

Privacy Guidelines for the Medicare Benefits and Pharmaceutical Benefits Programs

Issued by the Privacy Commissioner under section 135AA of the
National Health Act 1953 (Cth)

Date of Issue: 6 March 2008

Date of Effect: 1 July 2008

I, Karen Curtis, Privacy Commissioner hereby issue a new set of Privacy Guidelines for the Medicare Benefits and Pharmaceutical Benefits Programs ('the Guidelines').

The Guidelines are issued under s 135AA of the *National Health Act 1953 (Cth)* ('National Health Act') and subject to that section, come into effect on 1 July 2008. The Guidelines will replace existing guidelines which were originally made in 1993 and were last amended in July 2000.

Section 135AA(3) of the National Health Act requires that I issue binding guidelines to regulate the information to which section 135AA applies. Issuing such guidelines is also one of my functions pursuant to section 27(1)(pa) of the *Privacy Act 1988 (Cth)* ('Privacy Act'). A breach of the Guidelines is an 'interference with privacy' under section 13 of the Privacy Act.

The Guidelines regulate the way that all Australian Government agencies link and store claims information obtained under the Medicare Benefits Program and the Pharmaceutical Benefits Program. Among other things, section 135AA(5) of the National Health Act requires that the Guidelines prohibit agencies from storing claims information obtained under the Medicare Benefits Program and the Pharmaceutical Benefits Program on the same database.

Pursuant to section 135AA(7) of the National Health Act, the Guidelines are disallowable instruments for the purposes of section 6 of the *Legislative Instruments Act 2003 (Cth)*, and are accompanied by an Explanatory Statement.

Dated this sixth day of March 2008.

KAREN CURTIS
Privacy Commissioner

Attachment A: Privacy Guidelines for the Medicare Benefits and
Pharmaceutical Benefits Programs (March 2008)



Australian Government

Office of the Privacy Commissioner

Privacy Guidelines for the Medicare Benefits and Pharmaceutical Benefits Programs

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under section 135AA of the *National
Health Act 1953***

**Issued on 6 March 2008
to take effect on 1 July 2008**

Table of Contents

Part A)	Australian Government Agencies	3
	Guideline 1: Handling of claims information.....	3
Part B)	Medicare Australia	3
	Guideline 2: Management of claims information by Medicare Australia	3
	Technical Standards	4
	Medicare Australia Personal Identification Number	4
	Disclosures by Medicare Australia to the Department of Health and Ageing	5
	Guideline 3: Linkage of claims information by Medicare Australia	6
	Guideline 4: Retention and reporting of linked claims information by Medicare Australia	7
	Guideline 5: Linking old information with personal identification components by Medicare Australia	8
	Guideline 6: Disclosure of identifiable claims information for medical research purposes	9
Part C)	Department of Health and Ageing	10
	Guideline 7: Use of claims information.....	10
	Guideline 8: Name linkage	11
Part D)	Medicare Australia and the Department of Health and Ageing	12
	Guideline 9: Miscellaneous	12
	Meaning of terms	13

* Defined terms used in the Guidelines are marked with an asterisk (*).

Privacy Guidelines for the Medicare Benefits and Pharmaceutical Benefits Programs

These Guidelines are issued under section 135AA of the *National Health Act 1953* and, subject to that section, come into effect on 1 July 2008.

Part A) Australian Government Agencies

Guideline 1: Handling of claims information

- 1 Agencies* must store claims information* obtained under the Medicare Benefits Program* in a separate database* to claims information* obtained under the Pharmaceutical Benefits Program*.

Part B) Medicare Australia

Guideline 2: Management of claims information by Medicare Australia

- 2.1 Medicare Australia must ensure that claims information* obtained under the Medicare Benefits Program* is held in a separate database* to claims information obtained under the Pharmaceutical Benefits Program*. This requirement does not prevent Medicare Australia from locating each database* within the same computer system.
- 2.2 Databases* of claims information* obtained under the Medicare Benefits Program* and the Pharmaceutical Benefits Program* (that is, the 'Medicare Benefits claims database' and the 'Pharmaceutical Benefits claims database') must be kept separate from Medicare Australia's enrolment and entitlement databases.
- 2.3 For claims information* that is not old information*, personal identification components* must not be included in databases* of claims information* except as follows:
 - (a) in the case of the Medicare Benefits claims database*, the Medicare card number; and
 - (b) in the case of the Pharmaceutical Benefits claims database*, the Pharmaceutical entitlements number.

Technical Standards

2.4 Medicare Australia must establish detailed technical standards in relation to the Medicare Benefits claims database* and the Pharmaceutical Benefits claims database* which:

- (a) specify access controls applying to each database*;
- (b) limit access to each database* to those officers or contractors who reasonably require access to effectively administer the particular program;
- (c) specify the security procedures and controls that exist to prevent unauthorised linkage of records that are held in both databases* about the same individual;
- (d) identify how any linkages conducted pursuant to Guideline 3.1 and Guideline 5.2 can be traced;
- (e) describe the special arrangements for the security of claims information* required by Guidelines 4.2 and 5.4; and
- (f) specify the destruction schedule for records created pursuant to each circumstance specified in paragraphs (a) to (e) of Guideline 3.1 and paragraphs (a) to (g) of Guideline 5.2 (where practicable).

2.5 Medicare Australia must lodge a Technical Standards Report with the Privacy Commissioner within six months of the date these Guidelines come into effect. The Technical Standards Report must set out the matters listed in Guideline 2.4. The Privacy Commissioner in consultation with Medicare Australia may make the Technical Standards Report publicly available. Failure to lodge a Technical Standards Report within the specified time will not affect the validity or continued operation of the Guidelines.

2.6 If Medicare Australia varies the technical standards established under Guideline 2.4, Medicare Australia must lodge a Variation Report with the Privacy Commissioner detailing those variations.

Medicare Australia Personal Identification Number

2.7 Medicare Australia may only maintain a personal identification number ('Medicare Australia PIN') to the extent necessary to assist that agency in identifying individuals included in the Medicare Benefits Program* and the Pharmaceutical Benefits Program*.

2.8 Medicare Australia PINs may be stored on databases* holding records of claims information*.

2.9 A Medicare Australia PIN must not:

- (a) be based on or derived from a person's name, date of birth, address, telephone number or Medicare card number;
- (b) enable an individual's identity to be determined from the Medicare Australia PIN alone; or
- (c) reveal any health related or other personal information of the individual.

Disclosures by Medicare Australia to the Department of Health and Ageing

2.10 Medicare Australia may disclose claims information* to the Department* provided that such disclosures do not include personal identification components*, except as permitted by Guideline 8. Medicare Australia may disclose to the Department* claims information* that contains a Medicare Australia PIN and/or an encrypted form of an individual's Medicare card number.

2.11 Medicare Australia may not provide to the Department* any algorithm which enables an encrypted Medicare card number to be unencrypted.

2.12 Medicare Australia may provide to the Department* an algorithm which enables an encrypted Medicare card number or a Medicare Australia PIN to be validated as an authentic number of either type.

2.13 Medicare Australia may only provide to the Department* the name corresponding to a Medicare Australia PIN where Medicare Australia has received a request from the Department* conforming to Guideline 8.

2.14 Medicare Australia must keep a record of any disclosures of claims information* to the Department* in accordance with Guideline 8.

2.15 Medicare Australia may also provide information to the Department* as to whether the records attaching to a Medicare Australia PIN relate to an individual who is or was a participant in special schemes such as safety net arrangements under the Medicare Benefits and Pharmaceutical Benefits Programs*. That additional information shall not be in a form which reveals the identity of the individual.

- 2.16 Where Medicare Australia lawfully discloses information to an agency*, organisation or individual other than the Department* it must not provide both the name and the Medicare Australia PIN unless it is expressly required by or under law (for example, under warrant or subpoena).

Guideline 3: Linkage of claims information by Medicare Australia

- 3.1 Medicare Australia may only link claims information* from the Medicare Benefits claims database* and the Pharmaceutical Benefits claims database* relating to the same individual in the following circumstances:

- (a) for internal use that is authorised or required by law and is reasonably necessary, in a specific case or in a specific set of circumstances, for the discharge of Medicare Australia's statutory responsibilities in relation to:
 - (i) the enforcement of the criminal law;
 - (ii) the enforcement of a law imposing a pecuniary penalty; or
 - (iii) the protection of the public revenue;
- (b) for the purpose of external disclosure:
 - (i) where that disclosure is required by law;
 - (ii) to an enforcement body* where that disclosure is reasonably necessary, following linkage, in a specific case or in a specific set of circumstances, for:
 - (a) the enforcement of the criminal law;
 - (b) the enforcement of a law imposing a pecuniary penalty; or
 - (c) the protection of the public revenue;
- (c) for the purpose of determining an individual's eligibility for a benefit under one program, where eligibility for that benefit is dependent upon services provided under the other program;
- (d) where Medicare Australia believes on reasonable grounds that the linkage is necessary to prevent or lessen a serious and imminent threat to the life or health of any individual; or

(e) for disclosure to an individual where that individual has given their consent.

3.2 The discretion referred to in Guideline 3.1 does not permit Medicare Australia to establish a data matching program between the Medicare Benefits claims database* and the Pharmaceutical Benefits claims database*.

3.3 Where claims information* is linked pursuant to Guideline 3.1(b), the Medicare Australia PIN must not be disclosed unless it is expressly required by law.

Guideline 4: Retention and reporting of linked claims information by Medicare Australia

4.1 Where claims information* is linked in accordance with Guideline 3.1, Medicare Australia must destroy that linked claims information* as soon as practicable after meeting the purpose for which it was linked.

4.2 Medicare Australia must make special arrangements for the security of records of linked claims information*.

4.3 Medicare Australia must provide the Privacy Commissioner with a report detailing the handling of linked claims information*. The report must be provided annually in a form approved by the Privacy Commissioner. The report must include the following information for the reporting period:

- (a) the number of records linked in accordance with Guideline 3.1;
- (b) the number of records linked under each of the circumstances in paragraphs (a) to (e) of Guideline 3.1;
- (c) the number of linked records that were destroyed;
- (d) the number of records destroyed that were linked under each of the circumstances in paragraphs (a) to (e) of Guideline 3.1;
- (e) reasons for the retention of any records referred to in paragraph (a) of Guideline 4.3 that were not destroyed during the reporting period; and
- (f) the number of records linked in accordance with Guideline 3.1 that have been retained from previous reporting periods, and reasons for their retention.

4.4 The Privacy Commissioner may make the report referred to in Guideline 4.3 publicly available.

Guideline 5: Linking old information with personal identification components by Medicare Australia

5.1 Medicare Australia must store old information* from the Medicare Benefits Program* and the Pharmaceutical Benefits Program*:

- (a) in separate databases*; and
- (b) in a form that does not include any personal identification components*.

5.2 Medicare Australia may only link old information* to personal identification components* by use of a Medicare Australia PIN for the purpose of:

- (a) taking action on an unresolved compensation matter;
- (b) taking action on an investigation or prosecution;
- (c) taking action for recovery of a debt;
- (d) determining entitlement on a late lodged claim or finalising the processing of a claim;
- (e) determining entitlement for a related service rendered more than five years after the service which is the subject of the old information*;
- (f) fulfilling a request for that information from the individual concerned or from a person acting on behalf of that individual; or
- (g) lawfully disclosing identified information in accordance with the secrecy provisions of relevant legislation and these Guidelines.

5.3 Where old information* is linked to personal identification components* in accordance with Guideline 5.2, Medicare Australia must destroy that linked information as soon as practicable after meeting the purpose for which it was linked.

5.4 Medicare Australia must make special arrangements for the security of records obtained in accordance with Guideline 5.2.

5.5 Medicare Australia must provide the Privacy Commissioner a report detailing the extent to which old information* has been linked to personal identification components*. The report must be provided annually in a form approved by the Privacy Commissioner. The report must include the following information for the reporting period:

- (a) the number of records linked in accordance with Guideline 5.2;
- (b) the number of records linked under each of the circumstances in paragraphs (a) to (g) of Guideline 5.2;
- (c) the number of records of old information* linked in accordance with Guideline 5.2 that were destroyed;
- (d) the number of records destroyed that were linked under each of the circumstances in paragraphs (a) to (g) of Guideline 5.2;
- (e) reasons for the retention of any records referred to in paragraph (a) that were not destroyed during the reporting period; and
- (f) the number of records of linked old information* that have been retained from previous reporting periods, and reasons for their retention.

5.6 The Privacy Commissioner may make the report referred to in Guideline 5.5 publicly available.

5.7 Medicare Australia may collect from the Department*, and the Department* may disclose to Medicare Australia, old information* for:

- (a) a purpose under Guideline 5.2(a) to (g); or
- (b) inclusion in the databases* referred to in Guideline 5.1.

Guideline 6: Disclosure of identifiable claims information for medical research purposes

6.1 Claims information* that identifies an individual may only be disclosed for medical research if:

- (a) Medicare Australia is satisfied that the individual to whom the information relates has given their informed consent to the use of that information in the research project; or

- (b) the disclosure is made for the purposes of medical research to be conducted in accordance with guidelines issued by the National Health and Medical Research Council under section 95 of the *Privacy Act 1988*.

6.2 Before disclosing claims information* under Guideline 6.1, Medicare Australia must obtain a written undertaking from the researcher that the claims information* will be securely destroyed at the conclusion of the research project.

Part C) Department of Health and Ageing

Guideline 7: Use of claims information

- 7.1 Except where restricted by these Guidelines, claims information* provided to the Department* by Medicare Australia in accordance with Guideline 2.10 may be used by the Department* as authorised by the Secretary of the Department*, or delegate*.
- 7.2 The Secretary of the Department*, or delegate*, must not permit the establishment of a system which stores claims information* from both the Medicare Benefits Program* and Pharmaceutical Benefits Program* in a combined form.
- 7.3 Claims information* from the Medicare Benefits Program* and Pharmaceutical Benefits Program* concerning particular individuals may be linked by a Medicare Australia PIN only where:
 - (a) linkage is necessary for a use authorised by the Secretary of the Department*, or delegate*;
 - (b) claims information* identified by the Medicare Australia PIN or any personal identification components* is used solely as a necessary intermediate step to obtain aggregate or de-identified information; and
 - (c) such linked records are destroyed within one month of their creation.
- 7.4 Claims information* from the Medicare Benefits Program* and Pharmaceutical Benefits Program* shall only be linked in this temporary manner in conjunction with the Medicare Australia PIN where there is no practical alternative.

7.5 Claims information* may be held indefinitely for policy and research purposes by the Department* provided that such claims information* does not include personal identification components*.

7.6 Where the Department* discloses claims information* it must be reasonably satisfied that the recipient is not in a position to identify the individual to which the information relates unless:

- (a) that information is disclosed to Medicare Australia for the purpose of Guideline 5.7; or
- (b) that claims information* is released under section 130 of the *Health Insurance Act 1973* or section 135A of the *National Health Act 1953*.

Guideline 8: Name linkage

8.1 An officer of the Department* may collect from Medicare Australia the name and other personal identification components* corresponding to a Medicare Australia PIN where that is authorised by the Secretary of the Department*, or delegate*, and is necessary:

- (a) to clarify which information relates to a particular individual where doubt has arisen in the conduct of an activity involving the linkage of de-identified information; or
- (b) for the purpose of disclosing personal information in a specific case or in a specific set of circumstances as expressly authorised or required by or under law.

8.2 The Secretary of the Department*, or delegate*, must ensure that where information is obtained under paragraph (a) of Guideline 8.1, that information is not retained once the doubt has been clarified.

8.3 The Department* must maintain and make publicly available a policy statement outlining its practices of disclosure in relation to paragraph (b) of Guideline 8.1.

8.4 The Secretary of the Department*, or delegate*, must establish procedures to ensure that a request to disclose identified individual information is referred to Medicare Australia where practicable. Requests for disclosure should only be handled by the Department* where it is not practicable for the request to be referred to Medicare Australia.

8.5 Where information is collected under paragraph (b) of Guideline 8.1, the Secretary of the Department*, or delegate*, must ensure that:

(a) a record of that collection is retained by the Department*; and

(b) the record is held under strict security by a designated officer.

8.6 The Secretary of the Department* must advise the Privacy Commissioner of procedures developed to ensure compliance with Guidelines 8.2, 8.4 and 8.5 and any changes to those procedures.

Part D) Medicare Australia and the Department of Health and Ageing

Guideline 9: Miscellaneous

9.1 Paper copies of claims information* contained in the Medicare Benefits claims database* or the Pharmaceutical Benefits claims database* may be made where reasonably necessary for a lawful purpose. However, paper copies may not be made of the complete or a major proportion of either the Medicare Benefits claims database* or the Pharmaceutical Benefits claims database*. Paper copies of information must not be made for the purpose of circumventing the requirements of these Guidelines.

9.2 Medicare Australia and the Secretary of the Department* must keep the Privacy Commissioner informed, in a manner approved by the Privacy Commissioner, of any arrangements that Medicare Australia or the Department* make in relation to any delegation or authorisations given that are associated with the implementation of these Guidelines.

9.3 Medicare Australia and the Department* shall take reasonable steps to make all staff aware of the need to protect the privacy of individuals in relation to claims information* and of the content of these Guidelines.

9.4 To the extent that a Guideline imposes more specific obligations than the Privacy Act or the secrecy provisions of legislation relating to Medicare Australia and the Department*, the Guideline prevails.

Meaning of terms

Terms used in these Guidelines which are defined in section 135AA of the *National Health Act 1953* have the meaning provided for in that section.

Defined terms used in the Guidelines are marked with an asterisk (*).

agency* is defined in section 135AA(11) of the *National Health Act 1953* as 'having the same meaning as in the *Privacy Act 1988*';

claims information* means information to which these guidelines relate as defined in section 135AA(1) of the *National Health Act 1953*; for clarity in these Guidelines, as is indicated in section 135AA(2), 'claims information' does not include information about service providers.

database* is defined in section 135AA(11) of the *National Health Act 1953* as 'a discrete body of information stored by means of a computer';

delegate* means a Deputy Secretary or First Assistant Secretary of the Department* or the Australian Government Chief Medical Officer to whom a delegation has been made by the Secretary of the Department*.

enforcement body* is defined in section 6 of the *Privacy Act 1988*.

Medicare Benefits Program* is defined in section 135AA(11) of the *National Health Act 1953* as 'the program for providing Medicare benefits under the *Health Insurance Act 1973*';

old information* is defined in section 135AA(11) of the *National Health Act 1953* as 'information to which this section [section 135AA of the *National Health Act 1953*] applies that has been held by one or more agencies for at least the preceding 5 years';

personal identification components*, in relation to claims information, is defined in section 135AA(11) of the *National Health Act 1953* as 'so much of the information as includes any of the following:

- (a) the name of the person to whom the information relates;
- (b) the person's address;
- (c) the person's Medicare card number;
- (d) the person's Pharmaceutical entitlements number';

Pharmaceutical Benefits Program* is defined in section 135AA(11) of the *National Health Act 1953* as 'the program for supplying pharmaceutical benefits under Part VII of this [National Health] Act';

the Department* means the Department of Health and Ageing or any other successor agency or agencies which may have responsibilities under the Administrative Arrangements Order for administration of relevant provisions of the *National Health Act 1953* or the *Health Insurance Act 1973*.