



Health Alert March 2010

This alert contains information on the following topics:

- **National Health and Hospital Network**
- **New Retirement Villages Legislation now in force**
- **New Private Health Facilities Regulation finally commences**
- **Legislation update**

National Health and Hospital Network

The Federal Government's National Health Network involves the Commonwealth changing its funding of public hospitals to 60% of their efficient cost and taking over responsibility for funding primary health care.

Local Hospital Networks

Under the plan, a National Hospital Fund will fund Local Hospital Networks, made up of no more than four hospitals each. The Networks would be paid an "efficient national price" for each hospital service they provide (taking into account remoteness and patients' needs), this is aimed at forcing public hospitals to cut waste and clean up their act.

Issues:

- Who is legally responsible for actual costs that exceed the "efficient national price"? (Presumably the states.)
- What will the legal limits be on local network board's decision-making?

Why does the Federal Government need every state to agree?

The Federal Government can use its constitutional power to make laws for:

"the provision of... pharmaceutical, sickness and hospital benefits, medical and dental services..."

This does not give the Commonwealth power to take the states out of the hospital business (which is not part of the network plan).

More importantly, as a result of the *Intergovernmental Tax Agreement of 1999*, every state must approve a change surrendering a third (up to \$30 billion) of its GST revenue to the Commonwealth. The Senate must also approve the plan for it to become law.

A referendum as a last resort

Failing agreement from each state, the Prime Minister has foreshadowed calling a referendum for voters to approve the plan. Only eight referendums have succeeded in Australia since Federation. A total of 31 have been rejected, including the most recent in 1999 proposing a split from the monarchy.

The Prime Minister has announced a deadline of April 11 (when the Council of Australian Governments meets) for the states to respond.

We will be monitoring the progress of the plan and reporting in upcoming alerts to keep you informed of these important anticipated changes to public health care.

New Retirement Villages Legislation now in force

On 1 March 2010, the amended *Retirement Villages Act 1999* (NSW) and the accompanying *Retirement Village Regulation 2009* (NSW) came into force. It was not without some drama, as a motion was put successfully in the New South Wales legislative council on 25 February 2010 to remove the section of the Regulation which expanded the definition of what constitutes 'capital maintenance'.

Some of the more significant changes include:

- the introduction of a new 'settling-in' period, during which residents have the special right to terminate their village contract;
- a new requirement that the operator provide a 'general inquiry document' to prospective residents and their representatives;



- changes to the procedure for variation to recurrent charges, and the division of liability for recurrent charges between the operator and the resident after the resident moves out;
- new provisions dealing with 'urgent' repairs and maintenance;
- a new requirement that retirement village land must be registered with the Land and Property Management

Authority (LPMA) and a statutory charge over the land which will be used to protect ingoing contribution refunds;

- new restrictions on how the operator may deal with surpluses and deficits; and
- new caps on certain fees operators may charge and costs the operator may pass on to the resident (such the cost of preparation of a village contract).

It is critical that operators are aware of the changes to the law and have their documents up to date.

For a detailed analysis of the changes please contact **Lucinda Smith** or **Marc Wyld** to obtain a copy of our '*Guide to the new retirement villages legislation*'.

New Private Health Facilities Regulation finally commences

The long awaited *Private Health Facilities Regulation 2009* (NSW) (**New Regulations**) commenced on 1 March 2010, bringing into effect the *Private Health Facilities Act 2007* (NSW). This legislation replaces and repeals the *Private Hospital and Day Procedure Centres Act 1988*, *Private Hospital Regulations* and *Day Procedure Centres Regulations*.

New licensing standards

The New Regulations expand on the classes of facilities and set out the licensing standards for 17 new classes of facilities in addition to the general licensing standards. Licensed facilities with licences on display in their entry foyers must follow, among other requirements:

- the Australasian Health Facility Guidelines;
- the Building Code of Australia (and must notify the Director-General of local council orders for works such as demolition, repairs or fencing);

- an internal risk assessment and safety inspection program;
- an internal communication system enabling patients and staff to call assistance from each bed, toilet, staff station;
- Standards for Resuscitation: Clinical Practice and ensure all equipment and material necessary for the relevant type and level of patient care is readily available in proper quantities; and
- accommodation standards set out in the New Regulations, involving an annual review by the Medical Advisory Committee of a written admission policy and a follow-up call to patients on the day after they are discharged.

Other changes

One of the key drivers behind the New Regulations was a need for clearer communication to investigative committees when a reportable incident occurs (such as an unexpected death). Members of a

facility's root cause analysis team (formed in response to a reportable incident) can now record or communicate information in connection with research or investigation to the committees.

There is also an emphasis on committees in the New Regulations. The new requirements specify that Medical Advisory Committees must have an external medical practitioner, and committees for each class of facility to have a relevant specialist.

Importantly, quality improvement will involve regular audits, a complaints policy and a written incident management system.

If you would like more information on the New Regulations or advice on how the New Regulations interplay with your operations, please contact us.

Legislation update

Therapeutic Goods (Victoria) Bill 2010 (VIC)

This Bill was introduced into the Legislative Assembly on 23 March 2010 and received its second reading speech on 25 March 2010.

The objects of this Bill are to provide for the application of the national scheme for the regulation of therapeutic goods by applying the *Therapeutic Goods Act 1989* (Cth) (**Commonwealth Act**) as Victorian law, and provide for the regulation of therapeutic

goods in Victoria where the Commonwealth Act does not apply.

Some of the provisions of the Bill include:

- the Commonwealth therapeutic goods laws will apply as a law of Victoria, and their application will be extended to persons who are not corporations and are only involved in trade and commerce within Victoria;
- the Commonwealth Minister and Commonwealth Secretary, and other authorised persons, have the same

functions and powers under the applied provisions as they have under the Commonwealth therapeutic goods laws;

- the relevant Commonwealth criminal law will apply as a law of Victoria in relation to any offence committed against the applied provisions; and
- the Minister to exempt persons or classes of persons, goods and classes of goods from the application of all of the Victorian provisions or specified provisions.

Health Practitioner Regulation (National Uniform Legislation) Act 2010 (NT)

This Act received assent on 17 March 2010.

The object of the Act is to implement the Intergovernmental Agreement for a National Registration and Accreditation Scheme for Health Professions, which the Commonwealth and the States entered into on 26 March 2008, and to declare as the responsible tribunal for the Northern Territory, the Health Professional Review Tribunal, for the purposes of the national law.

Health Legislation Amendment Act 2010 (ACT)

This Act was assented to on 16 February 2010.

The Act makes a minor amendment to the *Health Records (Privacy and Access) Act 1997* (ACT) to provide that a record keeper who has possession or control of a health record must ensure that an electronic copy of the record has been generated.

The Act also amends the *Drugs of Dependence Act 1989* (ACT), including the removal of the following provisions:

- Part 9 (Treatment), which provided for assessment orders and treatment orders, treatment assessment panels, and approval of treatment centres
- Division 11.2 (Inspection) of Part 11 (Enforcement);
- Part 12 (Notification and review of decisions); and
- Schedule 1 (Reviewable decisions).

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