

Australian Capital Territory

# Public Health (Health Care Facility) Code of Practice 2021 (No 1)

Disallowable instrument DI2021–240

made under the

Public Health Act 1997, s 133 (Codes of Practice)

## EXPLANATORY STATEMENT

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This explanatory statement relates to the Public Health (Health Care Facility) Code of Practice 2021 (No 1) (the Code) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Code and to help inform debate on it. It does not form part of the Code and has not been endorsed by the Assembly.

### Overview

#### *Purpose of the Code and its intended effect*

A key objective of the *Public Health Act 1997* (the Act) is to protect the public from public health risks, including those associated with facilities, equipment, products and activities not adequately controlled under another law<sup>1</sup>. In keeping with the objectives of the Act, the Minister for Health has declared the operation of a health care facility (HCF) to be a public health risk activity.

Section 133(1) of the Act allows the Minister to approve codes of practice that describe the minimum standards that must be met for individuals or corporations to comply with the regulations.

This Disallowable instrument makes the Code a legal document that must be complied with as it relates to the operation of a health care facility.

The *Public Health (Health Care Facility) Risk Declaration 2021 (No 1)* (risk declaration) provides further information about public health risks as applied to a HCF. The risk declaration defines a HCF to be any premises where a declared public health risk procedure is performed or provides overnight inpatient services under the care of a registered medical professional. The risk declaration outlines the six declared public health risk procedures.

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<sup>1</sup> *Public Health Act 1997 (ACT)*, s4

This instrument revises the Code that applies to licenced HCFs to reflect current standards supporting the safety and quality of health care. Clause 5 of this instrument provides that the external documents as adopted from time to time as part of the Code are not required to be notified with this instrument due to the displacement of section 47(6) of the *Legislation Act 2001*. Displacing s47(6) of the Legislation Act ensures that the latest versions of the external documents (including any subsequent updates) are automatically adopted by the Code in order to assist HCFs to in the safe delivery of health care. Section 133(5) of the Act provides that a Code of Practice may adopt or incorporate an instrument as in force from time to time as outlined by section 47 of the Legislation Act.

These updates are driven by a Government need to have a high quality, strong health care sector to complement the territory-funded public health system. The updates also seek to address market failures associated with health care sectors including market asymmetry and ability to act on public safety concerns.

The Code sets minimum requirements and obligations on licence holders, with an aim of minimising the risk of harm to patients and facility occupants.

#### Commencement

The changes outlined in this instrument will commence six months after the date the instrument is notified. HCFs that were previously licenced as non-accredited facilities, will have 18 months from the date of notification to gain full accreditation to the National Safety and Quality Health Service (NSQHS) Standards. New HCFs will be required to undergo an interim assessment against the NSQHS Standards within 10 days of commencing operation and must be assessed against all relevant NSQHS Standards within 12 months of commencing operation.

The time frames for adopting the new Code are based on stakeholder feedback received during consultation and guidance from the Australian Commission on Safety and Quality in Health Care.

#### **Regulatory Impact**

All Australian State and Territory Governments regulate private hospitals and day procedure centres to support patient care and build confidence in Australia's health care systems, health insurance frameworks and associated structures. Prior to the introduction of the Code, the ACT was the only jurisdiction that regulated public HCFs through legislation. The introduction of the Code assists in aligning the ACT with other jurisdictions, as public HCFs will no longer be licenced. Public HCFs are required to follow the Code. This will result in Public HCFs no longer paying licence fees or seeking regulatory approval for construction and internal refurbishments of facilities.

The Code determines the minimum requirements that HCFs must meet. These requirements, and the updates to the regulatory framework supporting HCFs, have been informed by a 2018-2019 Regulatory Impact Statement (RIS) conducted by KPMG and a 2020 community consultation on the proposed update to the licencing and regulation of HCFs. Stakeholder feedback indicated strong support for increasing the regulatory requirements for HCFs.

There may be an increased operating cost to some HCFs in meeting the requirements of this Code, in particular the requirement to maintain accreditation to the NSQHS Standards. The RIS estimated upper accreditation costs at \$300,000 for a major tertiary hospital, however costs borne by HCFs are likely to be proportionate to their scope of services and complexity, with larger, more complex facilities experiencing larger operating costs. These costs are highly unlikely to be realised as a result of this Code given that the overwhelming majority of licenced HCFs are already accredited to the NSQHS Standards in order to facilitate access to private health insurance benefits under the *Private Health Insurance Act 2007 (Cwth)*. Increased operating costs borne by industry in association with this Code are considered to be outweighed by community benefits in the timely identification and prevention of public health risk. The financial impact and public health benefits of a national accreditation scheme have already been considered in detail by the Australian Commission on Safety and Quality in Health Care as part of a 2010 Regulatory Impact Statement.<sup>2</sup>

While care has been taken to minimise the business impacts of this Code in regulating HCFs, these requirements are not considered to present an unreasonable regulatory burden and are associated with net public health gains.

Section 20 of the Act makes it an offence to, without reasonable excuse, carry out a public health risk activity without complying with a code of practice applicable to that activity. This offence is not associated with strict liability or the use of infringement notices. This determination is therefore not considered to unreasonably expose a HCF to criminal penalties.

### **Human Rights Considerations**

The operation of a HCF requires the collection and storage of health records. The right to privacy and reputation under s12 of the *Human Rights Act 2004*, is protected by the *Health Records (Privacy and Access) Act 1997*, the *Information Privacy Act 2014*, and the *Privacy Act 1988 (Cwth)*.

The Code seeks to address the public health risks presented by HCFs whilst operating in a manner that is the least restrictive for an individual's liberty and privacy. This approach is consistent with the objectives of the Act.

### **Detailed explanation**

The Code provides six Standards concerning critical areas or systems that are applicable to all HCFs. Explanatory notes regarding each standard are below:

#### **Standard 1 – Facility and Equipment**

Standard 1 of the Code seeks to ensure that HCFs maintain a safe environment and any critical equipment required for the safe operation of a HCF is installed and in use.

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<sup>2</sup> Australian Commission on Safety and Quality in Health Care (ACSQHC). *National Safety and Quality Health Service Standards and their use in a Model Accreditation Scheme: Decision Regulatory Impact Statement* (2010).

This Standard addresses the requirements of sections 24, 25 and 29 of the Act regarding the suitability of an applicant to operate a HCF by demonstrating relevant policies, procedures, staff, equipment and solvency. This Standard also requires the construction and furnishing of HCFs to meet the current requirements of the Australasian Health Facility Guidelines (AusHFG).

The AusHFG are published by the Australian Health Infrastructure Alliance, a subcommittee of the Health Chief Executives Forum. All jurisdictions provide input to these guidelines. Adopting the AusHFG as the minimum standard for the design of hospitals and day procedure centres is consistent with the approach taken by other jurisdictions including South Australia, Victoria and New South Wales. This approach ensures that the design of HCFs supports optimal health service delivery, providing guidance on appropriate nurse call systems, infection control and patient flow management. Adoption of the AusHFG provides greater certainty for individuals or corporations seeking a HCF licence or making alterations to a licenced HCF. It supports them to determine that they are developing a safe and suitable environment.

Standard 1.12 of this Code, outlines the policies and procedures that licenced HCFs are required to have available. To ensure these documents remain relevant and up to date, it is recommended these documents be updated every two to five years, or as required.

The new Standard 1.14 in this Code, requires facilities to notify the Minister for Health if an organisation or individual who is not already listed by the HCF licence, undertakes a declared public health risk procedure on a HCF premises. This new requirement recognises that HCFs may lease rooms or equipment to other organisations or individuals conducting public health risk procedures. Notification of these arrangements enables a more timely investigation and response to any public health risks or adverse incidents that may occur.

## Standard 2 – Clinical Care and Safety

Standard 2 of the Code provides that HCFs must maintain a suitable professional workforce and identify, collect and store health records in accordance with the *Health Records (Privacy and Access) Act 1997*. This standard also adopts the *Guidelines on Sedation and/or Analgesia for Diagnostic and Interventional Medical, Dental or Surgical Procedures* as published by the Australian and New Zealand College of Anaesthetists (ANZCA) as minimum requirements for HCFs administering anaesthesia as a declared public health risk procedure. Application of the ANZCA requirements was strongly supported by stakeholders during consultation in August 2020.

The requirements imposed on HCFs by Standards 2.1 – 2.7 of this Code are in line with the NSQHS Standards. This approach supports public health officers to review these risk areas during routine audits and inspections rather than the Government relying on NSQHS Standards survey outcomes as a marker of quality and safety. The NSQHS Standards are adopted by Standard 4 of this Code.

Requirements introduced by Standard 2 of the Code were already included in the *Public Health (Code of Practice) Determination 2001* (2001 Code of Practice), but

have been redrafted to recognise the recommendations made to the Victorian Government by the Grattan Institute in *Targeting Zero - Report of the Review of Hospital Safety and Quality Assurance in Victoria (2019)*, and the observations of Coroner Hunter in her report *Inquest into the death of Theodora Zaal (2019)*. These updates clarify that HCFs have a responsibility to the ACT Government through HCF licencing, as well as the NSQHS, in ensuring the requirements of Standard 2 are met.

### Standard 3 – Infection Control

Infection represents a significant public health risk within HCFs and has potential to cause significant individual and public health risk if not adequately managed. Standard 3 of the Code requires HCFs to hold and implement an infection control management plan and employ a person, trained in infection control to implement the plan. This Standard also provides that the Minister (or delegate) may request a HCF to review or make a change to an infection control management plan if there is reasonable belief it would prevent or lessen a public health risk.

The requirement to have and maintain an infection control management plan is consistent with regulatory requirements already imposed on HCFs by the 2001 Code of Practice. Standard 3 also reinforces the existing requirements of the NSQHS Standards. Standard 3 is therefore not considered to introduce an increased regulatory burden on HCF operators.

### Standard 4 – Quality Assurance

Standard 4 of this Code requires health care facilities to be accredited by the NSQHS Standards. The NSQHS Standards are published by the Australian Commission on Safety and Quality in Health Care (the Commission), and are developed in collaboration with all Australian states and territories, to protect the public from harm and improve the quality of health service provision. The NSQHS Standards are adopted from time to time under the Code by Clause 5 of this instrument.

In 2011, Australian Health Ministers approved the Australian Health Service Safety and Quality Accreditation Scheme (AHSSQA Scheme) and agreed to mandate that all Australian hospitals and day procedure centres should be accredited to the NSQHS Standards. Many privately operated HCFs are already accredited to the NSQHS Standards so that they can access private health insurance benefits under the *Private Health Insurance Act 2007 (Cwth)*.

While the Australian Government is responsible for the coordination of the AHSSQA Scheme, all States and Territories are responsible for determining which health service organisations must be assessed against the NSQHS Standards.

In consultation with individual HCFs, the Commission is responsible for determining the scope of NSQHS Standards that a HCF is required to meet. As such, the Code requires HCFs to maintain accreditation to the NSQHS Standards excluding any exceptions granted by the Commission. This instrument and Code may be updated at a later date to reflect significant changes in the Commission's approach to the NSQHS Standards and its application to specific health care sectors including the adoption of the National Safety and Quality Primary Healthcare (NSQPH) Standards. Updated NSQPH Standards are scheduled to be released by the Commission during

2021. All other Australian jurisdictions require private HCFs to engage with the NSQHS Standards.

### Standard 5 – Information Management and Reporting

Standard 5 of this Code requires health care facilities to report notifiable incidents to the Chief Health Officer. The list of notifiable incidents has been updated to incorporate events captured by the Australian Sentinel Events List as published by the Australian Commission on Safety and Quality in Health Care. Updating the list of notifiable incidents helps to ensure that the Chief Health Officer can suitably respond to any public health risks occurring within a HCF. The proprietor of a HCF must report a notifiable incident to the Chief Health Officer within two business days of the incident occurring and complete a report into the incident within a reasonable timeframe. For the purposes of this explanatory statement, a reasonable period of time is defined as within 100 days of the incident occurring. Additional policy materials will be developed to assist HCFs in determining what type of incidents should be reported, and how to report on notifiable incidents.

While the NSQHS Standards and the Australian Sentinel Events List requires a degree of reporting by public facilities, these updates require all notifiable incidents to be reported to the regulator. This change enables ACT Health Directorate to review, learn from, and respond to, all notifiable incidents within a public health policy and planning context as it applies to HCFs.

This Standard also requires HCFs to prepare annual reports. This requirement, and the requirement to report adverse events are existing requirements for HCFs under the 2001 Code of Practice.

### Standard 6 – Support Services

Standard 6 of this Code requires HCFs that accommodate patients overnight to provide suitable food services. This Standard also states that HCFs must take all reasonable steps to ensure a safe and suitable environment for HCF staff and occupants, and have documented processes in place for the management, transportation, and disposal of waste products. The requirements imposed by Standard 6 were included in the 2001 Code of Practice and do not impose any increased burden on HCF operators.