

The Royal Australian College of General Practitioners

Submission to the Senate Community Affairs Committee:

**Inquiry into the 'Privacy Impact Assessment'
for the 'Increased Medicare Benefits Schedule
Compliance Audits (IMCA) Initiative'**

25 May 2009

1. INTRODUCTION

The Royal Australian College of General Practitioners (RACGP) appreciates the opportunity to further contribute feedback and comments to the Senate Standing Committee on Community Affairs on the Privacy Impact Assessment (PIA) for the Inquiry into the Increased Medicare Compliance Audits Initiative.

The RACGP is the specialty medical college for general practice in Australia, responsible for defining the discipline, setting and maintaining the standards and curriculum for training and for maintaining quality clinical practice, and supporting general practitioners' excellence in patient care and community service.

The RACGP remains opposed to the Increased Medicare Compliance Audits Initiative as described in the 'Exposure Draft of the Health Insurance Amendment (Compliance) Bill 2009'. The RACGP is concerned that the Increased Medicare Compliance Audits Initiative will breach the principles of patient confidentiality and, in turn, will lead to a fragmentation of the doctor-patient relationship.

In this submission, the RACGP identifies its concerns with the Privacy Impact Assessment and details its response to the ten recommendations specifically outlined in the Privacy Impact Assessment¹.

Whilst the RACGP recognises the need for Medicare Australia to monitor and investigate compliance by medical practitioners with Medicare rules, the RACGP disagrees that it should be at the expense of patient privacy. Instead, the RACGP has proposed five alternative recommendations for consideration by the Senate Standing Committee on Community Affairs and these are listed in section 5.

1.1 RACGP SUBMISSION REGARDING THE DRAFT EXPOSURE BILL

The RACGP addressed a number of key issues with the 'Exposure Draft of the Health Insurance Amendment (Compliance) Bill 2009' in its submission² and during its presentation to the Senate (6 May 2009)³. In its submission, the RACGP identified the following concerns:

- The proposed powers are too broad
- There is no detail on specifics of what information will be required for Medicare Australia audits
- There are insufficient safeguards for medical practitioners' legal rights
- There are insufficient safeguards for patients' privacy
- There will be significantly increased levels of red tape for medical practitioners
- The purpose of medical records is not to document compliance with Medicare Australia requirements. The medical record is an inappropriate tool for this purpose.
- The focus should be on education around appropriate billing practices, while sanctions such as fines should be preserved for repeat offenders only.

This submission reinforces the position of the RACGP and details significant concerns regarding patient privacy.

¹ Department of Health and Ageing, Canberra. [Accessed May 2009.]

<http://www.health.gov.au/internet/main/publishing.nsf/Content/exp-draft-HIA-bill2009>

² Royal Australian College of General Practitioners (2009). Submission to the Senate Community Affairs Committee: Inquiry into the Exposure Draft of the Health Insurance Amendment (Compliance) Bill 2009. <http://www.racgp.org.au/reports/31682>

³ Commonwealth of Australia, Proof Committee Hansard, Senate Standing Committee on Community Affairs, Compliance audits on Medicare benefits, May 6, 2009.

2. PATIENT PRIVACY IN RACGP GUIDELINES

The RACGP has a *Handbook for the management of Health Information in Private Medical Practice* which is used by medical practitioners to assist in the handling of patient health information.⁴ The following excerpts from the Handbook are of relevance to the Privacy Impact Assessment:

Patient Consent (page 2)

“The consent of the patient should be the guiding principle for medical practitioners when obtaining personal health information from their patients, using that information, or disclosing the information to other people. Medical practitioners should respect the right of patients to determine how their personal health information is used or disclosed, and should ensure that patients are provided with sufficient information to enable them to fully exercise this right”.

“Subject to certain very limited exceptions, patients must consent to any proposed disclosure to third parties. The consent of the patient is valid only if he or she understands fully how the information is to be used or disclosed”.

“...Some patients may withhold consent for particular uses of that information. Medical practitioners must respect their right to do so”.

Advising patients when collecting personal health information (pages 4-5)

“At the time of collecting personal health information, medical practitioners must take reasonable steps to ensure that the patient understands:

- What information is being collected?
- Why the information is being collected?
- Who within the practice will have access to the information?
- How the information will be used including, where applicable, that it may be used for research purposes?
- Any proposed disclosure of the information to third parties?”

“Whenever personal health information is to be made available to a person other than the treating medical practitioner, particular care should be taken to ensure that the patient understands that this will occur”. (Page 5)

⁴ Royal Australian College of General Practitioners (2002). *Handbook for the management of health information in private medical practice 2002*. [Accessed May 2009.] www.racgp.org.au/privacy/handbook

3. RACGP SEEKS CLARIFICATION

As well as withholding support for the recommendations in the Privacy Impact Assessment (PIA), the RACGP seeks clarification on a number of aspects of the PIA. Aspects of the PIA that are a concern for the RACGP and for which further clarification is sought are detailed in the table below.

Privacy Impact Assessment	RACGP concerns and questions
<p>Part A – Background information (pt. 13) Background – “The PIA is an iterative document which will continue to be updated regularly to reflect privacy issues arising from this initiative.”</p>	<p>Will there be an update to the PIA following the submission process and Senate Hearing?</p>
<p>Audit process (pts. 15-24)</p>	<p>Is there any patient/consumer engagement in the initiative at this point?</p>
<p>The need for change (pt. 26) “There has been little change to Medicare Australia’s compliance program for the Medicare scheme in the past decade despite significant growth and expansion.”</p>	<p>Why the need for change now? Why aren’t measures less invasive to the patient being devised to save public money?</p>
<p>The need for change (pt. 32) “The HIA currently requires some practitioners to provide specified health information, including information contained in patient medical records in response to a request from Medicare Australia.”</p> <p>The need for change (pt. 33) “Sections 23DKA and 23DS of the HIA provide clinical information relating to diagnostic imaging or pathology services must be produced (following a request) to a Medicare Australia employee who is a medical practitioner.”</p>	<p>Is the patient aware of this? The RACGP is concerned about the privacy of the patient. The RACGP strongly argues that the patient has the right to know (and thus, should be made aware) that their medical records are being used as part of an audit process. The therapeutic relationship is largely based on trust and confidentiality.</p> <p>Relational continuity is a sustained relationship between a single practitioner and a patient (or sometimes more than one practitioner and a patient) that extends beyond individual consultations or episodes of illness. This can be described as a sense of affiliation between a patient and their doctor ('my doctor' or 'my patient'). It is often viewed as the basis for continuity of care, and is an essential part of the therapeutic relationship. This legislation will damage the trust and confidentiality in the therapeutic relationship.</p>
<p>The need for change (pt. 33) “Although the Privacy Act 1998 allows personal information to be disclosed to bodies such as Medicare Australia where that disclosure is reasonably necessary to protect public revenue, many practitioners remain unclear about their obligations.”</p>	<p>The RACGP believes that its members are fully aware of their obligations to their patients, which include the protection of privacy of their patients. They take this role extremely seriously.</p> <p>The RACGP advocates that the protection of privacy of the patients is as important as the protection of ‘public revenue’.</p> <p>How will Medicare Australia ensure that its sweeping changes will not endanger patients’ rights to privacy?</p>

<p>Project description (pt. 40) “The CEO cannot give a notice to produce documents to the patient (the person to whom the professional service was rendered) or the person who incurred the medical expense in relation to the professional service (such as a parent or guardian).”</p>	<p>The RACGP argues that it is the right of the patient to be advised that their medical record has been used as part of an audit process of their GP undertaken by Medicare Australia. There are obvious insufficient safeguards for patients’ privacy.</p> <p>How will patient confidence be maintained when they know that their medical record can be accessed by third parties at any time without their knowledge?</p>
<p>Part B – Privacy analysis “Collection (pt. 85) – It is expected that compliance audits will require the production of documents such as appointment books, receipts and referrals and that excerpts from patient medical records will not be relevant to audits conducted in relation to some Medicare services.”</p>	<p>The RACGP is concerned about the potential risk of exposing the names and details of other patients in the practice.</p> <p>What steps will Medicare Australia take to address this issue?</p>
<p>Part B – Notification (pt. 94) “Patient notification has been an important issue raised by many stakeholders during consultations. Some stakeholders support individual patient notification, while others support indirect notification through notices in medical practices and/or on Medicare forms.’</p>	<p>The RACGP believes that it is the right of the patient to have their privacy protected. The RACGP strongly supports individual patient notification over notification via the waiting rooms. When an audit is underway, the patient whose medical records have been requested from the GP should be informed. The patient has the right to know for what purpose, and which aspects of the medical record are specifically being used. The patient also has the right to know how and when their personal information is no longer needed, and how it will be destroyed.</p> <p>Refer to Section 2 of this submission for excerpts from the RACGP ‘Handbook for the Management of Health Information in Private Medical Practice’ (2002).</p>
<p>Part B – Confidentiality “An important distinction of this project from other public interest disclosures currently required of practitioners is that the disclosure will impact on the practitioner not the patient...”</p>	<p>This arrangement will impact upon medical practitioners and result in the introduction of substantially more ‘red tape’.</p> <p>Can Medicare Australia provide assurance that the new requirements on medical practitioners to do more red tape for the government will not impact on the time that doctors can spend with their patients?</p> <p>Why does Medicare Australia suggest that accessing patient records without patient knowledge has no impact upon the patients?</p>

4. RACGP response to the 10 recommendations

The RACGP has detailed its response to the 10 recommendations in the Privacy Impact Assessment according to the following key areas:

- Quality assurance of Medicare Audits
- Providing information to medical practitioners and patients
- Patient consent and patient confidentiality
- Stakeholder consultation

4.1 Quality assurance of Medicare Audits

Recommendation 1

The PIA should continue to be updated throughout the implementation and ongoing management of the IMCA initiative.

Recommendation 3

Audits of internal Medicare Australia staff accessing information collected during a compliance audit should be undertaken by Medicare Australia on a regular basis, to ensure early detection of inappropriate access and potential misuse of data.

Recommendation 9

Audits of the records management of health information should be undertaken, to ensure compliance with retention and destruction guidelines and policies.

RACGP response

These three recommendations are a clear admission that it is not possible for Medicare Australia to create a safe and reliable system for managing sensitive patient information. It highlights that there will be risks involved, as well as the possibility of failures in process.

The RACGP recommends that an external audit of the initiative be undertaken annually by a third party to ensure privacy issues are addressed.

A suggestion that an audit of Medicare Australia's records management systems, highlights the fact that there are significant limitations associated with the release of patient health records to a third party, in this case, Medicare Australia, (especially without informed consent). These include non-compliance with retention and destruction guidelines and policies, which is a real issue when it concerns patient health records and personal information.

The RACGP strongly recommends that the findings of the audits are routinely made available to peak practitioner groups, health consumer and privacy groups.

4.2 Providing information to medical practitioners and patients

Recommendation 2

An information campaign for the public on the need for Medicare compliance audits and the potential for their clinical information to be accessed to confirm payment accuracy should be considered. Alternatively Medicare Australia should explore what information it can make available to patients (on new or existing forms, or through new or existing channels) on the potential for excerpts from their medical records to be provided to Medicare Australia during compliance audits.

Recommendation 5

Details on what constitutes an authorised disclosure of health information collected as part of a compliance audit should be made clear and accessible to the public.

Recommendation 6

To increase compliance with the openness and transparency requirements of privacy best practice, Medicare Australia should review the information available on its website about the type of personal information held by Medicare Australia and the purpose for which that information is held.

Recommendation 8

To provide clarity and transparency, Medicare Australia should establish and publish a clear set of guidelines covering the relevant retention and destruction policies relating to documents collected through the proposed legislation.

RACGP response

The RACGP agrees that information about the Medicare Compliance Audits (by way of posters, fliers, pamphlets) should be made available for patients in the waiting room of a medical practice. Information material should include the following aspects:

- The purpose of the compliance audit;
- The duration of the compliance audit
- Who will conduct the compliance audit?
- How their medical records will be used, and for what purpose?
- How their personal information will be destroyed?
- Who to contact for more information, or if they have concerns?

The RACGP reiterates that the patient has the right to know that their patient records are being disclosed to a third party as part of a compliance audit process being undertaken.

The RACGP recommends that information about the compliance audits is directly provided to GPs and patients, rather than relying on GPs and patients accessing websites..

The RACGP strongly recommends that the guidelines developed by Medicare Australia for the retention and destruction of documents should be reviewed and evaluated on an ongoing basis with input from professional and consumer organisations.

4.3 Patient consent and patient confidence

Recommendation 4

The notice to produce documents given by Medicare Australia to the practitioner should clearly state that the information being collected may only be used for the purposes of the compliance audit. The notice should also note any secondary purpose the information may be used for as required or authorised by or under law, such as in relation to offences under the HIA or *Criminal Code Act 1995* relating to false and misleading statements made in respect of Medicare services (IPP 10.1(c) 'use of the information for that other purpose is required or authorised by or under law').

Recommendation 10

Consideration should be given to reporting on the frequency and nature of Medicare Australia's access to clinical notes and reviewing the initiative after implementation, including a privacy audit to assess the privacy impacts, once the new procedures have been operational for a period of time.

RACGP Response

These recommendations clearly indicate that there is an inherent danger in providing detailed medical histories to Medicare Australia or other third parties.

The RACGP recommends that Medicare Australia should educate medical practitioners on how the information will be used. If the information can be used under the legislation to advise fourth parties, such as law enforcement agencies, then everyone involved, including the patients, should be informed.

The RACGP strongly recommends that the findings are again routinely made available to peak practitioner groups, health consumer groups and privacy groups.

4.4 Stakeholder consultation

Recommendation 7

Medicare Australia and the Department of Health and Ageing should use existing relationships with peak practitioner groups, health consumer and privacy groups to review and, if appropriate, change their accreditation requirements and Privacy Policies in relation to notices displayed in practices.

RACGP Response

The RACGP agrees but strongly recommends that organisations are supported in the process of updating their accreditation and privacy policies.

The RACGP agrees that ongoing stakeholder consultation would be an essential aspect of the ongoing management of the IMCA. The RACGP recommends that it and other relevant professional bodies be involved in evaluation in an ongoing way.

5. RACGP alternative recommendations concerning the Privacy Impact Assessment and the Increased Medicare Compliance Audits Initiative

The RACGP continues to oppose the proposed legislation and the Increased Medicare Compliance Audits Initiative on the grounds that the invasions of patient privacy are unnecessary and damaging.

Instead, the RACGP recommends that Medicare Australia undertake to support the following recommendations. The RACGP is willing to discuss these recommendations further with Medicare Australia.

The RACGP proposes a number of alternative approaches for recovering the money from inappropriate Medicare claims, for deterring deliberately inappropriate claiming practices, and for minimising accidentally inappropriate billing practices, including:

- 5.1 Simplify the MBS and current payment arrangements. The MBS is complex and confusing and needs revision and simplification. There are also diverse payment approaches that are associated with the Practice Incentive Program and the SIP. The Commonwealth Department of Health and Ageing should undertake a review of the MBS and current payment models in collaboration with professional organisations and determine how billing practices can be improved.
- 5.2 Invest in ongoing face-to-face training education of general practitioners, specifically in the area of billing practices, e.g. an orientation package for new GPs as well as possible 'refresher courses' for long-standing GPs to ensure their knowledge is current.
- 5.3 Enhance the existing scope of the 'Professionals Services Review' and increase efforts to ensure clinical records are reviewed by experienced doctors who understand the context and sensitivities of the medical record.
- 5.4 Create new processes that enable Medicare Australia to be responsible for informing patients that their records are currently being viewed by Medicare Australia as part of a compliance audit. This arrangement would go some way to reducing the fragmentation of the patient doctor relationship that may arise from a breach of patient confidentiality. It would also enable the patient to be informed that their records were being reviewed by Medicare Australia.
- 5.5 Conduct a review of the current Patient Consent Form that is completed by patients when they claim for a medical service. Consider how patients can be informed of the types of services they are claiming through Medicare Australia.