



Australian Government

Department of Health and Ageing

Exposure Draft Healthcare Identifiers Bill 2010

Release Note - 10 December 2009

In February 2006, the Council of Australian Governments (COAG) agreed to a national approach to developing, implementing and operating systems for healthcare identifiers for individuals and providers as part of accelerating work on a national electronic health records system to improve safety for patients and increase efficiency for healthcare providers.

An exposure draft of the Commonwealth Healthcare Identifiers Bill 2010 has been released for public comment. Complementary State and Territory legislation is also expected to be developed.

The purpose of the Bill is to establish a Healthcare Identifiers Service (HI Service) to implement a national system for consistently identifying consumers and healthcare providers and to establish clear purposes for which healthcare identifiers can be used. This represents an important first step in improving the management and communication of health information to support the nation's healthcare needs into the future and provides a key foundation for e-health initiatives across Australia.

The HI Service will underpin the development of a national electronic health system by removing those technological and organisation impediments to effective sharing of health information that have resulted from poor patient and provider identification.

The feedback received from an earlier round of public consultation in July - August 2009 on legislative proposals for healthcare identifiers, has been helpful in informing a number of key elements in the draft legislation. This consultation on the exposure draft bill represents the second phase of public consultation on these proposals, and follows on from the release of *Building the foundation for an e-health future...update on legislative proposals for healthcare identifiers* on 20 November 2009 which provides detailed background and context for the proposals.

Summary of the Exposure Draft Healthcare Identifiers Bill 2010

The exposure draft Healthcare Identifiers Bill 2010 sets out the functions of the new Healthcare Identifiers Service, the assignment of healthcare identifiers and the purposes for which identifiers may be used or disclosed. It also provides authority for use of personal information for the purpose of assigning identifiers, offences relating to misuse of identifiers and penalties for breaches of the legislation and a review period for the operation of the Healthcare Identifiers Service.

The handling of healthcare identifiers will also be subject to the requirements of the relevant privacy law in each jurisdiction. The Healthcare Identifiers Bill will have an impact on the operation of some aspects of privacy law, including on privacy principles around the collection, use and disclosure of healthcare identifiers. More details on how the Healthcare Identifiers Bill will operate in conjunction with existing privacy law is set out on pages 30-32 of the document *Building the foundation for an e-health future...update on legislative proposals for healthcare identifiers*.

A brief summary of the key elements of the Healthcare Identifiers Bill is set out below.

Part 1 – Preliminary

This part provides for commencement of the legislation upon Royal Assent to enable Medicare Australia as the Service Operator to undertake functions in preparation for implementing the Healthcare Identifiers Service. The Healthcare Identifiers Service is expected to commence operating in mid-2010.

This part also sets out the purpose of the legislation to uniquely assign identifiers to healthcare providers and recipients (consumers) to ensure healthcare information created in the course of providing healthcare is matched to the right person.

Key definitions such as for 'healthcare', 'healthcare provider' and 'healthcare recipient' are included to support assignment of healthcare identifiers for healthcare and related purposes and a definition of 'identifying information' to set out the personal information required to uniquely assign identifiers.

A definition of 'identified healthcare provider' has been included to mean those healthcare provider individuals or organisations that have been assigned a healthcare identifier by the HI service.

Provision has been made for regulations to prescribe any additional identifying information that may be required in the future to support assignment of healthcare provider identifiers and any new data sources.

Part 2 – Assigning healthcare identifiers

This part sets out the function for the Service Operator to uniquely assign healthcare identifiers to healthcare providers and recipients and maintain accurate records of information associated with each identifier. Three types of identifiers may be assigned by the Service Operator, that is, for healthcare recipients, individual healthcare providers and healthcare provider organisations.

A provision has been included to allow regulations to prescribe the requirements for assigning a healthcare identifier to a healthcare recipient or provider. It is envisaged that these regulations will set out key requirements for participation such as eligibility of healthcare providers and any security requirements.

It also provides for data sources, such as Medicare Australia, the Department of Veterans' Affairs and the Australian Health Practitioner Registration Agency to disclose specified personal and other information to the Service Operator for the purpose of assigning healthcare identifiers. A separate authorisation is included for healthcare providers to enable patient demographic information collected at the point of care to be provided to the Service Operator for the assignment of temporary identifiers, for example in emergency situations.

A duty of confidentiality for people employed by or undertaking Service Operator functions is set out with penalties for any use or disclosure of information held by the Service Operator other than for the purposes of the Act. Penalties for unauthorised use or disclosure are 120 penalty units or imprisonment for 2 years or both.

Part 3 – Service operator's disclosure

This part sets out who the Service Operator is authorised to disclose healthcare identifiers to and the purpose for which they may be disclosed including to:

- Healthcare providers for the purpose of communicating or managing health information as part of providing healthcare to an individual;

- A registration authority established under law for the purposes of healthcare professional registration; and
- To an entity established to provide healthcare provider authentication services for the purposes of issuing security credentials to authenticate a healthcare provider's identity.

Individuals will be able to access information held about them by the Service Operator, including their healthcare identifier, under existing provisions in privacy law.

Part 4 – Healthcare provider's use or disclosure

This part sets out that an identified healthcare provider (that is a healthcare provider that has been assigned a healthcare identifier by the HI Service) may disclose relevant identifying information about a patient of the provider for the purpose of obtaining that patient's healthcare identifier.

Part 4 also specifies the purposes that healthcare providers and related entities may use and disclose healthcare identifiers, namely for communicating and managing health information as part of:

- the provision of healthcare to an individual; or
- the management, funding, monitoring or evaluation of healthcare; or
- the conduct of health or medical research that has been approved by a Human Research Ethics Committee.

Where information is disclosed for these purposes the receiving healthcare provider or entity is authorised to collect the healthcare identifier and use it for the purpose for which it was disclosed.

This division of the Bill only provides authorisation for the handling of healthcare identifiers it does not authorise the sharing of associated personal or health information which would still need to be undertaken in accordance with existing privacy and health information laws in each jurisdiction.

Part 5 – Unauthorised use or disclosure

This part sets out a specific prohibition on the use or disclosure of healthcare identifiers of recipients of healthcare (ie consumers) for health, life or other insurance or employment purposes.

The part also includes an offence for any use or disclosure of a healthcare identifier by a person that is not authorised under the proposed healthcare identifiers legislation or another law. Two types of offences have been specified, a criminal offence attracting a penalty of 120 penalty units or imprisonment for 2 years or both and a strict liability offence attracting a penalty of 60 penalty units.

Part 6 – Miscellaneous

Interaction with Privacy Act

This section sets out important interactions between the proposed Healthcare Identifiers legislation and the Commonwealth *Privacy Act 1988* including that:

- an authorisation to collect, use or disclose a healthcare identifier under the Act is an authorisation by law for the purposes of the Privacy Act;
- an authorisation for an entity includes a person who is employed by the entity
- the Service Operator is an agency as defined in the Privacy Act and as such falls within the scope of the Privacy Commissioner's existing oversight functions;
- An offence against the Healthcare Identifiers legislation is also an interference with the privacy of the individual under the Privacy Act; and

- An individual may complain to the Privacy Commissioner about an interference with the privacy of the individual in accordance with the complaint handling functions of the Privacy Commissioner established in the Privacy Act.

Relationship to State or Territory laws

This section sets out the relationship between the Commonwealth Healthcare Identifiers legislation and laws of a State or Territory including specific healthcare identifiers laws of a State or Territory.

A law of a State or Territory will have effect to the extent that it is able to operate concurrently with the Commonwealth Healthcare Identifiers legislation and regulations. However, if an offence committed against the Commonwealth legislation is also an offence against a State or Territory law the person will only be able to be convicted of an offence against one of the laws.

The section also sets out a process for ensuring that State and Territory laws established to regulate healthcare identifiers in their public sectors are consistent with the relevant provisions of the Commonwealth Healthcare Identifiers legislation. This process involves consultation on legislative proposals for healthcare identifiers through a Ministerial Council of Health Ministers before introduction.

Healthcare Provider Directory

This section gives the Service Operator the function of establishing and maintaining a healthcare provider directory with the consent of healthcare providers. The Service Operator is authorised to disclose professional and business details of healthcare providers listed in the directory to other identified healthcare providers.

Annual reports – service operator

This section requires the Service Operator to prepare an annual report on the activities, finances and operations of the HI Service each financial year and to provide a copy of the annual report to the Ministerial Council no later than 3 months after the end of the financial year.

Annual reports – Privacy Commissioner

This section requires the Privacy Commissioner to prepare an annual report on compliance and enforcement activities in relation to Healthcare Identifiers legislation and to provide a copy of the annual report to the Ministerial Council no later than 3 months after the end of the financial year.

Review of operation of Act

This section requires the Commonwealth Minister to conduct a review of the operation of the legislation and to prepare a report on the review within 3 years of the legislation commencing.

Regulations

This section enables the Governor-General to make regulations prescribing matters relevant to giving effect to the Act. A penalty of 50 penalty units will apply for contravention of a regulation.

Guidelines for making comments

The exposure draft bill and the supporting document *Building the foundation for an e-health future...update on legislative proposals for healthcare identifiers* are available at www.health.gov.au/ehealth/consultation or by calling 02 6289 3919.

Please forward comments on the draft legislation to:

Exposure Draft Healthcare Identifiers Service Bill 2010
E-Health Branch
Primary and Ambulatory Care Division (MDP1)
Department of Health and Ageing
GPO Box 9848
CANBERRA ACT 2601

or ehealth@health.gov.au

The closing date for comment on the exposure draft bill is **Thursday, 7 January 2010**.

If you lodge comments by email, there is no need to send a separate copy by post.

Comments received will be published on the Department of Health and Ageing website, except where confidentiality is requested. Please indicate clearly if you wish all, or part, of your comment to be treated as confidential or anonymous. All confidential material should be clearly marked as 'confidential and not for publication'. Any request under the *Freedom of Information Act 1982* for access to a comment marked 'confidential' will be determined in accordance with that Act.