

PARLIAMENTARY INQUIRY QUESTION ON NOTICE

Department of Health and Aged Care

Senate Standing Committee on Community Affairs Legislation Committee Health Legislation Amendment (Modernising My Health Record—Sharing by Default) Bill 2024 [Provisions]

PDR Number: IQ25-000003

My Health Record - Application of Exemptions

Written

Senator: Marielle Smith

Question:

Proposed section 78C would require healthcare providers, in certain circumstances, to keep evidence that an exception which meets the requirements has been applied for a period of two years starting on the date the healthcare is provided.

To what extent will practitioners be able to automate the application of exemptions, or is the intention that practitioners will have to manually apply an exemption at each instance it is utilised - i.e. each time they see a patient and do not upload a record to my health record, during the period of an exemption applying.

Answer:

Healthcare providers will be required to keep records for 2 years if they have not uploaded a record due to one of the following exceptions, that may be applied on a case-by-case basis:

- the healthcare recipient does not want the record uploaded
- a healthcare provider believes that the information should not be shared because of a serious concern for the safety and wellbeing of the healthcare recipient; or
- other reasons beyond the control of the healthcare provider (e.g. technical reasons).

If a record isn't required to be uploaded for some other reason, including because the healthcare provider has an extension, or other exemption from uploading, then individual records do not need to be kept.

The level of automation healthcare providers may be able to use will likely depend on their software capabilities. The evidence required to support an exception is intended to be derived from existing workflow capabilities, for example, system audit logs registering any technical issues in the upload or upload preferences indicated on a request form.

The 2-year retention period is consistent with existing record keeping requirements for pathology and diagnostic imaging requests under the *Health Insurance Act 1973*.