



Psychotherapy & Counselling
Federation of Australia

COUNSELLORS AND PSYCHOTHERAPISTS SUBMISSION ON THE DRAFT REGULATIONS FOR THE HEALTHCARE IDENTIFIERS SERVICE

1.0 This submission to the eHealth Branch Primary and Ambulatory Care Division of the Department of Health and Ageing addresses the benefits and deficiencies in the Draft Regulations for the Healthcare Identifier Service. This submission is presented jointly by the qualified and self-regulated professions of Counselling and Psychotherapy by the Australian Counselling Association (ACA) and the Psychotherapy and Counselling Federation of Australia (PACFA).

The Healthcare Identifiers Bill 2010 ('the Bill') was introduced into Parliament on 10 February 2010 by the Minister for Health and Ageing, the Hon. Nicola Roxon MP. The Bill outlines the framework for a national Healthcare Identifiers Service (HI Service). The HI service is required to provide a reliable means for identifying healthcare providers and consumers to improve information management and facilitate electronic communication between healthcare providers, and to support national e-health infrastructure.

The Bill supports these activities by allocating functions to the Service Operator to assign, collect and maintain identifiers for individuals, healthcare providers and healthcare organisations; authorising the use of existing Medicare Australia infrastructure; and prescribing permitted uses and disclosures of healthcare identifiers. The Bill provides the authority for regulations to be issued to support the operation of the HI Service.

The Draft Regulations set out how healthcare identifiers will be assigned to individual healthcare providers and provider organisations and the security requirements authorised users will need to meet to participate in the service. These draft regulations are designed to assist healthcare providers and software vendors to better understand the potential impacts of the introduction of healthcare identifiers on their current business practices. Counsellor and Psychotherapist involvement in the development of regulatory support for the HI service is proposed to ensure that the service operates effectively and establishes the necessary foundations for future healthcare delivery and eHealth development.

The key areas in which regulations are being developed are to prescribe the classes of healthcare providers who can be assigned identifiers and to ensure appropriate security and access requirements are established for the HI Service. This submission expresses deep concern that the Draft Regulations are proposed to exclude Counsellors and Psychotherapists from the initial classes of health care providers who can be assigned identifiers. The inclusion of Psychologists attests to the importance of mental health professionals in the HI service. In the interests of comprehensive identification of healthcare providers and improvement of information management, it is important that Psychotherapists and Counsellors are not excluded.

BACKGROUND

2.0 The regulation of health professions within Australia is split between those regulated by statutory legislation (including health and allied health professions) and those professions (such as Psychotherapists and Counsellors) that self-regulate with differences across states. The Federal Government formed a standing committee called the Regulation Sub-Committee of the Australian Health Workforce Officials Committee to work towards a national co-regulatory system of registration of health professionals. In July 2006 the Council of Australian Government (COAG) agreed to *the National Action Plan on Mental Health 2006-2011*.

In 2005, the Commonwealth Government asked the Productivity Commission to undertake a research study to examine issues impacting on the health workforce including the supply of, and demand for, health workforce professionals and propose solutions to ensure the continued delivery of quality healthcare over the next 10 years. The report (Jan 2006) recommended that there should be a single national registration board for health professionals, as well as a single national accreditation board for health professional education and training. Both these Boards would be able to deal with workforce shortages/pressures faced by the Australian health workforce and increase their flexibility, responsiveness, sustainability, mobility and reduce red tape.

At its meeting of 14 July 2006, the Council of Australian Governments (COAG) agreed to establish a single national registration scheme for health professionals, beginning with the nine professional groups then registered in all jurisdictions. In 2006 the Senate Select Committee on Mental Health proposed a national approach to mental health - from crisis to community- providing a wide-ranging review of many aspects of mental health care in Australia. Also in 2006 the Prime Minister announced federal funding of \$1.8 billion over five years to improve mental health services in Australia, which included increased access to psychologists and other mental health professionals working in multi-disciplinary teams, increased services for families and carers, increases in the mental health workforce and community awareness programs.

A review of the Better Access initiative was to be completed by 2010, at which time there would be an opportunity to consider the inclusion of Counsellors and Psychotherapists as a profession under this national initiative. In 2008 the Senate Legislative and General Purpose Standing Committee on Community Affairs released its report –“**Towards recovery: mental health services in Australia**” It recognised that mental health care varies markedly across the states and territories, that people in some areas still receive more services than others and that some groups of people, including those with the most complex needs, are not getting the kinds of services they need. It was acknowledged that workforce shortages around Australia are affecting mental health services.

The Senate Committee stated that it is clear that many Counsellors and Psychotherapists have extensive training and supervision and are a well qualified source of mental health care that is being underutilized in the current system. It indicated that provision of access to quality, evidence-based care is an important principle for government funded health services and required the establishment of a consistent, and preferably externally, regulated credentialing system for Counsellors and Psychotherapists before any extension of the Better Access initiative to these professions.

In 2008 the two peak professional associations responsible for registration of qualified professional Counsellors and Psychotherapists (ACA and PACFA), established a Working Party chaired by Professor Peter Baume to work towards the establishment of a single national credentialing system for the professions of Counselling and Psychotherapy.

The Australian Register of Counsellors and Psychotherapists (ARCAP) was established on 1st July 2009 as the independent national professional self-registration body recognised by the ACA and PACFA for Australian Counsellors and Psychotherapists. Both PACFA and ACA have confirmed in writing acceptance of the code of ethics, code of conduct and compliance procedures of the Company

(ARCAP) and generally to do all such acts, matters and things and to enter into and make such arrangements as are incidental or conducive to its main Object.

The main object is to maintain an independent National Register of Counsellors and Psychotherapists who hold qualifications and recognised supervised professional practice and continuing professional education that qualifies them to offer accredited psychotherapeutic and Counselling service and assistance to the Australian public in order:

- (a) to protect the public, family and community interest in the provision of quality assured professional practice of Counselling and Psychotherapy services to persons seeking clinical and / professional psychotherapeutic and Counselling services;
- (b) to enhance the public and professional recognition and identity of the professions of Counselling and Psychotherapy by undertaking listing, registration or recognition of candidates for registration or listing of all persons seeking recognition as engaged in the profession who have confirmed their compliance with the clinical and professional training and accreditation standards established by ACA and PACFA respectively.
- (c) to promote the professions of Counselling and Psychotherapy by enhancing the public and professional recognition and identity of Clinical, Professional and Registered Counsellors and Psychotherapists who accept personal accountability for the establishment, monitoring and improvement of the ethical practice of their profession;
- (d) to promote the registration or recognition of training and educational institutions with skill, expertise, commitment to professional and ethical standards and financial standing to train and educate candidates for the professions of Counselling and Psychotherapy
- (e) to co-relate and encourage the efforts of recognised professional associations of Counsellors and Psychotherapists and encourage the support and assistance in all other forms of related organisations, companies, associations, societies, institutions, agencies, statutory authorities, government departments and other authorities and individuals committed to compliance with codified practice and ethical standards for the recognised practice of these professions;
- (f) to take steps to protect the status and title of Registered Counsellors and/or Psychotherapists as the trade marks, qualifications and intellectual property of persons approved for membership of the Divisions of the National Register by the Board Executive from time to time;
- (g) to originate and promote improvements in the law and to support or oppose alterations therein and to effect improvements in administration and for the purposes aforesaid to petition the Crown or any legislative body or authority and to promote deputations and to take such other steps and proceedings as may be deemed expedient for the furtherance of any of the objects of the Company;

The *Health Practitioner Regulation National Law Act 2009* is the model law to create a single national registration and accreditation system for the Australian health workforce. This submission expresses concern that only ten health professions will be included in the national system as of 1 July 2010. These are: chiropractors, dental care practitioners, medical practitioners, nurses and midwives, optometrists, osteopaths, pharmacists, physiotherapists, podiatrists and psychologists. A further four professions (Aboriginal and Torres Strait Islander health practice, Chinese medicine, medical radiation practice and occupational therapy) have been identified to be covered by 2012.

It is submitted that the exclusion of the professions of Counselling and Psychotherapy from the single national registration and accreditation system means that it cannot fully achieve the stated of benefits to the Australian community, namely:

- providing for the protection of the public by ensuring that only practitioners who are suitably trained and qualified to practice in a competent and ethical manner are registered;
- facilitating workforce mobility across Australia and reducing red tape for practitioners;
- facilitating the provision of high-quality education and training and rigorous and responsive assessment of overseas-trained practitioners;
- having regard to public interest in promoting access to health services; and having regard to the need to enable the continuous development of a flexible, responsive and sustainable health workforce

Evidence from the NSW Coronial Inquiry into the suicide of Rebekah Lawrence and recent media exposure of unqualified practitioners presenting themselves as unqualified Counsellors and Psychotherapists to the detriment of public health and safety indicates the necessity for the inclusion of these professions under the single national registration and accreditation system.

3.0 HEALTHCARE PROVIDERS

The purpose of the *Healthcare Identifiers Act* is stated as:

- (1) “to provide a way of ensuring that an entity that provides, or an individual who receives, health care Australian is correctly matched to health information that is created when healthcare is provided
- (2) This purpose is to be achieved by assigning a unique identifying number to each healthcare provider and healthcare recipient.

In the *Healthcare Identifiers Bill 2010* a healthcare provider means:

- (a) an individual who:
 - (i) has provided, provides, or is to provide, healthcare; or
 - (ii) is registered by a registration authority as a member of a particular health profession
- (b) an entity, or part of an entity, that has conducted, conducts, or will conduct, an enterprise that provides healthcare (including healthcare provided free of charge)

Healthcare in this context means health service within the meaning of subsection 6(1) of the *Privacy Act 1988* that defines “health service” as:

- (a) an activity performed in relation to an individual that is intended or claimed (expressly or otherwise) by the individual or the person performing it'
 - (i) to assess, record, maintain, or improve the individual’s health” or
 - (ii) to diagnose the individual’s illness or disability; or
 - (iii) to treat the individual’s illness or disability or suspected illness or disability or
 - (iv) the dispensing on prescription of a drug or medicinal preparation by a pharmacist.

Given the wide scope of the activities covered as health services, it is also important to note that the World Health Organisation (WHO) as a whole applies the principles of, and strategies for, health promotion to a variety of population groups, risk factors, diseases, and in various settings. Health promotion, and the associated efforts put into education, community development, policy, legislation

and regulation, is equally valid for prevention of communicable diseases, injury and violence, and mental problems, as they are for prevention of non-communicable diseases.

The legislation has been drafted so that healthcare identifiers might be assigned to a health care provider either by the Service Operator for the first two years or by a national registration authority. Section 8 of the Bill allows national registration authorities to be prescribed by regulation, which in turn permits those authorities to assign healthcare identifiers to individual health care providers. This raises the concern of ACA and PACFA as to the exclusion of the professions of Counselling and Psychotherapy from the Proposed Regulations for the Health care Identifiers Service, practically excluding these professions because they are not included in existing elements of Medicare Australia including trusted personal information about individuals, consumer Medicare cards, information policies and customer service.

Part 5 of the Bill requires Medicare to establish and maintain a healthcare provider directory which will list the details of all providers who have been assigned a healthcare identifier and who have consented to having their details included in the directory. The stated aim of the directory is to facilitate communications between healthcare providers by providing a reliable source of identifying and contact information about other participating healthcare providers.

In this context it is noted that the Regulations contain no definition of "health". The Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948 defines health as a *"state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."*

Under these conditions, the decision to exclude Counsellors and Psychotherapists from the provisions of the Act appears to constitute a deliberate restraint of trade in favour of the healthcare providers that are to be included in the directory. The exclusion represents a denial that the professions of Counselling and Psychotherapy, as recognised by the Senate Community Affairs Committee, have extensive training and supervision and are a well qualified source of mental health care that is being underutilized in the current system. Inclusion of the professions of Counselling and Psychotherapy in the early implementation of the H I service will enable the ARCAP single national credentialing system to be accepted as a National Registration Authority with provision to identify and issue healthcare identifiers to suitably qualified mental health practitioners.

4.0 PROFESSIONAL ASSOCIATIONS

The Healthcare Identifier Regulations 2010 (Consultation Draft) indicates that a **professional association** means an organisation that:

- (a) is a separate legal entity under a law of the Commonwealth or a State or Territory : and
- (b) has the following characteristics:
 - (i) its members practice the same healthcare profession:
 - (ii) it has enough membership to be considered representative of the health care profession practiced by its members'
 - (iii) it sets its own admission requirements, including acceptable qualifications;
 - (iv) it sets standards of practice and ethical conduct;
 - (v) it aims to maintain the standing of the health care profession by its members:
 - (vi) it has written rules, articles of association; by-laws or codes of conduct for its members'
 - (vii) it has the ability to impose sanctions on members who contravene the association's written rules, articles of association, by-laws or codes of conduct;

- (viii) it sets requirements to maintain its members' professional skills and knowledge by continuing professional development; and
- (c) has members who:
 - (i) may take part in decisions affecting their profession: and
 - (ii) have the right to vote at meetings of the association: and
 - (iii) have the right to be recognised as being a member of the professional association.

Section 10 of the ***Private Health Insurance (Accreditation) Rules 2008*** set out a different national standard for health professions that are not included elsewhere in those rules, viz:

If the treatment is provided by a health care provider who is not referred to in sub rule 7(1) or rule 8 or 9, the standard for that treatment is that the healthcare provider providing the treatment must be a member of a professional organisation which covers health care providers who provide that type of treatment (the profession) and which:

- (a) is a national entity which has membership requirements for the profession; and
- (b) provides assessment of the health care provider in terms of the appropriate level of training and education required to practice in that profession; and
- (c) administers a continuing professional development scheme in which the health care provider is required, as a condition of membership, to participate; and
- (d) maintains a code of conduct which the health care provider must uphold in order to continue to be a member; and
- (e) maintains a formal disciplinary procedure, which includes a process to suspend or expel members, and an appropriate complaints resolution procedure.

As ARCAP is a single national credentialing system for qualified Counsellors and Psychotherapists who are members of one of more than forty professional associations recognised by either the ACA or PACFA, it would not meet the requirements of the Draft Regulations despite having been specifically established pursuant to the *Private Health Insurance (Accreditation) Rules 2008*.

Assuming that it the intent of the Department of Health and Ageing to assign a number (a healthcare identifier) to uniquely identify all healthcare providers and not to discriminate against qualified Counsellors and Psychotherapists and to provide access to services for healthcare recipients on the widest possible platform of access and equity, ARCAP offers an existing means of national professional registration and delivery of healthcare identifiers across the nation.

It is submitted that the proposed Draft Regulation wording does not accord with the requirements of the Private Health Insurance (Accreditation) Rules 2008 that cover medical practitioners, allied health professionals and others who meet requirements imposed under State and Territory laws in respect of the provision of certain health services. The Department of Health and Ageing needs to clarify the relationship between the proposed Healthcare Identifier requirements and those of the Private Health Insurance (Accreditation) Rules 2008 so as to enable ARCAP to become a National Registration Authority.

5.0 HEALTH SERVICE PROVISION

Counsellors and Psychotherapists are directly engaged in the provision of health services and provide a vital source of primary care and early intervention that relies upon the communication and management of health information as part of provision of healthcare to an individual, management, funding monitoring or evaluation of healthcare, provision of medical indemnity cover for healthcare providers and conduct of research that has been approved by a Human Research Ethics Committee. In this context health information has the meaning given by subsection 6(1) of the *Privacy Act 1988*.

“Health Information” means”

- (a) information or an opinion about:
 - (I) the health or a disability (at any time) of an individual; or
 - (II) an individual’s expressed wishes about the future provision of health services to him or her; or
 - (III) a health service provided, or to be provided, to an individual that is also personal information; or
- (b) other personal information collected to provide, or in providing, a health service: or
- (c) other personal information about an individual collected in connection with the donation, or intended donation by the individual of his or her body parts organs or body substances; or
- (d) genetic information about an individual in a form that is; or could be, predictive of the health of the individual or a genetic relative of the individual.”

Acceptance of ARCAP as a National Registration Authority for the professions of Counselling and Psychotherapy (see description of this field as Appendix One) will enable the creation of a unified rather than a fragmented system of healthcare information. This will include uniform transaction and outcome recording, referral from healthcare providers to other healthcare providers including GPs and mental health specialists and provide greater choice and accessibility of appropriate and qualified mental health practitioners.

In this context, it is submitted that qualified Counsellors and Psychotherapists should be accepted by Medicare as the initial Service Operator for the provision of healthcare identifiers at the same time as other health and allied health service providers to ensure that clients can be adequately linked to desired and required health services. In this way it will be possible to ensure that the introduction of healthcare identifiers will not change the way individuals currently receive or have access to healthcare services or how information is shared by providers.

6.0 CONCLUSIONS

The Australian Counselling Association (ACA) and Psychotherapy and Counselling Federation of Australia (PACFA) endorse the strategic intent of the Healthcare Identifiers Bill 2010 but express their concern that the Proposed Regulations for the HI service fail to provide for the inclusion of qualified Counsellors and Psychotherapists.

It is recognised that the Department of Health and Ageing is yet to release details of its 2010 Review of the Better Access initiative and that it is desirable to establish a unique uniform national healthcare identifier for consumers and providers of healthcare service. Accordingly it is requested that the Australian Health Ministers' Advisory Council.

- (a) Include a member of the Australian Register of Counsellors and Psychotherapists (ARCAP) on the National Health Practitioner Board and the Australian Health Practitioner Regulation Authority to recognise and represent the professional interests of more than forty professional associations that have accepted ARCAP as the current National Registration Authority for their professions
- (b) Request Medicare Australia, as the initial Service Operator, to meet with the Directors of the Australian Register of Counsellors and Psychotherapists (ARCAP) to make arrangements for the protection of the public by ensuring that only practitioners who are suitably trained and qualified to practice in a competent and ethical manner.
- (c) Advise all State and Territory legislators and administrators of the existence of the Australian Register of Counsellors and Psychotherapists (ARCAP) to encourage a uniform requirement to recognise and protect the required performance and outcome standards required of ARCAP Registered Counsellors, Psychotherapists and Mental Health Practitioners noting that registration requires that each professional association's members are required to uphold admission standards of practice and ethical Conduct, maintain a standing in the profession, have a set of rules and regulations that protect the public interest and acceptance of conduct and compliance provisions on a uniform national basis.
- (d) Make provision for community education and information programs that inform choice of qualified practitioners and enhance access to health providers who meet the prescribed healthcare criteria and support the establishment of avenues for consumer and carer involvement in the delivery of desired healthcare services.

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Appendix 1

Definition of the field of Counselling and Psychotherapy

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Definition of the field of Counselling and Psychotherapy

Psychotherapy and Counselling are professional activities that utilise an interpersonal relationship to enable people to develop self understanding and to make changes in their lives. Professional Counsellors and Psychotherapists work within a clearly contracted, principled relationship that enables individuals to obtain assistance in exploring and resolving issues of an interpersonal, intrapsychic, or personal nature.

Professional Psychotherapy/Counselling:

- Utilises Counselling, psychotherapeutic, and psychological theories, and a set of advanced interpersonal skills which emphasise processes of facilitation. Such processes are based on an ethos of respect for clients, their values, their beliefs, their uniqueness and the right to self-determination.
- Requires an in-depth training process to develop understanding and knowledge about human behaviour, therapeutic capacities, and ethical and professional boundaries. Because it is explicitly contracted and requires in-depth training to utilise a range of therapeutic interventions, professional Counselling should be differentiated from the use of Counselling skills by other professionals.
- Takes account of the cultural and socio-political context in which the client lives and how these factors affect the presenting problem. This includes an awareness and assessment of cultural influences such as age, development, disability, religion, ethnicity, sexual orientation, socioeconomic status, indigenous identity, nationality, gender. Professional Psychotherapists and Counsellors value such differences and avoid discrimination on the basis of such factors.
- May involve work with current problems, immediate crisis, or long-term difficulties. Depending on the nature of the difficulties, the work may be short-term or long-term, and may involve working with an individual, a couple, a family or a group, and may occur in a variety of organisational contexts in the public or private sectors.
- Regards the processes of self-monitoring, self-examination, self-awareness, self-development, professional development and on-going clinical supervision as central to effective practice. Such practices lead to enhanced capacity to utilise oneself in the therapeutic endeavour.

Although Counselling and Psychotherapy overlap considerably, there are also recognised differences in terms of aims, approaches and training. While the work with clients may be of considerable depth in both modalities, the focus of Counselling is more likely to be on specific problems or changes in life adjustment. Psychotherapy is more concerned with the restructuring of the personality or self. At advanced levels of training, Counselling has a greater overlap with Psychotherapy than at foundation levels.