



Privacy Commissioner
Te Mana Matapono Matatapu

Office of the Privacy Commissioner

27 August 2007

David Goddard QC
Thorndon Chambers
PO Box 1530
WELLINGTON

Dear Mr Goddard,

ACC FUNDING AND ACCREDITATION OF PHYSIOTHERAPY SERVICES: PRIVACY ISSUES

The Commissioner has asked me to respond to your letter of 1 August 2007.

In your letter you advised that you are conducting a Ministerial Review of the way ACC funds and accredits physiotherapy services and have prepared a draft report of your findings so far (the draft report). Privacy issues have arisen under question 3 of the Terms of Reference for the Review, which relates to the manner in which audits are carried out by ACC.

You have asked for comment on privacy issues around the disclosure of personal health information by physiotherapists to ACC and the ACC 45 form authorising that disclosure. As you have suggested, we have focused our attention on the matters discussed in paragraphs 1.48-1.49 and 7.82-7.103 of the draft report.

In summary, we agree that your review has identified a specific privacy issue in this area. As our comments below indicate, we are in general agreement with your suggested solutions.

Privacy Issues Identified

Physiotherapists have expressed concern about the scope of their obligations and ability to provide information in response to ACC audits. These concerns relate to the use of ACC 45 forms to record consent by patients for the provision of information.

The ACC 45 form authorises wide disclosure, but the details of this disclosure are on the back of the form. There is nothing on the side of the form the patient signs to indicate its effect.

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You also note that 80% of the ACC 45 forms provided to ACC are electronic and there may be no 'back of the form' in many of these.

...it appears that there may be a significant number of cases where a claimant has not expressly authorised the provision of confidential information to ACC by treatment providers. [...] ACC's processes do not appear adequate to ensure that in every case the patient will have provided an effective consent to disclosure of information to ACC.¹

Your suggestions for change, summarised in sections 1.48 to 1.49 of the report, are:

- The ACC 45 injury claim form should include on its face a more explicit authorisation for release of confidential patient information by the treatment provider to ACC; and
- Where an ACC 45 form is provided electronically the provider should be required to certify that the patient has signed a hardcopy of the form.

You have also suggested that ACC should be clearer about what information it may and may not require physiotherapists to provide.

This is an area of concern, and is of broad application to New Zealand health consumers. An essential part of protecting the privacy of health information about individuals is ensuring they are aware of what is to be done with their personal information.

This issue has also arisen in the complaints area. For instance, one recent complaint turned on whether the complainant was aware of the consequences of not supplying information and the contents of the 'rule 3 statement' on the ACC 45 form. In a letter to ACC, dated 14 August 2006, the Commissioner said:

I understand that ACC is going to alter the ACC 45 form to better achieve informed consent. If this Office can assist in this process, please let me know.

To my knowledge, no changes have been made to the form.

As will be apparent, we would be happy to work further with ACC to help modify the form to better serve the needs of claimants and clinicians.

Conclusion

You have asked for comment on the preliminary views expressed in your draft report and for our suggestions about how the concerns you raise could best be addressed.

¹7.98, Goddard, *Draft Review of the Way in Which Physiotherapy Services are Funded and Accredited by ACC* (2007)

In our view, your draft report is an accurate summary of the privacy issues in this area. The issues you have noted are of some concern and the suggested changes would, if implemented, appear to be a good start towards remedying them.

The Privacy Commissioner is in agreement with these comments. If you would like to discuss this matter further, in the first instance please contact Sebastian Morgan-Lynch, Policy Adviser (Health). His DDI is (04) 474 7593 and his email address is sml@privacy.org.nz

Yours sincerely



Diana Pickard
Team Leader (Legal and Policy)