

Access to Medicare and PBS Information

The following letter was received by the Law Council of Australia and is reprinted here for the information of practitioners

I am writing to request your assistance in advising your members of the Health Insurance Commission's (HIC) requirements for solicitors to obtain access to the Medicare and/or Pharmaceutical Benefits Scheme (PBS) information of their clients.

The HIC receives numerous requests from solicitors, acting on behalf of their clients, usually in compensation or potential compensation matters, for the Medicare and/or PBS claiming histories of their clients.

Section 130 of the *Health Insurance Act 1973* (the HIA) and section 135A of the *National Health Act* (the NHA) preclude staff of the HIC from divulging information obtained in the course of duties or the exercise of powers or functions under those Acts, to a third party, except in limited circumstances, one of which is with the consent of the individual to whom the information relates.

Where solicitors request the Medicare or PBS information of their clients, the HIC requires the consent, in writing, of the individuals concerned to the release of their personal information. In many circumstances, the written consent of the individuals also includes an authority for the HIC to divulge the requested information directly to the solicitors. The HIC is frequently unable to accede to the clients' requests to divulge the information directly to their solicitors as the written consent only provides for the HIC to divulge very specific information. For instance, the consent may only allow the HIC to divulge "...information relating to my right arm injury..." or "...Medicare and PBS information relating to my compensation claim..."

The Medicare and PBS information held by the HIC is only sufficient

to enable the HIC to undertake its duties. Medicare claiming information which is collected and held is only that which is required to enable the HIC to assess as eligible and play a claim for Medicare benefits. The HIC does not hold clinical details of services and does not know the reasons patients went to see a medical practitioner, nor is it aware of what took

"Where the HIC forwards a person's claims history directly to that person's solicitor, however, the provisions of section 130(4) of the HIA and 135(A) of the NHA apply. These sections prohibit the person to whom the information is released from divulging that information to any other party."

place during the course of a consultation. For that reason, information relating to specific injuries or conditions cannot be determined and patients' claiming histories contain details of all claims for Medicare benefits.

Where a person has authorised the HIC to provide information relating to a specific condition to a solicitor, for the HIC to provide that person's entire claims history to the solicitor would be acting outside of the person's express authorisation. In such circumstances, the information is forwarded directly to the person to whom the information relates. This can, at times, cause inconvenience to both solicitors and clients.

The HIC is only able to forward a person's claims history directly to their solicitor where that person has authorised the HIC to do so and where there

is an acknowledgement on that person's authority that they understand that the information to be provided by the HIC to their solicitor will contain their entire Medicare claims history and will include other medical services which are not relevant to their claim for compensation (or to the relevant matter).

Where the HIC forwards a person's claims history directly to that person's solicitor, however, the provisions of section 130(4) of the HIA and 135(A) of the NHA apply. These sections prohibit the person to whom the information is released from divulging that information to any other party.

If the HIC forwards the requested information directly to the person to whom the information relates, there is no similar restriction and that person is then free to divulge the information to their solicitor and to whomever else he or she chooses. For this reason, where the information provided to the solicitor by the HIC needs to be divulged by the solicitor to another party, it would be preferable for the HIC to send the information directly to the person to whom the information relates.

I would appreciate your assistance in providing this information to your members as it would assist their efforts on their clients' behalf and would minimise disruption to both solicitors and their clients.

If you wish to discuss this matter or if you require any further information, please contact me on telephone (06) 234 1616 or by facsimile to (06) 234 1000.

Yours sincerely

Margaret McKenzie
Manager, Legislation and Data Access.