



Queensland

# Health Legislation Amendment Regulation (No. 2) 2011

## Explanatory Notes for SL 2011 No. 60

made under the

*Health Services Act 1991*

*Private Health Facilities Act 1999*

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## General outline

### Short title

*Health Legislation Amendment Regulation (No. 2) 2011.*

### Authorising law

Section 68 of the *Health Services Act 1991*.

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

### Policy objectives and the reasons for them

Management of patient records forms part of the delivery of public sector health services in Queensland and patient confidentiality is strictly regulated.

The *Health Services Act 1991* creates a duty of confidentiality, prohibiting Queensland Health staff 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. The offence for breaching confidentiality carries a maximum penalty of \$5,000.

Confidential information includes any information collected by Queensland Health during the course of providing a health service to an individual and may include such things as: name, address, date of birth, admission and discharge dates, billing information, and Medicare number; health and medical information; and information generated by health professionals such as notes and opinions about an individual and their health.

The *Health Services Act 1991* 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 nurse needs to discuss aspects of the patient's health care with another health professional.

Two further exceptions to the duty of confidentiality exist to allow staff to disclose confidential information:

- if the disclosure is to an entity prescribed under a regulation for evaluating, managing, monitoring or planning health services (s62H); or
- to the Commonwealth or another State, or an entity of the Commonwealth or another State, if there is an agreement that has been prescribed under a regulation and the disclosure is considered by the Chief Executive (Health) to be in the public interest (s62N).

Similar to the *Health Services Act 1991*, the *Private Health Facilities Act 1999* also imposes a duty of confidentiality in relation to personal health information. A maximum penalty of \$5,000 applies to a breach of the duty.

An exception to the duty of confidentiality under the *Private Health Facilities Act 1999* exists if the disclosure of personal health information is to the Commonwealth or another State, or an entity of the Commonwealth or another State, providing there is an agreement prescribed under a regulation and the Chief Executive (Health) is satisfied the giving of the information is in the public interest (s147(4)(c)).

Consistent with the purpose of exceptions to the duty of confidentiality, the policy objectives of the amendments are to enable confidential patient-identifying information to be disclosed by Queensland Health staff to:

- the Office of Economic and Statistical Research, for the purpose of conducting the Statewide Patient Satisfaction Survey on behalf of Queensland Health; and
- other States, for the purpose of Queensland obtaining a reimbursement from them of costs incurred in treating their residents as admitted patients in Queensland public sector health facilities.

### ***Prescribed entity***

The main purpose of prescribing an entity under the exception in section 62H of the *Health Services Act 1991* is to ensure that Queensland Health is not breaching its duty of confidentiality by disclosing confidential information that is necessary to assist with improving health services. To be prescribed, the entity must meet the criteria set out in section 62H of the Act. That is, the entity must use the confidential information it receives only for the purposes of evaluating, managing, monitoring or planning health services.

The Office of Economic and Statistical Research is a portfolio office of Queensland Treasury and is the principal economic, demographic and social research agency for the Queensland Government. One of the key areas of work conducted by the Office of Economic and Statistical Research is to provide statistical services including surveys, evaluation and statistical advice.

Queensland Health has contracted the Office of Economic and Statistical Research to undertake the annual Statewide Patient Satisfaction Survey (the survey) on behalf of Queensland Health. The aims of the survey are to measure the satisfaction of patients with the health services they have received and gather data on patient experience. The role of the Office of Economic and Statistical Research is to undertake the survey with participants on their experience at the public sector health service at which they attended as a patient. The collected data will then be analysed and provided to Queensland Health in a collated report.

The survey outcomes will assist hospitals to identify areas of concern that require quality and/or safety improvement interventions and provide information needed to meet statutory reporting requirements under the *Health Services Act 1991*.

### ***Prescribed Agreements***

The purpose of prescribing an agreement under the exceptions in section 62N of the *Health Services Act 1991* and section 147(4)(c) of the *Private*

*Health Facilities Act 1999* is to ensure that Queensland Health is not breaching its duty of confidentiality by disclosing confidential information to the Commonwealth and other States (or entities of those jurisdictions). The disclosure must be required or allowed under an agreement between Queensland and the relevant jurisdiction, and the agreement must then be prescribed in regulation. The disclosure must also be considered by the Chief Executive to be in the public interest.

The Commonwealth, a State or entity must meet the criteria set out in section 62N(2) of the *Health Services Act 1991* and section 147(7) of the *Private Health Facilities Act 1999*. That is, the entity must not give the information to anyone else unless permitted to do so under the agreement or in writing by the Chief Executive (Health) and must ensure the confidential information is used only for the purpose for which it was given under the agreement.

In accordance with the National Healthcare Agreement, Queensland may enter into agreements (cross border agreements) with other states to recover costs where residents of the other state receive services as an admitted patient in a hospital or facility in Queensland, and vice versa.

Under the cross border agreements, the parties will be entitled to reimbursement of costs from each other based upon the number and type of admitted patients treated as validated and on a basis as agreed between the parties. Victoria is the only state to include non-admitted patient services, such as outpatient services at a hospital, in addition to admitted patient services. The previous cross border agreements, which are currently prescribed in the *Health Services Regulation 2002* and the *Private Health Facilities Regulation 2000*, have lapsed. New agreements with all jurisdictions except New South Wales have been finalised and signed by the appropriate authorities. The new agreements took effect on 1 July 2009.

### **Achievement of policy objectives**

The amendments will achieve the policy objectives by:

- prescribing the Office of Economic and Statistical Research in the *Health Services Regulation 2002* as an entity under 62H of the *Health Services Act 1991*, to enable Queensland Health to lawfully provide confidential information to the Office of Economic and Statistical Research, for the purposes of it conducting the Statewide Patient Satisfaction Survey on behalf of Queensland Health; and

- prescribing the new cross border agreements in the *Health Services Regulation 2002* and the *Private Health Facilities Regulation 2000* with: the Australian Capital Territory; the Northern Territory; South Australia; Tasmania; Victoria; and Western Australia, to enable Queensland Health to lawfully provide confidential information to these jurisdictions where their residents receive services as an admitted patient in a hospital or facility in Queensland, and vice versa.

In relation to prescribing the new cross border agreements, the existing cross border agreements have been retained in the Regulations, notwithstanding that Queensland Health will be operating under the new agreements. This will remove any doubt about whether there may be a need to refer to the old agreements in relation to disclosure of confidential information during the period of those agreements.

### **Consistency with policy objectives of authorising law**

The amendments are consistent with the main objectives of the *Health Services Act 1991* and the *Private Health Facilities Act 1999*.

### **Inconsistency with policy objectives of other legislation**

The amendments are consistent with other legislation, including the *Right to Information Act 2009* and the *Information Privacy Act 2009*.

### **Alternative ways of achieving policy objectives**

The amendments are the only effective means of Queensland Health disclosing confidential patient information without breaching the statutory duty of confidentiality and are consistent with the permitted exceptions to the duty of confidentiality

### **Benefits and costs of implementation**

Implementation costs associated with the amendments will be minor and will be sourced from existing operational budgets.

### ***Prescribed Entity***

Prescribing the Office of Economic and Statistical Research will provide relevant information for evaluating, managing, monitoring and planning health services.

### ***Prescribed Agreements***

The key benefit of prescribing the cross border agreements is the ability for Queensland Health to seek reimbursement from other states of the costs incurred to treat persons from those states in public sector health facilities.

## **Consistency with fundamental legislative principles**

The fundamental legislative principles under the *Legislative Standards Act 1992* require that legislation has sufficient regard to the rights and liberties of individuals. Every person who accesses a public sector health service has a right to expect that information held about them will remain private. For this reason, the statutory duty of confidentiality contains a substantial penalty for disclosing confidential, patient-identifying information. However, the Queensland Parliament has agreed, through enactment of exceptions to the duty of confidentiality, that there are a number of situations where disclosure of confidential information is necessary and reasonable.

Only information that is relevant to the exceptional circumstances will be disclosed by Queensland Health, ie. the minimum necessary to satisfy the particular requirement.

Therefore, the amendments are consistent with fundamental legislative principles.

## **Consultation**

The Office of Economic and Statistical Research was consulted and supports the amendment to prescribe it as an entity for the purpose of conducting the Statewide Patient Satisfaction Survey on behalf of Queensland Health.

The Information Commissioner was consulted on the amendment to prescribe the Office of Economic and Statistical Research as an entity under section 62H of the *Health Services Act 1991*. Where appropriate, feedback from the Information Commissioner was incorporated into the

agreement developed between Queensland Health and Office of Economic and Statistical Research to underpin the arrangement for the disclosure of confidential information by Queensland Health.

The Department of the Premier and Cabinet and Queensland Treasury were consulted and are supportive of the amendments.

## **Notes on provisions**

### **Part 1 Preliminary**

#### **Short Title**

Clause 1 provides the short title of the regulation.

### **Part 2 Amendment of Health Services Regulation 2002**

#### **Regulation amended**

Clause 2 specifies that Part 2 amends the *Health Services Regulation 2002*.

#### **Amendment to s 34C (Disclosure for purposes relating to health services - Act, s 62H(b))**

Clause 3 amends section 34C of the *Health Services Regulation 2002* to prescribe the Office of Economic and Statistical Research as a 'prescribed entity' under section 62H of the *Health Services Act 1991*.

This will enable Queensland Health to lawfully disclose confidential information to the Office of Economic and Statistical Research for the purpose of it conducting the Statewide Patient Satisfaction Survey on behalf of Queensland Health.

### **Amendment of sch 2 (Agreements)**

Clause 4 prescribes new cross border agreements between Queensland and the Australian Capital Territory, the Northern Territory, South Australia, Tasmania, Victoria and Western Australia, under section 62N of the *Health Services Act 1991*.

This will enable Queensland Health to lawfully disclose confidential information to those jurisdictions to recover costs incurred for treating patients from the relevant jurisdiction in public sector health facilities in Queensland, and vice versa.

## **Part 3                      Amendment of Private Health Facilities Regulation 2000**

### **Regulation amended**

Clause 5 specifies that Part 3 amends the *Private Health Facilities Regulation 2000*.

### **Amendment of sch 2 (Agreements)**

Clause 6 prescribes new cross border agreements between Queensland and the Australian Capital Territory, the Northern Territory, South Australia, Tasmania, Victoria and Western Australia, under section 147(4)(c) of the *Private Health Facilities Act 1999*.

This will enable Queensland Health to lawfully disclose confidential information to those jurisdictions to recover costs incurred for treating patients from the relevant jurisdiction in public sector health facilities in Queensland, and vice versa.

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#### ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Health.



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