Patient Notes

Requests from insurers

Medical practitioners regularly receive requests by insurers for a patient's full medical history for a specified number of years. This advisory is to provide a guide to you on what you should do.

Requests for Patient Notes

The Privacy Commissioner has expressed the view that in most cases a request for a patient's full notes – even if it is for a specified period – is likely to be unlawful. An insurance company can only ask for those patient notes that are ***relevant*** to their decision. The Privacy Commissioners executive summary of their report is attached as Appendix One. Medical practitioners can therefore expect that the first request from an insurer will be of a more limited nature, such as questions about specific conditions.

Sometimes, the information that the insurer receives may indicate that more information is necessary for it to make a decision. At this point the company can request further information, which may include requesting the patient's full notes for a specified period. It will need to obtain a specific authorisation from the patient to be able to obtain those full notes.

As long as you are reasonably sure that the patient has authorised you to disclose their medical information to the insurer, you can disclose that information. The risk that the information is irrelevant is the insurer's risk, not yours.

If you are uncertain whether your patient has authorised the disclosure, discuss the matter with your patient. Your patient may also want to see their medical notes so they know what is there before they authorise a disclosure to an insurer. In most cases, patients have a right to see the information on their medical notes.

If the patient's medical notes contain confidential information from third parties, it may be prudent not to disclose that information to the insurer in the first instance. Instead, seek advice from your indemnity provider.

Billing

The need to answer insurers' questions will mean that in some cases considerable time may be required. A doctor should feel free to charge a reasonable fee for the time spent meeting the insurance company's request. The doctor should not feel constrained by the fact that an insurance company has advised of the amount of money it is prepared to pay you for this, however:

(a) You should advise the insurer prior to undertaking the work what your terms of engagement are (and in particular charge out rate) and
(b) The invoice you send to the insurer should provide full details of the service you provided.

(c) If you receive a cheque with the request that is less than the amount you would ordinarily bill do not bank it but send it back with the invoice you send to the company. This will avoid subsequent arguments by the insurance company that by banking the cheque you are deemed to have accepted this as the contract price.

Urgency

Doctors often complain that when they receive a request for patient notes this is often said to be "urgent". On the other hand we are aware that for many doctors, complying with these requests is often seen as time consuming and put to the bottom of the paperwork pile. While the requests rarely need to be dealt with immediately, nonetheless there is a need for the matter to be dealt with expeditiously. It is a service that is useful for your patient.

A good way to deal with the matter – as well as ensuring the patient has given authorised consent to the release of the information – is to book a time with the patient and complete the form at that time.

December 2016

Need more help?

Contact the NZMA:

Phone | 0800 65 61 61
Email | Robyn Fell: robyn@nzma.org.nz

Privacy Commissioner
Te Mana Matapono Matatapu

Collection of medical notes by insurers - Inquiry by the Privacy Commissioner

29/06/2009 10:18am

June 2009

Executive summary

The Privacy Commissioner has conducted an inquiry into the practice of some insurance companies of collecting full medical notes for a specified number of years.

The inquiry concludes that insurers that collect full medical notes - even for a specified period - are at risk of breaching the Health Information Privacy Code. This is because insurers can only collect personal health information that is **necessary** to make insurance decisions, such as calculating whether to insure someone or whether to pay out on a claim.

Insurers do need to collect detailed medical information to make insurance decisions, and their clients need to be completely open and honest about that information. However, this should usually take the form of asking for answers to particular questions. Not *all* the information contained in medical notes is necessarily relevant to an insurance decision. For instance, medical notes may contain family or relationship information - the medical practitioner may have treated a person as a whole, in their individual circumstances and context. This will not always be relevant to the decisions the insurer has to make about cover or claims.

Occasionally, an insurer will be entitled to collect full medical notes, if the more specific information does not provide the detail the insurer needs to make the decision. However, these situations should be rare.

The inquiry also concludes that insurers need to take care to ensure that their clients clearly authorise the insurer to collect their health information from their medical practitioner. In particular, the insurance client should be asked to provide a

separate authorisation for collection of full medical notes. Also, for the authorisation to be reasonably 'informed', the insurer should tell the client why full medical notes are required in these circumstances.

This inquiry has had to traverse some difficult issues of law and practice. First, not all insurers have the same approach to collecting full medical notes: some do this relatively frequently, and others very rarely if at all. Secondly, medical practitioners already struggle with the time-consuming task of filling in questions relating to insurance applications and claims. Some choose to send full notes as a quick method of dealing with this, while others worry that their clients have not properly authorised such a disclosure. Thirdly, insurance clients, doctors and insurers alike want the transactions to proceed speedily. Lastly, and importantly, insurance law has strict rules relating to non-disclosure of information. Any non-disclosure of information that a prudent insurer might need to know can affect a person's entitlement to claim on their insurance, whether the non-disclosure was deliberate or inadvertent. There are therefore significant dynamics favouring the full disclosure of notes - it is easy and it is quick for all concerned, and there may be a measure of protection against legal risk.

However, insurance clients should still be entitled to some measure of privacy. They have little real choice in how they deal with insurers, and what they are required to provide if they are to get cover, or have a claim paid. The only real privacy protections that they have are where the collection of their health information is restricted to necessary information only, and where they are asked for authorisation and are aware of what they are authorising.

The current privacy law provides the insurance client with that protection, and it should not be easily read down.

The full report can be read at https://www.privacy.org.nz/news-and-publications/commissioner-inquiries/collection-of-medical-notes-by-insurers-inquiry-by-the-privacy-commissioner/