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Dear Senators

**Re: Inquiry into the Exposure Draft of the Health Insurance Amendment  
(Compliance) Bill 2009**

Thank you for providing the Royal Australian College of General Practitioners with the opportunity to provide input to the Senate Community Affairs Committee inquiry into the proposed Health Insurance Amendment (Compliance) Bill 2009.

The College respectfully encloses its submission regarding this important inquiry, and hopes that the recommendations made in this submission will assist the Committee in its deliberations regarding the passage of the bill. The College considers its submission to be in the public domain at the Senate's pleasure.

The College appreciates permission to give evidence at the Committee's public hearings on Wednesday morning 6 May 2009. The College will provide details shortly regarding which senior members will represent the College.

If you have any questions or comments regarding this submission, please contact me at the College or Ms Lauren Cordwell on (03) 8699 0498 or at [lauren.cordwell@racgp.org.au](mailto:lauren.cordwell@racgp.org.au)

Regards

**Mr Robert Pratt**  
**Acting Chief Executive Officer**

Encl. Submission to Senate Community Affairs Committee

# **The Royal Australian College of General Practitioners**

**Submission to the Senate Community Affairs Committee:**

**Inquiry into the Exposure Draft of the Health  
Insurance Amendment (Compliance) Bill 2009**

**5 May 2009**

## 1. Introduction

The Royal Australian College of General Practitioners (RACGP) thanks the Senate Community Affairs Committee for the opportunity to continue to contribute to discussions regarding the Draft Exposure *Health Insurance Amendment (Compliance) Bill 2009*.

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 supports efforts to ensure that Medicare funding is distributed appropriately.

However, the RACGP is opposed to the proposed legislation.

The RACGP has concerns over proposals to enhance the auditing of the Medicare Benefits Scheme. The major concerns are that:

- 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.

The effect of the draft *Health Insurance Amendment (Compliance) Bill 2009* will be to fragment the relationship between a medical practitioner and a patient. The main causes of this fragmentation will be that the proposals may require medical practitioners to breach the privacy of their patients by requiring them to submit detailed patient records to the Commonwealth bureaucracy. There are no clear guidelines either on how much detail will be required. Any fragmentation of the patient doctor relationship will significantly impact upon the capacity of a general practitioner to offer comprehensive, holistic, person-centred health care. The security and safety that patients gain from the confidentiality arrangements currently in place when they are describing their ailments to a medical practitioner are essential to ensure the patient receive the best and the right care for their needs.

The possible harmful consequences include:

- Such legislation will deter patients from discussing intimate health concerns with their doctors if they believe their privacy is no longer assured
- The lack of clear safeguards against the possibility of patient information becoming available to health insurance companies could jeopardise patients' rights to obtain medical insurance
- Medical practitioners, who take patient confidentiality very seriously, may be forced to compromise this commitment
- Patients will lose confidence in the privacy and protection of their medical records.

This submission is made in response to the terms of reference for the "Inquiry into the Exposure Draft of the Health Insurance Amendment (Compliance) Bill 2009" of the Senate Community Affairs Committee. Details of the exposure draft and the terms of reference for the inquiry can be found at:

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

and

[http://www.aph.gov.au/senate/committee/clac\\_ctte/medicare\\_benefits\\_compliance\\_audits/index.htm](http://www.aph.gov.au/senate/committee/clac_ctte/medicare_benefits_compliance_audits/index.htm)

The RACGP has the following concerns with the draft Bill, and this submission provides a response on each of these three key areas:

- An increase in the number of compliant audits undertaken by Medicare Australia each year, causing additional red tape burdens
- A requirement that practitioners produce evidence to verify their Medicare claiming when audited by Medicare Australia, breaching patient confidentiality
- A financial penalty for medical practitioners who make incorrect claims, with no allowances for how onerous the new audit requirements will be or how difficult it will be to comply with them.

## 2. RACGP response to the Senate Inquiry

### 2.1 An increase in the number of compliant audits undertaken by Medicare Australia each year

The RACGP appreciates the intent of audits, particularly the requirement for accountability of public money. The RACGP understands that under the proposed legislation, doctors will be required to produce evidence to verify their Medicare claiming when audited by Medicare Australia.

The RACGP remains concerned that the powers and processes Medicare will use to conduct these audits have not been fully explained.

There is a lack of detail in the proposed legislation which makes it very difficult to judge what extra requirements will be placed on medical practitioners. The RACGP has questions regarding the following processes:

- Will a general practitioner be required to contact a patient to obtain their consent to release the patient's records?
- Will Medicare Australia accept evidence that a patient did not want their records released?
- Will adequate time be given to medical practitioners to cull unnecessary or irrelevant information from patients' records before submission to the audit?

The Professional Services Review currently uses experienced doctors to review case notes from medical practitioners referred by Medicare Australia. The Professional Services Review reviews and investigates the provision of services by a medical practitioner who may have engaged in inappropriate Medicare billing practices. This remains the appropriate avenue for such investigations.

The RACGP recommends that if general practitioner clinical notes are to be reviewed in an audit, they should be reviewed by experienced general practitioners.

The RACGP has concerns that the MBS has become too complex. This creates the likelihood that medical practitioners will make unavoidable errors when submitting audits. This may expose honest, well intentioned practitioners to sanctions.

The focus of audits should therefore be shifted to education and quality improvement, rather than solely focus on compliance and discipline.

### 2.2 A requirement that practitioners produce evidence to verify their Medicare claiming when audited by Medicare Australia

The RACGP has significant concerns relating to patient privacy and administrative penalties that may apply as an outcome of any audit. The RACGP believes that patients should feel free to confide in their general practitioner, and not be anxious that a bureaucratic review by Medicare will provide access to their confidential medical file.

The draft Health Insurance Amendment (Compliance) Bill 2009 will give Medicare Australia the right to access all information recorded by doctors on individual patients' records. Privacy protection will be stripped from patient records in a bid to step up Medicare audits.

Section 7 of the exposure draft, on Health Information, states that "the power under this section to require a document, extract or copy to be produced includes the power to require production of a document, extract or copy containing health information (within the definition of the Privacy Act 1988) about an individual." The bill will thus reverse current legal protections for patient privacy, with the result that no part of the patient record will be protected. The draft legislation specifically empowers administrative officers to view personal details from the confidential patient record, and that record can then be used further in proceedings.

This essentially means that Medicare will have the power to seize, copy and retain patient records and submit them in court for all to see, even without the patients' consent, and without patients having the right to be advised that their personal health records are being accessed by non-medical practitioners, and even publicised.

Furthermore, there are concerns about ownership of the records, and requirements surrounding storage and destruction.

Medical practitioners will be compelled to hand over highly sensitive medical information to justify Medicare claims (including if they wish to dispute a fine), as part of the audit process, potentially including a patient's intimate concerns and examination findings, their test results, weight, sexual health, genetic status, and infections.

Currently, doctors can only be compelled to release patient records by order of a court or the Professional Services Review.

The draft legislation therefore represents a significant erosion of patients' rights with minimal demonstrable gain or benefit to the patient.

## 2.2.1 Standards for management and ownership of patient information

The RACGP Standards for General Practice<sup>1</sup> set the standards for the provision of high quality general practice care for the Australian community.

Standards have been developed to address the role and details of a patient health record. The proposed legislation will complicate the ability of general practitioners to adhere to a number of current RACGP standards, including:

- 1.7 Patient health records
- 4.2.1 Confidentiality and privacy of health information
- 4.2.2 Information security
- 4.2.3 Transfer of patient health information
- 4.2.4 Retention and destruction of patient health information

For example, Standard 1.7 states:

Our patient health records contain sufficient information to identify the patient and to document reason for visit, assessment, management, progress and outcomes.

Criterion 1.7.3 specifically relates to consultation notes and states:

Each of our patient health records contain sufficient information about each consultation to allow another doctor to carry on the management of the patient.

The indicators for this criterion include:

Our patient health records document consultations – including consultations outside normal opening hours, home or other visits, telephone or electronic communications where clinically significant – comprising:

- Date of consultation
- Patient reason for consultation
- Relevant clinical findings
- Diagnosis
- Recommended management plan and where appropriate expected process of review
- Any prescribed medicine (including medicine name, strength, directions for use/dose frequency, number of repeats, and date medicine started/ceased/changed)
- Any relevant preventive care undertaken
- Documentation of any referral to other health care providers or health services
- Any special advice or other instructions
- Identification of who conducted the consultation, eg. by initial in the notes, or audit trail in electronic record.

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<sup>1</sup> Royal Australian College of General Practitioners (2007). *Standards for general practices*. [Accessed May 2009.] <http://www.racgp.org.au/standards>

As is evident from these standards and indicators, the general practitioner is required to include significant information about a patient and their health condition in their record and notes. Requiring medical practitioners to provide such detailed information to a government agency is a significant breach of patient privacy. The consequence on patient care could be that the proposed requirements, coupled with the significant penalties for not providing such details, may encourage medical practitioners to keep less detailed records in some cases.

## 2.2.2 Management of Health Information

Ensuring patients have a shared understanding of the doctor's responsibility on request to provide any document, or extract of any document, will undermine the patient-doctor relationship, a relationship built on trust that confidential information will remain confidential.

The purpose of medical records is not to document compliance with Medicare Australia requirements. The medical record is an inappropriate tool for this purpose.

If patients records are to be released to Medicare for the purpose of these audits, patients need a shared understanding of what may happen to their records. This undermines the confidentiality of consultations between medical practitioners and patients. Furthermore it adds an onerous responsibility on the medical practitioner to explain to every patient that their medical records may not be sacrosanct.

The *RACGP Handbook for the Management of Health Information in Private Medical Practice (October, 2002)* contains the following guidelines for general practitioners:<sup>2</sup>

### **Patient Consent (Chapter 2: 2.2; 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 information is used or disclosed, and should ensure that patients are provided with sufficient information to enable them to fully exercise this right”.

### **Use of information must be relevant to consent (Chapter 2, page 2)**

“Even where the patient has consented to the disclosure of his or her personal health information for a particular purpose, only information relevant for that purpose should be disclosed”.

Adherence to this important guideline would require that the medical practitioner being audited would need to spend significant time removing those medical details that were not relevant to the audit, adding red tape to the process.

### **Consideration before sharing health information (Chapter 3; 3.3; page 5)**

“Whenever personal 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”.

### **Using and disclosing personal health information (Chapter 5; page 8)**

Medical practitioners must not use or disclose a patients Medicare number, or any other identifier assigned by or on behalf of a Commonwealth agency, unless required to do so to fulfil their obligations to the agency, or unless the use of disclosure is to lessen or prevent a serious threat to life, health or safety or public health and safety, where required or authorised by law or for certain law enforcement purposes or investigations of suspected unlawful activities”.

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<sup>2</sup> 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](http://www.racgp.org.au/privacy/handbook)

**Third party disclosure (Chapter 5: 5.2; page 9)**

Where personal health information is to be disclosed to a third party, the medical practitioner must consider what information is relevant for the proposed purpose, and ensure that no personal health information is disclosed unnecessarily.

**Health provider identified health information (Chapter 9, page 14)**

“Where the health information enables both the patient and the health provider to be identified, the patient retains the right to control the flow of that information”.

The draft legislation clearly puts the ability of general practitioners to comply with these guidelines in jeopardy.

**2.3 A financial penalty for Medicare practitioners who make incorrect claims**

The RACGP supports the appropriate use of the Medicare Rebate for patients, and appropriate audits for the system. However, the RACGP disagrees with the likely scenario that under the proposed new legislation, medical practitioners will be assumed to be guilty and face a hefty fine, if they refuse to hand over patient information.

Under the proposed legislation, a medical practitioner who does not comply with the audit requirements of Medicare Australia will be required not only to pay a fine of \$2,500 but will also be required to pay back the amount of the Medicare claim as a debt.

The RACGP has concerns regarding how this practice will be implemented. Specific concerns relate to:

- Requiring a general practitioner to pay \$2,500 if they refuse to release a patient’s medical records, for each patient.
- Requiring a general practitioner to pay \$2,500 if they are unable to obtain a patients’ consent to access the medical records.
- Decisions by general practitioners to withhold patient information of a particularly sensitive personal nature.