

Health Insurance Commission Regulations (Amendment) 1995 No. 375

EXPLANATORY STATEMENT

STATUTORY RULES 1995 No. 375

Issued by the Authority of the Minister for Human Services and Health

Health Insurance Commission Act 1973

Health Insurance Commission Regulations (Amendment)

The *Health Insurance Commission Act 1973* (the Act) provides for the functions of the Health Insurance Commission (the Commission).

Section 8E of the Act provides for the prescribing of functions of the Commission in relation to health insurance and other matters relating to health, and the manner in which the Commission is to carry out such functions.

Section 44 of the Act provides that the Governor -General may make regulations for the purposes of the Act. The Health Insurance Commission Regulations (the Principal Regulations) prescribe certain functions of the Commission.

The Regulations prescribe the functions of the Commission in relation to the Australian Childhood Immunisation Register (the Register) by inserting new provisions in the Principal Regulations. The functions include:

- (a) to establish and maintain the Register:
- (b) to record on the Register all immunisations of children under the age of 7, which are notified to the Commission by recognised immunisation providers. The providers are specified in a new Schedule 3 to the Principal Regulations:
- (c) to use information on the Register for purposes relating to the immunisation or health of children, including giving such information to authorised persons and bodies for immunisation or health-related use (for example, the conduct of recall or reminder schemes to advise parents when their child should, or should have been, immunised. Parents will be able to opt out of these schemes); and
- (d) making payments to recognised immunisation providers and specified others in relation to the administrative costs associated with their provision of immunisation information to the Commission.

The Register will provide comprehensive figures on immunisation coverage across Australia, enabling identification of groups at risk of disease through incomplete immunisation and facilitating operation or recall/reminder schemes.

Measures in the Regulations to protect the personal privacy of individuals include that information which identifies children can only be given to a recognised immunisation provider with the consent of a parent or guardian, and that such information will not include the address of the child, or of a parent or guardian. Only those authorised by the proposed Regulations will be allowed to receive immunisation information. Information must be stored securely, and must not be used for any other purpose. Information which is disclosed to parents or guardians about the immunisation of their child, cannot be disclosed by telephone.

Part V of the Act deals with the Commission's finance. Section 41B of the Act enables modifications to Part V by regulations. The modifications must be in connection with the application of Part V to the Commission's performance of functions that have been conferred on it by regulations. The Regulations make minor consequential modifications of Part V.

Details of the Regulations are set out in the Attachment.

The Regulations commenced on 1 January 1996.

ATTACHMENT

Regulation 1 - Commencement

Subregulation 1.1 provides for the commencement of the Regulations on 1 January 1996.

Regulation 2 - Amendment

Subregulation 2.1 provides for the amendment of the Health Insurance Commission Regulations (the Regulations), as set out below.

Regulation 3 - New Regulation 3Q

Subregulation 3.1 provides for the insertion of a new regulation 3Q in the Regulations.

Subregulation 3Q(1) provides for the interpretation of a number of expressions:

"authorised" - this definition defines "authorised" by cross-reference to other parts of regulation 3Q : paragraph (6)(e) enables the Commission to give immunisation information to certain authorised persons, and the manner of this authorisation is dealt with in subregulation (7);

"child" - this term is used to mean a child under the age of 7 years;

"immunisation" - this term covers the process of administering vaccines that are either registered under section 17 of the Therapeutic Goods Act or that are being used in a clinical trial and are exempt or approved under relevant provisions of that Act;

"immunisation encounter" - immunisation encounter is expressed in terms of the immunisation of a child against a vaccine preventable disease by a recognised immunisation provider. Each of the expressions "immunisation", "vaccine preventable disease" and "recognised immunisation provider" is defined in the subregulation;

"information" - for general purposes, "information" is defined to mean information contained in a record kept by the Commission in relation to the immunisation of children against vaccine preventable disease. It expressly includes names and addresses of children, dates of immunisations and their nature, and names of recognised immunisation providers. However, the term's meaning is narrowed in two respects. First, in relation to the giving of information under paragraphs (6)(a) and (b), "information" does not include address information of a child or of its parent or guardian. Secondly, in relation to the giving of information under paragraphs (6)(d) and (e), the Commission is not authorised to give information about a child or its parent or guardian where a parent or guardian has advised the Commission that he or she does not wish to receive a recall or reminder notification about the child's immunisation;

"medicare database" - this term is expressed to mean the medicare enrolment files and medicare numbers held by the Commission in relation to its medicare functions (medicare functions are vested in the Commission by section 5 of the *Health Insurance Commission Act 1973*);

"purpose relating to the immunisation or health of children" - this expression has a threefold meaning : first, the recording of information about children's immunisation; secondly, the use of such information to determine a child's last immunisation (and the nature of that immunisation) or when a child is due to be immunised; and, thirdly, the notifying of a parent or guardian (or another person exercising health responsibilities in relation to the child - for example, in relation to some aboriginal children, their local Aboriginal Medical Service) when a child is due to be immunised;

"recognised immunisation provider" - such a person is one recognised by the Commission as a provider of immunisation to children;

"the Register" - this term is used to mean the Australian Childhood Immunisation Register;

"vaccine preventable disease" - paragraph (a) lists the diseases against which the National Health and Medical Research Council recommends all Australian children be vaccinated. In addition, paragraph (b) includes, as "vaccine preventable diseases", hepatitis B and tuberculosis in relation to those special risk children so identified in the current edition of the Australian Immunisation Procedures Handbook (for example, infants born to hepatitis B carrier mothers, and Aboriginal and Torres Strait Islander newborns in regions of high incidence of tuberculosis).

Subregulation 3Q(2) sets out the new functions of the Commission. These are:

- (a) establishing and maintaining the Australian Childhood Immunisation Register;
- (b) recording on the Register all immunisation encounters notified to it by recognised immunisation providers or the bodies listed in Schedule 3 (the Schedule 3 bodies include Divisions of General Practice and State/Territory Health Departments, some of which may be in a position to centrally notify the Commission of immunisation encounters in their respective areas or States);
- (c) using information in the Register for purposes relating to the immunisation or health of children - but this function is expressed to be subject to subregulation (6), which details the circumstances in which the Commission may give information to specified persons and bodies;
- (d) make a payment to recognised immunisation providers (or persons whom they authorise to receive payments on their behalf) in relation to their administrative costs in providing notification to the Commission of their immunisation encounters or of the death of a child who is entered on the Register. The payment may also be made in respect of such death notifications made by a State or Territory registrar of deaths. Receipt of death notifications will avoid distress to parents or guardians who might otherwise receive an immunisation recall or reminder notice in respect of their child who has died.

Subregulation 3Q(3) provides the Commission with the ability, in respect of the paragraph (2)(d) administrative payment, to set off overpayments against future payments.

Subregulation 3Q(4) authorises the Commission to use the medicare database to establish and maintain the Register. This enables the Register, at any point in time, to include all children under the age of 7 years who are medicare-registered.

Subregulation 3Q(5) authorises the establishment and maintenance of the Register in a computerised form.

Subregulation 3Q(6), in the context of the Commission's use-of-Register-information function in paragraph 3Q(2)(c), authorises the Commission to divulge information to specified persons and bodies, and in specified circumstances.

Paragraph 3Q(6)(a) deals with de-identified information (that is, information other than that which would enable the identification of a particular child, and excluding address information of the child or its parent or guardian because of the qualified definition of "information" in subregulation 3Q(1)). Such information may be given by the Commission to:

- (i) a recognised immunisation provider; or
- (ii) an officer of the Department of Human Services and Health; or

(iii) an officer of a Department, or authority, of a State or Territory who has requested the information.

Paragraph 3Q(6)(b) enables the Commission to give information (but excluding address information of the child or its parent or guardian because of the earlier definition of "information") to a recognised immunisation provider who has requested information about the immunisation of a particular child for a purpose relating, to the child's immunisation or health. (An example of a purpose relating to a child's "health" might be to help determine if a child's current symptoms might be explicable on the basis of a recent immunisation). However, under paragraph 3Q(6)(b) the Commission is only authorised to provide the information sought where a parent or guardian of the child consents to the disclosure of information.

Paragraph 3Q(6)(c) enables the Commission to provide, to a parent or guardian of a child, and by means of a document posted to him or her at the address of the child, a document containing information about the child's immunisation.

Paragraph 3Q(6)(d) authorises the Commission to give information to an officer of the Department of Human Services and Health, where that officer has requested information about the immunisation of children for a purpose relating to the immunisation or health of children. The information is only able to be given for that purpose. By virtue of the second qualifying limb of the subregulation 3Q(1) definition of "information", information released under paragraph 3Q(6)(d) does not include any information about a child or a parent or guardian of the child where the parent or guardian or other person has advised the Commission that he or she wishes to opt out of immunisation recall/reminder schemes. The "other person" referred to here is the other person "exercising responsibilities in relation to the health of the child" mentioned in paragraph (c) of the definition of "purpose relating to the immunisation or health of children" in subregulation 3Q(1).

Paragraph 3Q(6)(e) provides for the giving of information by the Commission to authorised recognised immunisation providers and authorised officers or employees of a Schedule 3 body, where there has been a request for information about the immunisation of children for a purpose relating to the immunisation or health of children. As with paragraph 3Q(6)(d), the information is only able to be given for that purpose, and the advice of parents, guardians and "others" to the Commission of a wish to opt out of immunisation recall/reminder schemes will prevent disclosure or relevant identifying information under paragraph 3Q(6)(e).

Paragraph 3Q(7) deals with the authorisation of persons able to receive information under paragraph 3Q(6)(e). It provides for the Commission's Managing Director to authorise receipt of such information by a person who is a recognised immunisation provider or an officer or employee of a Schedule 3 body only where the person has agreed in writing to act in accordance with specified privacy protections, namely that he or she:

- will not use the information other than for a purpose relating to the immunisation or health of children (paragraph 3Q(7)(c));
- will not give, directly or indirectly, the information to another person (paragraph 3Q(7)(d));
- in the case of an officer or employee of a Schedule 3 body, will ensure specified security safeguards and protections against loss or misuse of information which needs to be given to another in the context of service provision to the officer or employee (paragraph 3Q(7)(e)).

The privacy obligations set out in paragraphs 3Q(7)(c), (d) and (e) must also be agreed to subsist even if the person seeking to be authorised ceases to be a recognised immunisation provider or officer or employee of a Schedule 3 body.

Subregulation 3Q(8) qualifies the scope of the obligations, under paragraphs 3Q(7)(c) and (d), regarding authorised persons' use or onforwarding of information. Paragraph 3Q(8)(a) ensures preservation of requirements to give information to, a court.

Paragraph 3Q(8)(b) ensures that a recognised immunisation provider to whom information is disclosed under paragraph 3Q(6)(e) can legitimately give the information to another person where he or she needs to do so in the course of performing the function of immunising children.

Similarly, paragraph 3Q(8)(c) ensures that an officer or employee of a Schedule 3 body to whom information is disclosed under paragraph 3Q(6)(e) can legitimately give the information to another person where he or she needs to do so in the course of performing his or her official immunisation or health-related duties.

Regulation 4 - Regulation 4A (Modification of Part V of the Act)

Subregulation 4.1 operates to add, to the introductory words to regulation 4A of the Regulations, a reference to the new regulation 3Q function so that the introductory words contain a complete list of all the Commission's functions currently conferred upon it under Part IIB of the Act, in relation to which financial provision needs to be made.

Subregulation 4.2 operates to add to the list of functions contained in inserted paragraph 32A(1)(c) of the Act, the new regulation 3Q function. The effect of the addition is that this function is to be treated as "medicare" functions for purposes of Part V of the Act other than section 32.

Regulation 5 - New Schedule 3

Subregulation 5.1 inserts Schedule 3 in the Regulations, listing - by State and Territory bodies notifying immunisation encounters to the Commission (proposed paragraph 3Q(2)(b)) and bodies to which information may be given by the Commission (proposed paragraph 3Q(6)(e)). These bodies are Divisions of General Practice and State/Territory Health Departments.