

31 January 2019

Mr Anthony Millgate  
Assistant Secretary – Compliance Systems Branch  
Provider Benefits Integrity Division  
Department of Health  
Level 8, Sirius Building  
23 Furzer Street  
Woden 2602

Submitted via Department's Consultation Hub

Dear Mr Millgate

**RE: Medicare Compliance – Shared Debt Recovery Scheme**

Thank you for providing the Australian Dental Association (ADA) with the opportunity to participate in the consultation on the Medicare Compliance – Shared Debt Recovery Scheme.

The ADA acknowledges the responsibility of practitioners for correct billing under Medicare and supports the proposed inclusion of a transparent and fair debt recovery scheme in the Health Insurance Act 1973 that recognises the diverse contractual and employment arrangements that may exist in a dental practice. We note that the consultation paper is seeking input on 3 issues to which we provide the following advice.

**Consultation Issue 1**

***Classes of persons (or organisations) which may be considered a secondary debtor for the purposes of a shared debt and classes of persons (or organisations) who be excluded from being considered a secondary debtor***

The ADA supports the proposal that the secondary debtor will, in most circumstances, be the person or organisations that employs or engages with the health practitioner. However, we would like to draw your attention to a frequently occurring situation within dentistry that needs to be considered regarding this definition.

As allowed under various schemes such as the Child Dental Benefits Schedule and the Department of Veterans' Affairs Fee Schedule of Dental Services for Dentists and Dental Specialists, allied dental practitioners may provide services for and on behalf of dentists. These registered health practitioners will receive reimbursement for the services they provide from the employer who may or may not be the dentist whose provider number was used for the purposes of claiming. That is not to say that the dentist whose provider number was used is not responsible for the care provided, it simply means that they may not have derived any financial payment as a result of the treatment provided, in such cases where the dentist (whose provider number is listed for the purposes of billing), is the employer.

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In the situation described above, the primary debtor is the practitioner who provided the service and received the rebate (or portion thereof) and the secondary debtor is the employer or organisation. It is therefore essential that the 'Classes' of persons included in the scheme allow for this situation to be recognised so that the appropriate debtors are identified.

## **Consultation Issue 2**

### ***Matters which should be considered when making a shared debt determination***

The skills and experience of the audit officer will be critical to the decision making of shared debt determination and Medicare will need to ensure that audits related to dentistry are overseen by officers who understand the professions involved, the employment conditions and many varied contractual arrangements that exist within the dental setting. The general 65/35 rule may not be applicable in many dental practice employment settings - see further comment below under issue 3.

The consultation paper requests stakeholders to comment specifically on any circumstances where control or influence by a secondary debtor could lead to the making of a 'false or misleading' statement. One scenario that may need to be explored is where the secondary debtor has used the provider number of the dentist without their direct knowledge. As described above, allied dental practitioners who provide services on behalf of a dentist may be directed to provide services by their employer who may not be a dentist or alternatively, not the dentist to whom the provider number belongs if several dentists are employed in the same practice.

In addition, there should be consideration given to situations where inadvertent/accidental errors are made by administrative staff on an infrequent basis.

## **Consultation Issue 3**

### ***The default proportion of the debt that is recoverable from the secondary debtor***

The ADA notes that there is capacity within the scheme for the Chief Executive Medicare or their delegate to alter the proportion of a compliance debt in an individual case if they believe it is fair and reasonable that a different percentage be determined. The ADA welcomes this flexibility.

However, we believe that proportional prescribed split between the primary debtor and the secondary debtor does not reflect contemporary practice in dentistry. In fact, the reverse scenario of a 35% treating practitioner/65% employer split for debt recovery may be more appropriate especially for arrangements where the dentist that provided the services is an employee on commission. The situation is somewhat more complicated for independent contractors who are leasing rooms, although it is likely that there would be a similar division of earnings between the contractor and the owner of the facility.

Remuneration arrangements in private dental practice are varied and can be complex, often involving secondary debtor arrangements. The Department should adopt a flexible process to ensure that the debt recovery process takes these arrangements into account such that it reflects the remuneration arrangements in place at the practice.

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### Additional Comments

The consultation document refers in the overview section to the fact that organisations that engage or employ a practitioner to render professional services are already encouraged to ensure that all amounts claimed, correspond with the service rendered. The ADA would be interested to know what systems and measures the Department has in place currently.

Secondly, we note that the current audit system allows for Medicare to issue a notice to produce in situations where a practitioner is not able to produce documents which show that the item was correctly claimed, or the practitioner does not cooperate with the audit. In the instance where there is an inability to where the dentist no longer works at the practice where the services were delivered and no longer has access to the patient records Clarification is sought on how Medicare would respond to a situation?

Furthermore, the consultation paper indicates that before a notice to produce can be issued, the audit officer must seek advice from a medical practitioner who is an employee of the Department on what documents can be used to determine that the item was correctly claimed and have taken steps to consult with a relevant professional body. Clarification is sought as to the arrangements that will be in place when the audit relates to dentistry to ensure that a dentist rather than a medical practitioner is providing that advice, particularly as the practice management systems for patient records and the coding system used to describe treatments in dentistry is unique to that setting.

The ADA is happy to expand on any or all the comments provided. Should you have any questions, please do not hesitate to contact Ms Eithne Irving, General Manager, Policy on 02 8815 3332 or [eithne.irving@ada.org.au](mailto:eithne.irving@ada.org.au)

Yours sincerely,



Dr Carmelo Bonanno  
President