

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Health

Personally Controlled Electronic Health Records Act 2012

PCEHR (Assisted Registration) Amendment (support of parental responsibility claim) Rule 2015

The *Personally Controlled Electronic Health Records Act 2012* (the Act) enables the establishment of the personally controlled electronic health record (PCEHR) system. Section 109 of the Act provides that the Minister may make rules, known as PCEHR Rules, about matters that are required or permitted by the Act to be dealt with in the PCEHR Rules.

The *PCEHR (Assisted Registration) Rules 2012* (Assisted Registration Rules) prescribe requirements for healthcare provider organisations that choose to assist consumers in applying for registration for a PCEHR, and ensure the security of this manner of registration. The Assisted Registration Rules form part of the collection of PCEHR Rules.

The Assisted Registration Rules currently require that for a person to register a child through assisted registration, the person and the child must be listed on the same Medicare card (to demonstrate an existing relationship known by Medicare) and the person must make an assertion that they have parental responsibility for the child.

Children may be listed on their own Medicare card for a range of reasons, including having a long name (which exceeds a certain character limit) or being from a large family (more than nine people). A person cannot register a child through assisted registration if the child is on their own Medicare card.

While these children can be registered through other channels (in person or in writing), assisted registration is considered the simplest and easiest way to register a child. The inability for children on their own Medicare card to be registered by a parent through assisted registration is creating a barrier to registration.

The purpose of the *PCEHR (Assisted Registration) Amendment (support of parental responsibility claim) Rule 2015* (Amendment Rules) is to amend the Assisted Registration Rules to allow parents to apply to register a child on a separate Medicare card if the person makes an assertion that they have parental responsibility for the child, and the healthcare provider organisation providing assisted registration makes a declaration supporting that assertion. This recognises that healthcare provider organisations have established relationships with patients and, as part of providing treatment to a child, healthcare providers already make decisions about a person's authority to act on behalf of a child.

Healthcare provider organisations providing assisted registration are already trusted to verify the identity of individuals for the purpose of PCEHR registration so the Amendment Rule extends their role as a trusted source of information about individuals.

Participation in assisted registration by both healthcare provider organisations and consumers is entirely voluntary. If a healthcare provider organisation chooses to provide assisted registration, it must comply with the Assisted Registration Rules in addition to the other PCEHR Rules that currently apply (*PCEHR Rules 2012* and *PCEHR (Participation Agreements) Rules 2012*).

A healthcare provider organisation that chooses to provide assisted registration does not act on behalf of the System Operator.

The Assisted Registration Rules do not relate to the professional activities of healthcare providers. Professional obligations and professional bodies exist for this purpose. The Assisted Registration Rules only regulate matters necessary to support the making of an application for registration of identified consumers.

Detail of the Amendment Rules is set out in the Attachment.

The Amendment Rules commence on the day after registration on the Federal Register of Legislative Instruments.

The Amendment Rules are a legislative instrument and are subject to the *Legislative Instruments Act 2003*.

Consultation

Section 109 of the Act requires that, before making PCEHR Rules, the Minister must consult the Jurisdictional Advisory Committee and Independent Advisory Council, although failure to consult these committees does not affect the validity of the PCEHR Rules.

On 18 December 2014 the Jurisdictional Advisory Committee was consulted and unanimously supported the proposal and Amendment Rules. The Independent Advisory Council cannot be consulted at this time. Healthcare provider, consumer and Indigenous representatives have been consulted on this change and have supported the proposal.

Details of the *PCEHR (Assisted Registration) Amendment (support of parental responsibility claim) Rule 2015*

PART 1—PRELIMINARY

1. Name of Rule

Rule 1 provides that the title of the Amendments Rule is *PCEHR (Assisted Registration) Amendment (support of parental responsibility claim) Rule 2015*.

2. Commencement

Rule 2 provides that the Amendment Rule will take effect and amend the Assisted Registration Rules on the day after it is registered on the Federal Register of Legislative Instruments.

3. Amendment of *PCEHR (Participation Agreements) Rules 2012*

Rule 3 provides that Schedule 1 will make amendments to the Assisted Registration Rules.

SCHEDULE 1—AMENDMENTS

A parent is unable to register a child through assisted registration if the child is on their own Medicare card. In order for a child on their own Medicare card to be registered by a parent, the parent needs to apply through other channels (in writing, in person or by phone).

Assisted registration is the preferred channel of registration for Aboriginal people in remote areas of the Northern Territory since written, phone and face-to-face channels are not often viable in these communities.

The requirement for a parent and child to be co-located on the same Medicare card in order to register the child through assisted registration is a barrier to registration of children in remote areas. The Amendment Rules will enable a person to register a child on their own Medicare card through assisted registration if they assert that they have parental responsibility for the child and the assisting healthcare provider organisation makes a declaration in support of the person's assertion of parental responsibility.

Guidelines relating to this declaration will be made available by the System Operator for healthcare provider organisations. Given the variety of business processes within an organisation it will be up to the organisation to implement policies appropriate for their circumstances if they choose to participate in this way. Healthcare provider organisations will have the discretion to determine who in their organisation is appropriate to provide such a declaration.

For accountability purposes, the healthcare provider organisation that will make a declaration about a person's assertion of parental responsibility will need to be the same organisation that is assisting the person to register the child.

[1] – [3] Sub-subparagraphs 3(2)(a)(ii)(A), (B) and (C)

This item amends the definition of ***assisted registration***, changing the criteria regarding who is eligible to apply to register for a PCEHR through assisted registration.

Sub-subparagraph 3(2)(a)(ii)(A) currently requires that in order to register a child for a PCEHR and be recognised by the System Operator as an authorised representative of the child (in accordance with section 6 of the Act), the person making the application must, among other things, be listed on the same Medicare card as the child or the child must be no more than 14 days old.

Item 1 repeals this sub-subparagraph. These conditions will be part of new subrule 3(3) (see item 4) which will include the healthcare provider organisation's declaration in support of an assertion of parental responsibility as a third option.

As a result of the repeal of sub-subparagraph 3(2)(a)(ii)(A), sub-subparagraphs 3(2)(a)(ii)(B) and (C) are renumbered by items 2 and 3 as sub-subparagraph 3(2)(a)(ii)(A) and (B).

[4] After subrule 3(2)

This item inserts a new subrule to the definition of *assisted registration*.

The conditions for a person to be eligible to register a child for a PCEHR were previously specified at sub-subparagraph 3(2)(a)(ii)(A) – namely, that the child is either listed on the same Medicare card as the person making the application or is no more than 14 days old.

These conditions are now set out in new subrule 3(2) and include the new option that, in support of the consumer's assertion of parental responsibility for the child (as described in new sub-subparagraph 3(2)(a)(ii)(A)), the healthcare provider organisations that is assisting the consumer to make the application has made a declaration in support of that declaration.

This means that a person can make an application to register a child if they assert that they have parental responsibility for the child and one of the following circumstances applies:

- the child is listed on the same Medicare card as the person making the application;
- the child is no more than 14 days old; or
- the healthcare provider organisation has made a declaration to support the person's assertion of parental responsibility of the child.

[5] After rule 6

Item 6 inserts a new rule. Similar to existing rule 6 which requires that an employee of the assisting organisation take reasonable care in identifying a person, new rule 6A requires that an healthcare provider organisation take reasonable care when making any declaration in support of a person's assertion of parental responsibility. The concept of reasonable care is not defined so it relies on the common meaning of the term.

Any such declaration will be informed by the organisation's policy on providing assisted registration, as required by paragraph 9 of the PCEHR (Assisted Registration) Rules.

If the organisation has taken reasonable care to provide a declaration of support, the System Operator will take it, together with the applicant's assertion of parental authority, to mean that the person can be recognised as an authorised representative under subsection 6(1) of the Act.

The organisation must not knowingly or recklessly provide a declaration fraudulently.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

PCEHR (Assisted Registration) Amendment (support of parental responsibility claim) Rule 2015

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative Instrument is part of a collection of rules that provide the detail necessary to support the operation of the personally controlled electronic health record (PCEHR) system, as established by the *Personally Controlled Electronic Health Records Act 2012*.

The Legislative Instrument will amend the *PCEHR (Assisted Registration) Rules 2012* to allow a person to register a child for whom they assert parental responsibility if the healthcare provider organisation assisting the person to register the child makes a declaration in support of their assertion.

Human rights implications

Amending the eligibility requirements for PCEHR registration when assisted by a healthcare provider organisation engages rights to equality and non-discrimination, rights of parents and children and rights to health. Acceptance of support for parental responsibility from a healthcare provider organisation increases opportunities for children on their own Medicare card to be registered for an eHealth record.

This instrument does not interfere with privacy of an Individual or change the rights of individuals to choose whether to register for the PCEHR system and to choose who can access their eHealth record. Rather, it modifies the eligibility for use of a particular channel of registration.

Rights of equality and non-discrimination

Consistent with article 2 of the International Covenant on Civil and Political Rights this change supports participation in the PCEHR system irrespective of arrangements in place for the Medicare program. Currently technical constraints for Medicare cards mean a child with a long name or part of a large family group are listed on their own Medicare card and cannot be registered for an electronic health (eHealth) record through the assisted registration channel. Children can also be placed on their own Medicare card if inadequate documentation is available at the time of registration to group them with their parents.

This change benefits all children, and parents of children, who are registered on their own Medicare card. This Legislative Instrument removes a current barrier to registration of Aboriginal and Torres Strait Islander children in remote areas where assisted registration is the preferred channel.

Right to health

This change supports article 12(1) of the International Covenant of Economic, Social and Cultural Rights as it will increase the opportunities for all Australians to have an eHealth record. An eHealth record supports faster, safer and easier healthcare as healthcare providers can access an electronic summary of the patient's health information and treatment history.

This change provides increased opportunities for people to access the PCEHR system and the advantages of an eHealth record.

This Legislative Instrument does not affect people's choice to participate in the PCEHR system, have an eHealth record or who they share health information with.

Rights of parents and children

Under the PCEHR Act, individuals with parental responsibility for a child under 18 years of age can act on the child's behalf for the purposes of the eHealth record system. This instrument supports article 3 of the convention on the rights of the child, as the instrument increases the opportunities for parents to register their children for an eHealth record, if they consider it in the child's best interests.

Prohibition of interference with privacy of an Individual

This Legislative Instrument does not interfere with privacy of an Individual. No changes are being made to collection, use or disclosure of personal information. This change supports individuals to participate in the PCEHR system, if they choose to do so. It does not change what personal information is collected, if they choose to participate, or the consent arrangements for participation.

Conclusion

The amendments made by this Legislative Instrument are compatible with human rights as they support equal access to a health related service and support parents to access a service on their child's behalf.

The Hon Sussan Ley MP
Minister for Health