

Requests from Insurers for a Patient's Notes

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 recently 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. 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.