

EXPOSURE DRAFT



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Health Legislation Amendment (Permitted Information Disclosure) Regulations 2019

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2019

David Hurley
Governor-General

By His Excellency's Command

Greg Hunt [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for Health

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1 Name

This instrument is the *Health Legislation Amendment (Permitted Information Disclosure) Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Health Insurance Act 1973*;
- (b) the *National Health Act 1953*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments

Health Insurance Regulations 2018

1 Section 4

Insert:

health practitioner means a person practising a profession that, under the Health Practitioner Regulation National Law, is regulated by a National Board.

Health Practitioner Regulation National Law means:

- (a) for a State or Territory other than Western Australia—the Health Practitioner Regulation National Law set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld), as it applies (with or without modification) as a law of the State or Territory; or
- (b) for Western Australia—the *Health Practitioner Regulation National Law (WA) Act 2010* (WA), so far as that Act corresponds to the Health Practitioner Regulation National Law set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld).

National Board means any of the following:

- (a) the Aboriginal and Torres Strait Islander Health Practice Board of Australia;
- (b) the Chiropractic Board of Australia;
- (c) the Dental Board of Australia;
- (d) the Medical Board of Australia;
- (e) the Medical Radiation Practice Board of Australia;
- (f) the Nursing and Midwifery Board of Australia;
- (g) the Occupational Therapy Board of Australia;
- (h) the Optometry Board of Australia;
- (i) the Osteopathy Board of Australia;
- (j) the Physiotherapy Board of Australia;
- (k) the Podiatry Board of Australia;
- (l) the Psychology Board of Australia.

2 After subparagraph 92(a)(iv)

Insert:

- (iva) the *Treatment Benefits (Special Access) Act 2019*;

3 Subparagraphs 93(1)(a)(i) and (ii)

Repeal the subparagraphs, substitute:

- (i) the Australian Health Practitioner Regulation Agency;
- (ii) a National Board;
- (ia) each State or Territory Board of a National Board;

4 Paragraph 93(2)(a)

Omit “medical practitioner”, substitute “health practitioner”.

5 Subsections 93(3) and (5)

Omit “medical practitioner”, substitute “health practitioner”.

6 Subsection 93(5)

Omit “relating to the rendering of services”.

7 Paragraphs 93(6)(a) and (b)

Omit “medical practitioner”, substitute “health practitioner”.

8 Subsection 93(7)

Omit “medical practitioner” (first occurring), substitute “health practitioner”.

9 Paragraph 93(7)(b)

Repeal the paragraph, substitute:

- (b) the address of each location at which the health practitioner practises (including any former location at which the health practitioner practised in the period that is the subject of the complaint or investigation);
- (c) if the health practitioner has been allocated a provider number or requester number—the number;
- (d) whether the health practitioner has previously been the subject of an investigation by the Chief Executive Medicare and, if so, the status of the investigation.

10 Subsections 93(8) and (9)

Repeal the subsections, substitute:

- (8) Information relating to a service may be provided if:
 - (a) a health practitioner who is the subject of a complaint or investigation mentioned in subsection (2), (3) or (5):
 - (i) rendered the service; or
 - (ii) supervised the rendering of the service; or
 - (iii) requested the service; or
 - (iv) claimed or received payment of fees in relation to the service; or
 - (v) was the assignee under an assignment or agreement, made or entered into in accordance with section 20A of the Act, in relation to the medicare benefit in respect of the service; and
 - (b) the Chief Executive Medicare reasonably believes that the service is relevant to the complaint or investigation.
- (9) The information mentioned in subsection (10) relating to a patient may be provided if the patient has made a complaint mentioned in subsection (2) or (3).
- (9A) The information mentioned in subsection (10) relating to a patient may also be provided if:
 - (a) the patient has received a service; and
 - (b) a health practitioner who is the subject of a complaint or investigation mentioned in subsection (2), (3) or (5):
 - (i) rendered the service; or
 - (ii) supervised the rendering of the service; or

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Schedule 1 Amendments

- (iii) requested the service; or
 - (iv) claimed or received payment of fees in relation to the service; or
 - (v) was the assignee under an assignment or agreement, made or entered into in accordance with section 20A of the Act, in relation to the medicare benefit in respect of the service; and
- (c) the Chief Executive Medicare reasonably believes that the service is relevant to the complaint or investigation.

11 Subsection 93(10)

Omit “subsection (9)”, substitute “subsections (9) and (9A)”.

12 At the end of subparagraphs 93(10)(f)(i) and (ii)

Add “and”.

National Health Regulation 2016

13 Section 5

Insert:

health practitioner means a person practising a profession that, under the Health Practitioner Regulation National Law, is regulated by a National Board.

Health Practitioner Regulation National Law means:

- (a) for a State or Territory other than Western Australia—the Health Practitioner Regulation National Law set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld), as it applies (with or without modification) as a law of the State or Territory; or
- (b) for Western Australia—the *Health Practitioner Regulation National Law (WA) Act 2010* (WA), so far as that Act corresponds to the Health Practitioner Regulation National Law set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld).

National Board means any of the following:

- (a) the Aboriginal and Torres Strait Islander Health Practice Board of Australia;
- (b) the Chiropractic Board of Australia;
- (c) the Dental Board of Australia;
- (d) the Medical Board of Australia;
- (e) the Medical Radiation Practice Board of Australia;
- (f) the Nursing and Midwifery Board of Australia;
- (g) the Occupational Therapy Board of Australia;
- (h) the Optometry Board of Australia;
- (i) the Osteopathy Board of Australia;
- (j) the Pharmacy Board of Australia;
- (k) the Physiotherapy Board of Australia;
- (l) the Podiatry Board of Australia;
- (m) the Psychology Board of Australia.

14 After Part 4

Insert:

Part 4A—Divulging information

11A Treatment provided to veterans

For the purposes of paragraph 135A(3)(b) of the Act:

- (a) an APS employee in the Veterans' Affairs Department who performs functions under any of the following laws in relation to treatment or medical treatment (within the meaning of those laws) is a prescribed person:
 - (i) the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*;
 - (ii) Chapter 6 of the *Military Rehabilitation and Compensation Act 2004*;
 - (iii) the *Papua New Guinea (Members of the Forces Benefits) Act 1957*;
 - (iv) the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*;
 - (v) the *Treatment Benefits (Special Access) Act 2019*;
 - (vi) Part V of the *Veterans' Entitlements Act 1986*; and
- (b) the information that may be provided to such an employee is information that would enable the employee to perform those functions.

11B Complaints and investigations

- (1) For the purposes of paragraph 135A(3)(b) of the Act:
 - (a) each of the following authorities or persons is a prescribed authority or person:
 - (i) the Australian Health Practitioner Regulation Agency;
 - (ii) a National Board;
 - (iii) each State or Territory Board of a National Board;
 - (iv) the Health Care Complaints Commission of New South Wales;
 - (v) the Office of the Health Ombudsman of Queensland;
 - (vi) an APS employee mentioned in paragraph 11A(a); and
 - (b) this section sets out the circumstances in which information may be provided to a prescribed authority or person and the kind of information that may be provided.

Circumstances in which information may be provided

- (2) Information may be provided to an authority mentioned in any of subparagraphs (1)(a)(i) to (v) if:
 - (a) a person has complained to the Chief Executive Medicare about a health practitioner; and
 - (b) the Chief Executive Medicare reasonably believes that the complaint should be referred to the authority for possible investigation.

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- (3) Information may be provided to an authority mentioned in any of subparagraphs (1)(a)(i) to (v) if the authority tells the Chief Executive Medicare that a person has made a complaint to the authority about a health practitioner.
- (4) Information may also be provided to a person mentioned in subparagraph (1)(a)(vi) in the circumstances mentioned in subsection (2) or (3).
- (5) Information may be provided to an authority or person mentioned in paragraph (1)(a) if a health practitioner is the subject of an investigation by the Chief Executive Medicare.
- (6) However, information may only be provided to a State or Territory authority under subsection (5) if:
 - (a) the health practitioner is, was, or is applying to be, registered or licensed to practice in that State or Territory; or
 - (b) the health practitioner is or was practising in that State or Territory.

Information that may be provided

- (7) The following information may be provided in relation to a health practitioner who is the subject of a complaint or investigation mentioned in subsection (2), (3) or (5):
 - (a) name;
 - (b) the address of each location at which the health practitioner practises (including any former location at which the health practitioner practised in the period that is the subject of the complaint or investigation);
 - (c) if the health practitioner has been allocated an identifying number by the Chief Executive Medicare or the Secretary (such as a provider number, requester number or pharmacy approval number)—the number;
 - (d) whether the health practitioner has been the subject of an investigation by the Chief Executive Medicare, and if so, the status of the investigation.
- (8) Information relating to a service or to the supply of a pharmaceutical benefit may be provided if:
 - (a) a health practitioner who is the subject of a complaint or investigation mentioned in subsection (2), (3) or (5):
 - (i) provided the service or supplied the pharmaceutical benefit; or
 - (ii) supervised the provision of the service or the supply of the pharmaceutical benefit; or
 - (iii) requested the service or the supply of the pharmaceutical benefit; or
 - (iv) claimed or received payment of fees in relation to the service or the supply of the pharmaceutical benefit; or
 - (v) in the case of a service—was the assignee under an assignment or agreement, made or entered into in accordance with section 20A of the *Health Insurance Act 1973*, in relation to the medicare benefit in respect of the service; and
 - (b) the Chief Executive Medicare reasonably believes that the service or the supply of the pharmaceutical benefit is relevant to the complaint or investigation.
- (9) The information mentioned in subsection (11) relating to a person may be provided if the person has made a complaint mentioned in subsection (2) or (3).

- (10) The information mentioned in subsection (11) relating to a person may also be provided if:
- (a) the person has received a service or been supplied a pharmaceutical benefit; and
 - (b) a health practitioner who is the subject of a complaint or investigation mentioned in subsection (2), (3) or (5):
 - (i) provided the service or supplied the pharmaceutical benefit; or
 - (ii) supervised the provision of the service or the supply of the pharmaceutical benefit; or
 - (iii) requested the service or the supply of the pharmaceutical benefit; or
 - (iv) claimed or received payment of fees in relation to the service or the supply of the pharmaceutical benefit; or
 - (v) in the case of a service—was the assignee under an assignment or agreement, made or entered into in accordance with section 20A of the *Health Insurance Act 1973*, in relation to the medicare benefit in respect of the service; and
 - (c) the Chief Executive Medicare reasonably believes that the service or the supply of the pharmaceutical benefit is relevant to the complaint or investigation.
- (11) For the purposes of subsections (9) and (10), the information relating to the person is the following:
- (a) name;
 - (b) contact information;
 - (c) sex;
 - (d) date of birth;
 - (e) medicare number;
 - (f) if the person is not a permanent Australian resident:
 - (i) date of last entry into Australia; and
 - (ii) expected date of departure from Australia; and
 - (iii) name of country of residence.

11C Professional disciplinary and regulatory bodies

For the purposes of subparagraph 135A(5C)(c)(i) of the Act, the bodies mentioned in subparagraphs 11B(1)(a)(i) to (v) of this instrument are prescribed.