Hauora Taiwhenua Rural Health Network

Patient Notes
Requests from Insurers

1. Overview

1.1. Medical practitioners regularly receive requests by insurers for a patient's medical records. This resource is to provide guidance on what to do.

2. Requests for Patient Notes

2.1. The Privacy Commissioner has expressed the view that in most cases a request for a patient's full notes – even if it is for a specified period – is likely to be unlawful. An insurance company can only ask for those patient notes that are relevant to their decision. The executive summary from the Privacy Commissioner's 2009 report – Collection of Medical Notes by Insurers - is included as Appendix One of this resource.

2.2. The Privacy Commissioner strongly discourages insurance companies from collecting copies of full medical notes, as it is not necessarily relevant to making insurance decisions, such as whether to insure someone or to pay out on a claim.

2.3. Patients are however entitled to ask for their health or medical information from their medical professional. This right to access covers all the information the agency has about the patient, including all their medical notes and history. This right exists regardless of the reason a patient might want their records – whether to support their insurance application, to seek a second opinion, to complain about a service, or simply for their own information.

2.4. It is important to make sure your practice has a clear and straightforward policy for handling patient requests for their information. This policy should include how patients can request their information (via their GP, the practice manager, or receptionist), and how long it will take to respond; and how to make sure the information is going to the patient, or someone otherwise authorised or entitled to receive it.

2.5. It should be noted that the Privacy Act specifies a time limit for responding to an access request – in most cases, no longer than 20 working days.

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2.6. The practice policy should also cover the process for deciding whether any of the information in the patient's file should be withheld in accordance with the Privacy Act and Health Information Privacy Code.

3. Charging

3.1. There are very few circumstances where agencies can charge for providing health information. However, a private organisation such a GP practice may make a reasonable charge if:

3.1.1. the request is for a copy of an x-ray, video recording, MRI scan, PET scan or CAT scan (due to the costs associated with providing information in these formats); or

3.1.2. the individual has previously requested, and been provided with, the same health information within the last year.

4. Working with your Patient

4.1. If a patient asks for their full medical notes so that they can apply for health insurance, you can work with them to make sure they provide the right and full information to the insurer. Just as the Privacy Commissioner discourages insurance companies from collecting full medical notes directly from the doctor, we do not recommend that patients request a copy of their full medical history just to send them on to the insurer.

4.2. Working with your patients so that they understand their medical notes and history, and know what to tell the insurer, will help make sure that they are appropriately insured. It may also save your practice time in responding to a patient's request for their information

Source: Office of the Privacy Commissioner | "Give me everything you've got": Patient and health insurer access to medical records

Need more help?
Contact HTRHN:

Phone	021-595-937
Email	Robyn Fell: robyn.fell@htrhn.org.nz

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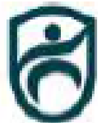

Privacy Commissioner
Te Mana Matapono Matatapu

Collection of medical notes by insurers - Inquiry by the Privacy Commissioner

29/06/2009 10:18am

June 2009

Executive summary

The Privacy Commissioner has conducted an inquiry into the practice of some insurance companies of collecting full medical notes for a specified number of years.

The inquiry concludes that insurers that collect full medical notes - even for a specified period - are at risk of breaching the Health Information Privacy Code. This is because insurers can only collect personal health information that is **necessary** to make insurance decisions, such as calculating whether to insure someone or whether to pay out on a claim.

Insurers do need to collect detailed medical information to make insurance decisions, and their clients need to be completely open and honest about that information. However, this should usually take the form of asking for answers to particular questions. Not *all* the information contained in medical notes is necessarily relevant to an insurance decision. For instance, medical notes may contain family or relationship information - the medical practitioner may have treated a person as a whole, in their individual circumstances and context. This will not always be relevant to the decisions the insurer has to make about cover or claims.

Occasionally, an insurer will be entitled to collect full medical notes, if the more specific information does not provide the detail the insurer needs to make the decision. However, these situations should be rare.

The inquiry also concludes that insurers need to take care to ensure that their clients clearly authorise the insurer to collect their health information from their medical practitioner. In particular, the insurance client should be asked to provide a

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separate authorisation for collection of full medical notes. Also, for the authorisation to be reasonably 'informed', the insurer should tell the client why full medical notes are required in these circumstances.

This inquiry has had to traverse some difficult issues of law and practice. First, not all insurers have the same approach to collecting full medical notes: some do this relatively frequently, and others very rarely if at all. Secondly, medical practitioners already struggle with the time-consuming task of filling in questions relating to insurance applications and claims. Some choose to send full notes as a quick method of dealing with this, while others worry that their clients have not properly authorised such a disclosure. Thirdly, insurance clients, doctors and insurers alike want the transactions to proceed speedily. Lastly, and importantly, insurance law has strict rules relating to non-disclosure of information. Any non-disclosure of information that a prudent insurer might need to know can affect a person's entitlement to claim on their insurance, whether the non-disclosure was deliberate or inadvertent. There are therefore significant dynamics favouring the full disclosure of notes - it is easy and it is quick for all concerned, and there may be a measure of protection against legal risk.

However, insurance clients should still be entitled to some measure of privacy. They have little real choice in how they deal with insurers, and what they are required to provide if they are to get cover, or have a claim paid. The only real privacy protections that they have are where the collection of their health information is restricted to necessary information only, and where they are asked for authorisation and are aware of what they are authorising.

The current privacy law provides the insurance client with that protection, and it should not be easily read down.

The full report can be read at https://www.privacy.org.nz/news-and-publications/commissioner-inquiries/collection-of-medical-notes-by-insurers-inquiry-by-the-privacy-commissioner/

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