Appendix D Professional Services Review overview

D.1. Process of the PSR

The legislated review process followed by PSR comprises up to three stages:

- Stage 1: PSR Director reviews the information
- Stage 2: PSR Committee decides if inappropriate practice occurred
- Stage 3: Determining Authority makes the decision

Stage 1: PSR Director reviews the information

The PSR process commences with the request by a delegate of the Chief Executive Medicare that asks the PSR Director to review a practitioner's provision of services during a specific period (through the PRP). Upon receiving a request, the Director considers materials provided by the delegate, and continues to obtain and evaluate a sample of billing statistics of the practitioner if inappropriate practice appears to occur. The Director may then meet with the practitioner to discuss the matters arise. In cases where the Director could reasonably conclude the occurrence of inappropriate practice, they prepare a report to explain the identified compliance concerns and the rationale behind and invite the practitioner to submit a response to assist the informed decision making. It is noted that approximately 90% of practitioners have representation at this stage, however this data was not made accessible for this Review.

The Director has seven days to alert a practitioner that a review is to take place that includes information about the concerns. The recently completed Section 92 Independent review noted that this was usually through the practitioner's legal or other representative (usually provided by the Medical Indemnity Insurer) and the Director of the PSR reports that they 'strongly advise' practitioners to be represented at this stage.

Upon examining the relevant materials provided, the Director decides on the outcome:

- Dismissing the matter if there are insufficient grounds to reasonably conclude that the practitioner engaged in inappropriate practice
- Negotiating a section 92 agreement with the practitioner in cases where the practitioner acknowledges their inappropriate practice (the agreement needs to be ratified by the Determining Authority before it takes effect); or
- Referring to a PSR Committee if a section 92 agreement is not achievable.

The Director is also required to refer the practitioner under review to appropriate bodies (e.g., medical boards, AHPRA, etc.) if concerns over patient safety and/or concerns relating to non-compliance with professional standards arise. Additionally, the Director is required to refer cases with evidence of criminal behaviours, including suspected fraud, to the Commonwealth Director of Public Prosecution for further investigation.

Notably, as imposed by relevant legislation, the Director's stage of a review has a maximum statutory timeframe of 12 months.[19]

Stage 2: PSR Committee decides if inappropriate practice occurred

A PSR Committee is an independent decision-making body established by the Director, consisting of at least 3 members drawn from the PSR Panel:

- A Deputy Director who serves as the Chair of the committee
- At least two members of the practitioner's profession
- Additional one to two members to provide a wider range of clinical expertise as needed.

The Director would provide the practitioner with documents that detail the membership of the committee, the MBS, PBS and/or CDBS items of concern being referred to the committee, and a report explaining the reasons for the identified inappropriate practice. Practitioners under review are allowed to challenge the appointment of committee members on the grounds of bias.

[19] Professional Services Review (2022) Professional Services Review Annual report 2021-22, <https://www.psr.gov.au/publications-and-resources/publications/annual-reports/annual-report-2021-22>, accessed 2 March 2023.

The investigation begins with the committee asks the practitioner to provide billing statistics regarding the items to be examined. The committee will then hold a hearing if review of the current evidence reveals the possibility of inappropriate practice. The hearing is designed to obtain information from the practitioner regarding their practice and the specific services they have provided.

After the hearing, upon considering the relevant materials provided, the committee prepares a draft report that outlines the preliminary findings about inappropriate practice if there is any along with the reason for those findings, and invites the practitioner to submit a response to address those findings and suggest changes to the report.

Finally, the committee prepares a final report for the practitioner, the Director, and the Chief Executive Medicare with an outcome such as:

- Insufficient grounds to conclude inappropriate practice and thus no further action needs to be taken; or
- Inappropriate practice is identified and thus the final report will be referred to the Determining Authority to decide sanctions following the findings.

It is expected that 80% of PSR Committees can finalise their investigations within 18 months of commencing investigation.[20] This timeframe was extended to 24 months in light of COVID-19.[21]

Stage 3: Determining Authority makes the decision

The Determining Authority has two main functions in the PSR process. Firstly, it is responsible for ratifying the agreements entered into between the Director and practitioners under review. Upon considering relevant materials provided by the Director, the Determining Authority ratifies the agreement if it is considered as fair and reasonable. In cases where the agreement is not ratified, the Determining Authority provides reasons for refusal, whereby the Director and the practitioner negotiate a new agreement for ratification.

Secondly, the Determining Authority decides sanctions to impose following a committee's findings of inappropriate practice. The Determining Authority cannot revisit a committee's findings. Its focus is limited to making a determination that includes at least one of the sanctions set out in section 106U of the Act:

- A reprimand
- Counselling
- Disqualification from billing certain MBS and CDBS items, providing Medicare services to a class of persons, or providing some or all Medicare items from a certain location for up to 3 years
- Full disqualification from billing all MBS items for up to 3 years
- Repayment of some or all of the Medicare benefits for MBS or CDBS items that you billed and were found to have provided inappropriately during the review period
- Full disqualification from the PBS for up to 3 years.

Upon considering a committee's final report and extra information provided by the Director, the Determining Authority invites the practitioner to make a submission about the sanctions it should impose. The practitioner will then be provided with a draft determination and an invitation to make a further submission focusing on the details of the decision and the reasons for any suggested changes to make.

The final determination will take effect 35 days after a copy is received by the practitioner, unless court proceedings are instituted by the practitioner.

D.2. PSR Activity Data

Table D.1 provides an overview of the high level PSR data.

Table D.1: PSR case statistics

	Action	2021–2022	2020–2021	2019-2020	2018-2019	2017-2018
PSR Director	Requests received from the Chief Executive Medicare	108	73	126	101	109

[20] Professional Services Review (2019) Professional Services Review Annual report 2018-19, < https://www.psr.gov.au/publications-and-resources/publications/annual-reports/annual-report-2018-19>, accessed 2 March 2023.Annual report 2018-2019

[21] Professional Services Review (2022) Professional Services Review Annual report 2021-22, <https://www.psr.gov.au/publications-and-resources/publications/annual-reports/annual-report-2021-22>, accessed 2 March 2023.

	Action	2021–2022	2020–2021	2019-2020	2018-2019	2017-2018
	Requests by Chief Executive Medicare to review a practitioner with a previous effective determination or negotiated agreement for a second or subsequent time	9	4	4	3	10
	No further action (under sections 88A, 91 or 106KE of the HIA)	6	6	5	2	1
	Requests withdrawn or lapsed	0	0	0	0	0
PSR Committees	Referrals from the PSR Director to new PSR Committees (under section 93 of the HIA)	15	12	16[a]	19	19
	Committees in progress (at 30 June)	32	39	34	31	23
	Committee reports finalised	19	10	11	12	12
	Reports finding inappropriate practice	18	10	11	12	12
	Reports finding no inappropriate practice	1	0	0	0	0
	Committee matters indefinitely suspended	0	0	0	0	3
	Practitioners referred to AHPRA/Boards (under sections 106XA or 106XB of the HIA)	22	22	20	15[b]	14
	Referrals to Chief Executive Medicare/regulatory authority for suspected fraud	3	1	3	2	1
Determining Authority	Negotiated agreements (under section 92 of HIA) ratified and effective	57	90	78	90	49
	Final determinations made	13	10	15	9	14
	Final determinations effective	13	9	12	8	17
	Cases on hand at 30 June	**154**	**123**	**155**	**125**	**125**

Source: Philip Review (2023) using Professional Services Review, Annual Report 2018-2019; 2019-2020; 2020-2021; 2021-2022. AHPRA = Australian Health Practitioner Regulation Agency; PSR = Professional Services Review. A = Excluding a matter remitted back to the Director by the Federal Court. B = 15 referrals were in respect of 11 practitioners. C = As PSR receives referrals from Chief Executive Medicare throughout the year, case data cannot be reconciled within a 12-month period.

Table D.2 Illustrates the breakdown of PSR outcomes since the 2017-2018 financial year. The majority of PSR outcomes have been section 92 agreements. From 2017-2018 to 2021-2022, 465 cases were finalised following the PSR process, where 364 cases were finalised with section 92 agreements after review, 81 cases were referred to a PSR Committee under section 93, and 20 cases were section 91 outcomes (i.e., no further action needed after review).

Table D.2: Breakdown of PSR outcomes since the 2017-18 financial year

Year	Referrals to PSR from DoHAC	Cases dismissed by the PSR Director (s91)	Negotiated agreements ratified and effective (s92)	Referrals to new PSR committees (s93)	Referrals to medical boards/AHPRA by committees	Referrals to Chief Executive Medicare/regulatory authority for suspected fraud by committees
2017-2018	109	1	49	19	14	1
2018-2019	101	2	90	19	15	2
2019-2020	127	5	78	16	20	3
2020-2021	73	6	90	12	22	1
2021-2022	108	6	57	15	22	3
Total	518	20	364	81	93	10

Source: Philip Review (2023).