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Health Records Regulations Review
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Dear Mr Di Paola

RE: Health Records Regulations Review

AMA Victoria welcomes the opportunity to contribute to this long over-due review of the *Health Records Regulations 2002* ('the regulations'). We have repeatedly called on the Government to conduct such a review to reassess the maximum fees able to be charged by health service providers when providing access to health information.

There are a number of issues inherent in the regulations which must be addressed and AMA Victoria recommends that a full and comprehensive review take account of each of the points outlined below. If you would like to discuss any of the matters contained in this submission, please contact Elizabeth Muhlebach, Policy Officer, on (03) 9280 8754 or elizabethm@amavic.com.au.

Rise in number of requests for access to health information

Since the commencement of the *Health Records Act 2001* ('the Act'), doctors have experienced a dramatic rise in the number of requests for access to medical records. These requests are being made by patients, patients on behalf of third parties and third parties themselves.

In order to respond to such requests, and to comply with their obligations under the Act, medical practitioners and their staff are being placed under an increasing burden. Doctors are expending considerable time, cost and effort in responding to such requests and, in this context, the need for prompt regulatory change is clear.

Change required for adequate cost recovery

The regulations in their current form do not achieve their stated objective of allowing adequate or reasonable cost recovery for health service providers who are required to respond to requests for access to medical records. While we recognise that fees should not be prohibitive for patients in accessing their health information, doctors are entitled to fully recuperate the costs incurred when facilitating these requests.

The prescribed maximum fees for providing access to health information, as set out in Schedule 1 of the regulations, arguably did not accurately reflect the level of costs at the time of their creation in 2002 and this inadequacy has been compounded further by the fact that the amounts have not increased in line with inflation.

The lack of indexation over the ten year period has significantly affected practices and has reduced the willingness of medical practices to waive fees for patient access to records, as there is reduced opportunity to cross-subsidise fees.

AMA Victoria suggests that the current review considers all the steps, costs and time associated with responding to requests and that the fees are adjusted accordingly. Our members would be happy to assist in the calculation of the precise costs involved in this process.

The regulations should also be amended to include new mechanisms for regular reviews of fees to ensure that they maintain parity with average weekly earnings. Doctors should not be unfairly disadvantaged by the rigidity of fees prescribed by the regulations.

Costs

There are multiple steps to be taken by doctors and medical practice staff in responding to a request for a copy of medical records.

Doctors must:

- store and maintain the patient file indefinitely in an appropriate medical filing cabinet;
- register and read requests upon receipt;
- retrieve the file and peruse what are often hundreds of pages including test results, reports, correspondence and other documents;
- copy what is commonly the whole file;
- peruse the file prior to dispatch;
- mail to the patient (commonly by registered mail);
- retrieve the file for continued storage.

Some doctors have reported that this process can take up to half an hour of the doctors' time and up to an hour of staff time per request however it is important to note that individual business procedures may vary across practices.

Doctors who run smaller practices may not feel that they can afford to have their staff out of office, leaving phones unanswered and this means that doctors themselves are personally venturing out to have the records copied. The fees able to be charged should take these considerations into account.

AMA Victoria recommends that the regulations must accurately reflect the costs incurred by medical practices of all sizes when responding to requests and, if they cannot adequately do so, that maximum fees should not be prescribed by legislation.

Requests for access by third parties

As outlined above, the increased number of requests being received by doctors includes those by parties other than the patient. A high number of requests received by doctors are from solicitors, Worksafe and the Transport Accident Commission ('TAC'), and are frequently made as a means of obtaining medical opinion for use in legal proceedings – a purpose for which the regulations were not intended.

The original and arguably primary objective of the Act was to provide patients with access to their information and we submit that its provisions should be amended to reflect the fact that the Act is frequently used for extraneous purposes.

We submit that health service providers should be able to charge a higher fee for responding to requests from third parties and that a provision to this effect should be incorporated into the regulations. A separate schedule of fees for access to health records by solicitors and insurers is set out in the *Health Act 1993 (ACT)*.

Furthermore, requests by third parties are virtually unlimited in their scope and doctors are commonly required to provide the entire record to such parties. Accordingly, AMA Victoria suggests that the law should set boundaries to limit requests to specific information rather than, as is frequently the case, requests for the entire medical record.

Requests should be limited to those that are reasonable in light of the reasons for which they are requested.

Privacy concerns

Doctors are also concerned that the Act does not provide adequate protection of patients' right to privacy by allowing access by third parties to a patient's file in its entirety if the patient has signed a letter of authority.

Doctors are concerned that while patients may have given written authority stating that they allow a nominated person to access their records, they may in reality have little idea of the detail and scope of information that this authority provides access to.

The scope of a patient's signed authority can be ambiguous and medical practitioners are concerned that, in order to comply with the law, they may be required to give third parties access to information that the patient never intended them to have.

Summary of recommendations

While doctors do not wish to see patients charged unfair or prohibitive amounts for access to medical records, the fees able to be charged should properly cover the costs medical practices incur as a result.

AMA Victoria's recommendations include:

- That doctors be entitled to recover from the patient, or any other legally authorised person or authority requesting the information, the reasonable cost of providing access to the information contained in a medical record.
- That a full and comprehensive review of the costs be undertaken to determine the precise level of remuneration that would be adequate in light of the actual time, cost and effort medical practices expend in responding to requests.
- That any prescribed fees should be determined with reference to doctors' input.
- That the regulations introduce new mechanisms for regular reviews of any prescribed fees to ensure that they maintain parity with average weekly earnings.
- That doctors be entitled to charge a nominal amount, in addition to costs, when responding to requests by third parties such as solicitors, courts, Worksafe or TAC.
- That requests by third parties be limited to requests that are reasonable in light of the reasons for which they are requested.

Yours sincerely



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