Medicare and Pharmaceutical Benefits Programs
privacy guidelines

Issued under section 135AA of the *National Health Act 1953*, with
Privacy Commissioner’s notes

May 1997

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Contents

Preface 1
Introduction 1
A Health Insurance Commission 5
B Department 11
C Miscellaneous 15
Meaning of terms 15
Table of amendments 17

Preface

These Guidelines were first issued on 24 November 1993, under section 135AA of the *National
Health Act 1953*. A Table of Amendments since that time appears at the end of the document.

The Guidelines commence with an introduction and then contain a number of specific provisions.
The numbered Guidelines lay down rules which are legally binding. A breach of a rule constitutes
an interference with the privacy of an individual for the purposes of s.13(bb) of the Privacy Act
1988. (See further s.135AB, National Health Act 1953.)

The Guidelines are accompanied by Commissioner’s notes which are in italics. The
Commissioner’s notes do not form part of the law and provide interpretive assistance only.

Introduction

Legal basis

These Guidelines are issued by the Privacy Commissioner under section 135AA of the National
Health Act.

The Guidelines have been developed in consultation with the Health Insurance Commission (“the
HIC”), the Department of Health, Housing, Local Government and Community Services (“the
Department”), representatives of the pharmacy and medical professions and other relevant organisations.

**Commissioner's note**
Consultation is required by section 135AA(6) of the National Health Act. Section 4(2) of the National Health Amendment Act 1993 provides that consultations that took place under subsection 135AA(7) of the National Health Act (prior to it being amended by the National Health Amendment Act 1993) are to be taken for consultations under section 135AA(6) as amended.

The Department of Health, Housing, Local Government and Community Services is now called the Department of Health and Family Services.

These Guidelines are disallowable instruments under section 46A of the Acts Interpretation Act 1901. They take effect from 15 April 1994 unless disallowed by Parliament. The Guidelines may be replaced or varied by written notice by the Privacy Commissioner at any time. Any such variation would also be subject to disallowance.

**Commissioner's note**
See the Table of Amendments at the end of the Guidelines for the date of effect of amendments to the Guidelines.

The Guidelines provide for standards to apply to information about an individual's claims under the Medicare and Pharmaceutical Benefits Programs which is stored in a computer database. The National Health Act (s.135AA(5)) requires that, so far as practicable the Guidelines must:

(a) specify the ways in which information may be stored and, in particular, specify the circumstances in which creating copies of information in paper or similar form is prohibited; and

(b) specify the uses to which agencies may put information; and

(c) specify the circumstances in which agencies may disclose information; and

(d) prohibit agencies from storing in the same database:

(i) information that was obtained under the Medicare Benefits Program; and

(ii) information that was obtained under the Pharmaceutical Benefits Program; and

(e) prohibit linkage of:

(i) information that is held in a database maintained for the purposes of the Medicare Benefits Program; and

(ii) information that is held in a database maintained for the purposes of the Pharmaceutical Benefits Program;

unless the linkage is authorised in the way specified in the Guidelines; and

(f) specify the requirements with which agencies must comply in relation to old information, in particular requirements that:

(i) require the information to be stored in such a way that the personal identification components of the information are not linked with the rest of the information; and

(ii) provide for the longer term storage and retrieval of the information; and
(iii) specify the circumstances in which, and the conditions subject to which, the personal identification components of the information may later be re-linked with the rest of the information.

Section 135AB of the National Health Act provides that a breach of the Guidelines constitutes an interference with privacy under section 13 of the Privacy Act. An individual may complain to the Privacy Commissioner under section 36 of the Privacy Act about a practice that may be a breach of the Guidelines. A complaint concerning a breach of the Guidelines will be dealt with in the same way as a complaint of a breach of an Information Privacy Principle.

Scope

The National Health Act sets out the information to which the Guidelines apply. Paragraphs 135AA(1) and (2) of the National Health Act provide:

(1) Subject to subsection (2), this section applies to information that:

(a) is information relating to an individual; and
(b) is held by an agency (whether or not the information was obtained by that agency or any other agency after the commencement of this section); and
(c) was obtained by that agency or any other agency in connection with a claim for payment of a benefit under the Medicare Benefits Program or the Pharmaceutical Benefits Program.

(2) This section does not apply to such information:

(a) so far as it identifies:
   (i) a person who provided the service or goods in connection with which the claim for payment is made; or
   (ii) a person who, in his or her capacity as the provider of services, made a referral or request to another person to provide the service or goods; or
(b) so far as it is contained in a database that:
   (i) is maintained for the purpose of identifying persons who are eligible to be paid benefits under the Medicare Benefits Program or the Pharmaceutical Benefits Program; and
   (ii) does not contain information relating to claims for payment of such benefits; or
(c) so far as it is not stored in a database.”

Commissioner’s note

The following outline of the scope of the Guidelines is drawn from subsections 135AA(1) and 135AA(2) of the National Health Act. It attempts to put the requirements of these sections into simpler language but is not intended to alter or vary the meaning of those sections.

These Guidelines seek to provide privacy protection for Medicare and Pharmaceutical Benefits claims information relating to individuals that is held by any agency under the Privacy Act. Agencies under the Privacy Act include federal and ACT departments and bodies (see section 6 of the Privacy Act for a comprehensive definition).

Commissioner’s note
The HIC and the Department advise that they are presently the only agencies holding information which satisfies the conditions set out under subsections 135AA(1) and (2) as to the information to be regulated by these Guidelines. Consequently these Guidelines are framed in terms of the HIC and the Department’s storage, use etc of that information. If the situation arises in future where other agencies are affected by subsections (1) and (2) the Guidelines will be amended. The National Centre for Epidemiology and Population Health holds on a database some Medicare claims information, which has been disclosed to the Centre with the consent of the individuals concerned for a particular research study. Guideline 4A deals specifically with claims information disclosed or used for research purposes.

The Guidelines do not apply to information which identifies a provider of a service under the Medicare or Pharmaceutical Benefits Programs or a provider who refers an individual for a service under these programs. Nor do the Guidelines apply to databases aimed at identifying people eligible to be paid benefits under the two programs.

The Guidelines apply only to the claims information which is stored on a computer database.

These Guidelines apply to all patient claims information collected under the Pharmaceutical Benefits Program and the Medicare Program, and held on a computer database, which is still in existence.

Commissioner’s note

The current position in relation to the retention of claims data is that Pharmaceutical Benefits claims information from November 1986 to date has been retained. Data from the commencement of the Medicare Program on 1 February 1984 is covered by the Guidelines. Medical claims data dating from the period before 1 February 1984 is not covered by the Guidelines. However, the Department has indicated that it would apply the spirit of the Guidelines to data collected prior to 1 February 1984.

These Guidelines do not regulate the disclosure of claims information by the HIC other than:

- in relation to any linkage between Medicare and Pharmaceutical Benefits claims information; and
- to the extent that the internal personal identification number (PIN) is involved.

The Guidelines should be read in conjunction with the secrecy provisions of the relevant health legislation (in particular section 130 of the Health Insurance Act and section 135A of the National Health Act) and the Information Privacy Principles (in section 14 of the Privacy Act). In some areas the Guidelines set a higher standard for the protection of claims information than is required by the Information Privacy Principles and deal with issues not covered by the Privacy Act (such as the retention, de-identification and destruction of claims information). In these cases the Guidelines override the Information Privacy Principles. Any disclosures of claims information must conform to the Guidelines and the relevant secrecy provisions in health legislation as well as Information Privacy Principle 11 (which limits disclosure of personal information).

These Guidelines do not cover information collected and held by the HIC and Department in carrying out functions under s.100 of the National Health Act (such as Human Growth Hormone Program and Continuing Medication Program) or the Pharmacy Restructuring Program (under Division 4B and 4C of Part VII of the National Health Act).

Commissioner’s note
The Human Growth Hormone and Continuing Medication Programs are small and specific programs administered by the Department rather than the HIC. Payments in the Human Growth Hormone Program are made by the Department to manufacturers who supply the doctors treating patients receiving the Human Growth Hormone. Claims data is not currently stored on a database. Under the Continuing Medication Program the Department refunds the prescription co-payment for displaced persons accommodated in shelters. Copies of the prescriptions are held by the Department but claims information is not currently stored on a database. Data held in relation to the Pharmacy Restructuring Program does not include patient claims data and therefore does not come within the scope of these Guidelines.

**A. Health Insurance Commission**

The following standards must be observed by the Health Insurance Commission in managing patient claims information in the conduct of the Medicare and Pharmaceutical Benefits Programs.

1. **Functional separation of programs**

   1.1 Medicare claims information and Pharmaceutical Benefits claims information must not be held on the same database. Procedures must not be established which permit claims information from either of these programs to be linked, merged or combined, other than in the exceptional circumstances listed in Guideline 1.4.

   **Commissioner’s note**

   This Guideline seeks to ensure that functional separation is maintained between the two databases, so as to accord with the individual patient’s expectation that sensitive health information given in a particular context is used and managed by the recipient in a way that is consistent and in accordance with that context. It gives a practical expression, in the context of information storage systems, to the privacy principle that information should generally only be used for the purpose for which it was collected.

   1.2 To ensure that functional separation is maintained between the two programs:

   (a) The claims information relevant to each program must be held in a separate database. This requirement does not prevent the HIC from locating each database within the same computer system.

   (b) Detailed technical standards must be established by the HIC which:

      (i) specify access controls applying to each database;

      (ii) limit access to each database to those officers or contractors who have a reasonable need for access in order to ensure the effective administration of the particular program; and

      (iii) specify the security procedures and controls which have been included in each database or in the system to prevent unauthorised comparison or merging of records held in either database about the same patient.

   1.3 These matters must be dealt with in a Technical Standards Report to be held by the HIC and filed with the Privacy Commissioner. Any variations to the technical standards should be the subject of a Variation Report also filed with the Privacy Commissioner.
1.4 The HIC may link, compare or combine records or information from either database relating, or expected to relate, to the same patient in the following circumstances:

(a) for internal use where that use is:

- authorised or required by law, and is reasonably necessary, in a specific case or in a specific set of circumstances, for the discharge of the HIC’s statutory responsibilities in relation to the enforcement of the criminal law or of a law imposing a pecuniary penalty or for the protection of the public revenue; or

(b) for the purpose of external disclosure:

- in a specific case or specific set of circumstances where that disclosure is required by law; or

- in the specific circumstance of Coordinated Care Trials conducted by the Department between October 2000 and April 2004, where the individual who is the subject of the information has given his/her express and informed consent in writing; or…

(c) for the purpose of determining an individual's eligibility for a benefit under one program, where eligibility for that benefit is dependent upon services provided under the other program; or

(d) where the HIC believes on reasonable grounds that the linkage is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.

Commissioner’s note
This Guideline varies Information Privacy Principle 10 in relation to internal use and Information Privacy Principle 11 in relation to external disclosure in the specific circumstances referred to in the Guideline, that is linkage, comparison or combination of records from either of the regulated databases. These variations reflect the special sensitivity attaching to linkage or comparison of records from the two claims databases.

Under section 1.4 (b) amendment 2000 No 1 inserted a second exception for Coordinated Care Trials, under which the HIC may disclose linked data from the Medicare and PBS databases to obtain a person’s complete health picture for the purpose of testing a new system of managing health care for people with multiple or complex care needs.

An illustration of where exception (c) may be used is where specific pharmaceutical benefits may be supplied to a person participating in assisted reproduction programs (including in vitro fertilisation).

1.5 The discretion referred to in Guideline 1.4 may not be used to establish a data matching program between the two databases.

Commissioner’s note
A data matching program in this context is intended to refer to the routine comparison of large numbers of records held in each database, using a computer, with a view to identifying matters of interest.
1.6 Where records or information are compared or combined for the purpose of disclosure as permitted by Guideline 1.4(b), the internal personal identification number must not be included in any information to be disclosed unless it is expressly required by law.

Commissioner’s note
A key feature of these Guidelines is to ensure that there is no linkage of both name and internal personal identification number in any disclosure to third parties by either the HIC or the Department, unless expressly required by law. Later Guidelines, in particular Guideline 2, deal with the extent to which these two data items may be made available by the HIC to the Department. The object is to restrict to the HIC, as far as possible, knowledge of the name-internal personal identification number link. An example of where the internal personal identification number may be expressly required by law to be disclosed is where there is a warrant or subpoena for the information.

1.7 Where records or information relating to the same patient in either database are compared or combined in conformity with Guideline 1.4(b), (c) and (d) the HIC shall keep a note of that action. The HIC must identify, in the Technical Standards Report, how the action can be traced.
Commissioner’s note
This requirement is supplementary to the obligation under Information Privacy Principle 10.2, to maintain a log of use where personal information is used for the enforcement of the criminal law, a law imposing a pecuniary penalty or for protection of the public revenue. Amendment 1996 No 1 amended this Guideline so that the HIC must specify in a technical report how it will keep an auditable record of instances where records or information relating to the same patient are linked, compared, or combined under Guideline 1.4. The previous requirement to include a flag on the database was amended as the HIC advised that it could not comply with it, and that it would have drawn attention to the fact that the subject of a record has had their records matched or combined to the HIC operators.

1.8 Enrolment and entitlement databases must be kept separate from the claims databases. Personal Identification Numbers referred to in Guideline 2 may be included in claims databases. Personal identification components must not be included in claims databases except as follows: in the case of Medicare claims database, the Medicare number; and in the case of the Pharmaceutical Benefits claims database, the Pharmaceutical entitlements number.

Commissioner’s note
This Guideline seeks to reinforce the existing practice of maintaining the enrolment and entitlement databases separately from the claims databases. This is seen as valuable in ensuring that the more detailed personal particulars (such as name and address) kept on the enrolment and entitlement databases are not duplicated in the more active claims processing databases. Previously no personal identification details other than the personal identification numbers referred to in Guideline 2 could be included in the claims database. Amendment 1996 No 1 permitted the use of the Medicare card number on the Medicare claims database, and the Pharmaceutical entitlements number on the Pharmaceutical Benefits claims database. These numbers are integral to the processing of claims and their inclusion on the relevant database does not undermine the policy objective of functional separation of the claims database. Since the Personal Identification Number (PIN) referred to in Guideline 2 is not defined as a ‘personal identification component’, it will continue to be able to be included in the claims database.

2. Maintenance and disclosure of personal identification number (PIN) information

Commissioner’s note
The HIC holds unique internal personal identification numbers in relation to all persons listed in the two databases. The internal operation of these databases is conducted by reference to those numbers. The object of these Guidelines is to restrict to the HIC, as far as possible, knowledge of the link between the name and internal personal identification number.

2.1 The HIC may maintain an internal personal identification number to the extent necessary to assist it in clearly identifying each patient included in either program.

Commissioner’s note
This Guideline accords with existing practice.

2.2 In assigning an internal personal identification number to a patient the HIC shall ensure that it is not based on or derived from a person's name, date of birth, address, telephone number or Medicare card number or that it enables an individual's identity to be determined from the internal personal identification number alone. The internal personal identification number must not reveal any health related or other personal information of the patient.
Commissioner’s note
This Guideline seeks to ensure that the internal personal identification number is not designed so as to convey, through codes, information about an individual. This accords with international statements on desirable practice in relation to the use of personal identification numbers in administration.

2.3 A person’s Medicare card number in an encrypted form and the internal personal identification number may be provided to the Department in conjunction with de-identified details of claims for payment under the Medicare Benefits Program or the Pharmaceutical Benefits Program. No other official patient identifying number shall be provided except as permitted by Guideline 2.7. Any algorithm enabling the encrypted Medicare card number or the internal personal identification number to be decoded so as to reveal the identity of a patient shall not be provided to the Department in any circumstances although a business algorithm enabling the encrypted Medicare card number or the internal personal identification number to be validated may be provided to the Department.

Commissioner’s note
It is routine for the HIC to provide de-identified (i.e anonymised) claims data to the Department. The Department uses the de-identified data for a range of public policy purposes for some of which it is necessary to link records relating to the same (unidentified) individual.

Amendment 1996 No 1 permitted the inclusion of the Medicare card number in encrypted form allowing the HIC to identify card level activities, when it obtains old claims information from the Department, while not enabling the Department to decode the number.

The reference to other official patient identifying numbers not being provided (except as provided in Guideline 2.7) is chiefly a reference to the Department of Social Security or Department of Veterans' Affairs concessional entitlement numbers, but applies equally to any official identifying number.

The Guideline seeks to ensure that any decoding algorithm in use in the HIC is not revealed to the Department.

2.4 The patient name corresponding to an internal personal identification number may only be provided to the Department where the HIC has received a request from the Department conforming to Guideline 6.

Commissioner’s note
This Guideline gives the HIC a discretion to provide the name-internal personal identification number link to the Department. This Guideline must be read in conjunction with Guideline 6 which specifies the limited circumstances where that is permissible.

2.5 Where the HIC has given the Department a name or number to enable it to re-identify information in accordance with Guideline 6 the HIC shall keep a note of that action.

Commissioner’s note
This Guideline seeks to ensure that any exercise of a discretion under Guideline 2.4 is logged, so as to assist the Privacy Commissioner in monitoring compliance.
2.6 Where the HIC lawfully discloses information to an agency, organisation or individual other than the Department it must not provide both the name and the internal personal identification number unless it is expressly required by law (for example under warrant or subpoena).

Commissioner’s note
This Guideline must be read in conjunction with Information Privacy Principle 11 and the relevant secrecy provisions in legislation. It seeks to ensure that in circumstances where the HIC makes a lawful disclosure, it only discloses either name information or internal personal identification number information, but not both unless this is expressly required by law.

2.7 The HIC may also supply the Department with information as to whether the records attaching to a particular personal identification number relate to an individual who is or was a participant in special schemes such as safety net arrangements under the Medicare and Pharmaceutical Benefits Programs. That additional information shall not be in a form which reveals the identity of the individual.

Commissioner’s note
The Department has advised that anonymity of the individual would normally be achieved by the HIC encrypting the relevant entitlement numbers.

3. Destruction

Commissioner’s note
The following Guideline seeks to ensure that long-term retention of data in identified form is avoided. This Guideline addresses the requirement under subsection 135AA(5)(f)(i) of the National Health Act that data over five years old is stored so that personal identification components are not linked with claims information.

3.1 The HIC shall destroy Medicare and Pharmaceutical Benefits claims information:

(a) in the case of data that is the product of the linking, comparing or combining of records or information in accordance with Guideline 1.4 - within 3 months of the data being brought into existence; or

(b) in any other case - within 5 years of the date of initial processing of the information; unless:

(c) there is an investigation, prosecution, unresolved compensation matter or action for recovery of debt pending which requires that the information be retained beyond whichever of the limits in paragraph (a) or (b) applies; or

(d) the information affects an individual’s entitlement to a related service which could be rendered after the expiry of whichever of the time limits in paragraph (a) or (b) applies.

Commissioner’s note
This Guideline does not prevent the HIC from retaining a summary or sample file of claims which have been stripped of all patient identifiers.

3.2 The HIC must make special arrangements for the security of records which have been retained under Guideline 3.1(c). These arrangements are to be included in the Technical Standards Report.
Commissioner’s note
The amount of information which would need to be retained after five years is likely to be very small. The Guideline ensures that the data retained by the HIC is given special protection and is not exposed in the ordinary operating system.

3.3 The HIC shall destroy any information that is retained beyond whichever of the time limits in Guideline 3.1(a) or (b) applies:

(a) within 14 months of the completion of the relevant investigation, prosecution, unresolved compensation matter or action for recovery of debt referred to in Guideline 3.1(c); or

(b) as soon as practicable after the circumstances referred to in Guideline 3.1(d) no longer apply;

as the case requires, and the HIC must satisfy the Privacy Commissioner, upon request, that it has adhered to its obligations under this guideline.

Commissioner’s note
Records Disposal Authority 1233, under the Archives Act, establishes a mandatory minimum retention period for records. Amendment 1996 No 1 strengthened this Guideline to require the HIC to destroy information rather than merely establishing procedures to do so; and that it must satisfy the Privacy Commissioner of its adherence to its obligations rather than merely being required to keep the Privacy Commissioner informed of the relevant procedures.

4. Obtaining old claims information

4.1 The HIC may, after supplying the relevant personal identification number or provider number, obtain from the Department, old claims information held by the Department and related to the number supplied where the HIC needs that information to enable it to:

- take action on an unresolved compensation matter
- take action on an investigation or prosecution
- take action for recovery of a debt
- determine entitlement on a late lodged claim
- determine entitlement for a related service rendered more than five years after the service which is the subject of the old claims information
- fulfil a request for that information from the individual concerned or from a person acting on behalf of that individual
- lawfully disclose identified information in accordance with the secrecy provisions of the relevant legislation and these guidelines.

Commissioner’s note
This Guideline regulates the circumstances in which the HIC may obtain from the Department claims information more than five years old.
4.2 Any record of any information obtained under Guideline 4.1 shall be deleted from any database on which it is held as soon as practicable after the action referred to in Guideline 4.1 has been completed; and in any case shall only be retained on any database for a maximum period of 3 months.

4.3 The HIC must make special arrangements for the security of records obtained in accordance with Guideline 4.1. These arrangements are to be described in a Technical Standards Report.

4.4 Where information is obtained in accordance with Guideline 4.1 the HIC shall keep a note of the action.

**Commissioner’s note**  
*This Guideline aims to provide a record of the transaction in the event of an individual complaint.*

4a. **Use of identified claims information for research purposes**

4A.1 Disclosure of Medicare and Pharmaceutical Benefits claims information for medical research must conform to the secrecy provisions in the *Health Insurance Act 1973* and the *National Health Act 1953*. In addition identified claims information may only be disclosed for research if:

(a) the HIC is satisfied that the individuals who are the subject of that information have given their free and informed consent to the use of that information in the research project; or

(b) the disclosure is made for the purposes of medical research to be conducted in accordance with the Medical Research Guidelines issued by the National Health and Medical Research Council under section 95 of the *Privacy Act 1988*.

**Commissioner’s note**  
*Reference to the Medical Research Guidelines is limited to the MRG in force on 1 January 1997, when Guideline 4A came into effect. It cannot refer to the MRG as in force from time to time in the future.*

4A.2 These Guidelines do not prevent a researcher to whom information has been disclosed in accordance with guideline 4A.1 from retaining that information once it becomes old information provided that at the conclusion of the research project the researcher either returns the information to the HIC for destruction or securely destroys the information.

**Commissioner’s note**  
*This Guideline replaces the previous Guideline 7 to make it clear that disclosures for research purposes must conform to the secrecy provisions and to make it clear that the Guidelines permit disclosures that are made with the consent of the individual or in accordance with the NH&MRC Medical Research Guidelines.*

**B. Department**

The following standards must be observed by the Department in using claims information received from the HIC.
5. **Use of de-identified claims information**

5.1 Claims information in computer form provided to the Department by the HIC in de-identified form may be used by the Department as permitted by the Secretary to the Department.

*Commissioner’s note*
*This Guideline seeks to recognise that the Department usually holds claims data in de-identified form. Provided there are adequate controls over the possibility of name linkage, the Department’s practices in relation to de-identified data are not affected by the Privacy Act. Guideline 6 seeks to ensure that adequate controls over the possibility of name linkage exist.*

5.2 The Secretary must not permit the establishment of a system which maintains the de-identified records from both programs in a combined form on a permanent basis in conjunction with the internal personal identification number.

(a) Nothing in this Guideline prevents the retention of de-identified records from both programs in a combined form in conjunction with an encrypted form of the internal personal identification number or a new and unrelated number.

(b) This Guideline does not prevent Pharmaceutical Benefits and Medicare claims information concerning particular individuals from being temporarily linked by the PIN where:

(i) the linkage is necessary for a use permitted by the Secretary; and

(ii) claims information identified by the PIN or any personal identification components (defined in section 135AA(11) of the National Health Act) is used solely as a necessary intermediate step to obtain aggregate or de-identified information; and

(iii) claims information temporarily linked in conjunction with the personal identification number is destroyed within 1 month of its creation.

Claims information from the two databases shall only be linked in this temporary manner in conjunction with the internal personal identification number where there is no practical alternative.

*Commissioner’s note*
*This Guideline is seeking to provide a further means of ensuring that the principle of functional separation of Pharmaceutical Benefits and Medicare claims data is maintained. It is recognised that it may be desirable for health policy purposes for de-identified records to be compared. By preventing this being done permanently in conjunction with the internal personal identification number, the possibility of a link back to the name or identity of a patient is reduced. Amendment 1996 No 1 clarified the Guideline and also provided that it does not prevent the retention of de-identified records in a combined form in conjunction with an encrypted form of the PIN or a new and unrelated number. Before the amendment, this could only be done using a new and unrelated number. While the Department may encrypt the PIN, it will not have the ability to determine who the PIN relates to.*

5.3 De-identified claims information may be held indefinitely for policy and research purposes.

*Commissioner’s note*
This Guideline accords with current practice. The Department is developing a policy on the retention of de-identified data beyond ten years.

5.4 Where the Department discloses claims information relating to patients in a de-identified form (other than in accordance with Guideline 4 or 6), the Department must be reasonably satisfied that the recipient is not in a position to re-identify the information unless the de-identified information has been released under section 130 of the *Health Insurance Act 1973* or section 135A of the *National Health Act 1953*.

**Commissioner’s note**

This Guideline seeks to ensure that the Department does not disclose de-identified data without having considered the possibility of whether it can be re-identified in the hands of the recipient. Amendment 1996 No 1 amended this Guideline to make an exception where the de-identified information has been released under secrecy provisions in the Department’s own Acts.

Any disclosures must also accord with the Information Privacy Principles in the Privacy Act and the relevant secrecy provisions in health legislation.

6. **Name linkage**

6.1 An officer of the Department may obtain from the HIC the name and other personal identification components corresponding to the internal personal identification number where that is authorised by the Secretary and is necessary:

(a) to clarify which information relates to a particular patient where doubt has arisen in the conduct of an activity involving the comparison or linkage of de-identified information; or

(b) for the purpose of disclosing personal information in a specific case or in a specific set of circumstances as expressly authorised or required by law.

**Commissioner’s note**

This Guideline recognises that there are limited circumstances in which it is necessary for the Department to have access to name information.

- Exception (a) is addressed to circumstances where technical difficulties arise in the conduct of policy and research activity which mean that data from two databases cannot accurately be compared without temporary re-identification of the data. The need to check the name is invariably transient, and identified data is not retained as a result.

- Exception (b) is necessary to deal with situations where the Department holds information which is the subject of a formal legal demand or in relation to which it has an express discretion to lawfully disclose information and where it is not practical for the request to be handled by the HIC. Guideline 6.4 provides that the Department should usually consider transferring requests for identified information to the HIC for action.

6.2 The Secretary of the Department must establish procedures which ensure that where information is obtained under paragraph (a) of Guideline 6.1 that information is not retained once the doubt has been clarified.

**Commissioner’s note**
This Guideline seeks to ensure that procedures are implemented which limit the checking of name information to as few officers as possible and to ensure that the existence of name information is transient.

6.3 The Department must maintain and make publicly available a policy statement outlining its usual practices of disclosure in relation to paragraph (b) of Guideline 6.1.

Commissioner’s note
This Guideline ensures that where personal information is disclosed in circumstances as expressly authorised or required by law, the normal practices of disclosure be available for public scrutiny.

6.4 The Secretary of the Department must establish procedures which ensure that a request to disclose identified patient information is usually referred to the HIC and is only handled by the Department where it is not practical for the request to be referred to the HIC for action.

Commissioner’s note
This Guideline aims to ensure that the principal record keeper of identified information, the HIC, retains control of requests for identified information. If the request is for claims information over five years old the Department should adopt the usual practice of disclosing the relevant claims information (with PIN) to the HIC for the HIC to re-identify. This Guideline recognises that there may be some cases where it is not practicable for this to occur, for example where this may cause unacceptable delays.

This Guideline should be read in conjunction with Guidelines 4 and 6.7 which set out the circumstances and controls on the disclosure by the Department to the HIC of claims information identified by PIN.

6.5 In cases where information is obtained under paragraph (b) of Guideline 6.1, the Secretary of the Department must establish procedures which ensure that

(a) a central record of those transactions is retained by the Department, and

(b) the central record is held under strict security by a designated officer.

Commissioner’s note
Due to the sensitivity of the Department re-identifying data for the purposes of external disclosure, Guidelines 6.4 and 6.5 introduce a number of measures: first, to establish procedures for the HIC to be the agency that deals with requests for identified data; second, where the Department considers it is necessary to depart from these procedures and deal with the request itself, to ensure that a secure, single and central log is kept. The log will enable monitoring by the Privacy Commissioner of the scale of any practice, as well as providing a record of the transaction in the event of individual complaint.

6.6 The Secretary must keep the Privacy Commissioner informed of the procedures developed under Guidelines 6.2, 6.4 and 6.5.

6.7 Where the Department has given the HIC Medicare claims information or Pharmaceutical Benefits claims information identified by the personal identification number in accordance with a request under Guideline 4, the Department shall keep a central record for each program of that action.
Commissioner’s note
This Guideline was amended by Amendment 1996 No 1 to clarify that each program should have a separate central record.

Amendment 1996 No 1 removed Part C, comprising Guideline 7, which dealt with research, consequential upon the insertion of new Guideline 4A.

C. Miscellaneous

8. Paper copies, or copies in a similar form, of information contained in either database may be made where it is useful for the purpose at hand. However paper copies, or copies in a similar form, may not be made of the complete or a major proportion of a single database or all relevant databases. Paper copies of information must not be made for the purpose of circumventing the requirements of these Guidelines.

The HIC and the Secretary of the Department must keep the Privacy Commissioner informed of any arrangements that the HIC or the Department make in relation to any delegation or authorisations given that are associated with the implementation of these Guidelines.

Commissioner’s note
Under general legislation the HIC and the Secretary of the Department have wide powers of delegation. This Guideline provides a mechanism for enabling the Privacy Commissioner to monitor the scope and extent of any delegations and authorisations that relate to claims information and these Guidelines.

10. The HIC and Department shall take such steps as are reasonable in the circumstances to make all staff aware of the need to protect the privacy of individuals in relation to claims information and of the content of these Guidelines.

Commissioner’s note
The HIC and the Department should also take reasonable steps to make all staff aware of the secrecy obligations imposed by the legislation administered by the HIC and the Department and the privacy obligations imposed by the Information Privacy Principles and the Privacy Act. The Information Privacy Principles in the Privacy Act apply to all personal information held.

11. To the extent that a Guideline is inconsistent with the Information Privacy Principles the Guideline prevails.

Commissioner’s note
As these Guidelines deal with a particular area of administration they lay down standards which seek to be specific to the privacy issues of that area. To ensure that these Guidelines are used as the primary reference for establishing standards, the aim of this Guideline is to ensure that the relevant Guideline prevails in cases where that Guideline sets a higher standard from that which might flow from the application of an Information Privacy Principle.

Meaning of terms
“agency” is defined in section 135AA(11) of the National Health Act 1953 as “having the same meaning as in the Privacy Act 1988”;

“the HIC” means the Health Insurance Commission;
“database” is defined in section 135AA(11) of the *National Health Act 1953* as “a discrete body of information stored by means of a computer”;

“the Department” means the portfolio department responsible for the Medicare and Pharmaceutical Benefits Program;

*Commissioner’s note*

The “Department” is currently the *Department of Health and Family Services*.

“Medicare Benefits Program” is defined in section 135AA(11) of the *National Health Act 1953* as “the program for providing Medicare benefits under the *Health Insurance Act 1973*”;

“Medicare claims information” refers to the information provided in connection with a claim under the Medicare Benefits Program and includes identification information in respect of the person to whom a service attracting Medicare benefit was provided, the person who provided the service, where appropriate the person who requested the service; and the details of the service provided;

“National Health Act” refers to the *National Health Act 1953*;

“old information” is defined in section 135AA(11) of the *National Health Act 1953* as “information to which this section [section 135AA of the *National Health Act 1953*] applies that has been held by one or more agencies for at least the preceding 5 years”. In these Guidelines an alternative term, “old claims information” is sometimes used and has the same meaning;

“patient” refers to a person who received a service for which a claim under the Medicare Benefits Program or the Pharmaceutical Benefits Program has been made;

“personal identification components”, in relation to information, is defined in section 135AA(11) of the *National Health Act 1953* as “so much of the information as includes any of the following:

(a) the name of the person to whom the information relates;
(b) the person’s address;
(c) the person’s Medicare card number;
(d) the person’s Pharmaceutical entitlements number”;

“personal identification number” means the internal identification used by the HIC to identify individuals eligible to receive Pharmaceutical or Medicare Benefits. It is an internal reference number, separate and unrelated to the Medicare card number;

“Pharmaceutical Benefits claims information” refers to the information provided in connection with a claim for benefit under the Pharmaceutical Benefits Program and includes identification information in respect of the person to whom pharmaceuticals were supplied, the person who prescribed the service, the person who supplied the benefit; and the details of the service provided;

“Pharmaceutical Benefits Program” is defined in section 135AA(11) of the *National Health Act 1953* as “the program for supplying pharmaceutical benefits under Part VII of this [National Health] Act”;

“Privacy Act” means the *Privacy Act, 1988*;
Any term used in these Guidelines which is defined in the *Privacy Act 1988* has that meaning.
Table of amendments

The Guidelines were issued on 24 November 1993 and were published in the Government Gazette, GN 48, on 8 December 1993. The Guidelines came into effect on 15 April 1994.

An amendment to the Guidelines was issued on 22 February 1994 and was published in the Government Gazette, GN 9, on 9 March 1994. The amendment came into effect on 13 May 1994.

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<td>Guideline 4</td>
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<tr>
<td>Guideline 5.4</td>
<td>amended by 22.2.94 amendment</td>
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<tr>
<td>Guideline 6.7</td>
<td>inserted by 22.2.94 amendment</td>
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<tr>
<td>Meaning of terms</td>
<td>“old information” amended by 22.2.94 amendment</td>
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A second amendment to the Guidelines was issued on 30 October 1996 and was published in the Government Gazette, GN03, on 22 January 1996. The amendment came into effect on 1 January 1997.

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A third amendment to the Guidelines was issued on 27 June 2000 and was published in the Government Gazette, GN 44, on 8 November 2000. The amendment came into effect on 10 October 2000.

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