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The Director General

To: Secretariat of the Article 29 Working Party
European Commission, Directorate-General Justice, Freedom and Security
Unit C.5 – Protection of personal data
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B – 1049 Brussels
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Subject: CEA response to Working Paper on the processing of personal data relating to health in electronic health records (EHR) as adopted by Article 29 Working Party on 15 February 2007 (WP 131)

Brussels, 11 June 2007

Dear Sirs,

CEA welcomes the opportunity to comment on the Working Paper no. 131 as adopted by Article 29 Working Party concerning the processing of personal data relating to health in electronic health records (EHR). We set out hereinafter the views of the European health insurance industry and provide the Article 29 Working Party with the experience of the health insurance sector. We hope that our remarks and recommendations will be taken into consideration with regard to the final interpretative document.

CEA recognizes that both privacy and data protection issues regarding health records, electronic or otherwise, are extremely important. CEA supports appropriate protection measures with access restricted to those who have a clear and approved need.

It is crucial to keep in mind that private health insurers are not mere passive financial entities but active partners who together with healthcare providers are responsible for the appropriateness of care, its quality and safety. Therefore, private health insurers not only manage administrative data but they also need to manage specific clinical information. These are vital in order to implement preventive programs and follow-ups, to pursue proper planning of clinical services, to ensure quality and safety, to analyze the appropriateness and cost effectiveness of health care, to avoid fraud.

CEA recognizes the complexities and time-scales for the full introduction of EHRs across the European Union, however, it believes it is important at this stage to clarify their role as well as the current and future comprehensiveness of these medical records. The Working Paper defines EHRs as "*a comprehensive medical record ... of the past and present physical and mental state of health.*" CEA is concerned as to how comprehensive the EHRs are to be in practice. Restrictions or limitations of the access by insurers to this important source of information could affect the underwriting and claim settlement processes and the ability of certain applicants to obtain private health insurance. The continued access to this data is essential for the risk assessment and claim settlement processes and it is imperative that this is recognized in the current and future Article 29 Working Party interpretive proposals. Evidently, restrictions could impose increased practical difficulties alongside the higher costs for insurers and policyholders. The latter could be consequently deprived of having an effective access to private health cover. Therefore, any changes stemming from such interpretation should be carefully assessed as to its impacts.

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Regarding the specific insurance "*documentation package*" it is the CEA view that the insurance industry should be involved in its formulation. CEA is concerned with its usefulness and desirability. It will necessitate time and financial resources to develop and implement such a standardized package. Moreover, new developments in medical science would require constant adaptation of such a standardized form and in some cases information needed would be too specific to be fully obtainable. The insurers in relevant cases need an access to the whole medical record, of course, under the explicit consent of the client. Therefore, if the idea of the *"documentation package"* prevails, there would be a need for flexibility in the output in terms of the insurer. It is currently a common practice for the assessment of this data to be delegated by the Medical Officer to experienced and qualified insurance staff, i.e. underwriters, with access to this information on a business need only.

It is the CEA opinion that there should be three levels of access to the information pertaining to the patients, i.e. administrative, medical management and clinical levels.
Administrative level. Information for general administration purposes: invoicing, accounting, statistics etc. This information is intended for clerical staff use at both clinical centers and private medical insurers' premises.
Medical management level. General and individualized information restricted to the medical and paramedical staff in both clinical centers and private medical insurers in charge of the management of clinical services. This type of information, crucial for a proper management and analysis of clinical services and health insurance contracts, is usually summarized in the hospital discharge reports, for instance, and accessible only to appropriate medical staff obliged to keep strict confidentiality of data.
Clinical level. Information for exclusive use by physicians and clinical staff only being in charge of a given patient.

A concern to an insurer would also be the EHR option which makes or would make possible that the patients amend or delete part of their own health records. As a result, a situation when only part of the information or the information changed on purpose would be problematic when assessing the risk, as well as for medical practitioners.

CEA would like to emphasize that the current use of prior explicit consent to be received by the insurers not only works well but offers protection to individuals since health records are only ever obtained where explicitly necessary as part of their application for insurance. These records follow the detailed data protection clauses outlined in insurance application forms, whereas insurance companies themselves are subject to the obligation of professional secrecy.

Last but not least, CEA and its member national associations are prepared to offer Article 29 Working Party their experience and know-how in order to effectuate the EU wide implementation of EHRs project and hope to have the opportunity to share and extend the views in due time.

Sincerely yours,

Michaela KOLLER
Director General of the CEA