

EXPLANATORY STATEMENT

HEALTH INSURANCE ACT 1973

DETERMINATION UNDER SUBSECTION 106K(3)

Purpose and operation

1. The Professional Services Review Scheme (the **Scheme**) is established under Part VAA of the *Health Insurance Act 1973* (the **Act**). Section 79A specifies the object of that Part as being “to protect the integrity of the Commonwealth Medicare benefits and pharmaceutical benefits programs and, in doing so:

(a) protect patients and the community in general from the risks associated with inappropriate practice; and

(b) protect the Commonwealth from having to meet the cost of services provided as a result of inappropriate practice.”

2. The Scheme involves the review of a practitioner’s provision of services to determine whether the practitioner has inappropriately rendered or initiated services which: (a) attract a Medicare benefit; or (b) involve prescribing or dispensing of a pharmaceutical benefit. A review under the scheme is conducted by a Professional Services Review Committee consisting of peers of the practitioner (**Committee**). There are a range of directions that may be made under the Act in relation to persons who have inappropriately rendered or initiated services of that kind.

3. Services to be investigated are referred to a Committee by the Director of Professional Services Review. In investigating the provision of services included in a particular class of referred services under the Scheme, a Committee may have regard only to a sample of the services included in the class (subsection 106K(1) of the Act).

4. Subsection 106K(3) of the Act provides that the Minister may make written determinations specifying the content and form of sampling methodologies that may be used by a Committee when investigating the provision of services in a particular class.

5. On 18 April 2000, the then Minister for Health and Aged Care, the Hon Michael Wooldridge, made the *Health Insurance (Professional Services Review – Sampling Methodology) Determination 2000 (No.1)* pursuant to subsection 106K(3) (the **Current Determination**). The Current Determination sought to address concerns raised by the Federal Court in the case of *Anthony Adams v Steven Yung & Anor* [1998] 506 FCA (15 May 1998) where a Committee was found to have not made any useful sample analysis of services, nor to have related its finding of inappropriate practice to some or all specified services.

6. The Current Determination sets out a sampling methodology to allow a Committee to make a finding of inappropriate practice in relation to the provision of particular identifiable services and to be able to extrapolate the results to a larger number of similar services within the referral period.

7. The *Health Insurance (Professional Services Review – Sampling Methodology) Determination 2006* (the **Determination**) provides for a new sampling methodology consisting

of:

- (a) a single sample of no less than 25 provided services randomly drawn from the class of referred services being investigated; and
- (b) the determination, according to a prescribed formula, of the proportion of services in the sample that constitutes inappropriate practice.

8. The sampling methodology in the Determination is simpler than that prescribed in the Current Determination and consequently should involve fewer Committee sitting days to apply. This should reduce the administrative burden for both the Committee and the person under review.

Consultations

9. The Determination has been agreed with the Director of the Professional Services Review. The Australian Medical Association considers that the Determination appears to accurately implement the Government's objectives, which it supports.

10. The new methodology proposed in the Determination has been developed in consultation with, and is endorsed by, Professor Des Nicholls, an accredited statistician and author of the methodology contained in the Current Determination.

Effect

11. The Current Determination made under section 106K(3) of the Act on 18 April 2000 with effect from 3 May 2000 is revoked and substituted with this Determination.

12. Details of the Determination are set out in Attachment A.

13. This Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

14. The Determination was made on 18 April 2000 and commenced on gazettal.

OVERVIEW OF THE *HEALTH INSURANCE (PROFESSIONAL SERVICES REVIEW – SAMPLING METHODOLOGY) DETERMINATION 2006*

PART 1 PRELIMINARY

Section 1 - Name of Determination

Provides that the Determination may be cited as the *Health Insurance (Professional Services Review - Sampling Methodology) Determination 2006*.

Section 2 - Commencement

Provides that the Determination is to commence on the day after it is registered.

Section 3 – Revocation of *Health Insurance (Professional Services Review - Sampling Methodology) Determination 2000 (No. 1)*.

- (1) Provides that the *Health Insurance (Professional Services Review - Sampling Methodology) Determination 2000 (No. 1)* is revoked. This revocation will, subject to subsection 3(2), take effect on the day of commencement of the Determination.
- (2) Provides that despite subsection 3(1), the *Health Insurance (Professional Services Review - Sampling Methodology) Determination 2000 (No. 1)* continues to apply to the investigation of services referred to a Committee under section 93 of the Act before the commencement of this Determination.

Section 4 - Definitions

Defines the term ‘Act’ used in the Determination as meaning the *Health Insurance Act 1973*.

The notes to section 4 also clarify that certain terms used in the Determination are defined in subsections 3(1) and 81(1) of the Act.

PART 2 SAMPLING METHODOLOGY

Section 5 - Purpose

Specifies the content and form of a sampling methodology that may be used by a Committee in:

- (a) investigating the provision of services included in a particular class of referred services;
and
- (b) having regard only to a sample of services included in the class.

Section 6 – Application of sampling methodology

Provides that the sampling methodology specified in Part 2 of the Determination is applicable to services provided, within the meaning given by subsection 81(2) of the Act, that are:

- (a) individual items; or
- (b) multiple items for the same patient on 1 occasion;

in a particular class of referred services.

Section 7 - Sample

- (1) Provides that under this methodology, the Committee must have regard to a sample of no fewer than 25 provided services randomly drawn from a class of referred services being investigated.
- (2) Provides that the Committee may:
 - (a) omit a service from the sample; and
 - (b) include another provided service, randomly drawn from the same class, in its place.
- (3) Provides that if the Committee omits a service and includes another provided service in its place under subsection 7(2), the Committee must state its reasons for doing so in the draft report and final report it prepares in respect of the person under review to whom the sample relates.

The note to section 7 clarifies that the Committee must prepare a draft report under section 106KD of the Act, and a final report under section 106L, in relation to the findings.

Section 8 – Determining percentage of inappropriate practice in sample

- (1) Provides that a committee relying on subsection 106K(1) of the Act must work out, in accordance with subsection 8(2), the proportion of services in the sample in relation to the provision of which the person under review engaged in inappropriate practice.
- (2) Provides that for subsection 8(1), the proportion is to be expressed as a percentage, as follows:

$$100 \times \left[d - \sqrt{\frac{4d \times (1 - d) \times (N - s)}{N \times (s - 1)}} \right]$$

where:

d is the number of services in the sample that the Committee has determined are services in relation to the provision of which the person under review has engaged in inappropriate practice, divided by *s*.

s is the number of services in the sample.

N is the number of services in the class.

- (3) Provides that the percentage must be expressed as a whole number (if necessary, for that purpose, rounded down to the nearest whole number).

Section 9 – Disregarding sample results less than 10%

Provides that, for the purpose of subsection 106K(1) of the Act, the methodology specified in the Determination may be used by a Committee only if the percentage worked out under section 8 is equal to, or greater than, 10% of the sample of the particular class of referred services under investigation.

The notes to section 9 clarify that:

- it is considered that no conclusion can be drawn from a result less than 10% because the result may not be statistically valid; and
- information about a service may be considered under section 106H of the Act even if, because of section 9 of the Determination, a sample including that service cannot be considered under section 106K of the Act.