



Personally Controlled Electronic Health Records Regulation 2012¹

Select Legislative Instrument 2012 No. 129

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Personally Controlled Electronic Health Records Act 2012*.

Dated 28 June 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

TANYA PLIBERSEK
Minister for Health

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Part 1 Preliminary

1.1.1 Name of regulation

This regulation is the *Personally Controlled Electronic Health Records Regulation 2012*.

1.1.2 Commencement

This regulation commences on the day after it is registered.

1.1.3 Definitions

In this regulation:

Act means the *Personally Controlled Electronic Health Records Act 2012*.

Australian Health Practitioner Regulation Agency means the National Agency established by the National Law.

evidence of identity process means the process to confirm the identity of a healthcare provider organisation's responsible officer and organisation maintenance officer undertaken by:

- (a) if the responsible officer or organisation maintenance officer is an individual healthcare provider who is registered by a registration authority as a member of a health profession—the Australian Health Practitioner Regulation Agency; or
- (b) in any other case—the service operator.

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Healthcare Identifiers Act means the *Healthcare Identifiers Act 2010*.

organisation maintenance officer has the meaning given by paragraph 9A (3) (c) of the Healthcare Identifiers Act in relation to a seed organisation and paragraph 9A (6) (b) of that Act in relation to a network organisation.

registration authority has the meaning given by the Healthcare Identifiers Act.

Remuneration Tribunal Determination means the *Remuneration Tribunal Determination 2011/09—Remuneration and Allowances for Holders of Part-Time Public Office*, as amended from time to time.

responsible officer has the meaning given by paragraph 9A (3) (b) of the Healthcare Identifiers Act.

service operator has the meaning given by section 5 of the Healthcare Identifiers Act.

Travel Determination means the *Remuneration Tribunal Determination 2004/03—Official Travel by Office Holders*, as amended from time to time.

Note For the definitions of the following terms, see section 5 of the Act:

- healthcare provider organisation
- individual healthcare provider
- National Law
- System Operator.

1.1.4 Nominated healthcare provider

For subparagraph (c) (iii) of the definition of **nominated healthcare provider** in section 5 of the Act, the class is individuals who have been awarded a Certificate IV in Aboriginal and/or Torres Strait Islander Primary Health Care (Practice).

Section 1.1.6

1.1.5 Identifying information—individual healthcare provider

For paragraph 9 (1) (h) of the Act, the status of the healthcare identifier, assigned under paragraph 9 (1) (a) of the Healthcare Identifiers Act to an individual healthcare provider, is identifying information.

Examples

Active, deactivated or retired.

1.1.6 Identifying information—healthcare provider organisation

For paragraph 9 (2) (f) of the Act, the following information is prescribed in relation to a healthcare provider organisation:

- (a) the status of the healthcare identifier assigned under paragraph 9 (1) (a) of the Healthcare Identifiers Act to the organisation;

Examples

Active, deactivated or retired.

- (b) if applicable, the organisation's business name on the register established under section 22 of the *Business Names Registration Act 2011*;

Note Also see paragraph 9 (2) (a) of the Act, which states that the name of the healthcare provider is also identifying information.

- (c) the type of healthcare service the organisation provides to another healthcare provider or a consumer;

Examples

General practice services, public hospital services or diagnostic imaging services.

- (d) the name, date of birth and date of death (if applicable) of the organisation's responsible officer and organisation maintenance officer;
- (e) the work address, email address, phone number and fax number of the organisation's responsible officer and organisation maintenance officer;
- (f) the identifying number assigned to the organisation's responsible officer and organisation maintenance officer by the service operator;

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- (g) whether an evidence of identity process has been undertaken for an organisation's responsible officer and organisation maintenance officer;
- (h) if an evidence of identity process is being undertaken for an organisation's responsible officer and organisation maintenance officer—the name of the agency or service operator undertaking the process;
- (i) if an evidence of identity process has been undertaken for an organisation's responsible officer and organisation maintenance officer—the name of the agency or service operator that undertook the process, the outcome of the process and when the process was undertaken;
- (j) the record that specifies the network address and technical requirements permitting electronic messages to be sent to the organisation;
- (k) any other network organisation or seed organisation, within the meaning of section 9A of the Healthcare Identifiers Act, that the organisation is linked to in a network.

Part 2 The System Operator, advisory bodies and other matters

Division 2.1 Jurisdictional advisory committee

2.1.1 Application of Division 2.1

For section 23 of the Act, this Division prescribes matters in relation to the jurisdictional advisory committee.

2.1.2 Remuneration of members

- (1) The remuneration for members of the jurisdictional advisory committee is the amount that would be payable if Schedule B to the Remuneration Tribunal Determination applied to:
 - (a) a member of the committee; or
 - (b) for the period a member is chairperson—a chairperson of the committee.
- (2) However, a member or chairperson that is already remunerated by the Commonwealth, a State or Territory for work on the committee is not entitled to remuneration under this section.

2.1.3 Allowances for members

The travel allowance payable to a member who is required to travel for official business is the amount that would be payable if the member were an office holder mentioned in the Travel Determination, according to the Tier 1 rate.

2.1.4 Leave of absence for members

Leave of absence may be granted to a member on the terms and conditions determined by:

- (a) if the member represents the Commonwealth—the Minister; or

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- (b) if the member represents a State or Territory—the head of the Health Department of the State or Territory that appointed the member.

2.1.5 Disclosure of interests by members

If a member of the committee is aware that he or she has a direct or indirect material personal interest (whether financial or not) in a matter being considered, or about to be considered, at a meeting of the committee:

- (a) the member must without delay, disclose the interest at, or before, the meeting of the committee; and
- (b) the member must not be present during any consideration of the committee about the matter, or take part in any decision of the committee about the matter, unless the committee decides otherwise; and
- (c) the disclosure must be recorded in the minutes of the meeting.

2.1.6 Procedures generally

When performing its functions, the committee must act with as little formality and as quickly as the requirements of the Act, this regulation, the PCEHR Rules, and proper consideration of the matters before the committee, allow.

2.1.7 Meetings

- (1) The committee must have at least 4 meetings in a year.
- (2) If all members of the committee consent, additional meetings may be held.
- (3) If consented to by all members of the committee, a meeting may be held using any technology that allows all members to reasonably participate in the meeting.

2.1.8 Quorum and voting

- (1) There is a quorum at a meeting of the committee when the member to represent the Commonwealth and at least 6 other members are present.

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- (2) A decision is made at a committee meeting by a majority of votes of the members present and voting.
- (3) The member chairing a committee meeting has a deliberative vote and, if the votes are equal, also has a casting vote.

2.1.9 Record of meetings

The committee must:

- (a) keep a written record of the committee's meetings and resolutions; and
- (b) give the System Operator, the Minister and the head of each State and Territory Health Department a report in writing in relation to:
 - (i) any matter raised by the System Operator for the committee to consider; and
 - (ii) any matter agreed by the committee to be considered that relates to its functions.

2.1.10 Out of session consideration

The committee may consider a matter relating to its functions outside a meeting in any way that does not involve a formal meeting and voting.

Examples

By correspondence, email or phone.

2.1.11 Obtaining information

The committee may obtain information about a matter in any way it considers appropriate unless the System Operator directs the committee in relation to the way in which information is to be obtained.

2.1.12 Subcommittees

The committee may, at the request of the System Operator, or on the agreement of all members of the committee, set up a subcommittee of members to help the committee to perform its functions.

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2.1.13 Other procedures

The committee may decide its own procedure on any matter that is not mentioned in the Act or this regulation.

Division 2.2 Independent advisory council**2.2.1 Application of Division 2.2**

- (1) For section 29 of the Act, sections 2.2.2 and 2.2.3 prescribe the remuneration and the allowances to be paid to members of the independent advisory council.
- (2) For section 37 of the Act, sections 2.2.4 to 2.2.11 prescribe the operation and procedures of the council.

2.2.2 Remuneration of members

The remuneration to be paid is the amount that would be payable if Schedule B to the Remuneration Tribunal Determination applied to:

- (a) a member of the independent advisory council; or
- (b) a chairperson of the council.

Note This section does not apply if the remuneration to be paid to a member is determined by the Remuneration Tribunal for the purposes of subsection 29 (1) of the Act.

2.2.3 Allowances for members

The travel allowance payable to a member who is required to travel for official business is the amount that would be payable if the member were an office holder mentioned in the Travel Determination, according to the Tier 1 rate.

2.2.4 Procedures generally

When performing its functions, the council must act with as little formality and as quickly as the requirements of the Act, this regulation, the PCEHR Rules, and proper consideration of the matters before the council, allow.

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2.2.5 Meetings

- (1) The council must have at least 4 meetings in a year.
- (2) If all members of the council consent, additional meetings may be held.
- (3) If consented to by all members of the council, a meeting may be held using any technology that allows all members to reasonably participate in the meeting.

2.2.6 Quorum and voting

- (1) There is a quorum at a meeting of the council, when at least 6 members are present.
- (2) A decision is made at a council meeting by a majority of votes of the members present and voting.
- (3) The Chair of the council has a deliberative vote and, if the votes are equal, also has a casting vote.

2.2.7 Record of meetings

The council must:

- (a) keep a written record of the council's meetings and resolutions; and
- (b) give the System Operator, the Minister and the head of each State and Territory Health Department a report in writing in relation to:
 - (i) any matter raised by the System Operator for the committee to consider; and
 - (ii) any matter agreed by the council to be considered that relates to its functions.

2.2.8 Out of session consideration

The council may consider a matter relating to its functions outside a meeting in any way that does not involve a formal meeting and voting.

Examples

By correspondence, email or phone.

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2.2.9 Obtaining information

The council may obtain information about a matter in any way it considers appropriate unless the System Operator directs the council in relation to the way in which information is to be obtained.

2.2.10 Subcouncils

The council may, at the request of the System Operator, or on the agreement of all members of the council, set up a subcouncil of members to help the council to perform its functions.

2.2.11 Other procedures

The council may decide its own procedure on any matter that is not mentioned in the Act or this regulation.

Part 3 Registration

3.1.1 Registration of a consumer by the System Operator

For subsection 41 (4) of the Act, the following State and Territory laws are prescribed:

- (a) sections 17 and 42J of the *Public Health Act 1991* of New South Wales;
- (b) sections 56 and 92 of the *Public Health Act 2010* of New South Wales;
- (c) sections 55, 77 to 79, 105 to 107, 175 to 177, 220 to 222, 238 to 240 and 266 to 268 of the *Public Health Act 2005* of Queensland;
- (d) sections 110 and 111 of the *Public Health Act 1997* of the Australian Capital Territory.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.