From the President's Office
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State Insurance Regulatory Authority
Via email: healthpolicyandsupervision@sira.nsw.gov.au

AMA (NSW) welcomes the opportunity to comment upon the draft *State Insurance and Care Governance Amendment Regulation* (***the Draft Regulation***).

AMA (NSW) is concerned about the recent amendments made to the *State Insurance and Care Governance* 2015 (***the Act***) and the draft *State Insurance and Care Governance Amendment Regulation* which provide SIRA with the power to issue directions to service provides under the Motor Accidents and Workers Compensation schemes.

State Insurance and Care Governance Act 2015

The recent amendments to the Act and the Drat Regulations provide SIRA with the power to direct service providers, relevantly defined to include medical practitioners, to:

- Provide specified data within a specified time to SIRA;
- Provide direction to a service provider to take specified action or provide specified information concerning specified services;
- Provide direction to a service provider to provide specified relevant services for the purposes of the workers compensation or motor accidents legislation in a specified way;
- Provide direction to a service provider not to provide specified relevant services for the purposes of the workers compensation or motor accidents legislation;
- A direction to a service provider requiring the provider not to provide any relevant services for the purposes of the workers compensation or motor accidents legislation.

The Draft Regulations provide that SIRA may make determinations when, inter alia, ethical or professional standards (the particulars of which are not defined) have been breached and when SIRA reasonably believes the health, conduct of performance of a medical practitioner poses a risk to injured people.

AMA (NSW) does not support the recent amendments made to the Act or the proposed Regulations.

SIRA has stated during the consultation process that the powers to issue directions are only intended to assist it to manage a small number of health practitioners whose billing practices do not comply with the provisions of the workers compensation and/or motor accidents legislation. While that may

be so, the Act and draft Regulation are drafted to extend well beyond what may be necessary to manage a small number of practitioners who are not billing in compliance with the schemes' requirements and if the intention is narrower the Act and Draft Regulation should be amended to reflect this intention.

If the genuine concern of SIRA is the billing practices of a few practitioners then there are means within the existing system to address those concerns, and if it is thought that there is not, then the legislation should be specifically confined to these matters.

Under the motor accidents and workers compensation schemes prior approval is required before treatment or procedures are undertaken, and the payment of invoices are also the subject of approval. Given these measures, it is difficult to understand why, if insurers are discharging their obligations, there is a need for these or other powers to be conferred on SIRA to manage medical practitioners' billing practices.

Minister Dominello, in his Second Reading Speech made when the *Motor Accidents and Workers Compensation Legislation Amendment Bill* 2021 was introduced to Parliament (the Bill which amended the *State Insurance and Care Governance Act* 2015) observed that the proposed amendments would provide SIRA with regulatory powers with respect to the professional practice of health service providers participating in the scheme: *"[c]urrently, SIRA can refer concerns about providers' professional practice to their professional bodies or the Health Care Complaints Commission but it is unable to prevent service providers from delivering treatment and other services in a manner inconsistent with the workers compensation or CTP legislation and its objectives*."

The Minister went on to explain the need for legislation provided SIRA with the power to issue directions to service providers to provide services in a particular way to comply with the scheme's specific requirements.

The second reading speech and the legislation itself clearly contemplate powers that extend beyond the billing practices of a limited few.

Regulation of the professional practice of medical practitioners in NSW

There is an existing robust system for registration and regulation of medical practitioners practising in New South Wales.

Registered medical practitioners have professional obligations to make treatment decisions in the best interests of the patients before them. These decisions should not be constrained or directed by third parties. In fact, medical practitioners who permit their treatment decisions to be constrained or directed by others rather than exercising their clinical judgement in the best interest of the patient, may find themselves the subject of disciplinary action.

Should medical practitioners be practising in a way that deviates from accepted standards of professional practice those concerns should be referred to the Medical Council of NSW or the Health Care Complaints Commission for assessment, and if appropriate, for action to be taken.

At the core of existing regulatory schemes, independent and objective peer review and assessment of professional standards and whether they may have been breached. In contrast, there is no prescribed role for a peer or peers of the health service provider the subject of a review.

The legislation establishing the regulatory scheme to be administered by SIRA lacks detail regarding:

- who the person or persons will be charged with reviewing the services provided by medical practitioners,
- the required qualifications or experience of those persons,
- when and how medical practitioners will have the right to respond and / or participate,
- the rights (if any) to representation,
- who will be the decision-maker,
- whether there is a separation of investigatory / inquisitorial functions and decision-making functions, and
- particulars of how and who will conduct the internal review at SIRA.

The proposal to deal some or all the details in Guidelines is not appropriate. Guidelines are not subject to the same public scrutiny as legislation and Regulations passed by Parliament.

Noting the representations by SIRA that what it is seeking to regulate are billing practices, regard might be had to the Professional Services Review Scheme (***PSRS***) established under the *Health Insurance Act* 1973. The PSRS was established to protect patients from the risks associated with inappropriate practice and to protect the Commonwealth from having to meet the costs of medical and health services provided because of inappropriate practice.

What constitutes inappropriate practice is defined in the legislation and the process is well defined including the composition of committees, the conduct of meetings and hearings, the rights of the medical practitioner under review, review and appeal rights, and checks and a separation of final decision-making function from the inquisitorial function.

The Proposed Public Register

The consequences, professionally and personally, for medical practitioners whose details are published on public registers cannot be underestimated. If particulars of directions made will include determinations that medical practitioners have placed patients at risk because of health, conduct or performance concerns, and / or that they have breached professional and ethical standards, the professional and personal consequences for a practitioner could be very serious including disciplinary proceedings.

Health information is sensitive information under the Privacy Laws. The AHPRA Register of Practitioners does not publish Health Conditions on the public register.

Given the potential consequences of being included on a public register that may include restrictions on a person's right to provide services, a person's right to privacy and confidentiality must be outweighed by the public interest in being privy to a direction has been made by SIRA. SIRA has not articulated a case as to why the public interest in naming practitioners and publishing details of directions made, is a matter that outweighs a practitioner's right to privacy and confidentiality.

If the intention is to address problematic billing practices, there appears to be no public interest in making the information publicly available.

Conclusion

AMA (NSW) does not support the powers conferred upon SIRA under the Act and the Regulations. The powers are very broad and extend well beyond what would be necessary to address concerns SIRA may have regarding the billing practices of a limited number of practitioners. Existing processes whereby treatment and costs are subject to approval it is unclear why these powers are necessary, and certainly not the extent of those powers. When considered together with a lack of meaningful protections for practitioners, AMA (NSW) does not support the powers conferred under the Act or the draft Regulations.

If the intention is to address concerns about billing practices of a limited number of practitioners, AMA (NSW) is willing to work with SIRA regarding how these issues may be addressed in a proportionate and fair manner for all and continue discussions that have commenced during the current consultation regarding the Draft Regulations.

Yours sincerely,

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