

## Health Insights

### New regulations are now in force for all health practitioners and organisations in NSW

If you operate a health service, or are a health practitioner working in NSW, you need to be aware of a regulation that came into effect on 1 September 2022 being the *Public Health Regulation 2022*. The regulation sets out prescriptive obligations for all health practitioners and health organisations, be they public or private. For registered health practitioners, this NSW statute sets out additional obligations governing your practice, as an adjunct to those imposed by *Health Practitioner Regulation National Law* and guidelines and Codes of Conduct by the relevant Boards of Australia.

#### New Regulations

The *Public Health Act 2022* commenced on 1 September 2022, under the *Public Health Act 2010 (NSW)*.

The *Public Health Act 2010* allows for regulations to be made setting out Codes of Conduct for the provision of health services by relevant health organisations and health practitioners who are:

- (a) Not subject to the Scheme for Registration under the *Health Practitioner Regulation National Law* – implemented by AHPRA – which includes deregistered health practitioners, and
- (b) Registered under the *Health Practitioner Regulation Law* for the provision of health services and who provide health services that are unrelated to their registration.

#### Schedule 3

Schedule 3 of the Regulations sets out the Code of Conduct for unregistered and registered health practitioners who are providing a health service unrelated to their registration.

Schedule 3 provides, with reference to the *Health Care Complaints Act 1993*:

1. The ‘Health Organisation’ is a body that provides a health service, not being a health practitioner.
2. ‘Health Practitioner’ means a natural person who provides a health service, whether or not the person is registered under the *Health Practitioner Regulation National Law*.
3. ‘Health Service’ includes the following services, whether provided as public or private:
  - a) Medical, hospital, nursing and midwifery 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 at paragraphs (a) – (g)
  - i) Services provided in connection with Aboriginal and Torres Strait Islander health practices and medical radiation practices
  - j) Chinese medicine, chiropractic, occupational therapy, optometry, osteopathy, physiotherapy, podiatry and psychology services
  - k) Optical dispensing, dietitian, massage therapy, naturopathy, acupuncture, speech therapy, audiology and audiometry services
  - l) Services provided to other alternate health care fields
  - m) Forensic pathology services, and
  - n) A service prescribed by the Regulations as a health service for the purpose of the *Health Care Complaints Act 1993*.
4. 'Relevant Health Organisation' means a person that is a health organisation other than the following:
- a) A public health organisation within the meaning of the *Health Services Act 1997*
  - b) A public hospital within the meaning of the *Health Services Act 1997*
  - c) A private health facility licensed under the *Private Health Facilities Act 2007*
  - d) An organisation or class of organisation prescribed by the Regulations for the purposes of this definition.
5. In essence, the Regulation provides that health services are to be provided in a safe and ethical way, which is defined, not exhaustively, to include:
- a) A health practitioner must maintain the necessary competence in the practitioner's field of practice
  - b) A health practitioner must practise in accordance with the accepted professional standards
  - c) A health practitioner must not provide health care of the type that is outside the practitioner's experience or training
  - d) A health practitioner must not provide services that the practitioner is not qualified to provide
  - e) A health practitioner must not use the possession of particular qualifications to mislead or deceive a client as to the practitioner's competence and the practitioner's field of practice or ability to provide treatment
  - f) A health practitioner must prescribe only treatments or appliances that serve the needs of the client
  - g) A health practitioner must recognise the limitations of the treatment the practitioner can provide and refer a patient to other competent health practitioners in appropriate circumstances
  - h) A health practitioner must recommend to a client that additional options and services be sought, if appropriate
  - i) A health practitioner must assist a client to find other appropriate health care professionals, if required and practicable
  - j) A health practitioner must encourage a client to inform the client's treating medical practitioner, if any, of the treatment the client is receiving

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- k) A health practitioner must have a sound understanding of adverse interactions between the therapies and treatments the practitioner provides or prescribes and other medications or treatments, whether prescribed or not, that the practitioner is aware a client is taking or receiving
  - l) A health practitioner must ensure appropriate first aid is available to deal with misadventure during a client consultation
  - m) A health practitioner must obtain appropriate emergency assistance, for example, from the ambulance service if there is a serious misadventure during a client consultation
  - n) Other provisions relate to health practitioners being diagnosed with infectious medical conditions so as not to put clients at risk
  - o) Health practitioners are not to make claims to cure certain serious illnesses, such as cancer or other terminal incurable illnesses and must adopt standard precautions for infection control.
6. In addition, there are requirements for health practitioners not to attempt to dissuade a client from seeking or continuing treatment by a registered medical practitioner:
- a) Not to practise under the influence of alcohol or drugs
  - b) Not to practise with certain physical or mental conditions (when these conditions detrimentally affect, or are likely to detrimentally affect, the practitioner's ability to practise or place his client at risk of harm)
  - c) Not to financially exploit clients (for example, must not accept financial inducements or gifts from referring clients to other health practitioners or to the suppliers of medications or therapeutic goods or devices)
  - d) Are required to have a clinical basis for treatments, are not to misinform clients
  - e) Are not to engage in sexual or close relationships with clients (noting that after a therapy relationship has ceased, a personal relationship can only commence after a suitable period has lapsed)
  - f) Must keep appropriate records
  - g) Must keep appropriate insurance
  - h) Must ensure confidentiality and privacy of client health information, and
  - i) Must display a Code of Conduct or other information (including this Code).

#### Schedule 4

Schedule 4 sets out the Code of Conduct for health organisations and provides similar obligations as set out in relation to non-registered health practitioners, as set out above.

In addition there is a requirement that a relevant health organisation must have appropriate policies and procedures in place to ensure the following is carried out in accordance with relevant legislation:

- a) The storage of medicines
- b) The supply and administration of medicines
- c) The keeping of records about the storage, supply and administration of medicines.

In relation to registered health practitioners, any potential breach of the legislation and Regulations can be investigated by the relevant Council (Medical Council of NSW or Psychology Council of NSW) as well as the

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Health Care Complaints Commission. For non-registered health practitioners, investigations can be also conducted by the Health Care Complaints Commission.

Please note that under Section 15 of Schedule 3 and Section 10 of Schedule 4 of the Regulations, as stated most practitioners and relevant health organisations must display a copy of:

1. The Code of Conduct Non-Registered Health Practitioners or Code of Conduct for Health Organisations, and
2. A Notice for Non-Registered Health Practitioners or Notice for Health Organisations approved by the Secretary of New South Wales Health, giving information about the way in which clients can make complaints to the HCCC.

These must be displayed at:

1. The premises where the practitioner carries out the practice, or
2. The premises at which the organisation provides health services, or
3. On the website of the practitioner or organisation.

For further details, please see the [Code of conduct for unregistered health practitioners and health organisations](#).

**This article was written by Principal Nevena Brown. For questions or further information about the introduction of the Public Health Regulation 2022, please contact Nevena directly.**



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