Declaration of a Quality Assurance Activity

The Commonwealth Qualified Privilege Scheme

Declaration of a quality assurance activity under Part VC of the Health Insurance Act 1973 provides specific protection to health care professionals participating in the activity. The aim of providing this protection is to encourage health care professionals to fully participate in quality assurance activities.

This pamphlet is designed to provide participants of declared quality assurance activities with important information about their declaration.

Scope of Quality Assurance Declaration

The Commonwealth Qualified Privilege Scheme provides two main areas of protection for specific quality assurance activities. These areas are:

1. Confidentiality of information that identifies individuals

Declaration of a quality assurance activity protects the confidentiality of information that identifies individuals that becomes known solely as a result of declared quality assurance activities by:

- making it an offence to make a record of that information or to disclose that information to another person or to a court; and
- specifying that a person cannot be required to disclose, or produce documents containing, such information to a court except in certain limited circumstances.

2. Assessment of other health care providers

A declaration offers protection from civil proceedings (apart from those relating to the breach of rules of procedural fairness) to people who participate in activities that involve the assessment or evaluation of the quality of health services provided by others. This protection applies if:

- the relevant person engaged in the review process in good faith;
- the review process adversely affects the rights or interest of a person who provides health services;
- the relevant person participates in the review process as a member of a committee for the purpose of making an evaluation or assessment of the services provided by a health care practitioner; and
- all or a majority of the members of the committee are health care professionals belonging to the same health care profession as the person who provides health services.

Responsibility of participants of declared activities

As a participant of a declared activity, you must not divulge information that identifies individuals that became known solely as a result of your activity. If you do not comply with this requirement the maximum penalty under the legislation is imprisonment for two years.

This brochure is not designed to replace the information set out in the Health Insurance Act 1973 and the Health Insurance Regulations 1975. It is designed to provide a brief summary to help you understand the main purposes of the Scheme. You should refer to the Act and Regulations for precise requirements.

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Areas not covered by a Declaration

In the past there has been some misunderstanding about the purposes and scope of protection provided by a declaration. For example:

(a) Patient Consent

One misunderstanding is that a declaration overrides the general law relating to confidentiality and patient consent and thereby obviates any requirement that may exist to seek patient consent for a patient’s medical records to be viewed by other than a treating doctor. A declaration is irrelevant to the issue of whether or not patient consent is required.

(b) Disclosure of Information

Another misunderstanding is that ‘all’ information generated as a result of a declared activity can be kept confidential. This is not the case. The only information protected by a declaration is that which identifies individuals. In fact, the legislation requires participants of declared activities to report on the progress and outcomes of the activity (without identifying individuals).

These are only two examples of areas not covered by a declaration. If you are unsure of whether a particular area of activity is covered by the declaration or not, please contact The Director, Therapeutic Device Registers Section on (02) 6289 1555.

Information for participants of declared activities

In the application form for declaration of this activity under Part VC of the Health Insurance Act 1973 it was agreed to:

a) notify the Minister of any change in the purposes of the quality assurance activity or in the composition or purposes of the organisation undertaking the activity:

- to notify the Minister of such a change you will need to complete a ‘Notification of Changes to the Declaration of a Quality Assurance Activity Form’ and return it to the Department. This form can be obtained by contacting the Therapeutic Device Registers Section, (02) 6289 1555 or email TDR@health.gov.au; and

b) provide the Minister with copies of non-identifying information concerning the activity which is published or disclosed as specified in the application form and the declaration.

The Minister has taken these agreements into account when granting declaration of your activity. Failure to meet these agreements may lead to re-consideration of this declaration.

If this activity is one that includes the assessment or evaluation of others and has the potential to affect a health care professional’s practising rights the Minister has granted this declaration on the understanding that the activity will include procedures to:

- provide reasons to the health care professional for any adverse findings;
- ensure that an appeal mechanism is available for a dissatisfied health care professional;
- disclose information that is about the health care professional’s clinical practicing rights; and
- disclose information that identifies the health care professional.

Please ensure that all participants of your activity are aware of the scope of the protection provided by the declaration. If you require further information, please contact The Director, Therapeutic Device Registers Section on (02) 6289 1555 or by email to TDR@health.gov.au

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