Private Health Facilities Regulation 2016

Explanatory notes for SL 2016 No. 140

made under the

Private Health Facilities Act 1999

General Outline

Short title

Private Health Facilities Regulation 2016

Authorising law

Section 151 of the *Private Health Facilities Act 1999*.

Policy objectives and the reasons for them

In accordance with part 7 of the *Statutory Instruments Act 1992*, the *Private Health Facilities Regulation 2000* (the 2000 Regulation) will expire on 31 August 2016. The *Private Health Facilities Regulation 2016* (the Regulation) replaces the 2000 Regulation to prescribe certain matters to support the *Private Health Facilities Act 1999* (the Act).

The Act provides a framework for protecting the health and wellbeing of patients receiving health services at private health facilities. The Act achieves this by enabling standards to be made, requiring persons proposing to operate private health facilities to first hold approvals, requiring persons to hold licences for the operation of the facilities and providing for compliance with the Act to be monitored and enforced.

Achievement of policy objectives

The Regulation replaces the 2000 Regulation, prescribing a range of matters for the Act, including:

- procedures that are considered to be day hospital health services
- health services that are subject to minimum patient throughput standards
- the timing for giving of reports to the chief health officer by the licensee of a private health facility
- quality assurance entities and programs, for the purpose of ensuring private health facilities operate under a quality assurance system, and
- fees payable for approvals and licences under the Act.

The Regulation is largely consistent with the 2000 Regulation, with minor changes to:

- simplify the process of prescribing quality assurance entities and reflect changes to the list of prescribed quality assurance programs
- update the list of prescribed agreements made between Queensland and other States, Territories and the Commonwealth for section 147(4)(c) of the Act under which disclosure of confidential information can occur, to remove out of date agreements and include new agreements, and
- reduce the fees for issue of an approval or licence to replace a lost, stolen, destroyed or damaged approval or licence to reflect the administrative cost of replacing the approval or licence.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the Act.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

The Regulation is largely consistent with the 2000 Regulation and accordingly imposes no additional costs on persons or organisations.

The reduction of the fee amount for issue of an approval or licence to replace a lost, stolen, destroyed or damaged approval or licence will ensure the fees reflects the service involved in replacing the approval or licence and bring it into line with the comparable fee for replacement of a licence in schedule 2 of the *Pest Management Regulation 2003*. This will benefit private health facilities that may need to replace an approval or licence. The fee reduction is not expected to have an impact on Government revenue, as requests for replacements approvals and licences are received infrequently.

Consistency with fundamental legislative principles

Section 48(1) of the Act requires a person proposing to operate a private health facility to hold a licence and provides the conditions of the licence. The conditions include that the licensee must, within 90 days of the licence being issued, start a quality assurance program conducted by a quality assurance entity and receive certification from the quality assurance entity that the facility operates under a quality assurance system within three years of the licence being issued. *Quality assurance entity* is defined in schedule 3 of the Act as an entity prescribed under a regulation that conducts a quality assurance program.

The Regulation provides that entities approved as accrediting agencies by the Australian Commission on Safety and Quality in Health Care (the Commission) and entities accredited by the Joint Accreditation System of Australia and New Zealand (JAS-ANZ) as being competent to conduct a quality assurance program prescribed under section 9(1)(c), that is, a

program based on the requirements of AS/NZS ISO 9001, are prescribed entities for the definition of *quality assurance entity.*

The Commission has developed the National Safety and Quality Health Service (NSQHS) Standards, which provide a nationally consistent statement about the level of care consumers can expect from health services. Hospitals and day procedure services are required to be accredited to the NSQHS Standards under the Australian Health Service Safety and Quality Scheme (AHSSQA), a national accreditation model for all jurisdictions. The Commission grants approval to accrediting agencies wishing to accredit health service organisations to the NSQHS Standards. The list of approved accrediting agencies is available on the Commission's website and is updated periodically.

JAS-ANZ is an internationally recognised accreditation body that accredits entities seeking to certify health service organisations against industry standards, including AS/NZS ISO 9001. Entities are assessed against the JAS-ANZ assessment criteria, including assessing an applicant's capabilities and systems. The JAS-ANZ register of accredited bodies is available on the JAS-ANZ website and the register is updated periodically.

Defining a quality assurance entity by reference to entities approved by the Commission or accredited by JAS-ANZ may be seen to breach section 4 of the *Legislative Standards Act 1992*, which requires legislation to have sufficient regard to the institution of Parliament. However, prescribing specific entities in the Regulation by name does not keep pace with changes to approved entities, such as name changes and new entities. The proposed approach provides an easily accessible and up to date list of quality assurance entities via the Commission and JAS-ANZ websites and removes the need to amend the Regulation each time the list changes, while ensuring that all prescribed entities meet the requirements set by the Commission and JAS-ANZ.

Clause 3 of the Regulation refers to the Speciality health services standard (version 5) mentioned in the *Private Health Facilities (Standards) Notice 2016*. The standard is not included in the Regulation. This may be seen as a minor breach of the fundamental legislative principles in section 4(5)(e) of the *Legislative Standards Act 1992*, which require subordinate legislation to have sufficient regard to the institution of Parliament by allowing the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons and if authorised by an Act. To address this, the standard will be tabled in the Legislative Assembly to enhance the visibility of the document to members of the Legislative Assembly. The standard is also available to view on the Queensland Health website.

Consultation

No external consultation was undertaken on the Regulation as it is largely consistent with the 2000 Regulation and the changes are minor and technical in nature.

The Office of Best Practice Regulation was consulted on the Regulation and has advised that a Regulatory Impact Statement is not required.

Notes on provisions

Short Title

Clause 1 provides that the short title of the Regulation will be the *Private Health Facilities Regulation 2016.*

Commencement

Clause 2 provides that the Regulation commences on 1 September 2016.

Day hospital health services

Clause 3 prescribes a number of diagnostic, surgical and other procedures, for example, haemodialysis, as being a *day hospital health service* for section 10(3) of the Act.

Minimum patient throughput standard

Clause 4 prescribes a number of health services for section 12(2)(g) of the Act, which provides that Standards may be made in relation to the minimum patient throughput for health services provided at private health facilities. The health services prescribed are cardiac surgery, cardiac catheterisation and obstetrics.

Prescribed change for which notice must be given

Clause 5 prescribes a number of changes relating to an authority holder for the Act, sections 23(4) (definition *prescribed change*, paragraph (b)) and 48(6) (definition *prescribed change*, paragraph (b)), for which notice must be given. A change, for these sections, includes a change in the name of the authority holder or an associate of the authority holder, a change in the authority holder's address, and, if the authority holder is a licensee for a private health facility, a change of the person who has the day-to-day management of the facility.

Time for giving of reports

Clause 6 prescribes the times for giving of reports to the chief health officer by the licensee of a private health facility under section 144(1) of the Act. For example, for section 144(3)(b) of the Act, the time prescribed for giving a report about patient identification, diagnosis and activity data is within 35 days after the end of the each month during the term of the licence.

Giving or disclosing information

Clause 7 provides that the agreements stated in schedule 1 are prescribed for section 147(4)(c) of the Act.

Clause 7 further provides that for section 147(4)(h)(ii) of the Act, Hardes and Associates Pty Ltd ACN 079 150 940 is prescribed for the purpose of evaluating, managing, monitoring or planning health services by reviewing patterns of health services delivery and projecting the future demand for, and supply of, health services.

Quality assurance entity

Clause 8 prescribes entities for the definition of *quality assurance entity* in schedule 3 of the Act. Entities approved by the Commission as an accrediting agency and entities accredited by JAS-ANZ as being competent to conduct a quality assurance program prescribed under section 9(1)(c) of the Regulation are prescribed.

Clause 8 further provides that an *accrediting agency* approved by the Commission is an agency that accredits entities against the National Safety and Quality Health Service (NSQHS) Standards developed by the Commission.

Commission is defined to mean Australian Commission on Safety and Quality in Health Care established under the *National Health Reform Act 2011* (Cwlth), section 8.

JAS-ANZ is defined to mean the Joint Accreditation System of Australia and New Zealand.

Quality assurance program

Clause 9 prescribes programs for the definition of *quality assurance program* in schedule 3 of the Act. Prescribed programs include the Evaluation and Quality Improvement Program conducted by the Australian Council on Healthcare Standards, a program based on the Quality Improvement Council (QIC) Health and Community Services Standards conducted by Quality Innovation Performance Limited and a program based on the requirements of AS/NZS ISO 9001 conducted by a quality assurance entity.

Clause 9 further provides that *AS/NZS ISO 9001* means the Australian/New Zealand Standard, jointly published by Standards Australia and Standards New Zealand, as in force from time to time under that designation (regardless of the edition or year of publication of the standard). This clarifies that if a new edition of the AS/NZS ISO 9001 Standard is published, a program based on the requirements of the previous edition continues to be prescribed as a quality assurance program.

Fees

Clause 10 provides that the fees payable under the Act are stated in schedule 2.

Refund of fees

Clause 11 provides that the chief health officer must refund the fee paid on a relevant application as soon as practicable if the chief health officer refuses to grant the application or the applicant withdraws the application before it is decided.

A *relevant application* is defined as an application under the Act other than an application for an approval. This will enable a refund to be given in relation to any fee paid under the Regulation other than a fee for application for approval. Fees paid on an application for an approval are not required to be refunded in the circumstances detailed above, given the significant administrative cost to the department of reviewing such an application.

Schedule 1 (Agreement)

Schedule 1 prescribes the agreements made between Queensland and other States, Territories and the Commonwealth for section 147(4)(c) of the Act. The list of agreements is amended to remove out of date agreements and to include new agreements.

Schedule 2 (Fees)

Schedule 2 prescribes the fees payable in relation to applications for approvals under the Act and applications for licences under the Act.

The fee for issue of another approval to replace a lost, stolen, destroyed or damaged approval (item 4) and the fee for issue of another licence to replace a lost, stolen, destroyed or damaged licence (item 10) is set at $48.50, a reduction from the 2000 Regulation, which set these fees at $216. The reduced fee amount reflects the administrative cost of replacing the approval or licence.