21 November 2013

Mr Richard Royle
Panel Chair - Review of PCEHR

Dear Mr Royle

Review of the Personally Controlled Electronic Health Record

Thank you for the opportunity to provide input into the review of the Personally Controlled Electronic Health Record.

Avant's submission is attached. This submission is in addition to our earlier submissions on the draft concept of operations, the legislation issues paper, and the exposure draft legislation.

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.

We remain committed to working with the new Government to improve the PCEHR system and are happy to elaborate on any of the matters in our submission. Please contact me on the details below if you require any further information.

Yours sincerely

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Review of the Personally Controlled Electronic Health Record

Submissions of Avant Mutual Group

Avant recognises the benefits of the PCEHR and has been supportive of e-health initiatives, including the objects of the *Personally Controlled Electronic Health Records Act 2012* (Cth).

Avant has participated in various consultations during the system's development and since it has gone live. Avant has sought to identify areas of medico-legal risk that practitioners may be exposed to and has suggested ways to mitigate these risks.

However, we remain concerned that our suggestions have not been heeded and do not know whether steps have been taken to respond to these concerns.

While issues of operability, time and expense for practitioners are very important to the successful adoption of the system, at a more fundamental level if questions about medico-legal risk are not resolved, the system risks being a white elephant.

Any future direction for the PCEHR should learn from the experience of the past two years and ensure that medico-legal risk is minimised through consultation with experts in the medico-legal field. When resolved, these issues should be properly communicated to practitioners.

Ultimately no one will know whether these risks are real ones until there is more use of the system, and these issues are tested in the courts or via complaints. However we believe that many of these risks can be mitigated with increased education of users of the system and some simple flags or notations on the ehealth record.

We have also included comments below reflecting the clinical experience of our members and suggestions to improve this.

We remain committed to working with the new Government to improve the PCEHR system and are happy to elaborate on any of the matters in our submission.

1. Avant's experience on the level of consultation with key stakeholders during the development phase

As well as making formal submissions, Avant was involved in consultations with NEHTA from an early stage in medical indemnity stakeholder working groups. Avant was also consulted by the Department of Health about the Participation Agreement and about assisted registration.

Among our members there is a view that there was insufficient training of practitioners in the lead up to the launch of the PCEHR and then during the first 6-12 months of its implementation. Many were completely unaware of the PCEHR until the announcement in

around November 2012 of the e-PIP. Practices then had a very tight timetable imposed on them to become eligible for the first payment in February 2013.

2. The level of use of the PCEHR by health care professions in clinical settings

Use is limited because of a lack of clinically useful information in the record, and the fact that there is little, if any, use by specialists or allied health practitioners. Allied health practitioners are interested but many do not use computerised records.

Many of our members have adopted a "wait and see" approach, leading to a vicious circle – practitioners not uploading documents therefore other practitioners seeing little value or benefit in the system.

3. Barriers to increasing useage in clinical settings

3.1 Clinical concerns

- lack of clinically useful information in the PCEHR because the system was launched before shared health summaries, discharge summaries and pathology and radiology results could be uploaded. This has meant that practitioners do not see much clinical benefit in the system
- documents are not presented in an accessible way. Documents are listed, but there is no way of knowing what is in them unless they are downloaded individually, resulting in additional time and effort
- "clunky" integration with clinical records software
- if an inaccurate or incorrect document is uploaded by the practitioner, it is not an easy process to amend it. There is no facility for the practitioner to amend or remove the document. A whole new document needs to be uploaded, or the patient can apply to the System Operator for the inaccurate document to be "effectively removed".

3.2 Medico-legal concerns

Concern about the potential medico-legal consequences of the PCEHR is in our view a major barrier to initial and increased use. Concerns expressed to Avant include:

- the ability of patients to limit health practitioner access to their ehealth record or to particular documents within the record may impact on patient safety and limits the clinical usefulness of the record
- how to deal with a patient's request not to include information in a shared health summary (SHS)
- the potential liability of practitioners because of the risk of inaccurate and incomplete information being on the system
- concern about the standard of care – is there a legal duty to consult the PCEHR, and if so, how often?
- whether professional indemnity and practice insurance policies cover participation in the PCEHR

- liability for privacy breaches – practitioners and practices are fearful of becoming involved because of the significant fines and penalties for privacy breaches together with the fact that professional indemnity policies do not generally cover fines and penalties
- whether a practitioner is required to obtain consent from a patient every time they access the PCEHR or upload or download documents
- in a patient with a chronic health condition, how far through the documents in the PCEHR does a practitioner have to go, and how long does a practitioner need to spend to find relevant information?
- the Participation Agreement absolves the Commonwealth as system operator (absent negligence) of liability, so all of the risk lies with the practice and/or practitioner. This approach has created a feeling of distrust and suspicion in some practitioners.

3.3 Lack of understanding and training

There is a wide range of understanding about the PCEHR – from those with quite detailed knowledge of the scheme and how it operates, to a complete misunderstanding about it (for example, several members who contacted us thought it was a means by which the patient could access the practitioner's clinical records).

We have noticed:

- confusion among practitioners about healthcare identifier provider numbers – what they are, why practices required them and whether practitioners should be providing them to practices
- legalese in the Participation Agreement leading to confusion and uncertainly about obligations and liabilities under the Agreement
- confusion about the roles and responsibilities of the RO and OMO (the definitions in the legislation about those roles are circular and unhelpful)
- lack of training and meaningful education especially in the first 6 months after the launch. This improved with the funding of Medicare Locals to assist with training, although the knowledge and ability of Medicare Locals was mixed.
- confusion for practitioners who work in different practices – some use the PCEHR and some don't, leading to inconsistency and uncertainty
- launch of the PCEHR before there had been adequate training of trainers who would themselves be training practices and practitioners.

3.4 Time and Expense

Concerns have been expressed to Avant about the increased workload for practitioners involved in this system:

- there is no payment for health practitioners to curate the SHS and upload it outside a consultation with a patient, because the Medicare benefit only applies to work done on the PCEHR during a consultation
- the time it takes to curate a SHS, obtain and document the necessary consent in the patient's medical records and ensure that the information in the SHS is up to date before uploading it

- although GPs can charge a long consult, it is not always feasible to extend consultations if there is a busy waiting room
- the time taken to cleanse data in a clinical record before including in a SHS. There is no payment for this, outside a consultation with the patient.

3.5 Administrative and technical issues

The process to apply for the ePIP and to sign up for ehealth initiatives was onerous and bureaucratic, with a tight time frame that coincided with the December-January period. Other concerns have been expressed around:

- the time and effort required to get the system up and running in practices, especially around training, and the development of requisite policies and procedures
- the time taken for assisted registration
- lack of availability of PCEHR-compliant software until around 6 months after the PCHER was launched
- integration of the PCEHR with clinical systems even with apparently compliant software, leading to difficulty accessing documents; IT systems crashing due to integration problems; and security issues
- there has been a focus on registration of consumers rather than clinical use. Many feel that was the wrong way around.

4. Comments on standards for terminology, language and technology

The Participation Agreement is legalistic and difficult to understand for health practitioners.

The terminology around seed organisations and network organisations is confusing.

5. Key clinician utility and useability issues

In addition to the matters raised in section 3 above, practices have reported problems accessing the PCEHR when they need to use it and problems verifying healthcare identifiers.

6. Key patient usability issues

We have no comment on this aspect.

7. Suggested improvements to accelerate adoption of the platform

To mitigate the potential medico-legal risks and increase utility, Avant recommends that:

- the PCEHR be linked with secure messaging systems to ensure seamless integration of information

- a Medicare benefit be payable for work done curating a SHS or other document, outside a consultation and without the patient having to be present

- there be improved transparency around the timetable for inclusion of information in the PCEHR so that practitioners can know when and what type of clinically useful information is likely to become available

- there be a facility to amend an uploaded document where an error is made or information has to be updated, without the need for numerous documents to be created

- consideration be given to the option of paying an incentive to practitioners per document uploaded for a set period of time - this may be a good way to get practitioners interested and using the system

- clinical data needs to be presented in an accessible, consistent and clinically useful format, using pro forma and template documents, to ensure consistency, and to assist practitioners to find clinically relevant information within an ehealth record quickly

- documents should be labelled in the system as "shared health summary", "event summary", "discharge summary" etc and dated to assist practitioners to identify clinically relevant information quickly

- the Participation Agreement should be simplified so that it is understandable by non-lawyers

- there be ongoing comprehensive training for practice managers and practitioners about the PCEHR system and medico-legal considerations

- many of our members believe that patients should not be able to control access to material on the system, however if this aspect is not to be changed, there should be a notice on the record that access to certain material has been blocked by the patient

- there should be more transparency and feedback about the extent to which medico-legal concerns have been considered and answered. This would allow us to give advice to our members about how best to mitigate their risks.

Avant Mutual Group
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