

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Health

My Health Records Act 2012

My Health Records (Assisted Registration) Rule 2015

The *My Health Records Act 2012* (the Act) enables the establishment of the My Health Record system (formerly referred to as the personally controlled electronic health record (PCEHR) system). The My Health Record system allows individuals and their healthcare providers to access their key health information online where and when they need it.

Healthcare recipients can currently register for a My Health Record through five channels – phone, online, in writing, in person at a Department of Human Services (Medicare) shopfront or at healthcare provider practices that provide assisted registration under the *PCEHR (Assisted Registration) Rules 2012* as previously in force. Assisted registration encourages registration of a higher proportion of vulnerable healthcare recipients (such as those in aged care, with disabilities, or with chronic illnesses) who will benefit from having a My Health Record and who would be much more likely to apply to register with the support or assistance of their healthcare provider.

Operational experience, and amendments made by the *Health Legislation Amendment (eHealth) Act 2015*, have revealed the need to repeal the *PCEHR (Assisted Registration) Rules 2012* and make new rules relating to assisted registration.

The *My Health Records (Assisted Registration) Rule 2015* (the Assisted Registration Rule) is made under section 109 of the Act, which allows Rules to be made by the Minister about a range of matters including requirements relating to healthcare recipients and participants in the My Health Record system. The Assisted Registration Rule forms part of the collection of My Health Records Rules including the *My Health Records Rule 2015* and *My Health Records (Opt-out Trial) Rule 2015*.

The purpose of the Assisted Registration Rule is to ensure that healthcare recipients who seek assistance applying for registration for a My Health Record have the necessary support from a registered healthcare provider organisation in a secure manner by:

- authorising healthcare recipients to apply to register for a My Health Record through assisted registration;
- prescribing the eligibility of the healthcare recipient applying for registration;
- prescribing the eligibility of the person undertaking assisted registration of a healthcare recipient;
- prescribing the requirements of healthcare provider organisations in identifying the healthcare recipient;
- prescribing the requirement of a healthcare provider organisation to exercise reasonable care when making a declaration supporting a healthcare recipient's assertion of parental responsibility;

- prescribing the requirement of a healthcare provider organisation to gain consent from the healthcare recipient;
- prescribing the requirement to inform healthcare recipients of alternative methods of registration; and
- prescribing that records of healthcare recipients' consent, previously required to be kept under the *PCEHR (Assisted Registration) Rules 2012*, are no longer required to be kept and must be destroyed unless an exception applies.

A healthcare provider organisation who chooses to provide assisted registration must comply with the My Health Records Rules, including this Assisted Registration Rule, in order to be and remain registered as a participant in the My Health Record system. If a healthcare provider organisation fails to comply with the My Health Records Rules, it may result in a range of consequences including a decision by the System Operator to cancel or suspend the registration of a registered healthcare provider organisation.

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

The Assisted Registration Rule does not relate to the professional activities of healthcare providers. Professional obligations and professional bodies exist for this purpose. The Assisted Registration Rule only regulates matters necessary to support the making of an application for registration of identified healthcare recipients.

Details of the Assisted Registration Rule are set out in the [Attachment](#).

Subsection 109(2) of the Act provides that, in making Rules, the Minister must consult with the subcommittee to the Ministerial Council prescribed by the regulations. The Australian Health Ministers' Advisory Council (AHMAC) is prescribed under regulation 5.1.1 of the *My Health Records Regulation 2012*. AHMAC was consulted about the Assisted Registration Rule in November 2015.

The Jurisdictional Advisory Committee was also consulted on the proposed Assisted Registration Rule in May 2015. This consultation was undertaken in accordance with a current requirement of the Act (subsection 109(2) which is proposed to be repealed around mid-2016.

All bodies supported the proposed Assisted Registration Rule.

The Assisted Registration Rule commences on the day after registration on the Federal Register of Legislative Instruments.

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required (OBPR Reference 16442). A Regulation Impact Statement was prepared for the *Health Legislation Amendment (eHealth) Bill 2015* and is available at <http://ris.dpmc.gov.au/2015/07/21/proposed-changes-to-the-personally-controlled-electronic-health-record-system/>.

The Assisted Registration Rule is a legislative instrument and is subject to the *Legislative Instruments Act 2003*.

Details of the *My Health Records (Assisted Registration) Rule 2015***PART 1—PRELIMINARY****1. Name of rule**

Rule 1 provides that the title of the rule is the *My Health Records (Assisted Registration) Rule 2015*.

2. Commencement

Rule 2 provides that the Assisted Registration Rule commences on the day after it is registered on the Federal Register of Legislative Instruments.

3. Repeal

Rule 3 repeals the *PCEHR (Assisted Registration) Rules 2012*.

4. Definitions

Subrule 4(1) defines terms used in the Assisted Registration Rule.

The note to subrule 4(1) assists readers by making clear that other terms used in the Assisted Registration Rule have the same meaning as they have in the *My Health Records Act 2012* (the Act).

Act

References to the Act in the Assisted Registration Rule are references to the *My Health Records Act 2012*.

Assisted registration

References to assisted registration mean the process, in accordance with subrule (2), in which a registered healthcare provider organisation assists a healthcare recipient to apply to register for a My Health Record. It is important to note that a healthcare provider organisation that provides assisted registration to healthcare recipients does not act on behalf of the System Operator.

Paragraph 4(2)(a) provides that the assisted registration process involves a registered healthcare provider organisation submitting a healthcare recipient's identifying information to the System Operator. Under paragraph 4(2)(a), a registered healthcare provider organisation can assist in registering a healthcare recipient who is applying to be:

- registered under section 41 of the Act or under clause 6 of Schedule 1 to the Act; or
- recognised by the System Operator under section 6 of the Act as an authorised representative of a person aged under 18 years, for whom the healthcare recipient asserts parental responsibility, and who is applying to be registered under section 41 of the Act or clause 6 of Schedule 1 to the Act.

Where a healthcare recipient is applying to be recognised as an authorised representative of a minor for whom they assert parental responsibility, subrule 4(3) requires that the healthcare recipient must be either:

- listed on the same Medicare card as the minor (to demonstrate an existing relationship recognised by Medicare); or
- applying to be recognised as an authorised representative of a person who is aged not more than 14 days; or
- the subject of a declaration by the healthcare provider organisation that it supports the healthcare recipient's assertion of parental responsibility under sub-subparagraph 4(2)(a)(ii)(A).

Paragraph 4(2)(a) does not affect the interpretation of the term *authorised representative* as defined by section 6 of the Act. Rather, it makes clear that only a subset of persons seeking to be an authorised representative of a minor who assert parental responsibility are eligible to apply to register that minor through assisted registration. Other classes of persons seeking to be authorised representatives recognised by section 6 of the Act, such as a person authorised by an Australian law or court to act on behalf of another person, will not be able to register healthcare recipients through assisted registration at this time.

Paragraph 4(2)(b) requires the healthcare provider organisation to check the identity of the healthcare recipient in accordance with rule 7 before asserting the healthcare recipient's identity to the System Operator

PART 2—ASSISTED REGISTRATION

DIVISION 1—APPLICATION FOR REGISTRATION

5. Application for registration

Rule 5 is made for the purposes of paragraph 15(f) of the Act, which specifies that a function of the System Operator is to register healthcare recipients and other participants in the My Health Record system, and to manage and monitor the system of registration.

Rule 5 provides that the System Operator may permit healthcare recipients to apply to register for a My Health Record through assisted registration. The My Health Record system also provides various other channels for a healthcare recipient to apply to register for a My Health Record – that is, by phone, in writing, online or in person.

DIVISION 2—UNDERTAKING ASSISTED REGISTRATION

6. Eligibility to undertake assisted registration

Subsection 109(3) of the Act provides that the My Health Records Rules may specify requirements relating to the My Health Record system that apply to healthcare recipients, and subsection 109(5) provides that the Rules may specify requirements relating to registering a healthcare recipient.

Rule 6 prescribes that only an employee of a registered healthcare provider organisation, who is authorised by that organisation for that purpose, may provide assisted registration to a healthcare recipient.

The note to this rule refers readers to the definition of *employee* in section 5 of the Act, making clear the scope of persons who are deemed to be “employees”.

The manner of authorising employees to provide assisted registration must be reasonably addressed in the organisation’s policy, as required under subparagraph 42(4)(f)(i) of the *My Health Records Rule 2015*.

At this time, only registered healthcare provider organisations are permitted to provide assisted registration to healthcare recipients on the basis that they have the technical capacity to register a healthcare recipient, and the nature of their relationship with the healthcare recipient which provides access to the necessary identifying information of the healthcare recipient.

7. Identification of healthcare recipient

Paragraphs 41(1)(c) and 6(3)(c) of Schedule 1 of the Act provide that the System Operator must decide to register a healthcare recipient if the System Operator is satisfied, having regard to the matters (if any) specified in the My Health Records Rules, that the identity of the healthcare recipient has been appropriately verified.

Rule 7 requires that the registered healthcare provider organisation must exercise reasonable care when identifying a healthcare recipient and must be satisfied that the healthcare recipient is the person whose identity will be asserted to the System Operator.

The process and criteria for identifying a healthcare recipient for the purposes of assisted registration must be reasonably addressed in the organisation’s policy, as required by subparagraph 42(4)(f)(iv) of the *My Health Records Rule 2015*.

The note below rule 7 reminds readers that giving false or misleading information to the System Operator is a serious offence under section 137 of the *Criminal Code Act 1995*.

8. Declaration to support a healthcare recipient’s assertion of parental responsibility

Rule 8 provides that before making a declaration to support a healthcare recipient’s assertion of parental responsibility for a person, the healthcare provider organisation must exercise reasonable care.

9. Healthcare recipient consent

Subsection 41(3) of the Act provides that the System Operator is not required to register a healthcare recipient if the healthcare recipient does not consent to the uploading of health information about them to their My Health Record. This consent is subject to certain prescribed laws and any express advice by the healthcare recipient to a healthcare provider organisation not to upload certain information.

Before a registered healthcare provider organisation undertakes assisted registration, Rule 9 requires the organisation to confirm that the healthcare recipient consents to registration with the My Health Record system.

In addition, where the healthcare recipient is applying to be registered under section 41 of the Act (that is, Schedule 1 of the Act does not apply to the healthcare recipient) – the organisation must confirm that the healthcare recipient consents to registered healthcare provider organisations uploading to the My Health Record system any record that includes health information about the healthcare recipient, subject to paragraphs 41(3)(a) and (b) of the Act.

Unlike previous *PCEHR (Assisted Registration) Rules 2012*, the Assisted Registration Rule does not require the healthcare provider organisation to record and retain the healthcare recipient's consent. However, there is nothing in the Assisted Registration Rule preventing a healthcare provider organisation recording and retaining the consent of the healthcare recipient for the organisation's own purposes or record-keeping requirements. Records of consent that were previously created and required to be retained under the *PCEHR (Assisted Registration) Rules 2012* are discussed below at rule 11.

10. Must inform healthcare recipient of alternative methods of registration

Rule 10 requires that before a registered healthcare provider organisation provides assisted registration, they must inform the healthcare recipient that an application to register may be made at a Medicare office, by telephone, online or by mail.

This rule is intended to address circumstances where healthcare provider organisations may choose to charge a healthcare recipient for providing assisted registration.

The organisation will be unable to impose a charge under Medicare, however it may impose a charge outside Medicare for services they perform. This is a business decision of the organisation.

It is possible that charging for assisted registration could be a disincentive to some healthcare recipients to apply for registration. For example, low income patients may rely on assisted registration as the preferred option for registering for a My Health Record, however they may be unlikely to apply to register if it incurs a fee. Rule 10 therefore requires all organisations that provide assisted registration to provide information so that the healthcare recipient will be aware of other options by which they can register.

DIVISION 3—RETENTION OF RECORDS OF CONSENT

11. Records of healthcare recipients' consent no longer required to be kept

Under the *PCEHR (Assisted Registration) Rules 2012* a record of a healthcare recipient's consent was required to be retained by the healthcare provider organisation or be sent to the System Operator for storage. Records of the consent had to be retained for at least three years.

Operational experience and feedback from some healthcare provider organisations have revealed that this requirement was unnecessary and in some cases a deterrent to providing assisted registration.

Rule 11 provides that a record of a healthcare recipient's consent created under the *PCEHR (Assisted Registration) Rules 2012* is no longer required to be stored or retained by either the healthcare provider organisation who assisted the healthcare recipient to register with the My Health Record system or the System Operator.

As the records are “Commonwealth records” they must be dealt with in accordance with the *Archives Act 1983* (the Archives Act). While paragraph 24(1)(a) of the Archives Act requires Commonwealth records to be retained, paragraph 24(2)(a) provides an exception under which records can be destroyed “as required by any law”.

Rule 11 relies on the exception in paragraph 24(2)(a) of the Archives Act and provides that the records of consent must be destroyed as soon as practicable by the entity holding the record after becoming satisfied that the record is not likely to be required:

- (a) if the entity is a healthcare provider organisation – for the purpose of meeting that entity’s own record-keeping requirements (subparagraph 11(b)(i));
- (b) for the purposes of investigating, reviewing or taking any action in relation to a complaint relating to that record (subparagraph 11(b)(ii)); or
- (c) for the purpose of complying with a direction by the System Operator to retain that record (subparagraph 11(b)(iii)).

The purpose of the exception in subparagraph 11(b)(i) is to allow healthcare provider organisations to retain the assisted registration consent forms if they wish to do so in order to meet their own record-keeping obligations – for example, retaining documents for auditing or liability purposes. If an exception does not apply, the record must be destroyed.

Statement of Compatibility with Human Rights

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

My Health Records (Assisted Registration) Rule 2015

The 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 My Health Record system, as established by the *My Health Records Act 2012* (the Act).

The Legislative Instrument will, in summary, ensure that healthcare recipients who seek assistance to apply for registration for a My Health Record have the necessary support from a registered healthcare provider organisation in a secure manner by:

- authorising healthcare recipients to apply to register for a My Health Record through assisted registration;
- prescribing the eligibility of the healthcare recipient applying for registration;
- prescribing the eligibility of the person undertaking assisted registration of a healthcare recipient;
- prescribing the requirements of healthcare provider organisations in identifying the healthcare recipient;
- prescribing the requirement of a healthcare provider organisation to exercise reasonable care when making a declaration supporting a healthcare recipient's assertion of parental responsibility;
- prescribing the requirement of a healthcare provider organisation to gain consent from the healthcare recipient;
- prescribing the requirement to inform healthcare recipients of alternative methods of registration; and
- prescribing that records of healthcare recipients' consent, previously required to be kept under the *PCEHR (Assisted Registration) Rules 2012*, are no longer required to be kept and must be destroyed unless an exception applies.

Human rights implications

The Legislative Instrument engages the following human rights and freedoms:

Right to health

Article 12(1) of the *International Covenant on Economic, Social and Cultural Rights* provides for the right to the enjoyment of the highest attainable standard of physical and mental health.

The My Health Record system and this Legislative Instrument promote the right to health by facilitating and improving the sharing of health information between treating healthcare providers, leading to quicker and safer treatment decisions and reducing repetition of information for patients and duplication of tests. Individuals are provided ready access to their own information, empowering them to make informed decisions about their healthcare.

This Legislative Instrument promotes the right to health by enabling registered healthcare provider organisations to assist healthcare recipients to register for a My Health Record. Assisted registration encourages registration of a higher proportion of vulnerable healthcare recipients (such as those in aged care, with disabilities, or with chronic illnesses) who will benefit from having a My Health Record and who would be much more likely to apply to register with the support or assistance of their healthcare provider. Without these rules in place, vulnerable healthcare recipients may not be capable of, or may be deterred from, registering for a My Health Record and enjoying the benefits of the system. Increased registration through assisted registration will help improve the standard of physical and mental health for all healthcare recipients in Australia.

Rights of people with disability

The *Convention on the Rights of Persons with Disabilities* (CRPD) provides for the promotion of the full realisation of all human rights and fundamental freedoms for all persons with a disability without discrimination of any kind on the basis of their disability, with a view to achieving progressively the full realisation of (economic, social and cultural) rights.

This Legislative Instrument promotes the right to human rights and freedoms without discrimination by providing assisted registration as an additional and supported channel of registration, allowing people with a disability to participate in the My Health Record system. Without this rule people with a disability who are not capable of applying to register for a record may be denied the ability to register and, as a result, might not experience that same standard of physical and mental health as other individuals who are able to register. Assisted registration will help improve the realisation of the right to health for persons with a disability.

Conclusion

The Legislative Instrument is compatible with human rights because it advances the right to health and the rights of people living with a disability.

The Hon Sussan Ley, MP

Minister for Health