

PCEHR Legislation Issues Feedback
Department of Health and Ageing
GPO Box 9848
Canberra ACT 2601

Via email: ehealth.legislation@health.gov.au

12 April 2012

Dear Sir/Madam

PCEHR: PROPOSALS FOR RULES AND REGULATIONS

The Insurance Council of Australia (Insurance Council)¹ appreciates the invitation to comment on the proposals for regulations and rules for the personally controlled electronic health record (PCEHR) system. We appreciate the consultative approach taken to the establishment of the PCEHR system and the Insurance Council's comments will be confined to Part 5 – Rules of the current proposals.

Our members are particularly interested in the rules and regulations providing certainty about the obligations and arrangements of healthcare professionals under the PCEHR. It is considered this will also increase confidence and encourage greater participation in the PCEHR system. Areas identified by our members, representing medical indemnity insurers, where the Rules would benefit from further clarification include:

Access - 5.2 (b):

- *General* - The word “access” is used in various paragraphs with different meanings (see for example “access list” and “access flags”). It is suggested the meaning should be defined clearly in each context; or another word used, so as to avoid potential confusion.
- *Default or basic access control* (second bullet point). It appears the Healthcare Provider Organisation (HCPO) involved in treatment of the patient will have access if the settings are in default. However, there is some confusion in relation to the reference to the patient “informing a particular HCPO not to access records”. It was generally considered access without consent would be unauthorised. It is suggested therefore, for the sake of clarity, that access control should be managed as part of the advanced settings (rather than on the basis of what a patient may say at a given point in time).

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. December 2011 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$36.0 billion per annum and has total assets of \$115.6 billion. The industry employs approx 60,000 people and on average pays out about \$110 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).

- *Advanced “access control”* (third bullet point). Clarification is sought in relation to the difference between advanced and basic access control.

Emergency access - 5.2 (d):

- Access controls can be overridden in an emergency by a health care provider making a request to the System Operator. The current wording conveys little sense of urgency. It is essential that the System Operator provide almost immediate access for the healthcare provider and the process be kept as simple as possible. This would promote patient safety and timely clinical decision making.

Obligations - 5.2 (e):

- It is proposed the healthcare provider which is the seed organisation within a network hierarchy will be responsible for setting “access flags” for the seed organisation and all network organisations within the healthcare provider organisation’s network hierarchy” (fourth bullet point). The Insurance Council would appreciate clarification as to whether this responsibility places an additional burden on practices (more so group practices) to modify/set up a network infrastructure.

Policies and Procedure – 5.5.1:

- More information is sought in respect of the proposed arrangements for risk mitigation. For example, one of the proposals is that HCPOs (in order to be eligible to register) must develop, maintain, enforce and communicate to their staff, policies and procedures relevant to their access to the PCEHR system. The development and implementation of these detailed policies and procedures would be onerous for HCPOs that are small general practices.
- The Insurance Council would therefore appreciate advice as to whether there will be:
 - pro-forma policies that can be implemented; and
 - staggered timeframes for the policies/procedures to be rolled out.

If available, this could encourage registration and participation in the PCEHR system.

Should you have any queries in relation to the issues raised in this letter, please contact the Insurance Council’s General Manager Regulatory Policy, Mr John Anning on tel: 02 9253 5121 or email: janning@insurancecouncil.com.au.

Yours sincerely



Robert Whelan
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