HCF

The Hospitals Contribution Fund of Australia Limited. ABN 68 000 026 746. HCF House, 403 George Street, Sydney 2000. Post: GPO Box 4242, NSW 2001.
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Submission: Proposed Codes and Guidelines- Chinese Medicine Board

9 January 2012

Executive Officer
Chinese Medicine Registration Board of Australia AHPRA
GPO Box 9958
MELBOURNE VIC 3001

By email: chinesemedicineconsultation@ahpra.gov.au

Dear Sir/Madam

Thank you for the opportunity to provide feedback on the proposed amendments to the codes and guidelines applicable to Chinese Medicine health service practitioners.

The Hospitals Contribution Fund of Australia Limited ("**HCF**") is the third largest registered private health insurer in Australia (and the largest with a not-for-profit status). We currently insure over 1.39 million Australians for a range of services, including Chinese Medicine and Acupuncture. To provide an indication of our size, last financial year the HCF paid in excess of $1.5b in rebates towards health services received by our members.

As a not for profit organisation, our members are at the core of our business. The fund undertakes its activities with a focus on improving the health and well being of our membership base whilst also ensuring premiums remain affordable. We take a keen interest in ensuring the practitioners recognised by the fund hold appropriate qualifications, uphold best practice and administer treatment in a safe and secure environment that reduces the risk of harm to the patient (i.e. our member).

HCF has reviewed the four proposed changes and has comment only on the proposed requirements for patient records. We are encouraged that you have issued guidelines on what patient records should include. Our Provider and Claims Compliance team regularly undertake audits of health service practitioners and sadly a percentage of practitioners fail to meet the basic requirements as outlined in your draft. We feel it is important the board provide this guidance to the profession so that a minimum standard is reached.

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We would like to draw to the board's attention a growing trend among health service practitioners, including Chinese Medicine and Acupuncture professionals, that is of considerable concern to us. Increasingly we are finding practitioners are utilising Microsoft Word® or Excel® or similar as an electronic patient record system (as opposed to purpose built products currently on the market). We have found that practitioners using Microsoft Word® or Excel® etc will create a new file for each patient which is not password protected. This is worrying, and added to this our concerns are that:

- **Lack of meta-data:** As these systems do not have the ability to set up multiple user accounts to access the patient files, there is no record of which user actually created the entry, the date and time the entry was created and has no way of protecting the content from future changes/deletion. Whilst the current draft guidelines contain the requirement the file be password protected, there is no requirement that the system have the capacity to have separate user accounts per clinician/administration personnel or have an audit trail.
- **Contemporaneity of records cannot be guaranteed:** Due to the lack of trustworthy meta-data above, the contemporaneity of the record cannot be independently verified. We are concerned from a legal perspective that the evidentiary value of the records may be diminished to the point that they are potentially no longer admissible in proceedings. This could adversely affect two key situations:
    - Where a patient has an action on foot (in progress), such as a claim of negligence against a third party, and the patient is seeking to rely on the clinician's records to support his/her claim of damages. If the records are inadmissible and it is the key source relied on to support that the plaintiff suffered injuries, the person might lose the action. This is inherently unfair as the patient has no control over the practitioner's patient record management system.
    - Where an action is commenced against the health service practitioner. We are equally concerned that the practitioner may be exposed in these cases. Health records may be key in supporting the practitioner's version of events and without them, the health service practitioner could lose the matter and have damages awarded against them (when that the court might have found otherwise if the records were admissible).
- **Security of records:** Unlike some of the purpose built solutions on the market, Word® and Excel® do not contain encryption. Even where the file is password locked, there are products on the market to bypass the requirement to enter the password. Without encryption of the files, we hold grave concerns that sensitive health information might fall into unauthorised hands. To date of the providers we have audited that use Word®, Excel® or similar, none have had password protection of the files. Whilst the PC may have a login ID when starting up the actual computer, we suggest this is not sufficient protection. Anecdotally providers are telling us they believe this is sufficient to prevent

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unwanted intrusions however this is a false sense of security. It is possible to 'image' a hard drive which takes a clone of the information stored on the drive. A separate computer can then be attached to the cloned copy and be used to look at the files stored on that hard drive; completely negating the need to enter the user name and password. We are concerned this will increase the risk of practitioners breaching their obligations under state and commonwealth privacy legislation relating to patient records.

We have included a de-identified copy of an electronic patient record presented to us by an acupuncturist during a recent audit.

'Should patient records be mandated to be in English...?'

Our position is that the board should make it mandatory that records be kept in English and we do so for the following reasons:

1. **Ease of access in emergency situations**: It is important that, should an adverse reaction occur or other emergency situation arise, an authorised person be able to read and interpret the patients history and any treatment provided. Where the provider is not available, it cannot be guaranteed that another person within the clinic or the paramedics will be fluent in the language used to record the entries. Multidisciplinary clinics are becoming more common in which one of the practitioners might be a Chinese Medicine practitioner. It is completely feasible that other practitioners within that clinic might only speak English or languages other than that spoken by the Chinese Medicine practitioner. The common thread across all professions is the requirement to be fluent in English.

2. **Audits by co-funders, including private health insurers and Medicare Australia:** As a multicultural country, we have a diverse range of languages spoken. It is simply unfeasible to expect that insurers and Medicare Australia will have a range of investigation personnel that have multilingual skills to cover all possible situations. For the ease of facilitating these audits, we strongly urge the board to mandate the requirement that records be maintained in English.

3. **Facilitate a timely and efficient release of records:** Privacy legislation both at state and commonwealth levels allows patients to access personal information held about them, including medical records, save a few very limited exceptions. There are many reasons why a patient might request a copy of records (including the desire to seek a secondary opinion or that they are relocating to an area geographically isolated from the current treating practitioner). This might introduce a time pressure for the release. If the records need to be translated into English at the provider's expense, this may take longer than

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the current situation allows. We are also concerned that given the practitioner must pay for the translation; they may turn to a friend or family member rather than professional interpreter. If that person is not sufficiently fluent in English, some detail may be lost or misrepresented in the interpretation.

Recommendations:

Based on the aforementioned, we recommend that the board:

1. make mandatory the requirement that records be maintained in English
2. further strengthen the guidelines on patient records to include a minimum requirement for electronic patient record systems that includes:
    a. ability to create a separate user account for each person accessing the system
    b. encryption is inbuilt into the system to avoid unwanted intrusions
    c. has appropriate audit functionality that records the user, date and time an entry was recorded in the system and tracks any changes made to that entry
    d. does not have the functionality to delete an entry
3. consider providing an education function where insurers, such as HCF, can refer Chinese Medicine practitioners who fail to meet the requirements for patient records.

Once again, thank you for extending the invitation to provide submissions.

Yours sincerely

Dr Andrew Cottrill
Acting General Manager- Benefits Management

NAME	DATE OF BIRTH	SYMPTOM	DATES OF TREATMENT	DETAILS
		Shoulder Pain	03-01-10	Acupuncture
			05-01-10	
			07-01-10	
			07-02-10	
			09-02-10	
			12-02-10	
			10-04-10	
			12-04-10	
			19-04-10	
			21-04-10	
			23-04-10	
			15-06-10	
			17-06-10	
			15-07-10	
			17-07-10	
			19-07-10	
		Back Pain	18-03-11	Acupuncture
			20-03-11	
			22-03-11	
			10-07-11	
			12-07-11	
			09-08-11	
			14-08-11	
			09-11-11	
			11-11-11	
			12-11-11	
			14-11-11	
		Back Pain	13-11-11	Acupuncture
			15-11-11	
			17-11-11	
			19-11-11	