

**Submission
No 40**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Organisation: AMA NSW

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**Parliament of New South Wales
Legislative Council
Standing Committee on Law and Justice**

**Inquiry into Workers' Compensation System
New South Wales**

Submission by

Australian Medical Association (NSW) Limited



1. Introduction

AMA is a medico-political organisation that represents over eight thousand doctors in training, career medical officers, staff specialists, visiting medical officers and specialists and general practitioners in private practice.

AMA (NSW) welcomes the opportunity to make a submission on the important issue of the operation of the Workers' Compensation system (hereafter known as "the system" in this submission) in New South Wales.

AMA (NSW) is the peak body representing doctors in New South Wales, and takes hundreds of calls every year from doctors in relation to various aspects of the workers compensation system in NSW.

Any questions regarding this submission should be directed to:

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AMA (NSW)

Introduction

AMA (NSW) is frequently consulted by Workcover NSW in relation to the role of the medical practitioner in the system, and finds the working relationship with Workcover NSW constructive.

We note that discussions between Workcover NSW and AMA (NSW) have commenced in relation to the difficulties currently faced by the system, and proposed solutions. We expect these discussions to continue over the immediate future, notwithstanding this parliamentary process, and wish to continue to work constructively with Workcover NSW to address the issues faced by the system currently.

We note the current focus of the Inquiry is reducing the costs of the system in NSW, and our submissions are focused on this issue.

Comments

The Issues Paper makes the comment that the workers compensation is a “broken system that does not produce good outcomes for injured workers”.

From a medical perspective, that is not a comment that AMA (NSW) entirely agrees with. The system provides injured workers with excellent medical care generally, and in that sense often the health outcomes for injured workers are very good. Their medical care is accessible very quickly, and is provided by leading medical practitioners in many areas.

The Issues Paper also comments that the system is difficult to navigate for all participants and subject to a lot of red tape. AMA (NSW) agrees entirely with this statement. AMA (NSW) received hundreds of calls from members requiring assistance with the many levels of bureaucracy and requirements, particularly in relation to the conduct of the scheme agents in administering the scheme. This is of particular frustration to general practitioners, who are at the centre of the system, and provide for patients the frontline management of their injury.

An example of this problem is the tendency of the scheme agents to issue “form letters” requiring supplementary information from GPs or specialists. The questions asked in these letters are clearly not specific to the patient’s file, and can be identified as form letters issued without thought as to the specifics of the patient’s file. Many of the questions seek information which has already been provided in the initial report. These requests for additional information are often answered very briefly by the doctor to reduce costs and time spent, however inevitably the doctor will be required to charge for the time spent responding to the request. Very often the information required is superfluous and is simply increasing the costs of the system for very little benefit.

We note that Workcover NSW has instructed scheme agents not to issue such form letters, however it is apparent to AMA (NSW) that the form letters are still used.

The current Guidelines issued by Workcover NSW for Independent Medical Examinations state that any request for supplementary information to the original medical report by the treating doctor, must be complied with by the treating doctor within ten days. Generally this is not enough time for the treating doctor to comply. Once the ten day timeframe is not complied with, the patient may be referred to an independent medical examiner for an examination and report.

It is apparent that the requests for further information from the treating doctor are being made with little intention that the treating doctor will have time to comply with the request- ie the scheme agent wants to refer the matter to an independent medical examiner rather than receiving the information from the treating doctor.

Two suggestions for change are as follows:

1. Extend the timeframe for the request from 10 days to 21 days, increasing the chance for the treating doctor to comply, and/or
2. If the scheme agents simply wish to refer the patient directly to an independent medical examiner, they should be given the opportunity to do so, rather than having to get a report from the treating doctor before the IME, which is costing the system again for little benefit.

The experience of medical practitioners within the system is that reports are over requested by scheme agents and lawyers. This must be increasing the cost of the system. More prescriptive guidelines could be developed to address this issue, as well as the development of a Medical Assessment Panel which may also help address this issue.

Causation

The other significant problem is the issue of "Causation". As things stand at the moment, if an Arbitrator refers a matter to an AMS for assessment of WPI, say for example of the cervical spine, and gives a date of injury, the AMS is legally obliged to accept that an injury to the cervical spine occurred on that date, or arose out of an injury to another body part on that date.

In deciding on the particular circumstances, the Arbitrator is guided by all the medical evidence at his/her disposal, and makes a decision on the basis of this information. In our opinion the Arbitrator is not qualified to make this decision, as it is a medical decision alone, and the reports that the Arbitrator has considered are not always disinterested opinions.

An example occurred recently where a worker had injured an ankle and some years later developed discomfort in the neck with restricted range of movement. The

Arbitrator had a number of medical reports available, one of which suggested that the neck symptoms had arisen as a result of the worker having to limp because of the ankle injury. One hundred percent of disinterested doctors would indicate that there was no relationship between the ankle and the neck, but the Arbitrator chose the single medical report suggesting that there was a relationship, and accordingly asked the AMS to assess lower extremity impairment and impairment of the cervical spine, as a result of the injury to the ankle. Strictly speaking then, the AMS is obliged to assess impairment of the cervical spine and relate it to the injury to the ankle.

There are no doubt injuries being accepted within the system that should not be, as they are not properly classified as being caused by a workplace incident. For example, medical practitioners are informing us that degenerative diseases that are often the result of the normal ageing process, are being accepted as being caused by the workplace or the result of a workplace injury.

The result of this is that the system is being costs for injuries that are not caused by or the result of workplace injury. If there was tighter control of what was assessed as being caused by the workplace, costs would be reduced as less injuries would be accepted in the system. AMA (NSW) submits that the way to achieve this is to have the injury assessed, and a decision on causation made by an Approved Medical Specialist or a Panel of medical assessors. This is the case in other jurisdictions (including the Motor Accident Authority Scheme, we understand). A comparison of costs with systems where causation is assessed by an AMS with the system in New South Wales would be useful.

Other Uses of Medical Assessment Panels

A medical review panel, through the Workers Compensation Commission, should be employed to stop unnecessary treatments and over-servicing. A medical peer group should be able to suggest treatment to treating practitioners where deficient treatment is perceived. These comments are made in relation to such observations as the frequent experience of physiotherapy continuing for six or twelve months, where only a few weeks of physiotherapy would seem to be beneficial, or the use of alternative treatments with little clinical indication.

Any restriction in relation to treatment recommended by doctors, which Workcover wishes to restrict in the system, should be subject to Guidelines prescribing the use of certain treatments or procedures, which should be developed following consultation with AMA (NSW) and the appropriate Colleges and medical societies.

Capping of Medical Treatments

It is the submission of AMA (NSW) that placing a time limit on medical treatments available under the system is not beneficial to those who are genuinely injured and requiring ongoing medical treatment. Workers injured at work deserve excellent medical treatment for as long as there is genuine clinical need.

There are other means of reducing costs within the system which should be utilised before this reform is considered. If for example, the issue of assessment of causation was addressed as suggested, it is likely that less claims would be paid, and medical costs would be accessed by less claimants.

Strengthen Regulatory Framework for Service Providers

AMA (NSW) has previously submitted a comprehensive submission on this issue. A copy of this submission is attached at Appendix A.

Briefly, in relation to the regulation of medical practitioners costs, it is our understanding that Workcover is now utilising a significant audit program to address any over servicing or inappropriate use of item numbers.

We would therefore submit that no further reform is required in this area in relation to the regulation of medical providers.

Conclusion

AMA (NSW) will be meeting with Workcover NSW in the immediate future to begin working on solutions to address the issues raised in this Issues Paper.

We would be pleased to appear before the Inquiry should the Committee regard this as useful, and provide evidence from medical practitioners extensively experienced in the system in New South Wales.

Date: 13 May 2012

APPENDIX ONE

Australian Medical Association (NSW) Ltd

SUBMISSION

*“Regulation of service providers in the NSW workers
compensation System”*

February 2011



*Prepared by Sarah Dahlenburg, Director Medico Legal and Employment
Relations, AMA NSW*

20 April, 2011

INTRODUCTION

AMA (NSW) appreciates the opportunity to provide comments on the above discussion paper on behalf of medical practitioners in NSW.

It is apparent that the motivation for consideration of the need to regulate service providers is justified having regard to the stated difficulties faced by WorkCover in reviewing individual specialty groups. The specifics of the cases mentioned are extreme and any practitioners unwilling to be counselled with regard to correct billing practices as stipulated by peer review, would not be supported by AMA (NSW).

However, AMA (NSW) holds the view that in all circumstances medical practitioners are professionals and should be treated as such with any system of “regulation” recognising their expertise and ability to charge appropriately for their medical treatment. Additionally, it is important to acknowledge the many existing arrangements in place to which medical practitioners are accountable such as the Health Care Complaints Commission in NSW. It is in this context that the following comments are provided.

PROPOSALS- BRIEF RESPONSE

The stated model to support enhancements raises strong objections from the medical profession in terms of the following items:

1. “give WorkCover the power to prevent certain service providers from operating within the workers compensation system” – whilst this may be achievable for specialists, for patients who need to see a medical practitioner immediately after an injury, the system is designed in such a way that general practitioners are front line and cannot necessarily “opt out” in the first instance. Unless WorkCover was to propose a situation in which every injured worker was only seen in hospital initially, this proposal is not achievable in our view.
2. “give WorkCover the power to decline specific types of services” – this has already been the case through the exclusion of chargeable items from the AMA List of Medical Services and Fees book. It is our view that a medical practitioner is best placed to decide what services are appropriate to treat an injured worker and that that this key position in the decision making process is protected. Interference in the clinic decision making process by non clinicians is likely to make clinicians disengage with the Workcover system, to the detriment of the worker.
3. “ensure payments for services provided to injured workers represent value for money” – it is offensive to describe the health management of any person as representing value for money. The ultimate position of WorkCover should be that the provision of services provided to injured workers are effective, efficient and payment appropriate for the service/s delivered.
4. “establish consultative and peer review mechanisms to provide an objective assessment of the appropriateness of services” – AMA (NSW) fully support peer review mechanisms where appropriate, however AMA (NSW) would need to be convinced there is a very clear case for peer review of services, and would submit in the majority of cases this is not necessary.

5. “establish panels of service providers to deliver particular types of services for WorkCover, insurers, employers and injured workers in accordance with pre-determined costs and conditions” – these panels already exist in limited capacity under the Approved Medical Specialist scheme.

1. Power to approve service providers

The proposed change would prove unworkable in the arena of general practitioner services which underpin the entire treatment of injured workers. It is not clear from the paper what approval process medical practitioners would be required to go through. For many general practitioners, seeing Workcover patients is on occasional practice, usually when a long term patient sustains a workplace injury. Any extra layer of bureaucracy or accreditation would be unnecessary and burdensome. General Practice is already subject to accreditation, which is a rigorous process. AMA (NSW) believes that should this proposal be implemented, many General Practitioners would simply not seek approval and would therefore not continue to see Workcover patients. This would be detrimental to workers, who would no longer be able to see their normal GP, in whom they have trust and confidence. All legislation and current health consumer philosophy is based on the premise that a patient should have a right to choose their medical practitioner, and to end that treatment relationship also if necessary. This proposal undermines that philosophy and is clearly to the disadvantage of workers in NSW.

The proposal would be particularly detrimental in regional areas where there is a shortage of GPs already in existence. It is not hard to envisage that some GPs in small towns would simply not have the time to comply with another approval/accreditation process, and workers may have to travel hours to see a GP who has been approved to provide services under the Workcover scheme.

For specialists, approval is already undertaken by WorkCover in the limited capacity of Approved Medical Specialists. AMA (NSW) has similar concerns that if an approval process for treating specialists is introduced, many specialists will consider any additional layer of bureaucracy not worth the trouble where they may see the occasional Workcover patient, and simply advise GPs that they no longer treat Workcover patients. Whilst this may not have a devastating effect in urban areas, where perhaps other specialists may offer Workcover services, again in regional areas this will have a detrimental effect on access to medical services for workers. Workers will be forced to travel at expense to the system, and great inconvenience. Adding extra burden to workers in terms of travel is not desirable, given their primary focus should be a return to work and return to good health. The stress that workers may suffer accessing medical services may delay their progress back to good health.

In relation to comments pertaining to reduction or elimination of practitioners who are “not fit and proper persons to provide those services” we believe that in NSW, the HCCCC is the appropriate body to investigate such complaints.

In discussions with the HCCC, AMA (NSW) understands that whilst the HCCC would not pursue complaints dealing with inappropriate billing, it would certainly investigate complaints relating to unnecessary medical treatment, as these are matters which go to the

protection of the health and safety of patients in NSW. In those very rare circumstances where Workcover alleges they have uncovered evidence of unnecessary medical treatment, such evidence should be handed over to the HCCC for assessment and investigation, and full co-operation by Workcover to assist investigations by the HCCC should occur.

AMA (NSW) contends that the HCCC is the appropriate body to deal with such complaints, as they are well equipped and structured to deal with complaints. If Workcover was to set up an alternative quasi complaints investigation body, this would be an unnecessary use of money in circumstances where a public body is already established for such means. AMA (NSW) strongly objects to Workcover establishing itself as a body which may consider what is appropriate medical practice.

Similarly, if allegations in relation to the professional practice of other health professionals and legal professionals are made by Workcover, those complaints should be referred to the relevant regulatory body who is best equipped to deal with the complaint.

2. Powers to decline specific types of services

We again stipulate that medical practitioners are best placed to make any decisions relating to the appropriateness of clinical treatments and reject the inference that practitioners may be putting a patient's health at risk by prescribing treatments to injured workers they believe are not appropriate. AMA (NSW) again reiterates that if this was determined to be the case then the HCCC would be an appropriate avenue for referral.

This proposal if implemented, would result in further delays in treatment for the worker if extra requirements in addition to those already in existence, were created. Delay in treatment is clearly to the detriment to the worker and may further delay a return to work, for example.

AMA (NSW) furthermore objects to any changes that would remove medical practitioners from consultation on treatment guidelines and regulation of pharmaceuticals.

This model also identifies an "argument against" as being an increase to the regulatory burden on service providers which we believe would deter doctors from providing services to injured workers.

The legislation stipulates that the worker is able to access medical treatment which is reasonably necessary as a result of the injury. If the scheme agent believes that proposed treatment is not reasonably necessary, then the proposed treatment should be declined. The dispute should be dealt with in accordance with the dispute resolution procedures (ie the worker may request a review of the decision).

It seems clear that if treatment is proposed which is not necessary, it should be not be approved and paid for. Further education of scheme agents is required to stop any inappropriate billing from occurring.

If Workcover identifies that there are pockets of inappropriate billing occurring, education strategies should be attempted first to alleviate the problem. AMA (NSW) is agreeable to

facilitating such education sessions to better educate medical practitioners in relation to billing in certain areas, in conjunction with the relevant specialty association, college or society.

3. Payment of fees for services

Medical practitioners are entitled to be paid for services provided to any person presenting to their practice for treatment. AMA (NSW) advises practitioners that this payment may be sought from individual patients unless legislation prohibits or restricts this process. This exists currently in the workers compensation legislation whereby a practitioner can only recover fees from the insurer once a claim number has been issued. There are daily examples from doctors of situations where they spend more money/time chasing payment from employers and/or insurers than any hardship that may be imposed on the injured worker when required to pay upfront. AMA (NSW) strongly objects to any change whereby a doctor cannot directly recover fees from the patient at least initially and notes that this is not even the case for persons seeking treatment under Medicare.

The extension of WorkCover's powers under this change to include the prohibition of recovery of money for services where treatments were not reasonably necessary, and/or the service was clinically inappropriate, undermines the professionalism of medical practitioners. Again, if treatment is not reasonably necessary, then the scheme agent should not approve payment. If payment is not made, then no recovery is necessary.

If a treatment plan is made which outlines medical treatment proposed, and the treatment is rejected as not being necessary, the worker may elect to have that medical treatment regardless. Provided the worker gives appropriate informed financial consent and is aware they may bear the cost of the treatment prior to the treatment, then this is not a matter which Workcover should concern itself with, as it is a private matter between the medical practitioner and the patient.

Again, this proposal is likely to create additional burdens for practitioners, which may deter them from treating workers compensation patients. It is unnecessary to burden all service providers with extra requirements when for the majority of providers, only reasonably necessary treatment is being provided.

4. Establish WorkCover consultative mechanisms

AMA (NSW) is supportive of any form of peer reviewed mechanisms and the establishment of appropriate consultative committees. However, we again note the intention of prohibition of practitioners is not a possibility in terms of general practitioners under the current system guidelines.

5. Establish panels of service providers for specific types of services

Any implementation of models that encourage “competitive” cost setting are opposed on the grounds that medical practitioners should be able to charge an appropriate fee for their services rather than have the appropriateness of their services judged on their fee.

Alternative model: Adopt the Medicare model

The maximum fees for services to be charged by medical practitioners are set at the AMA List of Medical Services and Fees. This book closely follows the description and intent of the MBS with little exception. As such it is our view that the current system is reflective of the Medicare model and it is unclear as to how the proposed change is an alternative.

SUMMARY

AMA (NSW) recognises the need expressed by WorkCover to modify the current workers compensation framework to better regulate costs being charged by service providers.

However, AMA (NSW) feels the following principles have been overlooked in the models provided under the discussion paper:

- The role of the medical practitioner in the coordination, management and treatment of persons injured in NSW is paramount.
- Medical practitioners are professional persons who should be empowered with the ability to make medical decisions appropriate for the treatment of a person, apply appropriate costs to that service and recover money as payment for their services in an efficient and timely manner.
- Protocol and procedures are already in place to manage medical practitioners who sit outside peer reviewed “norms” for either treatment or charging of services.
- Services provided to injured workers at the frontline of treatment, ie. By general practitioners, are usually with no option of opting in or out by a general practitioner. This is currently a cornerstone of the workers compensation system and if it is to remain so, any process for exclusion of general practitioners would be impossible to implement.
- The treatment of injured workers in a manner which enables them to return to work as soon as it is medically safe to do so underpins all management of these patients. It should not be diluted by any reference to the cost effectiveness or otherwise of a medical service that is clinically relevant.
- The clinical relevance of types of treatments should only be reviewed by appropriately qualified service providers in established consultative committee programs.
- Any increase in what is already viewed as administratively burdensome system would likely deter practitioner involvement.

It is the view of AMA (NSW) that enough regulatory framework currently exists to manage medical practitioners who are deemed inappropriate in their medical

management of patients. In relation to the workers compensation system, general practitioners are key to the management of an injured worker and they may only be managed on a peer review and education model that could not be exclusionary. For medical specialists, expansion of programs such as the Approved Medical Specialist Scheme may be appropriate in order to better track provision of services in this arena however, it carries the potential to alienate “good” doctors who do not pursue approval.

The role of the Agents in managing treatment proposals and approvals could be improved to reduce problems with charging. The appropriateness of such charging would be best determined through consultative committees of relevant health professionals for each field. In making this suggestion however, AMA (NSW) would not support a model that allows non-qualified individuals from making medical management decisions.