

Hospital and Health Boards Amendment Regulation 2021

Explanatory notes for SL 2021 No. 27

made under the

Hospital and Health Boards Act 2011

General Outline

Short title

Hospital and Health Boards Amendment Regulation 2021

Authorising law

Sections 282 and 151(1) of the *Hospital and Health Boards Act 2011*

Policy objectives and the reasons for them

Management of patient records forms part of the delivery of public sector health services in Queensland. However, to protect patients' privacy, access to patient records and disclosure of confidential information is strictly regulated. The *Hospital and Health Boards Act 2011* creates a duty of confidentiality, prohibiting 'designated persons' (Queensland Health staff, including contractors and volunteers) from disclosing confidential information about a person who is receiving, or who has received, a public sector health service if the person could be identified from the information.

Confidential information includes any information collected by Queensland Health during the course of providing a health service to an individual and may include an individual's name, address, date of birth, admission and discharge dates, health and medical information such as diagnosis and details of treatment, and information generated by health professionals such as notes and opinions about an individual and their health.

The Hospital and Health Boards Act also prescribes a number of exceptions to the duty of confidentiality, outlining circumstances in which confidential information may be disclosed. These circumstances cover a range of necessary situations, for example, if the patient consents to the disclosure or if a health practitioner needs to discuss aspects of the patient's health care with another health professional.

Section 151(1) of the Hospital and Health Boards Act provides that a designated person may disclose confidential information if the disclosure is:

- to the Commonwealth or another State, or an entity of the Commonwealth or another State, or to an entity of the State of Queensland;
- required or allowed under an agreement prescribed under a regulation; and
- stated in writing by the relevant chief executive to be in the public interest.

The agreements referred to by section 151(1) of the Hospital and Health Boards Act are prescribed in schedule 3, parts 1 and 2 of the *Hospital and Health Boards Regulation 2012*.

The agreement called ‘Hospital services arrangement between the Commonwealth of Australia and the Repatriation Commission and the Military Rehabilitation and Compensation Commission and the State of Queensland’ (the agreement) was made on 12 June 2020 between Queensland Health and the Commonwealth of Australia, represented by the Department of Veterans’ Affairs (DVA), the Repatriation Commission and the Military Rehabilitation and Compensation Commission. The period of the agreement is 1 July 2019 to 30 June 2023.

The agreement updates and provides for the continuation of a previous agreement made on 1 December 2016. It provides a framework for the provision of, and payment for, treatment of entitled veterans and their dependants in Queensland public hospitals. As part of this framework, the agreement allows confidential information to be shared between the parties in order to give effect to the funding arrangements. Confidential information that may be disclosed includes a patient’s personal details as well as clinical information such as care type, diagnoses, length of stay and DVA file numbers. This allows Queensland Health to make claims for treatment from the DVA. The agreement also allows Queensland Health to respond to requests for information by the DVA, if a veteran or dependant lodges a complaint regarding the treatment received at a Queensland Health facility. Veterans or their dependants are required to consent to the release of information through a patient election form.

The objective of the *Hospital and Health Boards Amendment Regulation 2021* (Amendment Regulation) is to prescribe the updated 2020 agreement in the Hospital and Health Boards Regulation. This will allow the parties to continue to share confidential information for the provision of hospital services to eligible veterans and their dependants.

Achievement of policy objectives

To achieve the policy objectives, the Amendment Regulation will amend the Hospital and Health Boards Regulation to prescribe the updated Hospital services arrangement between the Commonwealth of Australia and the State of Queensland to enable lawful disclosure of confidential information to the DVA.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the authorising 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

The Amendment Regulation is the only effective means of achieving the policy objectives.

Benefits and costs of implementation

The sharing of information under the prescribed agreement is within the usual business of Queensland Health and the DVA. Any costs will be met from existing budget allocations.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*.

Prescribing the agreement raises issues of privacy and confidentiality, which are relevant to whether legislation has sufficient regard to the fundamental legislative principle of the rights and liberties of individuals under section 4(2)(a) of the Legislative Standards Act.

The agreement authorises the disclosure of confidential information between the parties for the provision of, and payment for, the treatment of entitled veterans and their dependants in Queensland public hospitals. Confidential information that can be shared includes a patient's personal details and clinical information such as care type, diagnoses, length of stay and DVA file numbers.

The parties will only share confidential information to make and discharge claims for the treatment of veterans and their dependants or to resolve complaints by a veteran or dependant regarding the treatment received at a Queensland Health facility. The agreement requires the parties to the agreement, and their officers, employees, agents and subcontractors, to comply with the Commonwealth Privacy Act and relevant state privacy legislation. Each party is obliged to report any breaches or possible breaches of privacy legislation to the other party. In addition, confidential information used to resolve complaints can only be disclosed with patient consent.

Consultation

The DVA was consulted during drafting of the agreement.

No consultation was required to prescribe the agreement in the Hospital and Health Boards Regulation, as this is a process required to meet the confidentiality provisions of the Act.

The proposal to prescribe the agreement was assessed by Office of Best Practice Regulation, in accordance with *The Queensland Government Guide to Better Regulation*, as being excluded from further regulatory impact assessment on the basis that prescribing the agreement does not add to regulatory burden (exclusion category (k)).

Notes on provisions

Short Title

Clause 1 states the short title of the regulation is the *Hospital and Health Boards Amendment Regulation 2021*.

Regulation amended

Clause 2 provides that the regulation amends the *Hospital and Health Boards Regulation 2012*.

Amendment of sch 3 (Agreements)

Clause 3 amends item 1 in schedule 3, to prescribe an agreement for the purpose of section 151(1) of the *Hospital and Health Boards Act 2011*.

The agreement prescribed is the agreement made on 12 June 2020 called ‘Hospital services arrangement between the Commonwealth of Australia and the Repatriation Commission and the Military Rehabilitation and Compensation Commission and the State of Queensland’.