

Medicare Debt Recovery and Penalties Explained

Reading time:

MIPS Education

Date created: 15/06/2022

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As part of significant amendments to the Health Insurance Act 1973 (Cth) to improve Medicare compliance, the [Health Legislation Amendment \(Improved Medicare Compliance and Other Measures\) Bill 2018 \(Cth\)](#) inserts a new section 129ACA, introducing the Shared Debt Recovery Scheme (Scheme). The Scheme commenced on 1 July 2019 but applies to Medicare benefits paid on or after 1 July 2018.

The Scheme allows the Department of Health to hold an organisation responsible for a portion of Medicare debt incurred as a result of incorrect Medical billing by practitioners.

This means that all medical practices, hospitals and other organisations employing, engaging or contracting medical, specialist or allied health professionals may be liable to repay a debt incurred by the individual practitioner for incorrect Medicare billing.

To whom does this Scheme apply?

From 1 July 2019, the Scheme allows the Department of Health to claim the debts incurred as a result of incorrect Medicare billing, either in full or in part, from the employing, engaging or contracting organisation (the secondary debtor) instead of, or in addition to, the practitioner (the primary debtor).

The Scheme applies to general practitioners, specialists and allied health practitioners who are employees of, or contractors to an organisation. The Scheme does not apply to dentists and pharmacists.

Importantly, the Scheme will apply to professional services for which Medicare benefits were paid on or after 1 July 2018.

How is a shared debt determined?

There are a number of processes that must take place before a shared debt is determined.

As part of Medicare's usual monitoring of billing, documents may be requested by the Chief Executive of Medicare (the CEO) to ascertain whether:

1. the amount claimed was correct (such as clinical records); and
2. if a shared debt determination should be made (such as an employment contract or other agreement).

Where the CEO is not satisfied that there is no amount recoverable, a shared debt determination may be made. This process involves the issuing of a notice of intention to make a shared debt determination by the CEO to both the primary debtor and the secondary debtor. The debtors will have an opportunity to provide a response.

Thereafter, the CEO may make a shared debt determination if, among other things:

1. the secondary debtor employed or otherwise engaged the primary debtor to render professional services or the secondary debtor had an arrangement or agreement with the primary debtor relating to the professional services; and
2. the CEO reasonably believes the determination should be made having regard to:
 1. whether the relationship of the secondary debtor with the primary debtor was such that the secondary debtor could have controlled or influenced the circumstances that led to the making of the false/misleading statement to which the debt relates;
 2. whether the secondary debtor directly or indirectly obtained a financial benefit from the making of the false/misleading statement;
 3. whether any other factors in all the circumstances of the case make it fair and equitable for the determination to be made.
3. The determination must be given to the primary and secondary debtor and state:
 1. the decision, and reasons for it;
 2. the amount equal to a percentage of the recoverable amount that is recoverable from the secondary debtor (the shared amount);

3. the amount equal to a percentage of the recoverable amount that is recoverable from the primary debtor (the remaining amount); and
4. the right to seek review of the decision.

The percentage recoverable, will be set by the Minister by way of legislative instrument (yet to be published). This percentage can be displaced where the CEO reasonably believes in all the circumstances that it is fair and equitable that a different percentage be determined.

The CEO may then issue a notice, claiming a shared debt as an amount owed to the Commonwealth.

How is the administrative penalty determined?

In addition to repayment of the debt, the primary and secondary debtors may also be liable for an administrative penalty if the debt is more than \$2,500.

The amount of the administrative penalty will be 20 per cent of the recoverable debt amount. However, it is important to note that the administrative penalty can be reduced by 25 to 100 per cent if the organisation discloses information or admits that they were incorrectly billing Medicare early in the process. Likewise, penalties of 25 per cent apply if the debtor does not comply with Medicare's notice.

What now?

The terms of employment contracts and other engagement agreements or arrangements between the practitioner and their organisation will be a key factor in determining whether there is a shared debt and how that debt should be apportioned. The scope appears particularly broad and individual organisations will need to consider the Scheme's application in their particular circumstances.

For organisations, consideration should be given to:

- in what circumstances the organisation will be caught by the Scheme;
 - whether the terms of agreements with practitioners adequately protect against a shared debt determination being made, particularly in circumstances where the organisation retains a percentage of practitioners' billings for undertaking administrative billing and other practice management tasks;
 - ensuring that staff are appropriately trained in the requirements of Medicare billing and that there are policies and procedures in place to internally escalate any identified issues at an early stage; and
 - whether organisational monitoring of practitioner billing is required, and if so, the scope of such monitoring.
- For practitioners, consideration should be given to:
- ensuring that where Medicare billing is undertaken by administrative staff, there is a level of oversight by the individual practitioner to ensure accuracy;
 - adequate and contemporaneous medical records are maintained in accordance with the Health Insurance (Professional Services Review Scheme) Regulations 2019 (Cth) to substantiate Medicare billing; and
 - undertaking further training in Medicare billing compliance.
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