



28 October 2011

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

Dear Sir/Madam

Personally Controlled Electronic Health Record System: Exposure Draft Legislation

The Australian Nursing Federation (ANF) has been contributing to the work of the National E-Health Transition Authority (NEHTA) and to the development of electronic health records, both through written submissions and personal representation. The comments contained herein are provided in response to the release of the *Personally Controlled Electronic Health Record (PCEHR) System: Exposure Draft Legislation*.

With a membership of over 214,000 the ANF is the largest professional and industrial organisation in Australia for nurses, midwives and assistants in nursing. Members of the ANF are employed in a wide range of settings in urban, rural and remote locations in both the public and private health and aged care sectors.

Given our extensive membership base, and with nursing and midwifery forming the largest and most geographically dispersed cohort within the health and aged care sectors, the ANF is vitally interested in the development of health information management in the electronic environment. This extends to the implementation of personally controlled health records by consumers of health care.

With regard to the latest exposure draft legislation, the ANF reiterates the points made in previous submissions (May 2011, July 2011) to the development of the PCEHR System. We stress the full support of our organisation for the introduction of the PCEHR System and to most of the elements of this latest draft legislation.

Specific items we wish to highlight and comment on are as follows:

- *Pseudonymous healthcare identifiers* – we maintain that there are risks associated with the creation and use of a pseudonymous PCEHR. These risks include fragmentation or duplication of healthcare records. In addition, there is the possibility of documentation errors and duplication of health information if, in the future, the health record is related back to the true identity of the individual.

The industrial and professional organisation for nurses and midwives in Australia

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Under the proposed legislation the System Operator has the ability to cancel or suspend the registration of a consumer if they fraudulently assert their identity under another name. In these circumstances the fraud would make the consumer ineligible to be registered and the registration would be cancelled. The ANF seeks clarification as to how a pseudonym would be defined differently from the concept of registering under another name?

- *Serious invasion of privacy* – we consider it is essential to develop laws and regulations which ensure the protection of people's privacy in relation to their health information. Of high importance is a system which is also manageable from the perspective of the health professional. The risk of litigation in relation to patient safety and outcomes is significant in the health environment. The suite of security measures that underpin privacy and confidentiality through existing Federal and State legislation, governance, and quality and safety systems, would seem sufficient rather than changing the Federal legislation to allow an individual to sue another individual for serious invasions of privacy.
- *Authentication* - we support the second option (as outlined on page 39 of the Consequential amendments) that would "allow providers and organisations to exercise control over their identifiers by providing for uses or disclosures:
 - with the consent of the healthcare provider or organisations; and
 - for legitimate business purpose".

The ANF remains concerned about the option for healthcare consumers to 'opt-in' to the PCEHR System. It is our view that this could compromise the benefits of an electronic records system should a critical mass of healthcare consumers opting-in not be achieved.

The ANF looks forward to continuing to work with NEHTA staff on behalf of our nursing and midwifery members to progress the development of an electronic health records system in Australia.

Should you require any additional information or wish to discuss this matter further please contact Elizabeth Foley, Federal Professional Officer, on (03) 9602 8500 or elizabethf@anf.org.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Lee Thomas".

Lee Thomas
Federal Secretary

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