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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

HEALTH LEGISLATION AMENDMENT BILL 2009 (No.2)

EXPLANATORY STATEMENT

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EXPLANATORY STATEMENT

OVERVIEW

The Health Legislation Amendment Bill 2009 (No 2) reflects the health records recommendations made in the GP Taskforce Final Report: *General Practice and Sustainable Primary Health Care – The Way Forward* (the Final Report).

The Final Report contains 30 recommendations in relation to the general practice and primary health care workforce shortage in Canberra along with other matters that are directly or indirectly implicated. The Final Report follows 6 weeks of public consultation and the release of a discussion paper in June 2009 entitled, *Issues and Challenges for General Practice and Primary Health Care* (the Discussion Paper).

The Final Report and the Discussion Paper can be downloaded at:
www.health.act.gov.au/gptaskforce

Of the 30 recommendations, several proposed improvements to health records legislation. The relevant recommendations include:

- Mandating a period of 30 days notice to consumers and the community before closure or relocation of a practice can occur with examples of appropriate ways to notify the community;
- Allowing the general provisions for consumer access to health records to be extended to closure and transfer of practice;
- Removing the three week restriction in Principle 11 to allow records to be transferred immediately when required and include provisions that allow a practice to prioritise the transfer of health records;
- Including an appropriate period of time for a record keeper to transfer a health record to another service provider when requested by a consumer;
- Introducing a mandatory requirement for the notification of health service provider practices to ACT Health to be activated when a practice closes, merges or relocates; and
- Introducing a mandatory requirement that on closure of a practice health practitioners notify ACT Health who is then required to notify the ACT Health Services Commissioner (the HSC) regarding where the health records are to be stored.

DETAIL

Part 1 Preliminary

Clause 1 Name of Act

This clause is a technical clause and sets out the name of the proposed Act as the *Health Legislation Amendment Act 2009 (No 2)*.

Clause 2 Commencement

This clause is a technical clause setting out when commencement of the Act will occur. It is intended that commencement will occur on a day/or days fixed by the Minister by written notice.

Clause 3 Legislation amended

This clause is a technical clause and sets out the Act that will be amended, namely the *Health Records (Privacy and Access) Act 1997*.

Clause 4 The privacy principles Schedule 1, principles 11 and 12

Principle 11

Principle 11 deals with obligations and responsibilities of consumers and health service practices when a practice relocates or closes.

Public Notification

When a health service practice, which is defined as a business or premises where a health service provider provides health services, relocates or closes, they are required to provide 30 day's notice of the relocation or closure.

Principle 11 (2) requires that on deciding to move or close a practice, the health service practice must publish a notice in a local daily newspaper (a **transfer notice**) and take other practicable steps to inform consumers who have attended the health service practice that they are moving or closing.

Principle 11 (3) outlines what needs to be included in the transfer notice. The transfer notice must contain information about the issues below:

- That within 14 days after the publication of the notice, a consumer may request a copy or written summary of the consumer's health record be provided to the consumer or any health service provider the consumer wishes to elect.

- That if there are any fees associated with a consumer's request, the fee must be paid before the provider will finalise the consumer's request.
 - The notice must include information about whether there will be a fee charged. The Fees Determination containing all necessary fees, which is issued by the Minister which can be downloaded from: <http://www.legislation.act.gov.au/a/1997-125/fee.asp>.
- That if the consumer does not make a transfer request within the 14 days after the publication of the notice, a copy of the consumer's record will be given to a nominated health service provider or record keeper. The nominated health service provider's or record keeper's contact details must also be included in the notice.
 - The contact details of the practice that is closing down or moving should also be included in the notice so that the consumer has some way of tracking where their record is or is likely to be.

If a consumer asks for a copy or written summary of their health record, this is not to mean that a consumer can request an original. A consumer may not ask for an original of a health record. However, a health service practice may supply an original of a health record at the health service practice's own discretion.

Chief Executive Notification Requirements

As soon as possible after a notice is published under Principle 11 (2) & (3), the health service practice must provide the Chief Executive with written notice of the information in the transfer notice.

- The Chief Executive is initially intended to be the Chief Executive of ACT Health; however, this may change from time to time depending on changes to administrative units under section 13 of the *Public Sector Management Act 1994*.
- A written notice can be given in writing or electronically. For example, an email, or the completion and delivery of an electronic form may be a written notice; just as the completion and provision of a paper form is also a written notice.
- If a form, whether a written or electronic form is available and listed on the ACT Legislation Register at (for example): <http://www.legislation.act.gov.au/a/1997-125/di.asp>, the form must be used. If a form has been developed and made readily available but not listed on the ACT Legislation Register, the form should be used. Where a form on the ACT Legislation Register is not the same or consistent with another form available elsewhere in the ACT, but relates to the exact same issue, then the form on the ACT Legislation Register should be used. However, if a form not on the ACT

Legislation Register is used, but contains all the necessary information required under principle 11 to be notified, then the health service practice would be deemed to have complied with the notification requirements.

Principle 11 (8) requires that where a record keeper moves or closes a health service practice, the record keeper must promptly notify the Chief Executive of any change to the record keeper's contact details or the location of the stored health records.

This principle is intended to cover circumstances where a doctor closes their practice and is required to safely store the records in a secure location. It is important to be able to locate where the records are kept and how to get access to those records.

- For example, when Joan, a doctor who has records stored in a storage facility decides that she wants to move interstate to be closer to her grandchildren, she will be required to let the Chief Executive of ACT Health know how she can be contacted and where she intends to keep the records she has in storage.

After receiving notification from a practice or record keeper who is relocating or closing, the Chief Executive is required to promptly provide that information to the ACT Health Services Commissioner so that the ACT Health Services Commissioner has information regarding the location of stored records.

Timeframe Requirements

If a consumer requests a copy or a written summary of their health record within 14 days of the publication of the notice, the health service practice must give the consumer a copy or written summary within 7 days after the consumer has paid any applicable fees, or within 30 days of receiving the request from the consumer.

To assist with interpreting the timeframes mentioned above, below are several examples that may be useful:

- Example A: Clare reads in the Canberra Times that the local GP practice which she has been attending for the last several years is closing down. The next day she calls up the practice to ask for a copy of her records so she can see another doctor in a practice in a neighbouring suburb. The practice tells her she needs to pay a fee before she can get a copy of her records. Clare pays the fee on the 10th day after asking the practice. The practice gives her a copy of her records on the 17th day after she originally asked for it. The practice has satisfied its obligations in this instance.
- Example B: If instead of providing Clare's record to her on the 17th day, the practice provides it on the 20th day after Clare originally asked

them to (10 days after she paid her fees) the practice has not satisfied its obligations in this instance.

- Example C: If Clare does not pay until the 29th day after she originally asks the practice for a copy of her record and the practice provides Clare a copy of her records on the 30th day, the practice has satisfied its obligations.
- Example D: If Clare does not pay by the 30th day, but the practice provides her a copy of her record on the 30th day of her originally asking, the practice has satisfied its obligation.
- Example E: If Clare pays on the 26th day of originally asking for a copy of her record and the practice provides Clare with a copy of her record on the 33rd day (7 days after receiving Clare's payment), the practice has not satisfied its obligation.
- Example F: If the practice provides Clare with a copy of her record on the 30th day after Clare originally asks for it, and Clare has not paid the applicable fee, Clare is still liable to pay the practice the applicable fee and the practice is able to pursue debt recovery of any unpaid fees.
- Example G: If there are no applicable fees, the practice should give Clare a copy of her records no later than 30 days after she first asks for them.

Urgent Requests

Urgent cases are dealt with differently to all other cases. In order of priority a practice or record keeper must prioritize a request that is urgent. If a consumer is deemed to be receiving or needs urgent health services, the copy or written summary requested by the consumer must be provided within 7 days of the consumer asking for it. The timeframe must be complied with regardless of whether the consumer has paid or not. However, if there are associated fees, the consumer is still liable to pay those fees and the practice or record keeper can demand payment through debt recovery processes.

To assist with understanding what may be urgent, below are several examples that may be useful:

- Example A: Juliette is a diabetic. Her doctor, Oakley is retiring and closing down her practice. Juliette only finds out about the closure on the day of the closure. She promptly requests a written summary of her record because she urgently needs medication. Oakley receives her request the next day and knows that Juliette is a diabetic on regular medication and accepts that Juliette's request is urgent. Oakley provides Juliette with a written summary the next day. The practice has satisfied its obligations under this principle.

- Example B: Oakley falls ill with the flu on the same day that Juliette comes in to ask for a written summary of her record. The receptionist at Oakley's practice receives Juliette's request for a written summary, but can not decide whether it is urgent or not. The reception asks Juliette to get another doctor to verify the urgency. Juliette goes to another doctor and gets the other doctor to call Oakley's practice to confirm that Juliette's request is urgent. On receiving the phone call from the other doctor, the practice now has 7 days from the day Juliette first asked for a written summary to provide Juliette with the summary. If the summary is given within time, the practice has satisfied its obligations.
- Example C: The other doctor faxes a letter to Oakley's practice, noting that Juliette needs urgent care. On receiving the fax from the other doctor, the practice now has 7 days from the day Juliette first asked for a written summary to provide Juliette with the summary. If the summary is given within time, the practice has satisfied its obligations.
- Example D: The other doctor gives Juliette a letter to take back to Oakley's practice. On presenting the letter to Oakley's practice the next day, the practice now has 7 days from the day Juliette first asked for a written summary to provide Juliette with the summary. If the summary is given within time, the practice has satisfied its obligations.

Sole Practitioners

Principle 11 (10) requires that if a sole practitioner dies or becomes legally incompetent, a legal representative or guardian of the sole practitioner must comply with the requirements of Principle 11 as soon as practicable. The timeframe requirements mentioned earlier do not apply in this situation.

Principle 12.1

Principle 12.1 builds on Principle 12 of the Act. Principle 12 is intended to be read in light of amended Principle 11, new Principle 12.1 and Principle 12.2. Where Principle 12 is ambiguous on whether a consumer may ask for a copy or original of their health record, Principle 12 shall now be read consistent with amended Principle 11, Principle 12.1 and Principle 12.2 and is intended to read that a consumer may only request a copy or a written summary of their health record and not an original.

While Principle 11 deals with closures and relocations, Principles 12.1 deals with situations where a consumer moves from one health service provider to another.

While there are no public notification requirements to this principle, several other components relating to applicable fees, Chief Executive notification requirements, timeframes and urgent requests are repeated in Principle 12.1 and apply similarly in Principle 12.1 as they do in Principle 11.

For an explanation of how the elements of applicable fees, Chief Executive notification requirements, timeframes and urgent requests apply in Principle 12.1 refer to previous explanations of corresponding paragraphs in Principle 11.

Principle 12.2

Principles 12.2 deals with situations where a health service provider moves from one practice to another practice.

While there are no public notifications requirements to this principle, several other components relating to applicable fees, Chief Executive notification requirements, timeframes and urgent requests are repeated in Principle 12.2 and apply similarly in Principle 12.2 as they do in Principle 11.

For an explanation of how the elements of applicable fees, Chief Executive notification requirements, timeframes and urgent requests apply in Principle 12.1 refer to previous explanations of corresponding paragraphs in Principle 11.

Clause 5 Dictionary, note 2

This is a technical clause and inserts chief executive and health services commissioner to note 2 of the Dictionary to flag that 'chief executive' and 'health services commissioner' are defined in the *Legislation Act 2001 (ACT)*.