



New South Wales

Health Services Regulation 2008

under the

Health Services Act 1997

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Health Services Act 1997*.

REBA MEAGHER, M.P.,
Minister for Health

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Health Services Regulation 2003* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the appointment of visiting practitioners,
- (b) the transfer of accrued leave entitlements of persons transferring employment between the NSW Health Service and affiliated health organisations,
- (c) administrators of board governed health corporations,
- (d) the persons that are permitted to provide ambulance transport,
- (e) appeals to the Minister for Health in respect of certain decisions of public health organisations,
- (f) the management of Samaritan Funds,
- (g) the description of certain area health services,
- (h) savings and formal matters.

This Regulation is made under the *Health Services Act 1997*, including sections 18 (2), 52 (5), 64A (2) and (3), 67E (3) (e), 133 (3) and 140 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Health Services Regulation 2008

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Health Services Regulation 2008*.

2 Commencement

This Regulation commences on 1 September 2008.

Note. This Regulation replaces the *Health Services Regulation 2003* which is repealed on 1 September 2008 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Interpretation

- (1) In this Regulation:
the Act means the *Health Services Act 1997*.
- (2) Notes in this Regulation do not form part of this Regulation.

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Part 2 Visiting practitioners

Part 2 Visiting practitioners

4 Definitions

In this Part:

clinical privileges has the same meaning as it has in section 105 (2) of the Act.

medical and dental appointments advisory committee or *advisory committee*, in relation to a public health organisation, means a committee:

- (a) established by the public health organisation, and
- (b) having the function of advising the public health organisation in relation to the appointment of persons as visiting practitioners to the public health organisation and the clinical privileges that should be granted to those persons.

5 Advertising of available appointments as visiting practitioners

- (1) A public health organisation that decides to make available an appointment as a visiting practitioner must advertise the availability of the appointment in at least one newspaper circulating generally in New South Wales. The public health organisation may, in addition, advertise the availability in other ways.
- (2) An application for appointment as a visiting practitioner is to be made in writing to the public health organisation concerned and is to include:
 - (a) a statement setting out, in a manner that satisfies the public health organisation, the clinical privileges sought by the applicant, and
 - (b) an authority for the medical and dental appointments advisory committee of the public health organisation to obtain information as to the applicant's past performance as a medical practitioner or dentist, as the case may be.
- (3) On receipt of the application, the public health organisation is to refer the application to the advisory committee for advice.
- (4) Subclauses (1)–(3) do not apply:
 - (a) to an appointment as a visiting practitioner that is to be held as part of the duties of a person who is to be or has been appointed to a teaching position at a tertiary institution, or
 - (b) to an appointment as a visiting practitioner that is to be held by a person for a period of not more than 6 months, or
 - (c) to any appointment as a visiting practitioner, to the extent that the Director-General determines that the provisions of those subclauses are not to apply.

- (5) A determination under subclause (4) (c):
 - (a) may be made in respect of a particular appointment or in respect of appointments of any specified kind or description, and
 - (b) must be made in writing.

6 Appointment and conditions to be in written agreement

- (1) A person is to be appointed as a visiting practitioner to a public health organisation by written agreement between the person and the public health organisation.
- (2) The written agreement must specify the conditions to which the appointment is subject, including the clinical privileges of the visiting practitioner.
- (3) However, subclause (2) does not require conditions prescribed by or under the Act to be included in the written agreement.

7 Term of appointment

- (1) The period for which a person may be appointed as a visiting practitioner is such period (not exceeding 5 years) as the public health organisation determines.
- (2) A person is, if otherwise qualified, eligible for re-appointment from time to time.
- (3) Despite subclause (1), a person may be appointed as a visiting practitioner for the duration of the person's appointment to a teaching position at a tertiary institution (or for such lesser period as the public health organisation may determine) if the public health organisation has first obtained the advice of the medical and dental appointments advisory committee about the length of the appointment.
- (4) Despite subclause (1), a person may be appointed as a visiting practitioner for a period exceeding 5 years, but not exceeding 10 years, if the Director-General, in the particular circumstances of the case, approves the additional period of appointment.

8 Resignation

- (1) A person may resign an appointment as a visiting practitioner by giving 3 months' written notice of resignation to the public health organisation concerned.
- (2) However, a public health organisation may waive that requirement for notice or accept a lesser period of time for the giving of such notice if, in the opinion of the public health organisation, it is reasonable to do so.

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Clause 9 Health Services Regulation 2008

Part 3 Transfer of accrued leave entitlements

Part 3 Transfer of accrued leave entitlements

9 Definitions

In this Part:

accrued leave means leave of any description that is owing to a person (but not taken), and includes any leave to which a person would have been entitled in the event of illness.

non-declared AHO means an affiliated health organisation that is not a declared affiliated health organisation within the meaning of section 62A of the Act.

10 Transfer of accrued leave—moving from non-declared AHO to NSW Health Service

(1) **Period between employment must be continuous**

This clause applies in relation to a person only if the person's employment in the NSW Health Service immediately follows the person's employment with a non-declared AHO. However, this clause does apply in relation to a person's accrued long service leave entitlement if the break in employment is no longer than 2 months.

(2) **Transfer of existing leave balance**

If a person:

- (a) ceases to be employed by a non-declared AHO, and
- (b) commences employment in the NSW Health Service in connection with a public health organisation,

the person is taken to have the amount of any accrued leave to which the person was entitled immediately before ceasing to be employed by the non-declared AHO.

(3) **Election to cash-out accrued annual or long service leave**

In the case of any such accrued leave that comprises annual leave or long service leave, the person may, instead of retaining the entitlement to that accrued leave, elect to be paid the money value of that accrued leave.

(4) **Limit on how much accrued annual leave can be retained**

The amount of any accrued annual leave that a person may retain under this clause cannot, except with the approval of the Director-General, exceed the amount of annual leave that the person was entitled to over a 2-year period as an employee of the non-declared AHO.

(5) Liability for cost of existing annual or long service leave

The non-declared AHO is liable for the cost of any annual or long service leave entitlements in respect of the person concerned that have accrued up until the date on which the person ceases to be employed by the non-declared AHO.

(6) Orders under section 64 of the Act

This clause does not apply in relation to a person who ceases to be employed by a non-declared AHO by the operation of an order under section 64 of the Act.

11 Transfer of accrued leave—moving from NSW Health Service to non-declared AHO**(1) Period between employment must be continuous**

This clause applies in relation to a person only if the person's employment with a non-declared AHO immediately follows the person's employment in the NSW Health Service. However, this clause does apply in relation to a person's accrued long service leave entitlement if the break in employment is no longer than 2 months.

(2) Transfer of existing leave balance

If a person:

- (a) ceases to be employed in the NSW Health Service in connection with a public health organisation, and
- (b) commences employment with a non-declared AHO,

the person is taken to have the amount of any accrued leave to which the person was entitled immediately before ceasing to be employed in the NSW Health Service.

(3) Election to cash-out accrued annual or long service leave

In the case of any such accrued leave that comprises annual leave or long service leave, the person may, instead of retaining the entitlement to that accrued leave, elect to be paid the money value of that accrued leave.

(4) Limit on how much accrued annual leave can be retained

The amount of any accrued annual leave that a person may retain under this clause cannot, except with the approval of the non-declared AHO, exceed the amount of annual leave that the person was entitled to over a 2-year period as a member of the NSW Health Service.

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Clause 11 Health Services Regulation 2008

Part 3 Transfer of accrued leave entitlements

(5) **Liability for cost of existing annual or long service leave**

The Government of New South Wales is liable for the cost of any annual or extended leave entitlements in respect of the person concerned that have accrued up until the date on which the person ceases to be employed in the NSW Health Service.

Part 4 Miscellaneous

12 Area health service descriptions

- (1) A reference in Column 2 of Schedule 1 to the Act to *Sydney (part)*, in relation to the Sydney South West Area Health Service, is a reference to all that western sector of the local government area of Sydney created by a boundary which commences at the most northerly point where the eastern boundary of CCD 1 402 003 intersects with the western boundary of CCD 1 400 114 and which then follows in a generally southerly direction the eastern boundaries of CCDs 1 400 205, 1 402 006, 1 402 013, 1 400 801, 1 400 810, 1 400 811, 1 400 901, 1 400 904, 1 400 905, 1 400 906, 1 400 907, 1 400 908, 1 400 914, 1 400 915, 1 400 706, 1 400 607 and 1 400 615 and ending where CCD 1 400 613 intersects with the boundary of the local government area of Marrickville.
- (2) A reference in Column 2 of Schedule 1 to the Act to *Sydney (part)*, in relation to the South Eastern Sydney and Illawarra Area Health Service, is a reference to all that eastern sector of the local government area of Sydney created by a boundary which commences at the most northerly point where the western boundary of CCD 1 400 114 intersects with the eastern boundary of CCD 1 402 003 and which then follows in a generally southerly direction the western boundaries of CCDs 1 402 018, 1 402 010, 1 402 017, 1 402 016, 1 402 008, 1 402 020, 1 401 212, 1 401 217, 1 401 215, 1 401 214, 1 401 211, 1 401 112, 1 401 113, 1 401 114 and 1 401 008 until it meets the boundary of the local government area of Randwick, then generally westerly following the northern boundaries of CCDs 1 400 715, 1 400 606 and 1 400 608, ending at the most south westerly point of CCD 1 400 608 where it intersects with the boundary of the local government area of Botany Bay.
- (3) In this clause:
CCD means a Census Collection District determined by the Australian Bureau of Statistics for the 2001 Census of Population and Housing.

13 Provisions with respect to administrators

- (1) In this clause:
administrator means an administrator of a statutory health corporation appointed under section 52 of the Act.
- (2) On the expiration of a person's appointment or reappointment as administrator, the Governor may, by order published in the Gazette, reappoint the person as administrator for a further period or appoint another person as administrator.

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Clause 14 Health Services Regulation 2008

Part 4 Miscellaneous

- (3) The Governor may, by order published in the Gazette:
 - (a) remove from the office of administrator any person appointed to that office, or
 - (b) appoint a person to fill a vacancy in the office of administrator.
- (4) The Minister may appoint a person to act in the office of an administrator during the illness or absence of the administrator, and the person, while so acting, has and may exercise all the functions of the administrator and is taken to be administrator.
- (5) The Minister may remove from the office of administrator any person appointed to act in that office under subclause (4).
- (6) If the administrator of a statutory health corporation was, immediately before his or her appointment under section 52 (1) (c) of the Act, the chief executive of the corporation, the person is declared to be an unattached officer of the corporation.
- (7) An unattached officer of a statutory health corporation continues to be employed by the corporation, in accordance with section 51 (6) of the Act, until the person ceases to be the administrator of the corporation.

14 Provision of ambulance transport

For the purposes of section 67E (3) (e) of the Act, the Sydney West Area Health Service, in respect of services provided or operations conducted by the NSW newborn & paediatric Emergency Transport Service (*NETS*), is a person to whom section 67E does not apply.

15 Appeals concerning appointment decisions

- (1) An appeal under section 106 of the Act may be withdrawn at any time before the determination of the appeal by the appellant giving written notice of the withdrawal to the Minister in the form and manner approved by the Minister from time to time.
- (2) The Committee is not required to determine an appeal that has been withdrawn.

16 Samaritan Funds

- (1) In this clause:

Samaritan Fund of a public health organisation means the Samaritan Fund of the organisation referred to in section 133 (2) of the Act.

Special Purposes and Trust Fund, in relation to a public health organisation, means the fund of that name established by the public health organisation.

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- (2) The Samaritan Fund of a public health organisation is to be kept as a separate account in its Special Purposes and Trust Fund.
 - (3) The Minister may determine the manner in which the accounts for a Samaritan Fund are to be kept and the circumstances in which those accounts are to be audited.
 - (4) Money is not to be withdrawn from the Samaritan Fund of a public health organisation except by, or with the written approval of, the chief executive (or person authorised in writing by the chief executive) of the public health organisation.
 - (5) Money is not to be withdrawn from the Samaritan Fund of a public health organisation except for payment to, or for the purchase of items for, a necessitous patient or necessitous outgoing patient. The payment or purchase may be made only if it is essential to the well-being of the patient.

17 Savings

Any act, matter or thing that, immediately before the repeal of the *Health Services Regulation 2003*, had effect under that Regulation continues to have effect under this Regulation.