

## Protecting patient confidentiality when under Private Health Insurance audit

As part of contractual agreements between Private Health Insurance (PHI) funds and physiotherapy providers, physiotherapists are routinely subject to audit processes.

The Australian Physiotherapy Association (APA) has been made aware of multiple instances of PHI funds threatening to exclude physiotherapists from Health Industry Claims and Payments Service (HICAPS) if they do not supply clinical notes, even when their patient has denied consent to this disclosure.

### Why is this a problem?

Physiotherapists should not face financial threat and significant impact to their livelihood through exclusion from HICAPS services for following obligations to protect patient confidentiality. Regardless of contractual agreements between providers and PHI funds, physiotherapists are obliged by the Commonwealth Privacy Act and Australian Health Practitioner Regulation Agency (Ahpra) obligations, to uphold patient privacy if a patient does not consent to release of their clinical notes. This puts physiotherapists 'between a rock and a hard place' in the event they are threatened with HICAPS exclusion for upholding patient confidentiality. No physiotherapist should have to choose between losing their HICAPS eligibility or their Ahpra registration and ability to work as a physiotherapist.

### But don't patients provide consent to disclosure of their clinical notes when they sign PHI contracts, as well as when they sign the HICAPS receipt?

Yes, and no. There are sections of the member PHI fund contract, as well as the HICAPS benefit receipt, which acquire written consent from patients regarding disclosure of clinical records. **However**, if a patient subsequently withdraws their consent, this invalidates previous written consent and physiotherapists must uphold the most recent consent status. If you are unsure as to whether your patient knew what they were signing, written consent may be invalid if it was not truly informed. According to the Ahpra "Code of Conduct" Section 3.3g, providers are advised–

*"do not transmit, share, reproduce or post any person's information or images, even if the person is not directly named or identified, without first getting written and informed consent" (Ahpra 2022, p. 11)*

According to the Office of the Australian Information Commissioner (OAIC), because health information is considered highly sensitive in nature, physiotherapists must uphold stringent information handling processes under the Commonwealth Privacy Act. The OAIC advises patients–

*"You can withdraw your consent at any time." (OAIC 2019)*

*"Once you withdraw consent, an organisation or agency can't rely on your past consent for any future use or disclosure of your personal information." (OAIC 2019)*

Therefore, if you receive a request from a PHI fund for patient records, you should always get fresh consent, in writing, to ensure that you are protected from breaching Ahpra obligations, and that your patient's rights are protected.

### What is the APA doing about this issue?

The APA are engaging directly with the large private health funds, as well as PHI peak body Private Healthcare Australia (PHA) to assert that the coercive practice of threatening HICAPS exclusion ceases. We have made it clear that this practice within the audit process subordinates patient consent and coerces providers to break the law.

We will continue to advocate against this practice and work with PHI funds to find alternate methods to suffice the objectives of the audit process, without subjecting physiotherapists to financial ramifications for upholding their patient's wishes.

We have made it clear to PHI funds they must also take responsibility for managing health information in compliance with the Commonwealth Privacy Act and reform their practices in the collection of sensitive health information.

We will keep our membership abreast of reform activity as it occurs and will continue to advocate to protect our members from this coercive practice.

### **Where can I find more information?**

The APA website section '[Audit & Privacy Issues](#)' (APA 2022) contains more information regarding third party audits, your responsibilities, and patient privacy rights.

### **References**

Australian Health Practitioner Regulation Agency (Ahpra) 2022, *Code of conduct; June 2022*, Ahpra, viewed 21 November 2022, <https://www.ahpra.gov.au/Resources/Code-of-conduct/Shared-Code-of-conduct.aspx>.

Australian Physiotherapy Association (APA) 2022, *Audit & Privacy Issues*, APA, viewed 28 November 2022, <https://australian.physio/audit-and-privacy-issues>.

Office of the Australian Information Commission (OAIC) 2019, *Chapter 4: Giving access to health information*, Australian Government, viewed 21 November 2022, <https://www.oaic.gov.au/privacy/guidance-and-advice/guide-to-health-privacy/chapter-4-giving-access-to-health-information>.

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