

Ms Rosemary Huxtable
A/g Deputy Secretary
Department of Health and Ageing
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7 January 2010

Dear Ms Huxtable

EXPOSURE DRAFT OF THE HEALTHCARE IDENTIFIERS BILL 2010

The Insurance Council of Australia¹ (Insurance Council) appreciates the opportunity to comment on the Exposure Draft of the Healthcare Identifiers Bill 2010 (the Bill). The Insurance Council wishes to reiterate its strong endorsement of the priority being given to development of a national approach to healthcare identifiers as part of the work to establish a national electronic health records system. Please note that the views in this submission build on the Insurance Council's submission of 14 August 2009 in response to the Discussion Paper on Healthcare Identifiers and Privacy Regulation.

As explained in our August 2009 submission, general insurers provide important financial and other support in the healthcare sector. General insurers that, for example provide workers' compensation, compulsory third party motor vehicle (CTP) and travel insurance, deal with doctors and other healthcare practitioners in the management of personal injury claims on a daily basis. This is not only in the day to day management of claims handling, but also in the early stages of rehabilitation.

Several of our member companies also provide professional indemnity (PI) insurance for healthcare practitioners. In fact, such insurance will be a requirement of the National Scheme for Regulation of Healthcare Practitioners that will operate from 1 July 2010. PI insurance policies require that the insured notifies the insurer of any claims made against them. When this occurs with a PI policy for a healthcare practitioner, the insurer typically requests a copy of the patient record in order to allow the insurer and its agents (for example healthcare practitioner peer advisers and lawyers) to provide advice on claims management.

Consequently, it is appropriate that general insurers in managing claims and facilitating the rehabilitation of personal injury victims will often have access to patient records. It can be expected that when healthcare identifiers are in use they would be an integral part of a patient's record. However, as the Bill currently stands, the use and disclosure to and by general insurers of patient records including a healthcare identifier would generally not be authorised under the Bill's section 15.

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent more than 90 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. September 2009 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross premium revenue of \$32.2 billion per annum and has total assets of \$94.7 billion. The industry employs approx 60,000 people and on average pays out about \$96.4 million in claims each working day.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

In fact, the use or disclosure of a healthcare identifier for the purposes of an insurance business is specifically prohibited by the Bill's section 16, other than for the purposes of providing healthcare. The Insurance Council presumes that organising rehabilitation of a personal injury victim would be taken as providing healthcare. We would appreciate written confirmation that this is the case.

It therefore appears from the Bill that those providing patient information to a general insurer will need to delete all references to the healthcare identifier before passing on the information. Given that deletion will most likely take place manually (electronic manipulation of the patient's record would be risky and should be avoided), this process will be time consuming and inefficient, with errors likely to occur.

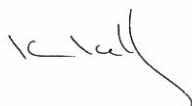
It will also be administratively complex for general insurers to comply with the privacy requirements for healthcare identifiers given that, although for the most part they will not be able to use or disclose healthcare identifiers, they will be able to for the purposes of providing healthcare. It appears therefore likely that general insurers will have some patient records that have been de-identified but also others for the same patient that are legitimately marked with the patient's healthcare identifier.

The situation that will result from the Bill as currently drafted is certainly not ideal for those facing the administrative burden of deleting healthcare identifiers before patient records are provided to general insurers. Similarly, it will be onerous for general insurers to ensure that any healthcare identifiers have not been inadvertently left unmasked. However, the greater danger is that because healthcare identifiers will be available to general insurers for some purposes but not others, the very confusion in handling patient information that the Bill is seeking to address will still remain in the general insurance area.

The Insurance Council therefore urges the Department of Health and Ageing to consider the possibility of appropriately worded amendments to sections 15 and 16 of the Bill to allow for the use and disclosure of healthcare identifiers by general insurers when managing a claim. This would be in addition to the current proposed exemption relating to the provision of healthcare. The Insurance Council would be pleased to organise a meeting with relevant Insurance Council members to discuss the wording of the further exemption.

If you have any questions or comments in relation to this submission, please contact John Anning, Insurance Council's General Manager Policy, Regulation Directorate on (02) 9253 5121 or janning@insurancecouncil.com.au.

Yours sincerely



Kerrie Kelly
Executive Director & CEO