



**Australian
Privacy
Foundation**

<http://www.privacy.org.au/>

11 March 2009

Rose Ross
Director
Medicare Integrity Section
Medicare Benefits Branch
Department of Health and Ageing
GPO Box 9848
Canberra ACT 2601

Dear Ms. Ross,

Re: APF feedback on "Information Sheet No. 2. The
Increased MBS Compliance Audit Initiative"

I am writing in my capacity as Chair of the Health Sub Committee of the Australian Privacy Foundation (APF) and refer to our earlier correspondence late last year with regard to the "Increased MBS Compliance Audits" information sheet and our subsequent meeting on December 12, where the APF advised it was pleased to establish effective dialogue with Medicare staff and the Department of Health and Ageing on pertinent matters.

1. Privacy Impact Assessments (PIAs)

As you no doubt remember, the Foundation is generally supportive of departmental moves to require practitioners to verify their claims for Medicare eligible services as a reasonable and responsible way of ensuring that taxpayer funds are spent appropriately. Yet we remain concerned about the potential for privacy breaches. During our meeting in December, we discussed the idea of an APF review of Medicare PIA methods as a means of improving the process, as required. Has there been an outcome from that meeting? A PIA must precede any legislative change to the Health Insurance Act 1973.

2. Audit requirements breach privacy rights

We are especially concerned about the focus of this proposed change in legislation. Considerable coverage is given to the mechanism of auditing service providers, e.g. why a particular test has been done, referral requests, time required to provide a service, if a pre-existing condition existed. Health and medical service providers will be subjected to considerable government scrutiny. The type of information the service provider needs to produce can and does violate patient privacy rights. This includes but is not limited to their name, Medicare number and attendance record.

3. Perverse incentives

The Information Sheet outlines a range of what the Medical Observer calls 'perverse incentives' (Bracey 2009). The incentives refer to substantial fines over and above amounts of \$2,500 to be repaid to Medibank and suggest that many doctors will pay the fine simply to satisfy the new requirements. On the one hand, the Information Sheet on proposed changes claims they are designed to have minimal impact on a provider's time and business and that practitioners will not be required to introduce new types of record to satisfy MBS compliance audits. On the other hand, various e-learning products and a range of other resources are available to help providers better understand the new Medicare requirements. These ideas are mutually exclusive. Also, anecdotal evidence suggests the majority of doctors do not know how to use a computer and bandwidth issues also limit access by rural and remote providers (Reed 2008). Therefore, the audit process will have a significant impact on a provider's time and business.

4. Biting Sanctions

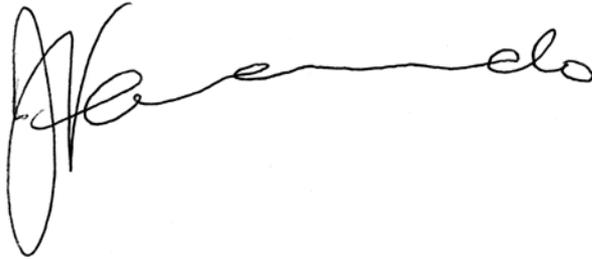
The APF written submission of November 2008 asks Medicare to confine access to patient information to times of reasonable suspicion of illegal behaviour, after all other options have been considered, and to impose biting sanctions to dissuade abuse as a recent ALRC report indicates (ALRC 2008). However, the Information Sheet points out the documents provided as evidence for an MBS audit will be able to be used in criminal matters. It will be very distressing to learn that one's medical prescription or treatment is plastered all over the news media when one has no idea the data had been used as evidence for audit purposes at all. What protections have been developed to secure patient rights to the privacy of their sensitive health information in terms of misuse or in the case of criminal matters?

5. Evidence

While the Information Sheet allows providers to determine what might be useful in respect of responding to a concern by Medicare Australia, patients are not accorded the right to be advised of when, what, how and why access to their sensitive health information is required. The decision protects the privacy of practitioners from patients to the latter's detriment. This decision deflects attention for information breach away from its implementers and instead pits the patient's right to health privacy against the provider's right to privacy. Privacy legislation applies to people not businesses. The APF maintains an adversarial relationship between patients and their clinicians supports the notion that citizens are less important than the government and its processes. A constructive way forward might be to ask patients for consent to provide their protected health records to Medibank as evidence before doing so and to advise patients that the practice being audited and ***not*** the individual.

In short, from a privacy and security perspective, the process remains intrinsically flawed. The APF, staffed by all volunteers, is a key stakeholder in legislative amendments to the Health Insurance Act 1973. Yet the Information Sheet shows no evidence of taking ***any*** of our feedback into account. Consequently, we would be pleased to participate in an ongoing and ***meaningful*** consultation process to ensure that proper legal frameworks have been established.

Please do not hesitate to ask questions or for clarification of any point made herein.
Yours sincerely

A handwritten signature in black ink, appearing to read 'Juanita Fernando'. The signature is fluid and cursive, with a large initial 'J' and 'F'.

Juanita Fernando
Chair
Health Sub Committee
<http://www.privacy.org.au/>

References

- ALRC (2008) Australian Law Reform Commission - Inquiry into the Privacy Act (cited March 10 2009) <http://www.privacy.gov.au/act/alrc/index.html>
- Bracey, A. (2009) 'Perverse incentives' loom with new Medicare audits Medical Observer 10 March (cited March 10 2009) <http://www.medicalobserver.com.au/News/0,1734,4095,13200903.aspx>
- Reed, B. (2008) Internet's bandwidth health still in trouble, report says. Techworld 24/11 (cited 10 March 2009) http://www.techworld.com.au/article/268462/internet_bandwidth_health_still_trouble_report_says