



My Health Records Regulation 2012

Select Legislative Instrument No. 129, 2012

made under the

My Health Records Act 2012

Compilation No. 2

Compilation date:	1 July 2016
Includes amendments up to:	F2016L00737
Registered:	25 July 2016

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *My Health Records Regulation 2012* that shows the text of the law as amended and in force on 1 July 2016 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1.1.1 Name of regulation

This regulation is the *My Health Records Regulation 2012*.

1.1.2 Commencement

This regulation commences on the day after it is registered.

1.1.2A Schedule 1

Schedule 1 has effect.

1.1.3 Definitions

Note: A number of expressions used in this regulation are defined in the Act, including the following:

- (a) healthcare provider organisation;
- (b) individual healthcare provider.

In this regulation:

ABN has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

ACN has the same meaning as in the *Corporations Act 2001*.

Act means the *My Health Records Act 2012*.

Australian Digital Health Agency means the Australian Digital Health Agency established by section 8 of the *Public Governance, Performance and Accountability (Establishing the Australian Digital Health Agency) Rule 2016*.

Australian Health Practitioner Regulation Agency means the National Agency established by the National Law.

evidence of identity process means the process to confirm the identity of a healthcare provider organisation's responsible officer and organisation maintenance officer undertaken by:

- (a) if the responsible officer or organisation maintenance officer is an individual healthcare provider who is registered by a registration authority as a member of a health profession—the Australian Health Practitioner Regulation Agency; or
- (b) in any other case—the service operator.

Healthcare Identifiers Act means the *Healthcare Identifiers Act 2010*.

organisation maintenance officer, for a healthcare provider organisation, has the meaning given by subsection 9A(8) of the Healthcare Identifiers Act.

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registration authority has the meaning given by the Healthcare Identifiers Act.

responsible officer, for a healthcare provider organisation, has the meaning given by subsection 9A(7) of the Healthcare Identifiers Act.

service operator has the meaning given by section 5 of the Healthcare Identifiers Act.

verification service means a service (whether operated electronically or otherwise) that allows an entity to compare information relating to the identity of an entity with a government record.

1.1.4 Nominated healthcare provider

For subparagraph (c) (iii) of the definition of **nominated healthcare provider** in section 5 of the Act, the class is individuals who have been awarded a Certificate IV in Aboriginal and/or Torres Strait Islander Primary Health Care (Practice).

1.1.5 Identifying information—individual healthcare provider

For paragraph 9(1)(h) of the Act, the following information is identifying information of an individual healthcare provider:

- (a) whether the healthcare provider is registered with a registration authority and the status of that registration (such as conditional, suspended, cancelled or lapsed);
- (b) whether the healthcare provider is a member of a professional association of the kind described in paragraph 9A(1)(b) of the Healthcare Identifiers Act and the status of that membership (such as conditional, suspended, cancelled or lapsed);
- (c) whether the healthcare provider is, or is likely to be, deceased;
- (d) whether the death of the healthcare provider has been verified;
- (e) whether the healthcare provider is linked to a healthcare provider organisation and, if so, the name of the organisation and the ABN and ACN of the organisation (whichever is applicable).

1.1.6 Identifying information—healthcare provider organisation

For paragraph 9 (2) (f) of the Act, the following information is identifying information of a healthcare provider organisation:

- (a) whether the organisation is registered under Division 2 of Part 3 of the Act;
- (aa) whether the healthcare provider organisation has notified the service operator that the organisation does not wish to use a healthcare identifier, either temporarily or permanently;
- (b) if applicable, the organisation's business name on the register established under section 22 of the *Business Names Registration Act 2011*;

Note: Also see paragraph 9 (2) (a) of the Act, which states that the name of the healthcare provider is also identifying information.

- (c) the type of healthcare service the organisation provides to another healthcare provider or a healthcare recipient;

Examples

General practice services, public hospital services or diagnostic imaging services.

- (d) the name, date of birth and date of death (if applicable) of the organisation's responsible officer and organisation maintenance officer;
- (e) the work address, email address, phone number and fax number of the organisation's responsible officer and organisation maintenance officer;
- (f) the identifying number assigned to the organisation's responsible officer and organisation maintenance officer by the service operator;
- (g) whether an evidence of identity process has been undertaken for an organisation's responsible officer and organisation maintenance officer;
- (h) if an evidence of identity process is being undertaken for an organisation's responsible officer and organisation maintenance officer—the name of the agency or service operator undertaking the process;
- (i) if an evidence of identity process has been undertaken for an organisation's responsible officer and organisation maintenance officer—the name of the agency or service operator that undertook the process, the outcome of the process and when the process was undertaken;
- (j) the record that specifies the network address and technical requirements permitting electronic messages to be sent to the organisation;
- (k) any other network organisation or seed organisation, within the meaning of section 9A of the Healthcare Identifiers Act, that the organisation is linked to in a network;
- (l) whether any individual healthcare providers are linked to the organisation and, if so, the names and other identifying information of those individual healthcare providers.

1.1.7 Identifying information—healthcare recipient

For paragraph 9(3)(i) of the Act, the following information is identifying information of a healthcare recipient:

- (a) the telephone number of the healthcare recipient;
- (b) the electronic address of the healthcare recipient;
- (c) whether the identity of the healthcare recipient has been verified;
- (d) whether a healthcare identifier assigned to the healthcare recipient has been assigned provisionally (for example, because it has not been possible to verify the identity of the healthcare recipient);
- (e) if information relating to the identity of the healthcare recipient has been, or is to be, verified using a particular form of identification document (such as a driver's licence or passport), details of that document including:
- (i) the document number; and
 - (ii) the State or Territory in which the document was issued; and
 - (iii) the name of the entity that issued the document;

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- (f) if information relating to the identity of the healthcare recipient has been, or is to be, verified by using a verification service, the response of that service to any verification inquiry in relation to the healthcare recipient;
- (g) whether the healthcare recipient is, or is likely to be, deceased;
- (h) whether the death of the healthcare recipient has been verified;
- (i) whether the healthcare recipient is a registered healthcare recipient for the purposes of the Act;
- (j) whether the healthcare recipient is an authorised representative, or nominated representative, of another healthcare recipient, and the identity of the other healthcare recipient;
- (k) whether the healthcare recipient, or an authorised representative or nominated representative of the healthcare recipient, has made an election under clause 5 of Schedule 1 to the Act that the healthcare recipient not be registered under the Act.

Part 2—System Operator

2.1.1 System Operator

For paragraph 14(1)(b) of the Act, the Australian Digital Health Agency is prescribed to be the System Operator.

Part 3—Registration

3.1.1A Other information in relation to a healthcare recipient needed for registration

- (1) The following is other information in relation to a healthcare recipient for the purposes of subparagraph 40(b)(v) of the Act:
 - (a) whether the identity of the healthcare recipient has been verified;
 - (b) whether a healthcare identifier assigned to the healthcare recipient has been assigned provisionally (for example, because it has not been possible to verify the identity of the healthcare recipient).
- (2) The following is other information in relation to a healthcare recipient for the purposes of subparagraph 4(b)(v) of Schedule 1 to the Act:
 - (a) whether the identity of the healthcare recipient has been verified;
 - (b) whether a healthcare identifier assigned to the healthcare recipient has been assigned provisionally (for example, because it has not been possible to verify the identity of the healthcare recipient);
 - (c) whether the healthcare recipient is, or is likely to be, deceased;
 - (d) whether the death of the healthcare recipient has been verified.

3.1.1 Registration of healthcare recipient by the System Operator

For subsection 41 (4) of the Act and subclause 9(3) of Schedule 1 to the Act, the following State and Territory laws are prescribed:

- (b) sections 56 and 92 of the *Public Health Act 2010* of New South Wales;
- (c) sections 55, 77 to 79, 105 to 107, 175 to 177, 220 to 222, 238 to 240 and 266 to 268 of the *Public Health Act 2005* of Queensland;
- (d) sections 110 and 111 of the *Public Health Act 1997* of the Australian Capital Territory.

Part 4—Collection, use and disclosure of information

4.1.1 Prescribed information to be included in a My Health Record

- (1) This section is made for:
 - (a) column 4 of item 9 of the table in section 58A of the Act; and
 - (b) column 4 of item 9 in the table in clause 8 of Schedule 1 to the Act.
- (2) The prescribed information is information that relates to the provision of healthcare to the healthcare recipient, other than information that relates to compensation or benefits provided under any of the following Acts:
 - (a) the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*;
 - (b) the *Military Rehabilitation and Compensation Act 2004*;
 - (c) the *Safety, Rehabilitation and Compensation Act 1988*;
 - (d) the *Veterans' Entitlements Act 1986*.

4.1.2 Verifying identity of healthcare recipients etc.

- (1) This section is made for item 10 of the table in section 58A and clause 8 of Schedule 1 to the Act.
- (2) The Attorney-General's Department is authorised to collect, use and disclose to the System Operator identifying information of the kind mentioned in Column 3 of that item of the table for the purposes mentioned in Column 4 of that item of the table.

Part 5—Other matters

5.1.1 Subcommittee of the Ministerial Council

For paragraph 109(2)(b) of the Act, and subclause 1(3) of Schedule 1 to the Act, the following subcommittee of the Ministerial Council is prescribed:

- (a) the Australian Health Ministers' Advisory Council, whether known by that name or another name;
- (b) if that Advisory Council ceases to exist—a subcommittee of the Ministerial Council that has been given the Advisory Council's functions in relation to electronic health records.

Schedule 1—Application, savings and transitional provisions

Part 1—Application provisions relating to the Health Legislation Amendment (eHealth) Regulation 2015

1 Definitions

In this Division:

the amending Act means the *Health Legislation Amendment (eHealth) Act 2015*.

the amending regulation means the *Health Legislation Amendment (eHealth) Regulation 2015*.

2 Repeal of regulations dealing with the jurisdictional advisory committee and independent advisory committee

Items 22, 24 and 33 of Schedule 1 to the amending regulation apply on and after the governance restructure day, as defined in item 112 of Schedule 1 to the amending Act.

3 Information to be provided before registration for a My Health Record

Item 34 of Schedule 1 to the amending regulation applies in relation to the registration of a healthcare recipient on or after the commencement of that Schedule.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Number and year	Registration	Commencement	Application, saving and transitional provisions
129, 2012	28 June 2012 (F2012L01399)	29 June 2012 (r 1.1.2)	
237, 2015	14 Dec 2015 (F2015L01967)	Sch 1 (items 16–39): 15 Dec 2015 (r 2(1) item 1)	—

Name	Registration	Commencement	Application, saving and transitional provisions
My Health Records Amendment (System Operator) Regulation 2016	9 May 2016 (F2016L00737)	1 July 2016 (s 2(1) item 1)	—

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
r 1.1.1	am No 237, 2015
r 1.1.2A.....	ad No 237, 2015
r 1.1.3	am No 237, 2015; F2016L00737
r 1.1.5	rs No 237, 2015
r 1.1.6	am No 237, 2015
r 1.1.7	ad No 237, 2015
Part 2	
Part 2	rep No 237, 2015 ad F2016L00737
r 2.1.1	rep No 237, 2015 ad F2016L00737
r 2.1.2	rep No 237, 2015
r 2.1.3	rep No 237, 2015
r 2.1.4	rep No 237, 2015
r 2.1.5	rep No 237, 2015
r 2.1.6	rep No 237, 2015
r 2.1.7	rep No 237, 2015
r 2.1.8	rep No 237, 2015
r 2.1.9	rep No 237, 2015
r 2.1.10	rep No 237, 2015
r 2.1.11	rep No 237, 2015
r 2.1.12	rep No 237, 2015
r 2.1.13	rep No 237, 2015
r 2.2.1	rep No 237, 2015
r 2.2.2	rep No 237, 2015
r 2.2.3	rep No 237, 2015
r 2.2.4	rep No 237, 2015
r 2.2.5	rep No 237, 2015
r 2.2.6	rep No 237, 2015
r 2.2.7	rep No 237, 2015
r 2.2.8	rep No 237, 2015
r 2.2.9	rep No 237, 2015
r 2.2.10	rep No 237, 2015
r 2.2.11	rep No 237, 2015
Part 3	
r 3.1.1A.....	ad No 237, 2015

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
r 3.1.1	am No 237, 2015
Part 4	
Part 4	ad No 237, 2015
r 4.1.1	ad No 237, 2015
r 4.1.2	ad No 237, 2015
Part 5	
Part 5	ad No 237, 2015
r 5.1.1	ad No 237, 2015
Schedule 1	
Schedule 1	ad No 237, 2015
Part 1	
c 1	ad No 237, 2015
c 2	ad No 237, 2015
c 3	ad No 237, 2015
