

Inappropriate practice

'Inappropriate practice' means conduct in providing services that a committee of the practitioner's peers would reasonably consider unacceptable to the general body of their profession.

The Scheme

The Scheme is managed by the Director of PSR (Director) who is an independent statutory officer appointed, subject to Australian Medical Association (AMA) agreement, by the Commonwealth Minister for Health and Ageing.

Medicare Australia administers Medicare and PBS and can request the Director to review provision of services by practitioners.

The **Professional Services Review Panel** consists of medical practitioners and other health practitioners appointed by the Minister after consultation with the AMA or appropriate professional organisations.

From the Panel, the Minister appoints **Deputy Directors**, who chair Professional Services Review Committees (PSRCs). A PSRC includes a Deputy Director and two other Panel members from the same profession or specialty as the practitioner under review. One or two more Panel members may be included to give the PSRC a wider range of clinical expertise.

The **Determining Authority** comprises a medical practitioner as Chair, plus a layperson and a member of the relevant profession. These are appointed by the Minister after consultation with the appropriate professions.

A **Medicare Participation Review Committee** can disqualify a practitioner, against whom two adverse determinations have been made, from the Medicare program for up to five years.

The Process

Counselling: Medicare Australia identifies potential inappropriate practice on the basis of a practitioner's service statistics. Medicare Australia advises a practitioner of its concerns. The practitioner's conduct is subsequently reviewed, and if concerns remain unaddressed, Medicare Australia may request the Director to review the practitioner's conduct.

Request for review: Medicare Australia can request the Director to review the provision of services by the practitioner during a specified period. A copy of the request is sent to the practitioner. The Director must decide within 1 month whether to undertake a review.

Review: The Director may review any services provided by the practitioner and is not restricted to Medicare Australia's reasons for requesting the review. The Director can require the practitioner to produce documents and can penalise non-compliance. Case officers may be appointed to help the Director conduct the review

Following the review: After the review, the Director must decide to either take no further action, or to provide the practitioner with a written report and invite submissions on any further action. After time for submissions, the Director must:

- decide to take no further action
- negotiate and enter into an agreement, or
- establish a PSRC and make a referral to it.

No further action: The Director may decide to take no further action if a PSRC could not reasonably find inappropriate practice.

Negotiating an agreement: The Director may negotiate a conclusion if the practitioner admits inappropriate practice and accepts sanctions. The agreement becomes effective if ratified by the Determining Authority.

Establishing a PSRC: The Director must establish a PSRC unless he/she decides to take no further action or the Determining Authority has ratified an agreement.

Challenging PSRC members: The practitioner may challenge the appointment of a PSRC member on the grounds of bias.

Hearings: A PSRC meets in private in State capital cities. The practitioner is given notice of the time and place of the hearing and must appear to give evidence. A PSRC may require the practitioner or someone else to produce documents. A lawyer usually assists a PSRC.

Failure to comply: If the practitioner fails to give evidence or to produce the requested documents, a PSRC may notify the Director who will fully disqualify the practitioner from Medicare until the practitioner complies.

PSRC process: A PSRC must accord the practitioner natural justice, may inform itself in any manner it thinks fit, and is not bound by the rules of evidence.

Medical records: A PSRC must consider whether the practitioner kept adequate and contemporaneous clinical records. A PSRC may find the practitioner's practice inappropriate despite the absence, deficiency or illegibility of health records.

Practitioner's rights at hearings: The practitioner may address a PSRC and question any witness. The practitioner may be accompanied, but not represented, by a legal or other adviser. A legal adviser may address a PSRC on points of law, and make a final address on the merits of the case. A non-legal adviser may address a PSRC.

Professional concerns: If the Director, a PSRC or the Determining Authority suspects a significant threat to the life or health of any person, or failure to comply with professional standards or fraudulent activity, they must report this to the relevant authority.

PSRC report: A PSRC will send a draft report to the practitioner inviting a submission on its preliminary findings. The PSRC must consider any submission from the practitioner before finalising its report to the Determining Authority.

Determination: If the PSRC makes a finding of inappropriate practice against the practitioner, the Determining Authority will invite submissions from the practitioner on the sanctions it should impose. The Determining Authority will then draft a determination, including the sanctions it intends to impose, upon which the practitioner may make further submissions. The Determining Authority will consider any further submissions in finalising the determination.

The sanctions

The Determining Authority must impose one or more of the following:

- a reprimand
- counselling
- repayment of Medicare benefits, and/or
- complete and/or partial disqualification from the Medicare scheme and/or PBS for up to three years.

Rights and responsibilities

Natural justice: The Scheme has safeguards to ensure the practitioner is treated fairly. At every major step the practitioner is invited to make submissions – especially on draft findings.

Confidentiality: The information and evidence presented to the PSRC, its deliberations and its findings remain confidential and may not be disclosed unless specifically authorised by the Act or on appeal. However, the Director may publish the name and address of any practitioner when the Determining Authority's decisions become effective.

Appeal rights: The practitioner may, at any stage, seek judicial intervention or review in the Federal Court.

Legal protection: Members of PSRCs, the Determining Authority and their consultants, witnesses and those appearing on behalf of practitioners are protected from civil or criminal actions.

Professional autonomy: The Scheme recognises the professional autonomy of the PSRCs in reaching findings of inappropriate practice.

Annual report: The Director's annual report to the Minister outlines the types of behaviour which led to findings of inappropriate practice and guides the professions as to their peers' understanding of inappropriate practice. Practitioner's names, an outline of their inappropriate practice, and the sanctions imposed are published in the annual report once a determination has taken effect. The report is tabled in Parliament.

More information

Contact Professional Services Review at
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phone on (02) 6120 9100
fax (02) 6120 9199;
or visit the PSR web site at www.psr.gov.au.

Disclaimer

This document is a general guide only and is not a legal document. The legislation should be consulted for comprehensive detailed information.

The authority for this Scheme is the *Health Insurance Act 1973* as amended. Copies of the Act can be obtained from a Commonwealth Government Info Shop.



PROFESSIONAL SERVICES REVIEW

Professional Services Review Scheme

The PSR Scheme is designed to protect the integrity of the Commonwealth medical and pharmaceutical benefits schemes (Medicare and PBS). The Scheme gives Professional Services Review authority to investigate whether health practitioners have engaged in inappropriate practice in providing Medicare services or when prescribing medication. Such investigations protect patients, the community and the Commonwealth from the risks and costs of health practitioners practicing inappropriately. Health practitioners covered by the Scheme include medical and dental practitioners, podiatrists, chiropractors, osteopaths, physiotherapists, midwives, nurse practitioners and optometrists.