

APA Submission RE: State Insurance and Care Governance Amendment Regulation 2022

Submission by
Australian Physiotherapy Association (APA)
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About Australian Physiotherapy Association (APA)

The APA vision is that all Australians will have access to quality physiotherapy, when and where required, to optimise health and wellbeing, and that the community recognises the benefit of choosing physiotherapy.

The APA is the peak body representing the interests of Australian physiotherapists and their patients. It is a national organisation with state and territory branches and specialty subgroups. The APA represents more than 31,000 members who conduct more than 23 million consultations each year. The APA corporate structure is one of a company limited by guarantee. The APA is governed by a Board of Directors elected by representatives.

1. Introduction

The Australian Physiotherapy Association (APA) welcomes the opportunity to provide feedback on the Draft State Insurance and Care Governance Amendment Regulation 2022 (the Draft Regulation). Physiotherapists in New South Wales (NSW) are vital to the provision of best practice, evidenced-based diagnostics, treatment, and return to work and wellbeing of injured people in NSW workers compensation and Compulsory Third Party (CTP) schemes. The APA acknowledges that the State Insurance Regulatory Authority (SIRA) is seeking consultation on the draft regulations prompted by amendments to the Motor Accidents and Workers Compensation Legislation Amendment Act 2022 (the Act) whereby Schedule 3 of the Act has established new powers that enable SIRA to provide directions to service providers in relation to claims in the workers compensation and motor accident schemes including:

- Directing a service provider to supply claim related data and information
- Requiring a service provider to take specific action or to provide services to injured persons in a specified way
- Excluding a service provider from providing some or all services to injured persons in certain circumstances.

The APA welcomes the opportunity to submit feedback regarding the Draft Regulation and welcomes the opportunity to ensure that regulations improve administrative and billing compliance without interfering with patient care and without undermining the role of expertly trained clinicians.

2. Executive Summary

The Draft Regulation in its current form has implications which would empower SIRA to exercise powers beyond their scope as a regulator and which would impact clinical care and undermine the patient centred environment provided by trained and qualified physiotherapists. Regulators should not be able to make decisions as to which clinical services are indicated in patient care, especially when health providers are the ones who are liable and held-accountable for the care and services provided. SIRA's objectives to increase administrative compliance and improve cost-effectiveness are not sufficient justification for regulations which effectively allow a regulator to take the role of both governance and health provider. The potential powers provided by amendment of the Motor Accidents and Workers Compensation Legislation Amendment Act 2022 should not be used as a short-cut to reducing costs in the guise of value-based care, which requires real reform.

Australian standards for providing health care as a physiotherapist include registration via the Australian Health Practitioner Regulation Agency (AHPRA) who already provide the means to ensure that physiotherapists are operating ethically and to a high professional standard. SIRA should be utilising AHPRA if they believe that a service provider poses a risk to injured people. The Draft Regulation therefore must be explicitly narrowed in scope to allow SIRA to exercise power over non-compliance where appropriate, without interfering with clinical decision making and patient centred care. The APA's recommendations aim to reduce the potential for breaches of power and conflicts of interest whilst ensuring that clinical decision making remains shared between qualified physiotherapists and their assenting patients.

Summary of Recommendations:

The APA recommends that:

Recommendation 1: The Draft Regulations regarding the issuing of directions under section 26D of the Act should limit directions to those which do not interfere with clinical decisions.

Recommendation 2: Where directions given under section 26D of the Act could potentially impact clinical care, under Section 4C(b) of Schedule 1 of the Draft Regulations ‘reasons for the direction’, these must include supporting literature providing clinical justification for the direction.

Recommendation 3: Internal review processes under Section 4C(c) of Schedule 1 of the Draft Regulations must utilise independent clinical experts to determine the outcome of the review, and rationalisations which impact clinical care must be transparently provided to the health provider.

Recommendation 4: Section 4F of the Draft Regulations must further qualify the definition of ‘Authorised Officers’ and if an Authorised Officer is directing clinical care decisions then a qualification must be included that the Authorised Officer has relevant qualifications in the provision of health care. If directing physiotherapy care under section 26D of the Act, Authorised Officers must also be physiotherapists registered with AHPRA themselves.

Recommendation 5: The patient or person utilising the relevant health services should be able to provide input into the review process where directions provided under section 26D of the Act may impact their health care.

Recommendation 6: Where directions are given under section 26C of the Act (to provide data), physiotherapists should be compensated for this time and a billable item reflecting this task should be added to the next revision of the ‘Physiotherapy, Chiropractic and Osteopathy Services Fees Order’.

Recommendation 7: Directions given under section 26D of the Act which exclude a physiotherapist from providing services must only be given where this physiotherapist is also under AHPRA investigation of misconduct or de-registration.

Recommendation 8: The Register of directed service providers under section 26G (2) of the Act must only publically name those physiotherapists who are subject to current AHPRA investigation of misconduct or de-registration.

Recommendation 9: Under Schedule 1 of the Draft Regulation Section 4C(3)(b), directions given to relevant service providers should specify the length of time for which the direction applies, and for directions which exclude providers from providing services, there should be no longer than 6 months maximum before an additional internal review process or removal from the register is triggered.

Recommendation 10: SIRA should engage with the APA across all stages within regulatory reform which could impact physiotherapists and their patients.

3. Background

Physiotherapists are highly-qualified, specifically trained and AHPRA registered health practitioners, who provide diagnostics, assessment, education and treatment without the use of invasive or surgical procedures. Physiotherapists are experts in what can be done *with* the body, not *to* the body. They are therefore vital to the non-pharmaceutical, non-surgical approach to health care and return to wellbeing of SIRA's patient base. There are currently 40,018 registered physiotherapists in Australia with 11,586 registered to practice in the state of New South Wales (Physiotherapy Board of Australia 2022b). This makes physiotherapy the second largest AHPRA registered health provider after psychologists (44, 917 registered nationally and 14,539 registered in NSW (Psychology Board of Australia 2022)), and the largest AHPRA registered primary care provider within physical health care (to put this in perspective there are 34,654 general practitioners registered nationally with 10,356 in NSW (Medical Board of Australia 2022)). As physiotherapists who work for public hospitals are not 'relevant service providers' to whom the Act and its sections 26C and 26D apply (State

Insurance Regulatory Authority (SIRA) 2022a), the physiotherapists impacted by recent amendments to the Act work largely in primary health care services.

The primary health care landscape in which physiotherapists practice is highly fragmented with physiotherapists operating small private businesses, many as sole traders (IBIS World 2022). The Australian Physiotherapy Association (APA) has a long history of representing physiotherapists to advise and assist regarding reform and regulation of this fragmented health care environment, enabling regulators and insurers to implement reform in a way which is promoting of the value which physiotherapists offer patients (Australian Physiotherapy Association 2022a). Ultimately, governance structures are already a lot more powerful than the individual physiotherapy practitioner and it is therefore important that new powers do not take advantage of this discrepancy or marginalise providers away from providing health care if they are qualified and registered to do so and if the patient is informed and consenting.

The APA values the strong and ongoing relationship it has with SIRA. The APA is consulting with SIRA on multiple reforms across the sector including the implementation of Value-Based Health Care, changes to Consultation C within Workers Compensation Scheme, ongoing Certification of Capacity by physiotherapists, revision and review of the Allied Health Treatment Request, and ongoing consultation regarding the gazetted physiotherapy fees and practice requirements. The APA will continue to work with SIRA to ensure that implementation of changes to the Act are enabling of reform without resulting in undue, unnecessary or unfair ramifications for physiotherapists and the patients they are assisting towards return to wellbeing.

4. Considerations and Recommendations

Clinical decisions must remain with clinical experts

The Draft Regulations in their current form allow a wide birth of application by SIRA which could allow directions under section 26D of the Act which result in a regulating body altering clinical care. To be qualified and registered as a physiotherapist, there is a high level of specific university level training and ongoing professional development requirements to retain the ability to make clinical decisions within patient care (APA 2022b). Even within

SIRA, physiotherapists must go through further approval processes to be issued a SIRA practitioner number in order to be able to deliver service within the NSW workers compensation scheme (SIRA 2022b). High standards protect patients and ensure that qualified practitioners are in charge of orienting patient care and in Australia, in order to have any clinical scope of practice, providers must meet such standards as a minimum requirement (Australian Commission on Safety and Quality in Health Care (ACSQHC) 2015). Regulators do not meet these standards and it is therefore not within their scope to direct physiotherapy providers to conduct or not conduct specified services. The Draft Regulations do not specify any qualification over who SIRA are able to assign as Authorised Officers under section 29B(6) of the Act.

Nowhere in the Draft Regulation does it limit the scope of SIRA's power to make directions under section 26D of the Act. This undermines the standard required to participate in clinical care and empowers a conflict of interest whereby a regulator can make decisions regarding health care provision. This can interfere with patient centred, shared-decision making and ultimately increase harm to patients (Bourdette et al. 2015). Physiotherapists will ultimately be accountable for any harm which occurs, and therefore should not be in a position to be directed towards providing specific services which they do not clinically agree with. Nowhere in the Draft Regulation does it provide the ability for health providers to dispute the initial warning letter on the basis of clinical rationale.

It is important to remember that patient expertise in the decision making process must be respected and that this improves the quality of care (ACSQHC 2011). This person-centred care improves the trust and satisfaction of the healthcare experience (ACSQHC 2011) and is advocated by the World Health Organisation as best-practice health care which suffices the need to move away from a biomedical model of care to one which is more responsive to unmet psycho-social needs within healthcare (World Health Organisation (WHO) 2013). The Draft Guidelines have not taken into account the patient voice and do not allow for patients to be involved in directions which impact their health services and which health practitioner they choose to receive care from. It is important that any directions regarding which care should or should not be provided are first discussed with patients in order to enhance, not detract from, the outcomes of healthcare (Lin et al. 2020).

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Recommendation 5: The patient or person utilising the relevant health services should be able to provide input into the review process where directions provided under section 26D of the Act may impact their health care.

Physiotherapists are already subject to high levels of regulation and reform

Physiotherapists are subject to AHPRA registration standards which include standards for continuing professional development, codes of conduct and guidelines for what constitutes appropriate professional practice under national law and law of co-regulatory jurisdictions (Physiotherapy Board of Australia 2022a). In order to attain the ability to provide SIRA regulated services in the first place physiotherapists must be approved and registered with SIRA, must have treatment sessions requested and approved via the Allied Health Treatment

Request and must invoice the insurer for no more than that published within the fee schedule (SIRA 2022c). The Draft Regulations will put further administrative burden on physiotherapists and this can interfere with patient care and lead to even more time which the health provider has to spend appealing decisions (Bourdette et al. 2016). This is time which these health care providers must then spend away from treating their patients and providing care and if SIRA are making directions which increase the administrative burden on health providers then this task should be compensated.

The Draft Regulations in their current form allow SIRA to bypass existing reporting mechanisms which could lead to breaches of power and the exclusion of health providers who otherwise meet all other national and AHPRA required standards. If SIRA believes that a physiotherapist is acting unreasonably or in a way which may harm patients, there are existing mechanisms in place through AHPRA to combat this. Therefore if a physiotherapist is compliant under AHPRA requirements and SIRA concerns are not sufficient to warrant an AHPRA complaint or investigation then it is not for SIRA to of their own accord decide that this health provider should be excluded from providing services. Registration for exclusion of servicing should be a last resort, and only those practitioners who are either currently under AHPRA investigation of misconduct or de-registration should have their name published on the register of directed service providers.

In their current form, the Draft Regulations are vague as to how long a provider will remain publically named on the register of directed providers and this leaves the potential for ambiguous applications of SIRA's new powers under Schedule 3 of the Act and it is important that health providers know exactly how long they will be under SIRA direction. If the direction is made to exclude the health provider from servicing patients, a review process should be enabled within a reasonable time to allow removal of the direction to assess whether the conditions which warranted the direction have changed.

Physiotherapists represent one of the largest primary health care providers and their vital role in high-quality health care means that physiotherapy care is often the subject of reform processes. The APA is currently assisting reforms toward outcome-focused care across multiple sectors and acknowledges that the current fragmented primary healthcare environment means that new models of care are required to reform health systems towards

improved outcomes for patients, including the transition to value-based care. Such reform of a fragmented environment is complex, slow and requires co-ordination and collaboration from all parties (Hall 2015) and it is important that implementation of new powers under the Act are not taken as a substitute for true reform or a quick means to reduce costs. The APA will continue to engage with SIRA in collaborative reform processes which lead to new models of care which are compatible with the complexities and nuances of the health service environment. The APA was not consulted before the legislative amendments to the Act. Such consultation should have been necessary in situations of regulatory change to help provide the environment for which changes are understood and implemented successfully (Javanparast et al. 2018).

Recommendation 6: Where directions are given under section 26C of the Act (to provide data), physiotherapists should be compensated for this time and a billable item reflecting this task should be added to the next revision of the 'Physiotherapy, Chiropractic and Osteopathy Services Fees Order'.

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Recommendation 10: SIRA should engage with the APA across all stages within regulatory reform which could impact physiotherapists and their patients.

5. Conclusion

The Australian Physiotherapy Association (APA) welcomes the opportunity to provide feedback on the Draft State Insurance and Care Governance Amendment Regulation 2022. The APA's recommendations aim to inform the scope of directions made under the Act to ensure that clinical decision making remains shared between qualified physiotherapists and their patients, existing regulatory processes through AHPRA are not subordinated, and that providers are not subject to undue or unfair exclusions via new powers provided via amendments to the Motor Accidents and Workers Compensation Legislation Amendment Act 2022. The APA looks forward to an ongoing working relationship with SIRA across all reforms impacting physiotherapists and the patients in their care within New South Wales workers compensation and Compulsory Third Party Compensation schemes.

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