Personally Controlled Electronic Health Records (Consequential Amendments) Bill 2011

Dr Rhonda Jolly
Social Policy Section

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Personally Controlled Electronic Health Records (Consequential Amendments) Bill 2011

Date introduced: 23 November 2011

House: House of Representatives

Portfolio: Health and Ageing

Commencement: Sections 1 to 3 on Royal Assent. Schedule 1 on a day or days to be fixed by Parliament or if any provisions do not commence by the later of 1 July 2012 and the day the Act receives Royal Assent, on the day after the later of these days.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation or on the Bill’s home page. When Bills have been passed and have received Royal Assent, they become Acts. These can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

Personally Controlled Electronic Health Records (Consequential Amendments) Bill 2011 (the Bill) proposes to make amendments to the Healthcare Identifiers Act 2010 (the HI Act), the Health Insurance Act 1973 and the National Health Act 1953 consequential to the enactment of the Personally Controlled Electronic Health Records Bill 2011 (once enacted).

Background

Background on the Health Care Identifiers legislation can be found in the Parliamentary Library’s Bills Digests on the Healthcare Identifiers Bill 2010 [and] the Healthcare Identifiers (Consequential Amendments) Bill 2010.

Background information relating to the development of the concept of e health—its definition and development in Australia and overseas—is comprehensively dealt with in the Library’s research

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paper, *The e health revolution—easier said than done*. This paper also contains discussion of the development of policy for the personally controlled electronic health system.²

A brief summary of the background information contained in the paper can be found in Box 1 in the Library’s Bills Digest on the Personally Controlled Electronic Health Records Bill 2011. Information on political party and stakeholder views of this legislation can also be found in the Digest.

The Library research paper, *The e health revolution—easier said than done*, no. 3, 2011-12, can also be found at: [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprspub%2F1232345%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fprspub%2F1232345%22).

**Committee consideration**

This Bill and the Personally Controlled Electronic Health Records Bill 2011 have been referred to the Senate Community Affairs Legislation Committee for inquiry and possible report by 29 February 2012.

Reasons for referral and principal issues for consideration by the Committee have been listed as:

- privacy issues/ privacy breaches/ penalties for breaches
- security of information on the PCEHR
- questions about the design, functionality, and capability of the personally controlled electronic health records (PCEHR) system
- questions regarding the use of consultants, contractors, and tenders let or hired by the National E–Health Transition authority (NEHTA) in regard to the development of the PCEHR
- the level of functionality of the PCEHR at 1 July 2012
- questions around the continuation of NEHTA after 1 July 2012
- the products that NEHTA designed, made, tested, certified for use in the PCEHR, and
- any other issues the Committee considers appropriate.

The inquiry therefore will deal with more wide-ranging issues than the scope and operation of the PCEHR as detailed in this proposed legislation. In particular, the inquiry will examine the actions of NEHTA in developing the PCEHR. It will also consider the possible ongoing role of NEHTA.


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Financial implications

The 2010–11 Budget committed funding of $466.7 million over two years to establish ‘the key components’ of a personally controlled electronic health record system.3

The Explanatory Memorandum to the Bill provides the following table:4

<table>
<thead>
<tr>
<th>Cost elements of the personally controlled electronic health record system</th>
<th>2010–11 ($m)</th>
<th>2011–12 ($m)</th>
<th>2012–13 ($m)</th>
<th>2013–14 ($m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governance and Program management</td>
<td>25.7</td>
<td>18.8</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Change and Adoption</td>
<td>42.0</td>
<td>56.8</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Standards and Foundations (infrastructure)</td>
<td>51.7</td>
<td>97.8</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Architectural Framework Release 1</td>
<td>33.9</td>
<td>48.9</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Operations and maintenance</td>
<td>11.2</td>
<td>28.4</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Program contingency</td>
<td>16.9</td>
<td>25.6</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Departmental</td>
<td>4.2</td>
<td>2.9</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Total Expense</td>
<td>185.6</td>
<td>281.2</td>
<td>0.0</td>
<td>0.0</td>
</tr>
</tbody>
</table>

Key provisions

Amendments to the Health Identifiers Act 2010

Item 14 of Schedule 1 to this Bill proposes to introduce a new section 11A in the HI Act. This section will authorise the Health Care Identifier Service Operator to use and disclose to the PCEHR System Operator identifying information for any purpose for which the PCEHR System Operator is to be authorised under a new Division 2A which will also be inserted in the HI Act. Section 11A has been deemed by the Explanatory Memorandum as a necessary inclusion in the HI Act because it is currently an offence to use or disclose identifying information unless it is done for the purpose ‘for which the information was disclosed to the person’ or for a purpose ‘authorised under another law’.5

Item 15 amends section 18 of the HI Act to give the HI Service Operator discretion not to provide a consumer, or a person responsible for the consumer, access to the healthcare identified and audit log for the consumer. The Royal Australian College of General Practitioners (RACGP) notes that discretion is left to the HI Service Operator and that it is intended the discretion is only to be exercised in exceptional circumstances. However, as the RACGP observes, the HI Act does not state

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what constitutes these circumstances and there is no provision for penalties for the inappropriate exercise of this discretion.  

**Item 16** inserts new sections 19A, 19B and 19C. The new sections authorise the HI System Operator to disclose healthcare identifiers and identifying information to the PCEHR System Operator (new section 19A), the Chief Executive Medicare (new section 19B) and to the Departments of Veterans’ Affairs and Defence and to any other Department, for the purposes which are elaborated in Division 2A (new section 19C).

**Item 21** will insert the new Division 2A. A new section 22 authorises the collection, use and disclosure of healthcare identifiers and identifying information by users of the PCEHR system. New section 22(A) authorises the PCEHR System Operator to collect identifying information and healthcare identifiers from the HI System Operator and to use and disclose that information for the purposes of the PCEHR system.

New section 22(C) allows registered repository and portal operators to collect, use and disclose healthcare identifiers, also for the purposes of the delivery of the PCEHR system. Registered repository and portal operators are not authorised to collect identifying information.

New section 22(D) authorises the Chief Executive Medicare and prescribed departments to collect identifying information and health care identifiers and to use and disclose that information for the purposes of the PCEHR system. This section limits the collection, use and disclosure of health information to be included in a consumer’s record to information relating to the Medicare Benefits Program and the Pharmaceutical Benefits Program and information on the Australian Childhood Immunisation Register and organ donor and tissue transplantation decisions.

New section 22(E) allows for regulations to authorise ‘a person’ to collect, use and disclose identifying information and healthcare identifiers for the purpose as ‘is reasonably necessary for the performance of a function or the exercise of a power in relation to the PCEHR system’.

In its submission to an earlier released Exposure Draft of the Consequential Amendments Bill, the Office of the Information Commissioner (OAIC) was concerned:

> ... these provisions do not make sufficiently clear the particular purpose/s for which operators may collect, use or disclose this information. If the HI Act does not describe such purpose/s more clearly, operators may be able to decide whether a collection, use or disclosure is appropriate in

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7. The Exposure Drafts of the PCEHR Bill and the PCEHR Consequential Amendments Bill were released by the Government on 30 September 2011. Fifty-one submissions were received to the Exposure Draft and these were consulted in preparing the current Bill.

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the circumstances. This in turn, could lead to inconsistent information handling practices by operators, which may not reflect consumers’ expectations.

The OAIC therefore suggests that the Draft Consequential Amendments Bill specify more clearly the particular purpose for which operators may collect, use or disclose this information.  

The OAIC iterated this concern in its submission to the Senate inquiry into this Bill.\(^8\) The OAIC also sought clarification about whether ‘identifying information’ and ‘healthcare identifiers’ as described under Division 2A would be covered by the civil penalty provisions in Division 1, Part 4 of the Personally Controlled Electronic Health Records Bill 2011.\(^9\)

**Amendments to the Health Insurance Act 1973**

**Item 29** proposes to insert new paragraphs into section 46E of the *Health Insurance Act 1973* to give the Chief Executive Medicare the ability to upload information about the immunisation of children who are registered consumers of the PCEHR system. It also gives the Chief Executive Medicare the authority to provide this information about immunisation of a particular child to the PCEHR System Operator, if the consumer consents.

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10. OAIC, Submission to Exposure Draft legislation, op. cit.

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