

# Public Health (General) Regulation 2002

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New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Private Health Facilities Act 2007 No 9](#) (not commenced)
  - [Public Health Amendment \(Deaths Involving Anaesthetics\) Regulation 2009 \(568\)](#) (LW 11.12.2009) (not commenced — to commence on 1.1.2010)

### Authorisation

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New South Wales

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# Public Health (General) Regulation 2002



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Public Health (General) Regulation 2002*.

### 2 Commencement

This Regulation commences on 1 September 2002.

#### Note—

This Regulation replaces Parts 2, 2A and 7 of the *Public Health Regulation 1991* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**Department** means the Department of Health.

**the Act** means the *Public Health Act 1991*.

(2) A reference in this Regulation to a publication is a reference to the publication as in force for the time being.

### 4 Notes

Notes in the text of this Regulation do not form part of this Regulation.

## Part 2 Sexually transmissible medical conditions

### 5 Information to patients

For the purposes of section 12 (1) of the Act, a medical practitioner is required in relation to a sexually transmissible medical condition to provide information to the patient on such of the following matters as are relevant in a particular case:

- (a) means of minimising the risk of infecting other people,
- (b) public health implications of the condition,

- (c) any responsibilities under section 11 of the Act, including any precautions considered reasonable,
- (d) responsibilities under section 13 of the Act,
- (e) diagnosis and prognosis,
- (f) treatment options.

### **Part 3 Scheduled medical conditions**

#### **6 Records of scheduled medical conditions**

For the purposes of section 14 (2) (a) of the Act, the following particulars are required to be recorded in relation to the scheduled medical condition indicated:

- (a) in relation to birth—the particulars required for the completion of the “NSW Midwives Data Collection Form” published by the Department,
- (b) in relation to perinatal death—the particulars in Schedule 1,
- (c) in relation to sudden infant death syndrome—the particulars in Schedule 2,
- (d) in relation to all Category 2 medical conditions (including AIDS)—the particulars required for the completion of the “Doctor/Hospital Notification Form” published by the Department,
- (e) in relation to AIDS—the particulars required for the completion of the “AIDS Notification Form” published by the Department,
- (f) in relation to a congenital malformation, cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria in a child under the age of 1 year or pregnancy with a child having a congenital malformation, cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria—the particulars required for the completion of the form entitled “Notification of a scheduled congenital condition diagnosed in an infant” or “Notification of a scheduled congenital condition diagnosed by prenatal diagnosis”, as applicable, both published by the Department.

#### **7 Period for keeping of records**

For the purposes of section 14 (2) (b) of the Act, the prescribed period is, where the person about whom the particulars have been recorded:

- (a) was 18 years of age or over—10 years, or
- (b) was less than 18 years of age—10 years starting on the person’s eighteenth birthday, or
- (c) was still-born—10 years starting on the date of birth, or

(d) died before turning 18—10 years starting on the date of the person's death.

#### **8 Notification of test results—prescribed tests**

For the purposes of section 16 (1) (a) of the Act, any diagnostic test on the following substances, or any constituent of the following substances, is a prescribed test:

- (a) human blood,
- (b) human cells,
- (c) human tissue,
- (d) other bodily substances.

#### **9 Notification of test results—time limit for providing information**

For the purposes of section 16 (4) of the Act, the prescribed period is 72 hours from the time when the person requested to carry out the test has asked the medical practitioner concerned to provide the relevant information.

#### **10 Protection of identity—exceptions**

- (1) For the purposes of section 17 (1) (b) of the Act, the prescribed exception exists when the patient:
  - (a) is receiving hospital services or other health services provided by a public hospital, or
  - (b) is a patient within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*, or
  - (c) consents to the disclosure of his or her name and address in the communication.
- (2) For the purposes of section 17 (3) (e) of the Act, information may be disclosed by a person to the Director-General if the person has reasonable grounds to believe that failure to provide the information could place the health of the public at risk.

#### **11 Notification of death from scheduled medical condition**

For the purposes of section 20 (c) of the Act, the prescribed additional particulars are:

- (a) the date of birth and the sex of the deceased, and
- (b) the date, place and cause of death, and
- (c) the address of the person who certified the cause of death.

#### **12 Advice to Category 2 or 3 patients**

The Director-General, or a registered medical practitioner authorised under this clause by

the Director-General, may notify a person suffering from a Category 2 or 3 medical condition of measures to be taken, and activities to be avoided, in order to minimise the danger of passing the medical condition to another person.

### **13 Advice to Category 2, 3 or 4 contacts**

The Director-General may notify a person who the Director-General believes may have been in contact with a person suffering from a Category 2, 3 or 4 medical condition of measures to be taken, and activities to be avoided, in order to minimise the danger of the first person contracting the condition or passing it to a third person.

## **Part 4 Control of vaccine preventable diseases**

### **14 Classes of children to which Part 3A of the Act applies**

For the purposes of Part 3A of the Act, the following classes of children are prescribed:

- (a) children who enrol, or have enrolled, for attendance at a kindergarten class in a school after 1 January 1994,
- (b) children who enrol, or have enrolled, for attendance at a child care facility after that date.

### **15 Additional child care facilities for the purposes of Part 3A of the Act**

For the purposes of Part 3A of the Act, the following are declared to be child care facilities:

- (a) a playgroup affiliated to the Playgroup Association of N.S.W. Incorporated,
- (b) a child care service for pre-school children to which Division 1 of Part 3 of the [Children \(Care and Protection\) Act 1987](#) would apply but for the fact that the service is provided at the premises of a government school or non-government school.

### **16 Period for which immunisation certificates and register entries are to be retained**

- (1) For the purposes of section 42B (5) of the Act, the period for which a principal of a school must retain an immunisation certificate is 2 years from the date on which the child concerned has ceased to attend the school, unless the principal is earlier required to forward the certificate under section 42B (2) of the Act.
- (2) For the purposes of section 42C (5) of the Act, the period for which a director of a child care facility must retain an entry in the register to be kept by the director is 2 years from the date on which the child concerned has ceased to attend the facility.

### **17 Responsibilities of directors of child care centres with respect to immunisation**

- (1) For the purposes of section 42C (1) of the Act, a subsequent occasion is whenever the child concerned reaches the age, designated by the Director-General for a specified vaccine preventable disease, at which it is appropriate for a child to be immunised or

further immunised against that disease.

- (2) On designating a subsequent occasion for the purposes of section 42C (1) of the Act, the Director-General must notify the designation to the directors of all child care facilities likely to be affected by it. The notification may be by such means as the Director-General considers appropriate.

## **Part 5 Miscellaneous**

### **18 Public authorities to notify public health risks**

If a public authority considers, on reasonable grounds, that a situation has arisen in which the health of the public is, or is likely to be, at risk, the public authority is to notify the Medical Officer of Health of the district in which the area for which the public authority is responsible is located.

### **19 Particulars of notifiable diseases**

For the purposes of section 69 of the Act, a chief executive officer of a hospital is to provide the Director-General:

- (a) concerning persons suffering from cancer—with the particulars required for the completion of the “Cancer Notification Form” published by the New South Wales State Cancer Council, or
- (b) concerning children under the age of 1 year who have a congenital malformation, cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria or persons who are or were pregnant with a child having a congenital malformation, cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria—with the particulars required for the completion of the form entitled “Notification of a scheduled congenital condition diagnosed in an infant” or “Notification of a scheduled congenital condition diagnosed by prenatal diagnosis”, as applicable, both published by the Department, or
- (c) concerning persons who have any other notifiable disease—with the particulars required for the completion of the “Doctor/Hospital Notification Form” published by the Department.

### **20 Disclosure of information—lawful excuse**

For the purposes of section 75 (2) (e) of the Act, circumstances in which it is a lawful excuse to disclose information include circumstances where the Chief Health Officer, Department of Health, or any person authorised by the Chief Health Officer, has approved (with or without conditions) the disclosure to a specified person or class of persons of information consisting of epidemiological data of a specified kind and the disclosure is in accordance with that approval.



### **20A Prescribed electrophysical treatment**

For the purposes of section 10AD of the Act, the following electrophysical treatments are prescribed:

- (a) shortwave and microwave diathermy,
- (b) electrical stimulation by interferential current.

### **20B Minimum qualifications for director of nursing at nursing home**

For the purposes of section 52 (2) of the Act, the prescribed minimum necessary qualifications for a registered nurse to be appointed as a director of nursing at a nursing home are:

- (a) 5 years post-basic or post-graduate nursing experience, and
- (b) 2 years full-time administrative experience in a position of, or more senior than that of, nursing unit manager in a hospital or nursing home.

### **20C Prescribing of optical appliances**

For the purposes of section 10AE (1) (c) of the Act:

- (a) orthoptists who are registered with the Australian Orthoptists Registration Body Pty Ltd are declared to be authorised persons, and
- (b) the conditions and limitations with which an authorised person referred to in paragraph (a) must comply are that the authorised person may prescribe only spectacle lenses and only to someone who:
  - (i) has had, within the previous 6 months, an ocular health examination conducted by an optometrist or a registered medical practitioner practising as an ophthalmologist, and
  - (ii) has been referred in writing to the authorised person by the optometrist or medical practitioner.

### **21 Vermin**

An occupier of premises must take reasonable measures to keep the premises free from fleas, other disease-carrying insects, rats and mice (except any such animals kept as pets).

Maximum penalty: 20 penalty units.

### **22 Sleeping rooms**

- (1) The occupier of premises must not allow any room or cubicle within the premises to be used for the purposes of sleeping accommodation unless:

- (a) the room or cubicle has a floor area of 5.5 square metres or more for each person sleeping in it (in the case of long-term sleeping accommodation) or 2 square metres or more for each person sleeping in it (in any other case), or
- (b) the room or cubicle has been exempted by the Minister under subclause (2) and complies with any conditions attached to the exemption, or
- (c) the premises are private domestic premises.

Maximum penalty: 5 penalty units.

- (2) The Minister may, by order in writing, exempt an occupier in relation to any room or cubicle from the requirements of subclause (1), either conditionally or unconditionally, if satisfied that the exemption will not result in any adverse effect on the health of persons sleeping in the room or cubicle.
- (3) In this clause, a reference to long-term sleeping accommodation is a reference to accommodation that is in fact provided to the same person or persons for a period of more than 28 consecutive days, or that is the subject of an agreement for its provision to the same person or persons for a period of more than 28 consecutive days.

### **23 Anthrax**

A person must not sell, offer for sale, consign, transmit, deliver for sale, use in any manufacturing process, or receive for the purposes of business any hide, portion of a hide, hair or wool of any animal which is suffering, or which has died, from anthrax.

Maximum penalty: 20 penalty units.

### **24 Approvals by Director-General**

- (1) An application for an approval by the Director-General under this Regulation is to be accompanied by such information relevant to the application as is required by the Director-General.
- (2) An approval given by the Director-General for the purposes of this Regulation:
  - (a) may be given subject to conditions specified in the instrument giving the approval, and
  - (b) does not operate, or ceases to operate, if there is a failure to comply with any such conditions.

### **25 Guidelines and codes**

- (1) A copy of any guideline, or code of practice, published by the Department and referred to in this Regulation is to be made available by the Department (on the payment of such reasonable charge (if any) as the Director-General determines) to any member of the public who requests it.

(2) Subclause (1) does not apply to the code of conduct set out in Schedule 3.

**25A Code of conduct for certain health practitioners**

The code of conduct set out in Schedule 3 is prescribed under section 10AM of the Act as a code of conduct for the provision of health services by:

- (a) health practitioners who are not required to be registered under a health registration Act (including de-registered health practitioners), and
- (b) health practitioners who are registered under a health registration Act who provide health services that are unrelated to their registration.

**25B Notice to be given by health practitioners who are de-registered or subject to prohibition orders**

- (1) For the purposes of section 10AK (2) of the Act, the notification to be given by a de-registered health practitioner to a person to whom the health practitioner intends to provide a health service or, if that person is under 16 years of age or under guardianship, to a parent or guardian of that person, is a notice in writing that sets out the following:
  - (a) the type of registration the health practitioner held prior to becoming a de-registered health practitioner,
  - (b) the date the health practitioner became a de-registered health practitioner,
  - (c) the reason the health practitioner became a de-registered health practitioner,
  - (d) the period for which the health practitioner will be a de-registered health practitioner.
- (2) For the purposes of section 10AK (2) of the Act, the notification to be given by a de-registered health practitioner to the health practitioner's employer is a copy of the relevant decision and orders relating to the de-registration of the health practitioner.
- (3) For the purposes of section 10AK (3) of the Act, the notification to be given by a health practitioner who is subject to a prohibition order to a person to whom the health practitioner intends to provide a health service or, if that person is under 16 years of age or under guardianship, to a parent or guardian of that person, is a notice in writing that sets out the following:
  - (a) the type of health service or services the practitioner was providing prior to becoming subject to the prohibition order,
  - (b) the date of the prohibition order,
  - (c) any health service the health practitioner has been prohibited from practising under the prohibition order,

- (d) the reason the health practitioner is subject to the prohibition order,
  - (e) the period for which the health practitioner is subject to the prohibition order.
- (4) For the purposes of section 10AK (3) of the Act, the notification to be given by a health practitioner who is subject to a prohibition order to the health practitioner's employer is a copy of the relevant decision and orders relating to the prohibition order.

## **26 Savings**

Anything done or omitted under Part 2, 2A or 7 of the *Public Health Regulation 1991* is taken to have been done or omitted under this Regulation.

## **Schedule 1 Perinatal deaths: particulars**

(Clause 6 (b))

### **1 Particulars**

- (1) Full name of mother of deceased infant.
- (2) Usual residential address of mother at time of birth of deceased infant.
- (3) Date of birth of mother.
- (4) Date of first day of mother's last menstrual period (if known) and estimated gestational age of deceased infant at time of birth.
- (5) Date of birth of infant.
- (6) Vital status at time of birth: liveborn or stillborn.
- (7) Date of death (if liveborn).
- (8) Name of hospital of birth, or address of place of birth (if not a hospital).
- (9) For liveborn infant, name of hospital where death occurred, or address of place of death (if not a hospital).
- (10) Sex of infant.
- (11) Plurality: single or multiple birth.
- (12) If multiple birth: total number of infants at that birth.
- (13) If multiple birth: the number of the deceased infant in the birth order.
- (14) Birth weight in grams.
- (15) Cause of death, as recorded on Medical Certificate of Cause of Perinatal Death.

## Schedule 2 Sudden infant death syndrome: particulars

(Clause 6 (c))

### 1 Particulars

- (1) Full name of mother of deceased infant.
- (2) Usual residential address of mother at time of birth of infant.
- (3) Date of birth of mother.
- (4) Full name of infant.
- (5) Date of birth of infant.
- (6) Name of hospital of birth, or address of place of birth (if not a hospital).
- (7) Sex of infant.
- (8) Usual residential address of infant.
- (9) Address of place at which infant was found deceased or moribund.
- (10) Date of death of infant.

## Schedule 3 Code of conduct

(Clause 25A)

### 1 Definitions

In this code of conduct:

**health practitioner**, **health registration Act** and **health service** have the same meanings as in the [Health Care Complaints Act 1993](#).

**Note—**

The [Health Care Complaints Act 1993](#) defines those terms as follows:

**health practitioner** means a natural person who provides a health service (whether or not the person is registered under a health registration Act).

**health registration Act** means any of the following Acts:

*Chiropractors Act 2001*

*Dental Technicians Registration Act 1975*

*Dental Practice Act 2001*

*Medical Practice Act 1992*

*Nurses and Midwives Act 1991*

*Optical Dispensers Act 1963*

*Optometrists Act 2002*

*Osteopaths Act 2001*

*Pharmacy Practice Act 2006*

*Physiotherapists Act 2001*

*Podiatrists Act 2003*

*Psychologists Act 2001.*

**health service** includes the following services, whether provided as public or private services:

- (a) medical, hospital and nursing services,
- (b) dental services,
- (c) mental health services,
- (d) pharmaceutical services,
- (e) ambulance services,
- (f) community health services,
- (g) health education services,
- (h) welfare services necessary to implement any services referred to in paragraphs (a)–(g),
- (i) services provided by podiatrists, chiropractors, osteopaths, optometrists, physiotherapists, psychologists and optical dispensers,
- (j) services provided by dietitians, masseurs, naturopaths, acupuncturists, occupational therapists, speech therapists, audiologists, audiometrists and radiographers,
- (k) services provided in other alternative health care fields,
- (k1) forensic pathology services,
- (l) a service prescribed by the regulations as a health service for the purposes of this Act.

## **2 Application of code of conduct**

This code of conduct applies to the provision of health services by:

- (a) health practitioners who are not required to be registered under a health registration Act (including de-registered health practitioners), and
- (b) health practitioners who are registered under a health registration Act who provide health services that are unrelated to their registration.

**Note—**

Health practitioners may be subject to other requirements relating to the provision of health services to which this Code applies, including, for example, requirements imposed by Part 2A of the Act and the regulations under the Act relating to skin penetration procedures.

**3 Health practitioners to provide services in safe and ethical manner**

- (1) A health practitioner must provide health services in a safe and ethical manner.
- (2) Without limiting subclause (1), health practitioners must comply with the following principles:
  - (a) a health practitioner must maintain the necessary competence in his or her field of practice,
  - (b) a health practitioner must not provide health care of a type that is outside his or her experience or training,
  - (c) a health practitioner must prescribe only treatments or appliances that serve the needs of the client,
  - (d) a health practitioner must recognise the limitations of the treatment he or she can provide and refer clients to other competent health practitioners in appropriate circumstances,
  - (e) a health practitioner must recommend to his or her clients that additional opinions and services be sought, where appropriate,
  - (f) a health practitioner must assist his or her clients to find other appropriate health care professionals, if required and practicable,
  - (g) a health practitioner must encourage his or her clients to inform their treating medical practitioner (if any) of the treatments they are receiving,
  - (h) a health practitioner must have a sound understanding of any adverse interactions between the therapies and treatments he or she provides or prescribes and any other medications or treatments, whether prescribed or not, that the health practitioner is aware the client is taking or receiving,
  - (i) a health practitioner must ensure that appropriate first aid is available to deal with any misadventure during a client consultation,

- (j) a health practitioner must obtain appropriate emergency assistance (for example, from the Ambulance Service) in the event of any serious misadventure during a client consultation.

#### **4 Health practitioners diagnosed with infectious medical condition**

- (1) A health practitioner who has been diagnosed with a medical condition that can be passed on to clients must ensure that he or she practises in a manner that does not put clients at risk.
- (2) Without limiting subclause (1), a health practitioner who has been diagnosed with a medical condition that can be passed on to clients should take and follow advice from an appropriate medical practitioner on the steps to be taken to modify his or her practice to avoid the possibility of transmitting that condition to clients.

#### **5 Health practitioners not to make claims to cure certain serious illnesses**

- (1) A health practitioner must not hold himself or herself out as qualified, able or willing to cure cancer and other terminal illnesses.
- (2) A health practitioner may make a claim as to his or her ability or willingness to treat or alleviate the symptoms of those illnesses if that claim can be substantiated.

#### **6 Health practitioners to adopt standard precautions for infection control**

- (1) A health practitioner must adopt standard precautions for the control of infection in his or her practice.
- (2) Without limiting subclause (1), a health practitioner who carries out a skin penetration procedure within the meaning of section 51 (3) of the Act must comply with the relevant regulations under the Act in relation to the carrying out of the procedure.

#### **7 Appropriate conduct in relation to treatment advice**

- (1) A health practitioner must not attempt to dissuade clients from seeking or continuing with treatment by a registered medical practitioner.
- (2) A health practitioner must accept the right of his or her clients to make informed choices in relation to their health care.
- (3) A health practitioner should communicate and co-operate with colleagues and other health care practitioners and agencies in the best interests of their clients.
- (4) A health practitioner who has serious concerns about the treatment provided to any of his or her clients by another health practitioner must refer the matter to the Health Care Complaints Commission.



**8 Health practitioners not to practise under influence of alcohol or drugs**

- (1) A health practitioner must not practise under the influence of alcohol or unlawful drugs.
- (2) A health practitioner who is taking prescribed medication must obtain advice from the prescribing health practitioner on the impact of the medication on his or her ability to practice and must refrain from treating clients in circumstances where his or her ability is or may be impaired.

**9 Health practitioners not to practise with certain physical or mental conditions**

A health practitioner must not practise while suffering from a physical or mental impairment, disability, condition or disorder (including an addiction to alcohol or a drug, whether or not prescribed) that detrimentally affects, or is likely to detrimentally affect, his or her ability to practise or that places clients at risk of harm.

**10 Health practitioners not to financially exploit clients**

- (1) A health practitioner must not accept financial inducements or gifts for referring clients to other health practitioners or to the suppliers of medications or therapeutic goods or devices.
- (2) A health practitioner must not offer financial inducements or gifts in return for client referrals from other health practitioners.
- (3) A health practitioner must not provide services and treatments to clients unless they are designed to maintain or improve the clients' health or wellbeing.

**11 Health practitioners required to have clinical basis for treatments**

A health practitioner must not diagnose or treat an illness or condition without an adequate clinical basis.

**12 Health practitioners not to misinform their clients**

- (1) A health practitioner must not engage in any form of misinformation or misrepresentation in relation to the products or services he or she provides or as to his or her qualifications, training or professional affiliations.
- (2) A health practitioner must provide truthful information as to his or her qualifications, training or professional affiliations if asked by a client.
- (3) A health practitioner must not make claims, either directly or in advertising or promotional material, about the efficacy of treatment or services provided if those claims cannot be substantiated.

**13 Health practitioners not to engage in sexual or improper personal relationship with**

**client**

- (1) A health practitioner must not engage in a sexual or other close personal relationship with a client.
- (2) Before engaging in a sexual or other close personal relationship with a former client, a health practitioner must ensure that a suitable period of time has elapsed since the conclusion of their therapeutic relationship.

**14 Health practitioners to comply with relevant privacy laws**

A health practitioner must comply with the relevant legislation of the State or the Commonwealth relating to his or her clients' personal information.

**15 Health practitioners to keep appropriate records**

A health practitioner must maintain accurate, legible and contemporaneous clinical records for each client consultation.

**16 Health practitioners to keep appropriate insurance**

A health practitioner should ensure that appropriate indemnity insurance arrangements are in place in relation to his or her practice.

**17 Certain health practitioners to display code and other information**

- (1) A health practitioner must display a copy of each of the following documents at all premises where the health practitioner carries on his or her practice:
  - (a) this code of conduct,
  - (b) a document that gives information about the way in which clients may make a complaint to the Health Care Complaints Commission, being a document in a form approved by the Director-General of the Department of Health.
- (2) Copies of those documents must be displayed in a position and manner that makes them easily visible to clients entering the relevant premises.
- (3) This clause does not apply to any of the following premises:
  - (a) the premises of any body within the public health system (as defined in section 6 of the *Health Services Act 1997*),
  - (b) private hospitals or day procedure centres (as defined in the *Private Hospitals and Day Procedure Centres Act 1988*),
  - (c) premises of the Ambulance Service of NSW (as defined in the *Health Services Act 1997*),
  - (d) premises of approved providers (within the meaning of the *Aged Care Act 1997* of

the Commonwealth).