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Submission to Consultation Papers: Pathology and the PCEHR System and Diagnostic Imaging and the PCEHR System

Avant welcomes the opportunity to provide input into the Department of Health's Consultation Papers on the PCEHR system and pathology and diagnostic imaging. Background information about Avant is at the end of this letter.

General comments

Avant confirms its support for e-health initiatives that will fulfil the objects outlined in the *Personally Controlled Electronic Health Records Act 2012* (Cth).

Avant believes that:

- the development of e-health initiatives must have clinical engagement at the core of their development and operation
- any e-health system must address issues around practitioners' medico-legal risk
- e-health systems should provide appropriate functionality for the practitioner and not impose onerous requirements of time and expense.

We provide specific comments below on pathology and diagnostic imaging in the context of these general comments. We also note our involvement in the consultation workshop held on 8 July 2014 on pathology and the PCEHR.

The proposed model

The Consultation Papers note that the key premise behind the proposed model for pathology and diagnostic imaging is that an "Authority-to-Post" (ATP) message must be provided by a reviewing healthcare provider before a report is made available on an individual's PCEHR. The diagnostic imaging paper notes that consensus was not reached in earlier workshops about the proposed model, whereas general consensus was reached on the proposed model for pathology.

We recommend that the same model be used for both diagnostic imaging and pathology.

Medico-legal concerns

We agree that the design of the model should be aligned to medico-legal responsibilities. The Consultation Papers note that:

> *During the consultation concerns were raised about potential additional medico-legal responsibilities implied under the proposed ATP model, in particular where clinical curation of the report has not been provided by a healthcare provider and the ATP decision remains outstanding.*

We are unclear about what "potential additional medico-legal responsibilities" might be implied under the proposed ATP model. On receipt of pathology results or a diagnostic imaging report a practitioner has an obligation to:

- Review the results in a timely way and consider whether any further action is required
- Advise the patient of the results in a timely way
- If further action is required, follow up with the patient as appropriate.

The extent of follow up and the timing of it will depend on the clinical seriousness of the results.

The RACGP Standards for general practices (4th edition) state the following in relation to following up clinically significant results:

> *The nature and extent of responsibilities for following up tests and results will depend on what is reasonable in all of the circumstances. Overall, the following factors are important in determining if something is clinically significant and therefore requires follow-up:*
>
> - *The probability that the patient will be harmed if adequate follow-up does not occur.*
> - *The likely seriousness of the harm.*
> - *The burden of taking steps to avoid the risk of harm.*
>
> *The clinical significance of a test or result need to be considered in the overall context of the patient's history and presenting problems. Clinically significant results do not necessarily only mean "abnormal" results. ... "Clinically significant" is a judgment made by the GP that something is clinically important for that particular patient in the context of that patient's health care.*

The practitioner has this obligation to follow up results whether or not the patient has a PCEHR and whether or not an ATP has been provided in relation to the results to be uploaded to the PCEHR. We do not see the ATP model as changing these obligations.

The Consultation Papers note the concern that reports may not be uploaded in a timely manner (or at all) due to the dependency on healthcare providers having to provide an ATP before a report is made available in the PCEHR. We agree that this is a concern, particularly because of the impact on clinical workflow. As many specialists and allied healthcare providers requesting tests or imaging do not have the IT infrastructure to provide the ATP message, the task of providing an ATP may fall again to the GP if the GP is provided with a copy of the report by the pathology or imaging provider. This has the potential to cause confusion among members of the team about whose responsibility it is to provide the ATP where not all members of the team have the necessary IT infrastructure.

The ultimate medico-legal implications of this will depend on the extent to which other healthcare providers or the patient are relying on the report being uploaded to the PCEHR. We suggest that, in most cases, if pathology results or an imaging report is needed urgently by the patient or another healthcare provider, the means of communication or transmission of

the result will not be the PCEHR, particularly given the PCEHR is not intended to be a means of direct communication between healthcare providers.

Further issues for consideration

It is important to balance the rights of the patient to have access to information against the need to ensure appropriate interpretation of results by doctors.

We suggest that when reviewing the proposed ATP model consideration should be given to:

- including the option of the practitioner providing ATP at the time of the pathology or diagnostic imaging request
- if the ATP is provided at the time of the request, what will happen if there is an unexpected abnormal result? The practitioner should be able to remove or reverse the ATP
- how to manage the ATP where multiple practitioners are involved
- ensuring that the model does not impose an additional administrative burden on practitioners.

Please contact me on the details below if you require any further information or clarification of the matters raised in this letter.

Yours sincerely

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About Avant

Avant Mutual Group Limited ("Avant") is Australia's largest medical defence organisation, and offers a range of insurance products and expert legal advice and assistance to over 60,000 medical and allied health practitioners and students in Australia. Our insurance products include medical indemnity insurance for individuals and practices, as well as private health insurance, which is offered through our subsidiary The Doctors' Health Fund Pty Limited.

Our members have access to medico-legal assistance via our Medico Legal Advisory Service. We have offices throughout Australia, and provide extensive risk advisory and education services to our members with the aim of reducing medico-legal risk.