or the exercise of powers (whether by the Director, the Director's nominee, a Committee or the Determining Authority) under this Part in relation to a person under review who is a practitioner, the Director forms the opinion that the practitioner has failed to comply with professional standards; or

Part 9—Disqualified practitioners

Health Insurance Act 1973

82 Subparagraphs 19B(2)(a)(ii) and (c)(iv)

Omit “partly”, substitute “fully”.

83 Subsection 19D(1)

After “section 19B”, insert “or 106ZPM”.

84 Subsection 19D(11) (paragraph (c) of the definition of *disqualified practitioner*)

Omit “fully”.

85 Subsection 19D(11) (paragraph (e) of the definition of *disqualified practitioner*)

Omit “paragraph 106U(1)(h) that the practitioner be fully disqualified”, substitute “paragraph 106U(1)(g) or (h)”.

86 Subsection 19D(11) (note at the end of the definition of *disqualified practitioner*)

Repeal the note.

Part 10—Patient referrals

Health Insurance Act 1973

87 After section 132

Insert:

132A Regulations relating to the manner of patient referrals

- (1) If an *item* specifies a service that is to be rendered by a practitioner to a patient who has been referred to the practitioner, the regulations may require that, for the purposes of the item, the patient is to be referred in a manner prescribed by the regulations.
- (2) In this section:

item includes an item relating to a service specified in a determination in force under subsection 3C(1).

practitioner has the same meaning as in section 124B.

88 Subsection 133(2)

Repeal the subsection.

Schedule 3—Technical amendments relating to legislative instruments

Health Insurance Act 1973

1 Subsection 86(5)

After “Minister may”, insert “, by legislative instrument,”.

2 Subsection 86(6)

Repeal the subsection.

3 Subsection 93(4)

Omit “in writing”, substitute “by legislative instrument”.

4 Subsection 93(5)

Repeal the subsection.

5 Subsection 106K(3)

Omit “make written”, substitute “, by legislative instrument, make”.

6 Subsection 106K(5)

Repeal the subsection.

7 Subsection 106Q(3)

After “Minister may”, insert “, by legislative instrument,”.

8 Subsection 106Q(4)

Repeal the subsection.

9 At the end of section 124FAA

Add:

- (7) In this section, a reference to a final determination under section 106TA includes a reference to an agreement that, under paragraph 92(4)(f), is taken to be a final determination for the purposes of section 106X.

*[Minister's second reading speech made in—
House of Representatives on 9 May 2012
Senate on 10 May 2012]*

(35/12)

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