

2009

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Health)

# Health Legislation Amendment Bill 2009 (No 2)

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## A Bill for

An Act to amend the *Health Records (Privacy and Access) Act 1997*

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Health Legislation Amendment Act 2009 (No 2)*.

3 **2 Commencement**

4 This Act commences on a day fixed by the Minister by written  
5 notice.

6 *Note 1* The naming and commencement provisions automatically commence on  
7 the notification day (see Legislation Act, s 75 (1)).

8 *Note 2* A single day or time may be fixed, or different days or times may be  
9 fixed, for the commencement of different provisions (see Legislation  
10 Act, s 77 (1)).

11 *Note 3* If a provision has not commenced within 6 months beginning on the  
12 notification day, it automatically commences on the first day after that  
13 period (see Legislation Act, s 79).

14 **3 Legislation amended**

15 This Act amends the *Health Records (Privacy and Access)*  
16 *Act 1997*.

17 **4 The privacy principles**  
18 **Schedule 1, principles 11 and 12**

19 *substitute*

20 **Principle 11: Relocation and closure of health service practice**

21 1 This principle applies if a health service practice is or is proposed to  
22 be—

23 (a) relocated; or

24 (b) permanently closed.

- 1           2 Not later than 30 days before the proposed relocation or closure, the  
2 provider must—
- 3           (a) publish a notice (a *transfer notice*) of the relocation or closure  
4 in a daily newspaper; and
- 5           (b) take other practicable steps to inform each consumer who has  
6 attended the health service practice of the matters mentioned in  
7 the transfer notice.
- 8           *Note*     **Daily newspaper** means a daily newspaper circulating generally in the  
9 ACT (see Legislation Act, dict, pt 1).
- 10          3 The transfer notice must state—
- 11           (a) that the consumer may request (a *transfer request*) that a copy  
12 or written summary of the consumer’s health record be given  
13 to the consumer or a health service provider nominated by the  
14 consumer; and
- 15           (b) that the transfer request must be made not later than  
16 14 days after the day the transfer notice (the *transfer request*  
17 *period*) is published; and
- 18           (c) if a fee has been determined under section 34 for this  
19 principle—that there is a fee that the consumer must pay before  
20 the provider will give a copy or written summary of the record  
21 to the consumer or health service provider nominated by the  
22 consumer; and
- 23           (d) that if the consumer does not make a transfer request within the  
24 transfer request period, a copy of the consumer’s health record  
25 will be given to a stated health service provider or record  
26 keeper; and
- 27           (e) the stated health service provider’s or record keeper’s address  
28 and contact details.

- 1           4 As soon as practicable after publishing the transfer notice, the  
2 provider must give a copy of the transfer notice, or written notice of  
3 the information in the transfer notice, to the chief executive.
- 4           *Note 1* If a form is approved under s 35 for this provision, the form must be  
5 used.
- 6           *Note 2* **Chief executive** means the chief executive of the administrative unit  
7 responsible for this Act (see Legislation Act, s 163). Administrative  
8 units are established under the administrative arrangements (see *Public*  
9 *Sector Management Act 1994*, s 13).
- 10          *Note 3* Notice may be given electronically in certain circumstances  
11 (see *Electronic Transactions Act 2001*, s 8).
- 12          5 If a consumer has made a transfer request, the provider must give  
13 the consumer or the consumer's nominated health service provider  
14 the requested copy or written summary of the consumer's health  
15 record as soon as practicable but not later than the later of—
- 16           (a) if a fee is payable for this principle—7 days after the day the  
17 fee is paid; and
- 18           (b) 30 days after the day the provider receives the transfer request.
- 19          6 If, however, the consumer is receiving or needs urgent health  
20 services, the provider must give the consumer or the consumer's  
21 nominated health service provider the requested copy or written  
22 summary of the consumer's health record as soon as practicable but  
23 not later than 7 days after the day the provider receives the transfer  
24 request.
- 25          *Note* **Urgent health services**—see cl 11 and cl 12.

- 1           7 If a consumer does not make a transfer request within the transfer  
2 request period, the provider must, within 30 days after the end of the  
3 transfer request period, give a copy of the consumer's health records  
4 to the health service provider or record keeper stated in the transfer  
5 notice.
- 6           *Note 1* If the original or copy of a consumer's health record is given to another  
7 health service provider (the *new provider*) or other record keeper (the  
8 *new record keeper*)—
- 9           • the consumer may ask the new provider or new record keeper for  
10 access to the consumer's health record  
11 (see s 10 and s 12); and
  - 12           • the new provider or new record keeper must give the consumer  
13 access to the consumer's health records in accordance with the Act  
14 (for example, see s 13 to s 13D).
- 15           *Note 2* A fee may be payable by the consumer for certain types of access  
16 (see s 10 (5) and s 13 (2) (c) (ii)).
- 17           8 If a record keeper holds health records following the relocation or  
18 closure of a health service practice, the record keeper must promptly  
19 notify the chief executive of any change to—
- 20           (a) the record keeper's contact details; or
  - 21           (b) the location of the stored health records.
- 22           9 The chief executive must promptly give a copy of a notice under  
23 clause 4 or clause 8 to the health services commissioner.
- 24           10 If this principle applies because a sole provider in a health service  
25 practice dies or becomes legally incompetent, a legal representative  
26 or guardian of the provider must comply with the requirements of  
27 this principle as soon as practicable.
- 28           11 It is sufficient to establish that a consumer is receiving or needs  
29 *urgent health services* for prioritising the giving of records by a  
30 provider (the *record holder*) if another health service provider  
31 advises the record holder that the consumer is receiving or needs  
32 urgent health services.

- 1           12 However—
- 2           (a) an advice under clause 11 need not be in writing; and
- 3           (b) the record keeper may be satisfied that a consumer is receiving
- 4           or needs urgent health services without an advice mentioned in
- 5           clause 11.
- 6           13 The requirement under clause 5, clause 6 or clause 7 to give a copy
- 7           of the consumer's health record is taken to be satisfied if the original
- 8           of the record is given.
- 9           14 To avoid doubt, clause 13 does not require a provider to give the
- 10          original of the consumer's health record.
- 11          15 In this principle:
- 12           **health record** means a health record held by, or on behalf of, the
- 13           provider.
- 14           **health service practice** means the business or premises where a
- 15           health service provider provides health services.
- 16           **provider** means—
- 17           (a) the provider of a health service practice; or
- 18           (b) if the provider is legally incompetent—the guardian of the
- 19           provider; or
- 20           (c) if the provider is dead—the legal representative of the
- 21           provider.
- 22           **relocate**, a practice, includes—
- 23           (a) relocate to another premises or location; or
- 24           (b) stop, temporarily or otherwise, the provision of health services
- 25           at a particular location.
- 26           **transfer notice**—see clause 2 (a).
- 27           **transfer request**—see clause 3 (a).

1                    *transfer request period*—see clause 3 (b).

2                    **Principle 12.1: Consumer moves to another health service provider**

- 3                    1 If a consumer moves from 1 health service provider (the *first*  
4                    *provider*) to another health service provider (the *second provider*),  
5                    the consumer may ask the first provider to give the second provider  
6                    a copy or written summary of the consumer's health record.
- 7                    2 If the first provider receives a request under clause 1 (a *transfer*  
8                    *request*), the first provider must—
- 9                    (a) if a fee has been determined under section 34 for this  
10                    principle—not later than 7 days after the day the first provider  
11                    receives the transfer request, give the consumer notice that the  
12                    consumer must pay a stated fee before the first provider will  
13                    give the second provider the requested copy or written  
14                    summary of the consumer's health record; or
- 15                    (b) not later than 30 days after the day the first provider receives  
16                    the transfer request, give the second provider the requested  
17                    copy or written summary of the consumer's health record.
- 18                    3 If the consumer pays the fee stated in a notice under clause 2 (a), the  
19                    first provider must give the second provider the requested copy or  
20                    written summary of the consumer's health record not later than the  
21                    later of—
- 22                    (a) 7 days after the day the fee is paid; and
- 23                    (b) 30 days after the day the first provider receives the transfer  
24                    request.
- 25                    4 If the consumer is receiving or needs urgent health services, the first  
26                    provider must give the second provider the requested copy or  
27                    written summary of the consumer's health record as soon as  
28                    practicable but not later than 7 days after the day the first provider  
29                    receives the transfer request.

- 1           5 It is sufficient to establish that a consumer is receiving or needs  
2            **urgent health services** for prioritising the giving of records by the  
3            first provider (the **record holder**) if another health service provider  
4            advises the record holder that the consumer is receiving or needs  
5            urgent health services.
- 6           6 However—
- 7               (a) an advice under clause 5 need not be in writing; and
- 8               (b) the record keeper may be satisfied that a consumer is receiving  
9               or needs urgent health services without an advice mentioned in  
10              clause 5.
- 11          7 The requirement under clause 2 (b), clause 3 or clause 4 to give a  
12          copy of the consumer’s health record to the second provider is taken  
13          to be satisfied if the original of the record is given.
- 14          8 To avoid doubt, clause 7 does not require the first provider to give  
15          the original of the consumer’s health record to the second provider.
- 16          9 In this principle:
- 17            **first provider**—
- 18               (a) see clause 1; and
- 19               (b) includes—
- 20                   (i) if the first provider becomes legally incompetent—a  
21                   guardian of the provider; or
- 22                   (ii) if the first provider dies—a legal representative of the  
23                   provider.
- 24            **health record** means a health record held by, or on behalf of, the  
25            first provider.
- 26            **second provider**—see clause 1.
- 27            **transfer request**—see clause 2.

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1 **Principle 12.2: Health service provider moves to another health**  
2 **service practice**

- 3 1 If a health service provider (the *provider*) moves from 1 health  
4 service practice (the *first practice*) to another health service practice  
5 and a consumer continues to see the provider, the consumer may ask  
6 the first practice to give the provider a copy or written summary of  
7 the consumer's health record.
- 8 2 If the first practice receives a request under clause 1 (a *transfer*  
9 *request*), the first practice must—
- 10 (a) if a fee has been determined under section 34 for this  
11 principle—not later than 7 days after the day the first practice  
12 receives the transfer request, give the consumer notice that the  
13 consumer must pay a stated fee before the first practice will  
14 give the provider the requested copy or written summary of the  
15 consumer's health record; or
- 16 (b) not later than 30 days after the day the first practice receives  
17 the transfer request, give the provider the requested copy or  
18 written summary of the consumer's health record.
- 19 3 If the consumer pays the fee stated in a notice under clause 2 (a), the  
20 first practice must give the provider the requested copy or written  
21 summary of the record not later than the later of—
- 22 (a) 7 days after the day the fee is paid; and
- 23 (b) 30 days after the day the first practice receives the transfer  
24 request.
- 25 4 If the consumer is receiving or needs urgent health services, the first  
26 practice must give the provider the requested copy or written  
27 summary of the consumer's health record as soon as practicable but  
28 not later than 7 days after the day the first practice receives the  
29 transfer request.

1           5 It is sufficient to establish that a consumer is receiving or needs  
2            **urgent health services** for prioritising the giving of records by the  
3           first practice (the **record holder**) if another health service provider  
4           advises the first practice that the consumer is receiving or needs  
5           urgent health services.

6           6 However—

7           (a) an advice under clause 5 need not be in writing; and

8           (b) the record keeper may be satisfied that a consumer is receiving  
9           or needs urgent health services without an advice mentioned in  
10          clause 5.

11          7 The requirement under clause 2 (b), clause 3 or clause 4 to give a  
12          copy of the consumer's health record to the provider is taken to be  
13          satisfied if the original of the record is given.

14          8 To avoid doubt, clause 7 does not require the first practice to give  
15          the original of the consumer's health record to the provider.

16          9 In this principle:

17           **first practice**—see clause 1.

18           **health record** means a health record held by, or on behalf of, the  
19           first provider.

20           **health service practice** means the business or premises where a  
21           health service provider provides health services.

22           **provider**—see clause 1.

23           **transfer request**—see clause 2.

## 24           **5 Dictionary, note 2**

25            *insert*

- 26                   • chief executive (see s 163)
- 27                   • health services commissioner

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2009.

**2 Notification**

Notified under the Legislation Act on 2009.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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