The Royal Australian & New Zealand College of Psychiatrists

28 October 2011

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

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

Dear Sir/Madam

Re: Personally Controlled Electronic Health Record (PCEHR) - Invitation to review draft legislation

Thank you for inviting the Royal Australian and New Zealand College of Psychiatrists (RANZCP) to review the draft legislation in regard to proposed legislation that will facilitate the implementation of the Personally Controlled Electronic Health Care Record (PCEHR).

The RANZCP responded to the draft concept of operations relating to the introduction of the PCEHR in May 2011 and the Legislation Issues Paper in August 2011. As noted in those responses, the RANZCP is generally supportive of the concept of the PCEHR as way of improving outcomes for patients. The RANZCP refers to these previous submissions for the overall RANZCP position and opinion on the PCEHR. These submissions can be accessed here: http://www.ranzcp.org/policy-advocacy/ehealth-and-information-management.html

With regard to the proposed legislation presented, the RANZCP believes that the legislation is clearly drafted and provides an appropriate framework for implementation of the PCEHR. However, outlined below are further points that it is believed can be enhanced to improve the functioning of the PCEHR to meet the needs of health practitioners and consumers of mental health services.

Advisory committee
It is mentioned in the legislation that an advisory committee will be established to supervise the electronic health records system. No mention is made as to whether there will be a representative from the mental health sector on this advisory committee. Because mental health patients are some of the most vulnerable likely to be using the system, any glitches in the system are likely to affect them more severely for various reasons. The RANZCP believes it would be very valuable to have a psychiatrist representative on such an advisory committee nominated by the RANZCP.

The use of pseudonyms and incomplete records
The legislation allows for the possibility of the use of pseudonyms. No mechanism seems to have been incorporated in the overall design to resolve issues of multiple records relating to one patient, as seen by the treating health practitioner. Unless there is some mechanism of automatic integration from the provider perspective, it is potentially dangerous to allow the

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use of pseudonyms for the electronic health record, particularly where this leads to incomplete records.

It is suggested that refusal to treat a patient due to concerns about potential incomplete records on the electronic health record is a valid reason why a patient may not be treated. Doctors should not be obliged to treat a patient that they conscientiously believe they cannot help adequately, given the levels of information provided. It is suggested that there be some specific alert which may be tracked back to a particular doctor who has collaborated with the patient over the record becoming less than complete, so that medicolegal safety can be accomplished.

Requirement to meet conditions and technical specifications
In the legislation there is mention of health providers being required to meet certain conditions and technical specifications if they are to use the e-health record. Whilst it is understood that such conditions may be necessary, concern is expressed as to the level and detail of such technical specifications and conditions. If these conditions or specifications are too complicated, they are likely to cause health practitioners to refuse to participate in the system.

Organisational copyright
There is a mention in the legislation about organisational copyright, and yet it is not clear how copyright can be maintained in the e-health record, or how that plays out in reality. Under privacy legislation, patient records may be provided to the patient at their request, but then often used by lawyers and insurance companies to trawl through the information to find things that may be of use to them for other than health purposes. It therefore appears that, under privacy legislation, the idea of practitioner copyright seems to have been removed. In light of this it is believed that there should not be any type of organisational copyright allowed with the electronic health record, especially if practitioners do not have such copyright protection.

Discrimination for non participation in the ehealth record
The legislation outlines that patients cannot be discriminated against or treatment cannot be refused because they have an electronic health record. These processes require further clarification. It is important that practitioners do not discriminate against people who have an electronic health record, but it is also important that practitioners are not discriminated against for refusing to participate in the electronic health records system. It is possible that a practitioner may refuse to treat a patient if the patient wishes them to use electronic health record, but does not provide them with access to the full record. Such provisions under discrimination should not over-reach the right of a doctor or health practitioner to refuse to treat a particular patient for a number of reasons. Occasionally such a situation arises, and it is important for health practitioners to be able to refuse to treat people. Of course, when refusing to treat a patient, it is always regarded as important that the patient is provided with a few other choices of treatment.

Disclosure of information
Clause 60 imposes no restriction on the consumer disclosing information from their record. The Bill is silent as to whether their nominated representative(s) can do likewise. This requires clarification. Furthermore, this section appears to allow information release if a holder of information reasonably believes there is a serious threat. This requires further definition and protection against disclosure in such circumstances.

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Sensitive information and liability issues
The Bill does not address the potential for sensitive information to harm the consumer or others, nor associated liability issues. It may be that the consumer will authorise the actual entries before they are uploaded to the electronic health care record and accept any liabilities arising from that point but nothing is stated. It is suggested that this be clarified further.

I hope that these comments are helpful in finalising the legislation in regard to the PCEHR. If you require any further information in regard to this matter, please contact Felicity Kenn, Manager, Policy, via felicity.kenn@ranzcp.org or (03) 9601 4958.

Yours sincerely

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President

Ref: 2216