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PCEHR/HI Discussion Paper Feedback
Department of Health
MDP 1003
GPO Box 9848
CANBERRA ACT 2601

CONFIDENTIAL

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

Electronic Health Records and Healthcare Identifiers: Legislation Discussion Paper

Dear Sir/Madam

Bupa welcomes the opportunity to comment on the *Electronic Health Records and Healthcare Identifiers: Legislation Discussion Paper* (**Discussion Paper**).

As both a health insurer and health care provider Bupa is highly supportive of Australia having a strong and effective eHealth system and look forward to continuing to work with the Government to deliver on this outcome. We are generally supportive of the proposals in the Discussion Paper and have responded below to the few matters we have some concerns with.

As an overarching comment, Bupa would like to stress the importance of ensuring that the private sector and in particular the private health insurance industry continues to be consulted on and included within Australia's eHealth system.

It is important to remember that around 50% of the Australian population currently hold some form of private health insurance. Moreover, unlike the public health system and many other healthcare system participants, health insurers maintain a relationship with their members even when they are well. Further, health insurers are increasingly becoming providers and partners in the delivery of healthcare and preventative health services. It is therefore important that any changes made to the eHealth system do not curtail the important role private health insurers can play; both in partnering with Government to ensure the successful roll out of the system, as well as the role they play in helping their members manage their health.

It is also important to distinguish health insurance from other forms of insurance, as the manner in which private health insurance is regulated provides existing consumer protections and strict limitations on the manner in which insurers may use health data.

Further, Bupa is concerned to ensure that, with the consent of their members, health insurers are able to actively and fully participate in the eHealth system and continue to assist their members to manage their health and the Government to manage the challenges our health system faces. Bupa therefore seeks confirmation that the private sector, including the private health insurance industry, will continue to be included in any further consultation process undertaken in relation to the development of the legislation and in relation to proposed changes to legislation and regulations in the future.

About Bupa Australia and New Zealand

As part of the international Bupa Group, Bupa's Australian and New Zealand businesses share a common purpose of longer, healthier, happier lives. We are focussed on providing sustainable healthcare services, support and advice to people throughout their lives, and on leading the industry in the promotion of preventive health and wellness.

We provide a wide variety of services for around 5 million customers across Australia and New Zealand. In Australia, we provide health insurance and aged care services, as well as delivering healthcare services. These include, GP services (through Bupa Medical GP) health coaching (through Bupa Health Dialog), corporate health services (through Bupa Wellness), eye care (through Bupa Optical) and dental (through Bupa Dental Corporation). In addition, Bupa Medical Visa Services provides visa medical examinations to approximately 250,000 people annually across Australia and other visa and migration services to the Department of Immigration and Border Protection. In New Zealand, Bupa has rest homes, retirement villages, personal medical alarms and a brain rehabilitation business.

SPECIFIC COMMENTS

3.1.2 Definitions

(a) Clarification of 'Healthcare'

Bupa is concerned about the statement in the Discussion Paper that minor amendments should be made to the definition of 'healthcare' to allow "regulations to be made to exclude activities from being 'healthcare' because they are performed for reasons other than care or treatment, such as for the purpose of life, health or other insurance".

In this regard, it is critical that the significant differences separating health insurance from life and other forms of insurance are clearly understood.

Firstly, private health insurance, unlike the other forms of insurance, is subject to specific regulation which provides protection to consumers from the potential misuse by insurers of

the health information they hold. Private health insurers are currently subject to a strict policy and regulatory framework, based on a community rated framework, and one which protects medical practitioners' professional freedom to identify and provide appropriate treatments. These provide substantial protection for consumers against the use of health information for any detrimental purpose. For example, a health insurer is prohibited from being able to make any decision or take any action which would improperly discriminate between people who are or wish to be insured with them. Under the *Private Health Insurance Act 2007* (Cth) (**PHI Act**) 'improper discrimination' includes discrimination which relates to a number of matters including the suffering by a person from a chronic disease, illness or other medical condition or from a disease, illness or medical condition of a particular kind. Health insurers are in effect unable to refuse to insure someone, may only apply limited waiting period to pre-existing conditions, and are legally unable to influence the management of their members' health by treating clinicians. Moreover, the community rating principle under the PHI Act effectively prohibits insurers from using health information about an insured person for purposes such as fixing that person's premiums based on their health risk.

Secondly, private health insurers already hold a considerable amount of health data on customers and will continue to do so. Like other health system participants, insurers are required to comply with the *Privacy Act 1988* (Cth) and to health records legislation in some States and Territories. To date, insurers have not misused the health data they are holding for customers and the health insurance industry has appropriate and secure systems in place to manage sensitive health information and has proven it has the capacity and ability to protect data of this nature.

Finally, unlike other forms of insurance, many health insurers are actively involved in delivering or offering programs to their members to enable them to manage their health more effectively. In 2007, a policy decision was taken by the Government to expand the role of private health insurers in the system. Changes to regulation meant that the services for which health insurers could pay a benefit were widened to include broader health cover treatments. Since that time, health insurers have delivered individualised preventative health, disease management and the prevention of hospitalisation services directly to members; in some cases filling the gap in services not otherwise available in the public health system. It is likely that in the future the scope of health services which can be covered by private health insurance will continue to widen.

Health insurers currently hold substantial and diverse health data, which would make the industry's contribution to the eHealth system invaluable and has the capacity to enrich and inform policy decisions. The current data held by health insurers has enabled them to identify important triggers to enable the initiation of timely disease management and preventative health interventions for their members. The type of data collected and used by health insurers is largely determined by the health services for which they pay benefits and are permitted to pay benefits, some of which are not covered under the public system, or may otherwise not be captured centrally in another source. For example, in addition to data on hospital episodes (for consumers who hold hospital cover), insurers also hold data on treatment episodes with allied health and other practitioners (for consumers who have

extras cover). Where an individual has a PCEHR, with their consent, the additional information held by their insurer could assist by providing their healthcare practitioners with important insights in the delivery of care to their patients. Additionally, health insurance members are beginning to contribute to health monitoring and health risk assessment activities made available by some insurers.

Additionally, we believe the PCEHR will help to alleviate current limitations in the availability and use of relevant information in the health system, which undermines accountability in the provision of health services, undercutting health experiences and outcomes, as well as the system's capacity to achieve value for taxpayers. The availability and use of de-identified data as a part of the PCEHR system will be paramount in alleviating these issues and that it is essential that de-identified clinical data held in the PCEHR system is made available to organisations for secondary uses that will enable delivery of improvements in the health outcomes for all Australians.

This use of de-identified data would lead to the development of more effective, routine, targeted prevention activities that enable healthcare professionals to make interventions within the right cohorts at risk of exacerbation of chronic diseases as well as enhance the way we manage existing chronic diseases. Further, health services in Australia can be substantially improved in terms of equity, access and cost, by examining them through the lens of unwarranted variation and enabling healthcare practitioners to easily access the maps and rankings. Unwarranted variation in healthcare is variation that cannot be explained by illness, need or patient preferences. It is caused by differences in the effectiveness and efficiency of healthcare delivery systems.

Accordingly, it is essential that no unnecessary prohibitions or barriers are in place which hamper health insurers from providing an optimal level of support and benefit for members and could also deprive other health service providers from having the information held by insurers as part of the otherwise comprehensive record.

Therefore it is essential that health insurers, with their members' consent, are able to access and interact with the eHealth record system.

Further, Bupa believes that rather than seeking to increase the barriers to participation by health insurers in the eHealth system, consideration should be given to how the PCEHR and HI legislation could be amended to ensure that, with the consent of members and in accordance with the relevant access controls, health insurers are able to access their eHealth records in the same manner as other authorised parties are able to.

We therefore do not believe that there is a need to include regulatory restrictions on health insurers and submit that doing so may in fact preclude health insurers from acting in the best interests of members, and may be detrimental to the future direction of the eHealth system in Australia.

On this basis, Bupa submits that any references to excluding health insurance should therefore be removed from the proposed amendment. We seek clarification as to what the policy reason is for the need to consider the making of additional regulations to restrict the

participation of health insurers in the eHealth system and why the current legislative framework does not already achieve the desired outcome.

3.3.1 Opt-out PCEHR system?

(a) Opt-out trials

Bupa is supportive of the need to trial different participation models including an opt-out system. As the custodian of a large amount of health data, Bupa takes the privacy of its members seriously and supports a model where an individual determines who they share their data with, as this is the model we have adopted. Specifically, under Bupa's Information Handling Policy, individuals insured under a Bupa health insurance policy have the right to determine whether or not the policy owner is able to access or view their claims data.

We are however concerned that the restriction of these trials to geographic regions may unduly limit the possibilities in relation to understanding how to maximise participation in the eHealth system, and how it may be used more broadly. For example Bupa submits that the Government may wish to partner with private health insurers to pilot a participation model with their members, including on an opt-out model. Such a pilot may be used, for example, to test the effectiveness of targeted communications, and education and training with private sector providers and private health insurance members. The proposed regulatory regime for the opt-out trials would prevent this being a possibility. We therefore suggest that rather than being overly prescriptive, the changes made to the legislation should enable pilots of whatever nature the Government wishes to conduct and deems to be of value to the future sustainability and application of the eHealth system more broadly.

Further, in relation to the opt-out transition in trial regions, Bupa suggests that consideration be given to require the trial consortium to offer services that interpret the PCHER data for the consumers. We believe this would bolster the objectives of the trial and ensure that consumer sees the value of participation.

(b) Secondary use of information

Bupa notes that the Discussion Paper states that "appropriate protections around the preparation and disclosure of de-identified information will be implemented to ensure individuals' privacy is safeguarded."

Bupa seeks clarification as to whether the intent is that the Department would undertake this process and will determine which standards are intended to be applied to the de-identification process. Bupa suggests consideration is given to using a pseudonymisation standard that is recognised and endorsed by the Privacy Commissioner in order to ensure the highest level of protection.

(c) Registering healthcare provider organisations and other entities in opt-out trials

Bupa believes there would be value in consideration being given to the development of incentives to encourage other health care providers including aged care providers and private health insurers who provide health care services to their members, to participate in the trials.

3.5.1 Notification of PCEHR use

Given the sensitivity of an individual's health information, Bupa is very supportive of the proposal that the system would notify the individual when their record has been accessed or used where an individual has opted in to be notified.

We note that there may be portals or wrap around applications and systems developed by third parties to deliver a more consumer friendly view of the record and provide additional features which would draw on the PCEHR record (which would involve accessing or using the record), care should be taken to ensure that any notification process is designed for this eventuality. For example, it would not be ideal to have a notification sent to a consumer each and every time the portal opens or accesses the record as this could result in numerous notifications a day, causing concern for individuals. For certain providers or approved entities, consideration may need to be given to having the ability for the individual to provide a once off consent to the access of their record and a waiver of the need to notify each access after that consent is provided.

Additionally, given the potential cost to administer real time and immediate access notifications, particularly for those consumers who require a high level of access to health services, Bupa believes consideration should be given to providing a weekly summary to the consumer, in lieu of real time notifications.

3.5.2 Temporary suspension of access to a PCEHR

Bupa supports the inclusion of the ability to suspend access in the circumstances outlined but seeks clarification as to whether notification will be provided to the individual affected and any providers with access advising of the suspension and reasons.

3.5.3 Collection use and disclosure of information

(a) Handling of healthcare identifiers by prescribed entities

Bupa supports the need to ensure that the system is flexible enough to accommodate changes to providers and services that may arise in the health system over time. Accordingly we agree that there is a need to do this via regulation and suggest that the provisions enabling the making of regulations is sufficiently flexible. Having "closely restricted areas" defined or set out the principle-based legislation may result in the system being less flexible than required. As the Discussion Paper states "Parliament would be able to disallow any proposed additional uses if it did not agree".

(b) Healthcare provider organisations' use of healthcare identifiers

Bupa is supportive of making amendments which would allow the HI Service Operator to disclose the status of individual healthcare providers' healthcare identifiers and their provider type. We submit that such a change is required to ensure the efficacy of the system, but also aligns with the manner in which other healthcare provider registers are maintained. For example, the registers of the various National Boards established under the *Health Practitioner Regulation National Law* are publicly available, allowing consumers and other healthcare providers to validate the registration status of regulated practitioners.

(c) Healthcare identifier searching capabilities

Bupa supports the need to address the current issues arising with instances of mismatches when searches are conducted. However we seek clarification as to the kinds of actions that are being contemplated for the HI Service Operator to take to enable resolution of the identity without disclosing personal information about third parties.

(d) Retaining information for security purposes

Bupa seeks clarification of the kinds of actions that it is proposed the HI Service Operator would undertake in order to detect fraudulent activity or activities that pose a risk to the security of the system.

Bupa thanks the Department for the chance to once again comment on this important issue. If you have any questions or require further information, please do not hesitate to contact me on (02) 9323 9898.

Yours sincerely,

Ayela Thilo
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Bupa Australia and New Zealand