



Victorian Healthcare Association

# SUBMISSION

*Personally Controlled Electronic Health Record System:  
Proposals for Regulations and Rules*

5 April 2012

## 1. Introduction

The Victorian Healthcare Association (VHA) welcomes the opportunity to provide feedback to the Commonwealth Government regarding the recently-released *Personally Controlled Electronic Health Record (PCEHR) System: Proposals for Regulations and Rules* (the paper).

The VHA agrees to this submission being treated as a public document.

### 1.1. Contact details

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### 1.2. The Victorian Healthcare Association

The VHA is the major peak body representing the public healthcare sector in Victoria. Our members include public hospitals, rural and regional health services, community health services and aged care facilities. Established since 1938, the VHA promotes the improvement of health outcomes for all Victorians, from the perspective of its members.

### 1.3. VHA view

The VHA supports the general premise of the introduction of PCEHR into the health system. The rules and regulations outlined in the paper demonstrate that the security and privacy of the consumer is being given the primacy it requires, particularly in the default setting.

Our members have noted that it is important to consider the capacity of smaller, particularly rural, health services to deliver the PCEHR system. As such, it is heartening to see that the Independent Advisory Council takes this into account in its balanced arrangements for the nomination of members.

However, broader concerns with the PCEHR system remain. The commitment to an 'opt-in' system presents a high risk that the system will fail. PCEHRs require active input from individuals and practitioners but neither of these parties is obliged to participate. The result is that as practitioners repeatedly search for records, but return no results, they will place little faith in the records, defeating their intended purpose. The Government claims that a PCEHR will most benefit older people, those with chronic and complex conditions and Aboriginal and Torres Strait Islanders. However, these are the groups who are least likely to have access to the IT



infrastructure and skills necessary to create their record. An 'opt-out' system would ensure greater buy-in from consumers and health practitioners. Similarly, the level of detail contained in the health summaries must be sufficient for health practitioners to gain any value from consulting a consumer's health record.

It is of concern that several details with regard to the PCEHR system have not yet been determined when the scheme is due to go live on 1 July 2012. It is important that the system is well thought through, even if this delays the intended start date, to avoid the potential of the system failing, and a huge public investment being wasted.

#### **1.4. Emergency access controls**

While the VHA largely agrees with the proposed rules and regulations, there are still some concerns regarding emergency access to records. Section 5.2 (d) (i) states that "where collection, use or disclosure of health information in a consumer's PCEHR is necessary to lessen or prevent a serious threat to an individual's life, health or safety...a treating healthcare provider may assert to the System Operator that access to the consumer's PCEHR is required."

There needs to be clear guidelines provided to health practitioners as to what constitutes a 'serious threat'. When a consumer establishes their electronic health record, it is important that the circumstances in which their privacy settings can be over-ridden are clearly explained to them. Interpretations of emergency can differ widely from practitioner to practitioner, and from practitioner to patient, so clear guidelines are essential.

Further, the rules need to be clarified around the System Operator's role in allowing or denying access to a record in the case of 'serious threat'. The paper states that the healthcare provider organisation must 'assert' the need for access to the record. It is unclear if this means that the System Operator must assess the legitimacy of the claim before access is enabled. If this is the case, there are concerns around the speed at which the System Operator can assess claims at all hours. 'Serious threats' often necessitate urgent action. The review process for emergencies needs to be quick but secure enough to uphold the privacy of the consumer.

If all that is required is for the healthcare provider organisation to 'assert' need then there are security concerns. The System Operator may then assess the need after the record has been made accessible. If the claim is illegitimate then a security breach has already occurred and there need to be penalties for potential misuse.

#### **2.0 Conclusion**

The paper provides much needed clarity on the rules and regulations surrounding the implementation of the PCEHR system. Largely, the VHA believes that these will



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adequately support the protection of sensitive health information, while questions still remain about emergency access. The VHA is also pleased to note the involvement of a diverse range of stakeholders to inform the development and monitoring of the PCEHR system.

Please contact me on (03) 9094 7777 to clarify any information in this submission.

A handwritten signature in black ink, appearing to read 'Trevor Carr', is positioned above the name and title.

**Trevor Carr**

Chief Executive Officer

