



Independent
Review Office

28 February 2023

David Grant
Director Health Policy, Prevention and Supervision
State Insurance Regulatory Authority

By email: healthpolicyandsupervision@sira.nsw.gov.au

Dear Mr Grant

Draft Guidelines for the provision of relevant services (health and related services)

Thank you for your email on Tuesday 7 February 2023 seeking comments on the draft Guidelines for the provision of relevant services (health and related services) and for the briefing and presentation provided to IRO on Thursday 9 February 2023.

Please find below IRO's comments which relate primarily to ensuring the Guidelines can be applied in a practical manner and are reflective of the intention of the *State Insurance and Care Governance Regulation 2021* (the Regulation).

Application and purpose of the Guidelines (point 10)

The reference to clause 4C(2)(b) of the Regulation appears to be incorrect. The draft Guidelines may have intended to refer to clause 4C(3) of the Regulation which provides certain circumstances where a direction may be given to a relevant service provider (RSP). Those circumstances are afforded specific meaning under section 26D of the *State Insurance Care and Governance Act 2015* which could be referred to as the source of power to issue directions concerning relevant services provided by RSPs.

Definitions (point 11, point 15 and point 18)

Point 11

SIRA may wish to elaborate on the definition of 'allied health services' to ensure it excludes health professionals who are not allied health practitioners, e.g. dentists.

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Point 15

The current definition of ‘overservicing’ could also capture underservicing and the provision of insufficient services by RSPs. SIRA may wish to consider including the term ‘excessive’ (or a similar term).

Point 18

The roles of the ‘employer’ and ‘insurance case manager’ may require further clarification so there is no suggestion these roles play a part of clinical decision making. Decisions about treatment and care should be made solely by qualified medical and allied health practitioners.

Part 2: Code of conduct for RSPs delivering relevant services (point 19(c))

SIRA may wish to define the term ‘overbilling’.

Part 3: Requirements for the provision of relevant services**Registration/accreditation requirements (point 20 and 21(b)-(c))****Point 20**

Elaborating on the term ‘where required’ could clarify that certain RSPs (who are not otherwise subject to requirements for registration) do not need to be registered or accredited to provide relevant services.

Point 21(b)

This requirement appears to restrict RSPs from delivering relevant services if they have been the subject of any of the specified actions at any point in time (including in the past, or where an action was commenced but not continued or upheld).

It may be preferable to require RSPs to report all matters which occurred within a specified period (for example the last 5 years), with discretion to exclude them from continuing to provide relevant services.

Point 21(c)

This requirement raises some concern that a blanket restriction which prohibits RSPs from providing ‘relevant services if they have any civil proceedings lodged against them’ would extend to all RSPs who have been subject to a negligence claim at any point in time. Negligence claims involving RSPs are not uncommon and not necessarily indicative that a practitioner is unfit to provide some, or all, services. SIRA may wish to consider implementing a requirement for all RSPs to report their involvement in civil proceedings, with a discretion to exclude a RSP from delivering relevant services where appropriate.

In addition, the inclusion of the words ‘or their practice’ may prevent a RSP from providing relevant services in circumstances where a partner in their practice has been convicted of a criminal offence (or is the subject of pending criminal charges) or has had any civil proceedings lodged against them. It not clear that this is reasonably necessary to protect injured workers from inadequate, or inappropriate care.

Notification requirements (point 23)

IRO is concerned that there may be certain situations where the RSP is restricted (i.e. by privacy agreements or relevant legislation) and therefore not permitted to provide the information requested to SIRA or a similar external body.

SIRA could consider how to resolve any conflict that may arise between this notification requirement and the confidentiality provisions that apply during investigations by professional standards bodies.

Communication requirements (point 25)

SIRA may consider excluding the words *‘that to’* from the sentence.

Part 4: Requirements for the delivery of relevant services**Point 26(b)**

Point 26 makes it imperative for RSPs to provide services in accordance with certain specified frameworks. In point 26(b), this includes a requirement to have discussions with an injured worker about the benefits of returning to work and providing encouragement to do so. For some workers these types of discussions may be redundant or capable of harming their prospects of returning to work if they occur prematurely. Including the words *‘where appropriate’* would guide RSPs to apply their clinical judgement prior to engaging in conversations of this kind.

Requirements to ensure continuity of care (point 30)

The requirements may not be sufficiently flexible to accommodate all circumstances. Including the words *‘where possible’* may achieve this flexibility.

Requirements regarding telehealth services (point 31(a))

SIRA may wish to consider including exceptions for injured workers who are unable to travel short distances or are incapable of attending in-person appointments.

Part 9: Requirements for billing for relevant services**Point 39(c)**

This may prevent RSPs who are employed and have provided relevant services as part of their employment from charging a fee for the services provided. An amendment which accommodates this type of payment arrangement could be considered.

We trust these comments are of assistance. If SIRA requires further information please do not hesitate to contact [REDACTED] at [REDACTED]

Yours sincerely



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