

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Health

Health Insurance Act 1973

Health Insurance (Professional Services Review - Allied Health and Others) Determination 2012

The Professional Services Review (PSR) scheme is established under Part VAA of the *Health Insurance Act 1973* (the Act). Section 79A of the Act provides that the object of that Part is to protect the integrity of the Commonwealth Medicare benefits and pharmaceutical benefits programs (MBS and PBS respectively) and, in doing so, protect patients and the community in general from the risks associated with inappropriate practice and protect the Commonwealth from having to meet the cost of services provided as a result of inappropriate practice.

Subsection 81(1A)(a) of the Act provides that the Minister may determine by legislative instrument that a health professional of a particular kind, who provides a health service within the meaning of subsection 3C(8) of the Act is a practitioner for the purposes of Part VAA of the Act.

Subsection 81(1A)(b) of the Act provides that the Minister may determine by legislative instrument that a vocation engaged in by a health professional of a kind determined under subsection 81(1A) is a profession under Part VAA of the Act.

The *Health Insurance (Professional Services Review - Allied Health and Others) Determination 2012* (the Determination) lists those health professionals who are practitioners and those vocations that are professions for the purposes of Part VAA of the Act.

At present the PSR Scheme applies only to medical practitioners, dentists, chiropractors, physiotherapists, podiatrists, optometrists, midwives, nurse practitioners and osteopaths who provide services under Medicare and the PBS.

In the 2011 calendar year, practitioners not covered by the PSR, provided over 4 million services at a cost to Medicare of \$383 million. These practitioners include audiologists; diabetes educators; dieticians; exercise physiologists; mental health nurses; occupational therapists; psychologists; social workers, speech pathologists, Aboriginal and Torres Strait Islander health practitioners, Aboriginal health workers and orthoptists.

This Determination adds these health professionals and the vocations undertaken by them to the list of matters regulated by the PSR arrangements. This will enable the PSR Scheme to be applied to all health professionals who provide Medicare services.

Details of the Determination are set out in the [Attachment](#).

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

The Determination commences on 1 January 2013.

Consultation

These changes are based on amendments to the Act by the *Health Insurance Amendment (Professional Services Review) Act 2012* (the PSR Act). The PSR Act underwent an extensive consultation process. An exposure draft of the PSR Act was released for consultation on 1 April 2010 and key professional bodies, such as the Australian Medical Association and Allied Health Professions Australia indicated their support for the changes in the PSR Act.

Details of the Health Insurance (Professional Services Review - Allied Health and Others) Determination 2012

Section 1- Name of Determination

This section provides that the name of the Determination is the *Health Insurance (Professional Services Review - Allied Health and Others) Determination 2012*.

Section 2 - Commencement

This section provides that the Determination commences on 1 January 2013.

Section 3 - Interpretation

This section provides that words and expressions used in the Determination have the same meaning as given to them in the Act.

Section 4 – Health Practitioners

This section provides that, in accordance with subsection 81(1A)(a) of the Act, health professionals listed in Part A of the Schedule are practitioners for the purposes of Part VAA of the Act.

Section 5 – Professions

This section provides that, in accordance with subsection 81(1A)(b) of the Act, vocations that practitioners engage in, listed in Part B of the Schedule, are professions for the purposes of Part VAA of the Act.

Schedule 1 – Practitioners and Professions for the purposes of the Professional Services Review

The table in the Schedule provides a list of practitioners and professions who are practitioners or professions for the purposes of Part VAA of the Act.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Health Insurance (Professional Services Review - Allied Health and Others) Determination 2012

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Health Insurance (Professional Services Review - Allied Health and Others) Determination 2012* (the Determination) provides a list of practitioners and professions that can now be considered under Part VAA of the Act. It provides that where a practitioner can provide services under the MBS or PBS, and is listed in Schedule 1 of the Determination, then that practitioner is a practitioner for the purposes of Part VAA of the Act.

Human rights implications

The right to health

The right to the highest attainable standard of physical and mental health is protected by Article 12(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR). The object of the PSR Scheme, outlined in section 79A of the Act, is to protect patients and the community in general from the risks associated with inappropriate practice and to protect the Commonwealth from having to meet the cost of services provided as a result of this inappropriate practice. The PSR Scheme investigates the provision of services by a practitioner to determine whether the practitioner has engaged in inappropriate practice in providing Medicare services or in prescribing under the PBS.

As the primary mechanism for monitoring the clinical relevance of professional services provided under the Medicare scheme, PSR Committees perform a public health role when undertaking reviews of practitioners. If a PSR Committee identifies public health and safety issues in the course of their deliberations, they may either expressly address those issues in their findings or, if a case arises involving a significant threat to the life or health of any other person, a PSR Committee must refer their concerns, through the Director of PSR, to an appropriate regulatory body. This process may lead to the identification of conduct that may not otherwise be brought to the attention of the appropriate regulatory body.

The provisions in this Determination are aimed at ensuring that any practitioner who can provide health services under the MBS or the PBS can be reviewed by the PSR. By extending Part VAA of the Act to all MBS and PBS eligible services, this Determination ensures the public can attain the highest standard of physical and mental health services.

Conclusion

This Legislative Instrument is compatible with human rights.

The Hon Tanya Plibersek MP,

Minister for Health