



## **Health Insurance (Medicare Participation Review Committee) Guidelines 2020**

---

I, Greg Hunt, Minister for Health, make the following guidelines.

Dated                    11 August 2020

The Hon Greg Hunt MP  
Minister for Health

---

---

## Contents

1	Name .....	1
2	Commencement.....	1
3	Authority .....	1
4	Definitions.....	1
5	Compliance with Guidelines .....	2
6	Exercise of powers under the Act.....	2
7	Making of determinations under subsection 124F(2) .....	2
8	Other relevant considerations .....	3
9	Disqualification periods.....	3
10	Payment of medicare benefits.....	5
11	Making of determinations under subsection 124G(2).....	5
12	Exception to presumptions .....	7

---

## 1 Name

This instrument is the *Health Insurance (Medicare Participation Review Committee) Guidelines 2020*.

## 2 Commencement

- (1) Each provision of this instrument 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
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered	

Note: This table relates only to the provisions of this instrument as originally made.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

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

## 3 Authority

This instrument is made under subsection 124H(1) of the *Health Insurance Act 1973*.

## 4 Definitions

Note: The expression *pecuniary penalty order* where used in this instrument is defined in subsection 3(1) of the Act.

In this instrument:

*Act* means the *Health Insurance Act 1973*.

*Committee* means a Medicare Participation Review Committee established under the Act.

*convicted* refers to a conviction for an offence as referred to in subsection 124B(2) of the Act.

*offence of strict liability* means an offence of the type described in section 6.1 of the *Criminal Code*.

*practitioner* has the meaning given in section 124B of the Act.

*provider* has the meaning given in subsection 23DZZID of the Act.

*relevant civil contravention* has the meaning given in section 124B of the Act.

---

*relevant offence* has the meaning given in section 124B of the Act.

## **5 Compliance with Guidelines**

In making determinations under subsection 124F(2) and subsection 124G(2) of the Act in relation to a relevant offence or a relevant civil contravention, being the subject of a notice under section 124D of the Act, a Committee is required to have regard to the matters set out in sections 7 to 12 of these Guidelines.

## **6 Exercise of powers under the Act**

- (1) Subject to paragraph 124F(3)(b) of the Act, nothing in these Guidelines shall be read as limiting the powers conferred on a Committee by the Act.
- (2) Nothing in these Guidelines shall be read as limiting the authority of a Committee to consider, when making a determination to which these Guidelines apply, matters the Committee considers relevant to the making of the determination, being matters not dealt with in these Guidelines.
- (3) Subject to these Guidelines, a Committee established in relation to a practitioner or provider may when:
  - (a) making a determination under subsection 124F(2); or
  - (b) considering making a determination under subsection 124G(2) that subsection 124G(1) does not apply;inform itself on any matter in such manner as it considers appropriate.
- (4) The Committee shall bear in mind that its consideration under these Guidelines of any relevant offence or relevant civil contravention dealt with by a court may not extend to a review of the decision of the court regarding that offence or civil contravention.

## **7 Making of determinations under subsection 124F(2)**

- (1) In making a determination under subsection 124F(2) of the Act regarding either a conviction for a relevant offence or a pecuniary penalty order made in respect of a relevant civil contravention, a Committee shall have regard to the matters set out in subsections 7(2) and (3).
- (2) The nature and circumstances regarding the commission of the relevant offence or relevant civil contravention, including:
  - (a) the number of offences or civil contraventions;
  - (b) the date of commission of each offence or civil contravention;
  - (c) the facts of each offence or civil contravention;
  - (d) the penalty, if any, imposed by the court on the practitioner or provider for each offence or civil contravention; and
  - (e) the reasons for the court's decision and any other statements made by the court regarding its consideration of each offence or civil contravention.
- (3) The nature and circumstances regarding the commission of any previous relevant offence of which the practitioner or provider has been convicted, or any previous

---

relevant civil contravention for which a pecuniary penalty order has been made against either the practitioner or provider, including:

- (a) the number of offences or civil contraventions;
- (b) the date of commission of each offence or civil contravention;
- (c) the facts of each offence or civil contravention;
- (d) the penalty, if any, imposed by the court on the practitioner or provider for each offence or civil contravention;
- (e) the reasons for the court's decision and any other statements made by the court regarding its consideration of each offence or civil contravention;
- (f) any previous determination by a Committee regarding an offence or civil contravention by the practitioner or provider and the reasons given in a notice under subsection 124Q(1) for making the determination;
- (g) where any such determination imposed a period of disqualification on a practitioner, the length and date of termination of and the services covered by, the disqualification; and
- (h) where any such determination specified a period during which medicare benefits were not payable for specified services rendered by or on behalf of a provider, the length and date of termination of the period and the services specified in the determination.

## **8 Other relevant considerations**

- (1) In making a determination under subsection 124F(2) of the Act in relation to a practitioner or provider, a Committee shall have regard to the following matters:
  - (a) the length of time the practitioner or provider has been in active professional practice as a practitioner or provider;
  - (b) the effect which any particular determination, which the Committee may make, could have regarding the practitioner or provider;
  - (c) the potential effect of a particular determination on the patients of the practitioner or provider and/or the community they serve, regarding provision and quality of medical services;
  - (d) any period during which the practitioner or provider is not able, or was not able, to render professional services (which would otherwise attract medicare benefits) as a result of the conviction or the order to pay a civil penalty, whether due to imprisonment, not being registered or otherwise; and
  - (e) any other matters which the Committee considers relevant.

## **9 Disqualification periods**

- (1) Where a Committee has dealt with a practitioner under subsection 124F(2) of the Act and is of the opinion that a determination of disqualification should be made against the practitioner, the Committee shall have regard to the presumptions set out in subsections 9(2) to (8).
- (2) Where the practitioner:
  - (a) has been convicted of a relevant offence which is an offence of strict liability; or

- 
- (b) has been ordered by the Federal Court to pay a pecuniary penalty order for a relevant civil contravention; and
- (c) has not previously been:
- (i) convicted of a relevant offence; or
  - (ii) ordered by the Federal Court to pay a pecuniary penalty order for a relevant civil contravention;
- then disqualification for a period not exceeding 6 months would be appropriate.
- (3) Where the practitioner:
- (a) has been convicted of a relevant offence which is an offence of strict liability; or
  - (b) has been ordered by the Federal Court to pay a pecuniary penalty order for a relevant civil contravention; and
  - (c) has previously been:
    - (i) convicted of a relevant offence; or
    - (ii) ordered by the Federal Court to pay a pecuniary penalty order for a relevant civil contravention; and
  - (d) has not previously been disqualified by a Committee;
- then disqualification for a period of at least 3 months but not exceeding 2 years would be appropriate.
- (4) Where the practitioner:
- (a) has been convicted of a relevant offence which is not an offence of strict liability; and
  - (b) has not previously been convicted of a relevant offence;
- then disqualification for a period of at least 6 months but not exceeding 3 years would be appropriate.
- (5) Where the practitioner:
- (a) has been convicted of a relevant offence which is not an offence of strict liability;
  - (b) has previously been convicted of a relevant offence; and
  - (c) has not previously been disqualified by a Committee;
- then disqualification for at least twelve months would be appropriate.
- (6) Where the practitioner:
- (a) has been convicted of a relevant offence which is an offence of strict liability; or
  - (b) has been ordered by the Federal Court to pay a pecuniary penalty order for a relevant civil contravention; and
  - (c) has on one or more occasions been disqualified by a Committee;
- then disqualification for at least twelve months would be appropriate.
- (7) Where the practitioner:
- (a) has been convicted of a relevant offence which is not an offence of strict liability; and
  - (b) has on one or more occasions been disqualified by a Committee;
- then disqualification for at least 2 years would be appropriate.
-

- 
- (8) A practitioner is entitled to be heard on why any presumption as to the period of disqualification that would otherwise apply should not apply.

## **10 Payment of medicare benefits**

- (1) Where a Committee has dealt with a provider (who is not a practitioner) under subsection 124F(2) and is of the opinion that some action should be taken against the provider, the Committee shall have regard to the presumptions set out in subsections 11(2) to (8).

- (2) Where the provider:

(a) has been ordered by the Federal Court to pay a pecuniary penalty order for a relevant civil contravention; and

(b) has not previously been:

(i) convicted of a relevant offence, being an offence against Division 3 of Part IIBA of the Act; or

(ii) ordered by the Federal Court to pay a pecuniary penalty order for a relevant civil contravention;

it would be appropriate for the Committee to determine that medicare benefits are not payable for kinds of services specified in the determination rendered by or on behalf of the provider for a period not exceeding 6 months.

- (3) Where the provider:

(a) has been ordered by the Federal Court to pay a pecuniary penalty order for a relevant civil contravention; and

(b) has previously been:

(i) convicted of a relevant offence, being an offence against Division 3 of Part IIBA of the Act; or

(ii) ordered by the Federal Court to pay a pecuniary penalty order for a relevant civil contravention; and

(c) has not previously been subject to a determination by a Committee which specifies a period during which medicare benefits are not payable for kinds of services specified in the determination rendered by or on behalf of the provider;

it would be appropriate for the Committee to determine that medicare benefits are not payable for kinds of services specified in a determination rendered by or on behalf of the provider for a period of at least 6 months but not exceeding 2 years.

- (4) Where the provider:

(a) has been convicted of a relevant offence, being an offence against Division 3 of Part IIBA of the Act; and

(b) has not previously been convicted of a relevant offence, being an offence against Division 3 of Part IIBA of the Act;

it would be appropriate for the Committee to determine that medicare benefits are not payable for kinds of services specified in the determination, rendered by or on behalf of the provider, for a period of at least 6 months but not exceeding 3 years.

- 
- (5) Where the provider:
- (a) has been convicted of a relevant offence, being an offence against Division 3 of Part IIBA of the Act; and
  - (b) has previously been:
    - (i) convicted of a relevant offence, being an offence against Division 3 of Part IIBA of the Act; or
    - (ii) ordered by the Federal Court to pay a pecuniary penalty for a relevant civil contravention; and
  - (c) has not previously been subject to a determination by a Committee which specifies a period during which medicare benefits are not payable for kinds of services specified in a determination rendered by or on behalf of the provider;

it would be appropriate for the Committee to determine that medicare benefits are not payable for kinds of services specified in the determination, rendered by or on behalf of the provider, for a period of at least 12 months.

- (6) Where the provider:
- (a) has been ordered by the Federal Court to pay a pecuniary penalty order for a relevant civil contravention; and
  - (b) has on one or more occasions previously been subject to a determination by a Committee which specifies a period during which medicare benefits are not payable for kinds of services specified in a determination, rendered by or on behalf of the provider;

it would be appropriate for the Committee to determine that medicare benefits are not payable for kinds of services specified in the determination, rendered by or on behalf of the provider, for a period of at least 12 months.

- (7) Where the provider:
- (a) has been convicted of a relevant offence, being an offence against Division 3 of Part IIBA of the Act; and
  - (b) has on one or more occasions previously been subject to a determination by a Committee which specifies a period during which medicare benefits are not payable for kinds of services specified in a determination, rendered by or on behalf of the provider;

then disqualification for at least two years would be appropriate.

- (8) A provider is entitled to be heard on why any presumption as to period of non-payment of medicare benefits that otherwise would apply should not apply.

## **11 Making of determinations under subsection 124G(2)**

- (1) The Committee is required to consider the following matters in making a determination under subsection 124G(2) regarding a person:
- (a) any submission made to the Committee by the person in accordance with subsection 124G(3);
  - (b) the nature and seriousness of and the circumstances concerning the commission of each relevant offence for which the person has been convicted, or each relevant civil contravention where a pecuniary penalty order has been made regarding the person;



- 
- (c) whether the person has previously been convicted of a relevant offence or has previously been the subject of a relevant civil contravention for which a pecuniary penalty order has been made;
  - (d) whether the person has at any time been subject to a determination made under paragraphs 124F(2)(d), (e), (f) or (g) or a determination made under subsection 124G(2) of the Act;
  - (e) whether or not the practitioner or provider fits the criteria for an exception to a presumption set out in section 12; and
  - (f) any other matters the Committee considers relevant.
- (2) The Committee shall not make a determination under subsection 124G(2) unless the Committee is satisfied that:
- (a) were a hearing to be conducted, there would be little or no reasonable prospect that further evidence or material would become available to the Committee, which might, in the Committee's opinion, result in the making of a determination by the Committee under paragraphs 124F(2)(b), (c), (d), (e), (f) or (g) of the Act; or
  - (b) the exception in section 12 should be applied.

## **12 Exception to presumptions**

- (1) If a Committee has dealt with a practitioner under subsection 124F(2) and the Committee is satisfied that:
- (a) as a result of the conviction or order to pay a civil penalty, the practitioner is (or was) unable to render professional services (which would otherwise attract medicare benefits), whether due to imprisonment, not being registered or otherwise;
  - (b) the inability to render professional services (which would otherwise attract medicare benefits) has (or had) a similar practical effect to a determination by a Committee that the practitioner is disqualified; and
  - (c) the period during which the practitioner is (or was) unable to render professional services (which would otherwise attract medicare benefits) is appropriate;
- then, despite the presumptions in section 9, a Committee may determine that:
- (i) a hearing not be held in accordance with subsection 124G(3) of the Act; and
  - (ii) no further action be taken against the practitioner in accordance with subsection 124F(2) of the Act.