

Application of Better Regulation Principles

Private Health Facilities Amendment (COVID-19 Prescribed Period) Regulation 2021

Principle 1 - The need for government action should be established

In May 2020 section 12A was inserted into the Private Health Facilities Act 2007 (the Act). Section 12A permits the Secretary to impose any conditions on a licence for a private health facility that the Secretary considers necessary, having regard to the COVID-19 pandemic, to protect the health and safety of the public, manage resources or ensure the provision of balanced and coordinated health services. These additional conditions may include limiting the types of elective surgeries that can be undertaken. This may be necessary to manage resources or coordinate health services to ensure an appropriate supply of personal protective equipment for more serious cases across the entire New South Wales health system, both public and private, during this crisis.

While the COVID provisions have not been used, they are considered appropriate to retain. This is because, if the COVID-19 pandemic worsens, there are arrangements in place to ensure that the Ministry can appropriately respond to circumstances.

Section 12A permits the provisions be extended for a period up to 26 March 2022. The Private Health Facilities Amendment (COVID-19 Prescribed Period) Regulation 2021 (the Amending Regulation) prescribes that the expiry date of the provisions be 26 March 2022. If a further extension is considered necessary, a legislative change will be required.

Principle 2 - The objective of government action should be clear

The objective of the Amending Regulation is to retain the COVID-19 provisions to enable NSW to respond to the COVID-19 pandemic.

Principle 3 - The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options

There is no non-regulatory means to extend the operation of section 12A of the Act.

Principle 4 - Government action should be effective and proportional

The Amending Regulation is considered to be effective and proportional as it extends the COVID-19 provisions for the period permitted in section 12A of the Act.

Principle 5 - Consultation with businesses and the community should inform regulatory development

No consultation has occurred regarding extending the provisions. However there has been consultation with private health facilities regarding plans for management of COVID-19, and they are informed of any COVID-19 information that is relevant to their facilities.

Principle 6 - The simplification, repeal, reform, consolidation of existing regulation should be considered

The Amending Regulation amends the existing Private Health Facilities Regulation 2017.

Principle 7 - Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness

The effect of the Amending Regulation will expire on 26 March 2022. Further extensions will require legislative amendments.