3 June 2021

Ms Angelene Falk
Australian Information Commissioner and Privacy Commissioner
Office of the Australian Information Commissioner

delivered by email to: privacy.rules@oaic.gov.au

Dear Ms Falk,

OAIC NATIONAL HEALTH (PRIVACY) RULES 2018 REVIEW CONSULTATION

I am writing in response to the Office of the Australian Information Commissioner (OAIC) consultation paper on the National Health (Privacy) Rules 2018 review.

AHHA is Australia's national peak body for public hospitals and health care providers. Our membership includes state health departments, Local Hospital Networks and public hospitals, community health services, Primary Health Networks and primary healthcare providers, aged care providers, universities, individual health professionals and academics. As such, we are uniquely placed to be an independent, national voice for universal high-quality healthcare to benefit the whole community.

AHHA works to improve health outcomes for all Australians by developing, disseminating and promoting a wide range of research, education and thought leadership, by working with our membership and through dedicated programs including the Deeble Institute for Health Policy Research, the Australian Centre for Value-Based Health Care and our peer-reviewed academic journal the Australian Health Review.

AHHA recognises the potential value of the latent information contained within Medicare Benefits Schedule (MBS), Pharmaceutical Benefits Scheme (PBS) and linked MBS-PBS data. Beyond administration of these two programs, there is the potential for the wider use of MBS and PBS data to valuably inform public health policy and the investigation of other population health issues.

However, the information relating to individuals' use of health services, and potentially revealing details about their health condition(s), is highly sensitive. It is therefore paramount that individuals' privacy with their MBS and PBS generated data is ensured with rigorous and transparent safeguards. It is also vital that these processes and procedures are well communicated to ensure the public's confidence in how this data is being managed.

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Public confidence in the integrity of the way data is managed goes to the core issue of public trust and the social licence to use the data for purposes other than service delivery. In this respect, OAIC may like to consider the public debate and concerns raised around the My Health Record opt-out implementation, and the issues raised and views expressed as part of the Commonwealth Government's Data Sharing and Release consultation process.

AHHA accepts the need for a balance between providing specific instructions and the potential usefulness of allowing greater discretion in applying the intent of subordinate legislation such as the National Health Privacy Rules (NHPR). AHHA also recognises the rapidly changing information technological landscape and a possible shift in consumers' views on the use of personal data.

For these reasons, AHHA believes that in reviewing the NHPR the OAIC should take a principles-based approach rather than a prescriptive approach to the use and linkage of MBS and PBS data. Similarly, AHHA believes that there should be a technological neutral approach to facilitate flexibility around the broader intent of the use of MBS and PBS data. These approaches can then facilitate a more nuanced approach to balancing the potentially valuable use of this data with the overarching need to ensure the public confidence with the use of personal data.

With stringent safeguards in place to protect individuals' privacy, AHHA believes that the use and linkage of MBS and PBS claims information should be permitted beyond the limited circumstances prescribed in clause 9 of the NHPR. The use of linked then de-identified records could enable important insights to be gained for public health policy and population health purposes. AHHA also believes that clause 10 of the NHPR should be extended to include the quarterly public disclosure of MBS and PBS data releases and linkages, including the purpose for which any such releases occurred, where this does not relate to administration of the two programs. This transparent disclosure is to reinforce the public's trust with how MBS and PBS data is being managed and used.

Consistent with the wider potential use of MBS and PBS data discussed above, and while it is recognised that the definition of "old information" is specified in the National Health Act 1953 and not the NHPR, the OAIC should also consider the merits of seeking to have this definition modified to provide for a longer period of time before MBS and PBS data is deidentified.

The 2017 Productivity Commission report on data availability and use outlined the significant potential gains from more open access to government data. AHHA supports the broad intent of that report including broader access to MBS and PBS data. But this is always with the overriding proviso that rigorous and transparent safeguards are in place to ensure the privacy of individuals and the public's confidence in the processes and procedures in place.

Your sincerely

Alison Verhoeven
Chief Executive