Perspectives

Professional Services Review: unnatural justice

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Lack of transparency and reliance on statistics alone make doctors vulnerable

The Professional Services Review (PSR) was established to investigate and manage situations where the Medicare system was being used inappropriately by doctors. Undoubtedly, the PSR's activities have identified and addressed instances of doctors knowingly exploiting Medicare. However, over the past 5 years, an initial general disquiet about the increased effect of the PSR's investigative system and processes on general practice grew into widespread concern among broad sections of the medical profession and others. The PSR committees were disbanded because they were not ratified by the Australian Medical Association (AMA), 39 cases under review were dropped, and a senate inquiry into the entire running of the PSR scheme was conducted. The inquiry resulted in the publication of seven recommendations for improvements in the system,[1] with a review with all relevant stakeholders planned for 12 months later.

A common recurrent complaint was Medicare's focus on statistics, with less emphasis on other information provided. Medicare targeted the right-hand end of the bell curve, assuming this was where inappropriate practice occurred. The "vanilla GP" who held four standard consultations an hour was the Medicare epitome of a gold standard practitioner and was safe from audit. However, the further GPs steered away from this "standard" practice, the more they were at risk of being investigated by the PSR. There is no substantial evidence that statistical outliers represent a high-risk group, and yet the PSR has intensified its auditing activities among such doctors, increasing auditing from 1% to 4%.[2]

Surveys of the medical profession have revealed deep concerns with the system and processes of the PSR. The AMA posed the question: “Do you think the Medicare audit process has become too heavy handed?”, to which 88% of respondents (307) voted yes.[3] The *Medical Observer* ran a survey that attracted over 200 replies. It showed that over 80% of respondents felt that Medicare and the PSR had not replied adequately to queries on the Medicare Benefits Schedule and less than 15% felt confident they would pass an audit on the Enhanced Primary Care item numbers.[4]

The specific concerns held by us and others are numerous. In our view, the operational processes of the PSR and the Medicare audit system appear to be non-transparent, with too much power in the hands of the PSR Director. There is a denial of natural justice, with a high conviction rate and pressure to accept “negotiated agreements”, with no practical appeal process. Fines imposed are large, running to between five and six figures. Preserving patient confidentiality during an audit seems to disadvantage the case of the doctor being audited. The PSR does not appear to respond to concerns raised in these areas, and this undermines community confidence in primary care.

A particular problem is that Medicare and the PSR give little or no guidance to GPs on the approved use of item numbers in the Medicare schedule. They have tried to refer complex requests back to the AMA and Royal Australian College of General Practitioners,[5] and will not give binding interpretations on the use of Medicare items. Their past rulings do not provide useful guidance. This puts GPs in an extremely vulnerable situation, being unable to reliably check their interpretation of Medicare item numbers, yet able to be severely punished for actions judged to be misdemeanours at a later date.

Some of the submissions to the Senate inquiry[6] show the heavy-handedness of the PSR, particularly in relation to procedures performed by GPs. Examples include a rural GP being required to pay back a substantial sum because he had not personally documented the wound dressings and vaccinations performed (a nurse had done the

documentation), and the rejection of independent assessment that disagreed with the PSR when investigating a rural GP for computed tomography scan orders. The PSR investigated 200 records associated with a procedural rural GP who had been in practice for 26 years because of “statistical anomaly” in the number of pre-anaesthetic checks ordered, even though the local hospital generated all these requests. On this basis, the GP was found guilty of incomplete record keeping and misinterpretations of item numbers 723 and 2713. He decided to accept the settlement after trying to sort through the issue over 2 years, although he did not feel at any stage that he had done anything wrong. Despite his previously clear record and full cooperation, he was subsequently fined a substantial five-figure sum and his patients were banned from claiming item 36 from Medicare.

The particular case of Dr Tisdall,[7] whose disqualification from Medicare was publicised by the PSR, and who fought for 10 years to clear his name, only to die soon after the federal court granted him the right to have his case reviewed by a new committee, is well known in the medical community and in Kyabram where he worked. The Full Federal Court was highly critical of the way the PSR went about making its findings. They described it as making a “speculative assumption” and decisions “simply based upon inferences drawn from statistics”,[7] echoing criticisms from medical groups.

The PSR is not only the concern of the various medical organisations that have queried its operation. The Australian community are the losers when government bodies fail. This inquiry has given us all the opportunity to improve a system for the benefit of patients, the government and doctors alike. The PSR needs to work hard with all medical and community groups to regain trust and respect.

Competing interests: Scott Masters has been audited three times by Medicare Australia. On the first two occasions, no concerns were identified except statistical anomalies. On the third occasion, he entered into a “negotiated agreement” with the Director of the Professional Services Review.

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References

1. Parliament of Australia. Senate Community Affairs Committees. Review of the Professional Services Review (PSR) Scheme; 25 October 2011. Recommendations. http://www.aph.gov.au/Senate/committee/clac_ctte/prof_serv_rev/report/b01.htm (accessed Nov 2011).
2. Karvelas P. Doctors angry over Kevin Rudd's Medicare blitz. *The Australian* 2008; 30 Dec. http://www.theaustralian.com.au/business/breaking-news/doctors-angry-over-rudd-medicare-blitz/story-e6frg90f-1111118434315 (accessed Mar 2011).
3. Parliament of Australia. Senate Community Affairs Committees. Review of the Professional Services Review (PSR) Scheme; 25 October 2011. Submissions received by the Committee. Answers to questions on notice. 1. Answers to questions on notice from the Australian Medical Association, received 23 September 2011. http://www.aph.gov.au/Senate/committee/clac_ctte/prof_serv_rev/submissions.htm (accessed Oct 2011).
4. Bracey A. Most GPs fear they'd fail an EPC item audit. *Medical Observer* 2010; 30 Jul. http://www.medicalobserver.com.au/news/most-gps-fear-theyd-fail-an-epc-item-audit (accessed Aug 2010).
5. Bracey A. Health department defers MBS item advice to doctors group. *Medical Observer* 2011; 14 Feb. http://www.medicalobserver.com.au/news/health-department-defers-mbs-item-advice-to-doctors-groups (accessed Feb 2011).
6. Parliament of Australia. Senate Community Affairs Committees. Review of the Professional Services Review (PSR) Scheme; 25 October 2011. Submissions received by the committee.

http://www.aph.gov.au/Senate/committee/clac_ctte/prof_serv_rev/submissions.htm (accessed Oct 2011).
7. *Tisdall v Webber* [2011] FCAFC 76.

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