

Private Health Facilities (Standards) Amendment Notice 2022

Explanatory notes for SL 2022 No. 159

made under the

Private Health Facilities Act 1999

General Outline

Short title

Private Health Facilities (Standards) Amendment Notice 2022

Authorising law

Section 12 of the *Private Health Facilities Act 1999*

Policy objectives and the reasons for them

The objective of the *Private Health Facilities (Standards) Amendment Notice 2022* (Amendment Notice) is to notify the making of the amended *Private Health Facilities Credentials and Clinical Privileges Standard* (Standard), which will apply to licensed private health facilities in Queensland.

The changes to the Standard support commencement of the *Voluntary Assisted Dying Act 2021* on 1 January 2023. Voluntary assisted dying in Queensland gives eligible people diagnosed with a life-limiting condition, who are suffering intolerably and dying, an additional end-of-life choice by allowing them to choose the timing and circumstances of their death.

Section 12(1) of the *Private Health Facilities Act 1999* provides that the Chief Health Officer may make standards for the protection of the health and wellbeing of patients receiving health services at private health facilities. Section 12(3) provides a standard made by the Chief Health Officer has effect when the Minister notifies the making of the standard. Section 12(5) provides that the notice of the making of the standard is subordinate legislation. Operators of licensed private health facilities must comply with standards made by the Chief Health Officer and notified by the Minister.

Under section 12(2) of the *Private Health Facilities Act*, the Chief Health Officer may make standards about the processes for evaluating the credentials of medical practitioners providing, or seeking to provide, health services at private health facilities, and deciding which health services may be provided by the medical practitioners at the facilities.

Credentialing is a process used by public and private hospitals to ensure that only experienced, suitably trained and qualified medical practitioners provide particular types of health care services.

To become a voluntary assisted dying practitioner authorised by Queensland Health, a practitioner must apply to Queensland Health and fulfil the eligibility requirements set out in the Voluntary Assisted Dying Act, including the additional eligibility criteria approved by the chief executive of Queensland Health, and complete mandatory training also approved by the chief executive of Queensland Health. For example, for medical practitioners with general registration, the requirements include: practised medicine for at least five years; completed voluntary assisted dying mandatory training and have clinically practised twice the minimum hours per registration period set out in the *Registration Standard: Recency of Practice* published by the Medical Board of Australia.

The Voluntary Assisted Dying Act sets out obligations on health facilities to enable a person to access voluntary assisted dying while in a health facility. The requirements for entities who operate health facilities differ depending on the stage of the voluntary assisted dying process, as well as whether the person accessing the scheme is a permanent resident at a facility. In some circumstances, an entity is required to allow reasonable access to an authorised voluntary assisted dying practitioner to carry out a step in the voluntary assisted dying process at the facility. In these circumstances, an external practitioner who is not employed by, or does not normally provide contracted services to a facility, may need to enter the facility.

The Chief Health Officer has revised version 5 of the Standard referred to in the Notice and made a new Standard, referred to as version 6. Changes introduced in version 6 allow private health facilities to recognise the Queensland Health authorisation of voluntary assisted dying practitioners providing voluntary assisted dying services in private health facilities and not undertake local credentialing of the practitioners. This approach is intended to reduce the regulatory burden for private health facilities in permitting access to voluntary assisting dying in accordance with the Voluntary Assisted Dying Act.

Achievement of policy objectives

The Amendment Notice notifies the making of the amended Standard by reflecting the updated *Credentials and Clinical Privileges Standard* (version 6).

To give effect to the amended Standard, the Minister must notify the making of the Standard in accordance with section 12(3) of the Private Health Facilities Act.

Consistency with policy objectives of authorising law

The Amendment Notice is consistent with the policy objectives of the Authorising Act.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

The Amendment Notice is the only effective means of achieving the policy objectives.

Benefits and costs of implementation

The Amendment Notice does not impose significant costs on private health facilities.

If the amendment were not made, private health facilities would be required to develop credentialing processes for practitioners seeking to provide voluntary assisted dying services in private health facilities. This would be burdensome given the eligibility and training requirements that practitioners must meet to be authorised by Queensland Health and the strict legislative framework in which voluntary assisted dying will operate.

The updates to the Standard that allow private health facilities to recognise Queensland Health's authorisation for voluntary assisted dying practitioners will support patients in private health facilities to access voluntary assisted dying.

Consistency with fundamental legislative principles

The Amendment Notice is generally consistent with fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*.

Section 4(5)(e) of the Legislative Standards Act requires subordinate legislation to have sufficient regard to the institution of Parliament by allowing the subdelegation of power only in appropriate cases and to appropriate persons and if authorised by an Act. Clause 3 of the Amendment Notice amends schedule 1 of the Notice by referring to the Standard, which is an external document. This provision potentially impacts on the fundamental legislative principle that legislation must have sufficient regard to the institution of Parliament.

Private health facilities standards can be made or amended by the Chief Health Officer under the Private Health Facilities Act. The Private Health Facilities Act also provides that a standard made by the Chief Health Officer has effect when the Minister notifies the making of the standard. The amended Standard will be tabled in the Legislative Assembly to enhance the visibility of the document. The amended Standard will also be published on the Queensland Health website.

In addition, the technical nature of the requirements outlined in the Standard, and its use in ensuring the safety and protection of Queenslanders receiving health care at private health facilities, justifies the need for the making of a Standard as an external document.

Consultation

Key stakeholders were consulted, including: Chief Executive Officers of private hospitals; State Managers for Mater Health, Ramsay Health, Healthscope, Uniting Health, St Vincent's and Healthcare Australia; Private Hospitals Association of Queensland and members of the Voluntary Assisted Dying Private Hospital and Hospice Committees. Stakeholders had no feedback on version 6 of the Standard.

The regulation was assessed by the Office of Best Practice Regulation, in accordance with *The Queensland Government Guide to Better Regulation*, as meeting category (k) – regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts. This assessment concluded no further regulatory impact was required.

Notes on provisions

Short Title

Clause 1 provides that the short title is the *Private Health Facilities (Standards) Amendment Notice 2022*.

Notice amended

Clause 2 provides that the notice amends the *Private Health Facilities (Standards) Notice 2016*.

Amendment of sch 1 (Standards)

Clause 3 amends schedule 1, item 2 to remove the current version number of the *Credentials and Clinical Privileges Standard* and prescribe the new version number of the amended Standard. To achieve this purpose, the reference to version 5 is omitted and version 6 is inserted.