

Public consultation document

November 2019

Consultation on proposed options for *Dental records guidelines*

Public consultation

This public consultation paper released by the Dental Board of Australia (the Board) seeks feedback from stakeholders on the proposed options for *Dental records guidelines*.

This consultation paper will be published on the Board's website, see the *Current Consultations* section of www.dentalboard.gov.au.

Your feedback

You are invited to provide feedback by email to dentalboardconsultation@Ahpra.gov.au by close of business on 13 January 2020.

You are welcome to supply a PDF file of your feedback in addition to a Word (or equivalent) file. However, we request that you do supply a text or Word file. To meet international website accessibility guidelines, the Australian Health Practitioner Regulation Agency (Ahpra) and the Board are striving to publish documents in accessible formats (such as Word), in addition to PDFs. More information about this is available at www.Ahpra.gov.au/About-AHPRA/Accessibility.

How your submission will be treated

Submissions will generally be published unless you request otherwise. The Board publishes submissions on its website to encourage discussion and inform the community and stakeholders. However, the Board keeps the right not to publish submissions at their discretion, and will not place on their website, or make available to the public, submissions that contain offensive or defamatory comments or which are outside the scope of the consultation.

Before publication, the Board will remove personal or identifying information from submissions, including contact details.

The views expressed in the submissions are those of the individuals or organisations who submit them, and their publication does not imply any acceptance of, or agreement with, these views by the Board.

The Board will accept submissions made in confidence. These submissions will not be published on the website or elsewhere. Submissions may be confidential because they include personal experiences or other sensitive information. Any request for access to a confidential submission will be determined in accordance with the *Freedom of Information Act 1982* (Cwlth), which has provisions designed to protect personal information and information given in confidence.

Please let the Board know if you do not want your submission published, or want all or part of it, treated as confidential.

Purpose of the proposal

1. The role of the Board is to work with Ahpra and other National Boards to achieve the objectives of the National Registration and Accreditation Scheme (the National Scheme) in accordance with its guiding [Regulatory principles of the National Scheme](#) (the regulatory principles).
2. The Board carries out regular reviews of all its registration standards, codes, guidelines and policies to ensure continued relevance in a dynamic regulatory environment. The *Guideline for dental records* (the guidelines) are due for review and the Board has developed a proposal for consultation.

Context

Guidelines on dental records

3. The Health Practitioner Regulation National Law, as in force in each state and territory (the National Law) allows National Boards to develop and approve standards, codes and guidelines to provide guidance to the health practitioners they register and about other matters relevant to the exercise of its functions.
4. The Board developed the guidelines under section 39 of the National Law.
5. The [guidelines](#) were developed at the inception of the National Scheme in 2010 to guide dental practitioners on how to maintain dental records which contribute to the safety and continuity of patient or client care.
6. The guidelines describe the minimum requirements expected for dental records for all dental practitioners. It relates to both hardcopy or electronic dental records and is divided into three domains:
 - behaviours
 - general principles to be applied, and
 - information to be recorded.
7. The *Behaviours* domain details the professional and legal responsibilities for dental practitioners including confidentiality, access, informed consent and retaining or transferring records as required by Commonwealth, state or territory legislation.
8. The *General principles to be applied* provides a detailed summary on the Board's expectations for maintaining and handling dental records. It covers subjects such as:
 - storage
 - retrieval of records
 - ensuring records are contemporaneous and in chronological order
 - accuracy
 - how to manage corrections, and
 - type of language to be used.
9. It includes further references to legislative requirements such as privacy laws and retention of records. It also references the requirements for closing a practice as detailed in the [Code of conduct](#).
10. The *Information to be recorded* domain provides a comprehensive list of information which, if relevant, should be included in the dental record, and itemised instructions on what should be recorded for:
 - the patient or client details, including identifying the details of the patient and medical history
 - clinical details, including the date of the visit, presenting complaint, identifying details of the practitioner providing the treatment, relevant history, clinical findings and observations, diagnosis, patient or client consent, all procedures conducted, instrument batch control identification, prescribed medication and details of advice provided
 - unusual 'sequelae' of treatment
 - radiographs and other relevant diagnostic data
 - other digital information including Computer-aided design (CAD) – Computer-aided manufacturing (CAM) restoration files

- instructions to and communication with laboratories, and
- other details such as referrals, any relevant communication with or about the patient or client, details of anyone contributing to the dental record and fees.

Broader regulatory framework of the dental profession

11. Dental practitioners have a responsibility to maintain clear and accurate health records in accordance with the principles of the *Code of conduct*.¹
12. The Board's [Code of conduct](#) defines the Board's expectations for dental practitioners' professional conduct, including the importance of maintaining a high level of professional competence to give the best dental care to patients or clients. The Code of conduct is a key part of the regulatory framework that the Board has established for the dental profession to protect the public and support the other objectives of the National Law.
13. The Code of conduct seeks to assist and support dental practitioners to deliver effective dental services within an ethical framework. It describes the Board's expectations of what constitutes good practice when maintaining health records. Dental practitioners always have a duty to make the care of patients or clients their first concern and to practise safely and effectively. Dental practitioners must maintain dental records that serve the best interests of patients or clients that contribute to the safety and continuity of their dental care
14. The Code of conduct is under review. There will be an opportunity to provide feedback on the *Code of conduct* as part of the review process.
15. The *Code of conduct* has a section which specifically refers to health records under the *Professional behaviour* section (section 8.4). It documents the importance of maintaining clear and accurate health records for the continuing good care of patients or clients. It details what the Board considers to be good practice concerning health records, such as, keeping accurate, up-to-date, factual, objective and legible records that report relevant details of clinical history, clinical findings, investigations, information given to patients or clients, medication and other management in a form that can be understood by other health practitioners.
16. While the specifics are covered in this section, the Board's expectations about practitioners maintaining adequate health records are detailed throughout the *Code of conduct*. Requirements for health records are also covered in:
 - Providing good care
 - Effective communication
 - Informed consent
 - Confidentiality and privacy
 - Ending a professional relationship
 - Understanding boundaries, and
 - Closing or relocating a practice.
17. The Board has also developed registration standards. Registration standards define the obligations applicants, registrants or students need to meet to be registered, such as:
 - a. the *Professional indemnity insurance registration standard* which requires dental practitioners to have the necessary level of insurance cover for all areas of their practice, and
 - b. the *Registration standard: continuing professional development* (CPD) and the associated guidelines which requires dental practitioners to complete specific amount of CPD activities within the definition of dentistry. CPD courses on record keeping are readily available for dental

¹ The *Code of conduct* for the dental profession is also used by eleven other National Boards (Aboriginal and Torres Strait Islander Health Practice, Chinese medicine, chiropractic, medical radiation practice, occupational therapy, optometry, osteopathy, paramedicine, pharmacy, physiotherapy and podiatry) with some minor profession-specific changes for some National Boards.

practitioners and can cover topics such as, privacy and consent, legislative requirements, access and retention.

18. Registered health practitioners are obligated to indicate that they have met the requirements of the Board as established in registration standards, *Code of conduct* and policies when renewing or applying for registration.
19. In addition to complying with the Board's regulatory framework, dental practitioners should comply with Commonwealth, state and territory legislative requirements including (but not limited to) authorities that regulate health records or any other relevant legislation and/or regulatory requirements. Furthermore, dental practitioners should also be aware and comply with privacy legislation and other relevant privacy requirements about health records.
20. Employers (e.g. health services and/or individuals) may have workplace requirements in place for health records.

Proposal

21. The proposed options describe how the guidelines could be retained with updates to reflect any relevant changes that have occurred since their development in 2010. In doing so, this option may not address the Board and the National Scheme's growing maturity since the development of the guidelines.
22. The proposed options also explore whether there remains a need for the guidelines at all, given the evolution of the Board's regulatory framework since they were first developed and the Board's objective to respond in ways that are proportionate when developing standards, policies, codes and guidelines.

Option 1: maintain the status quo

23. Option one is to maintain the status quo by keeping the current guidelines which details the Board's requirements for dental record keeping. The Board, however, may identify ways to improve the guidelines, including opportunities to clarify the language and structure making it easier to understand.
24. The advantages of keeping the status quo are:
 - it reinforces the principles outlined in the *Code of conduct* and helps highlight the Board's minimum standards expected from dental practitioners for maintaining health records, and
 - it can be employed as a resource by dental practitioners and other stakeholders (including consumers) to clarify how dental practitioners should be maintaining patient or client health records and ensure dental practitioners are adhering to the Board's expectations of maintaining health records.

25. The disadvantages of keeping the status quo are:
 - the guidelines is overly prescriptive, opening it up to being used as a checklist to assess or critique dental practitioners' record keeping, which is not the intention of the guidelines
 - it has created an unrealistic expectation that all aspects of guidelines must be met to satisfy the requirements of the Board
 - it creates a further level of regulation for practitioners when expectations are adequately stipulated in the *Code of conduct*, and
 - the language used in the guidelines is convoluted and outdated.

Option 2: Retire the Dental record guidelines

26. Option two proposes to retire the guidelines. The National Scheme has matured since the introduction of the guidelines in 2010. The regulatory principles which underpin the work of the Board encourages a responsive, risk-based approach to regulating dental practitioners. The Board manages and responds to risk in a way that is proportionate. The current guidelines could be considered overly

prescriptive and, at times, has been used as a checklist by dental practitioners which is not the intended purpose of a guideline.

27. The Board considers that there is adequate guidance about health records in the *Code of conduct*. Therefore, the retirement of the guidelines will not change the Board's expectations of dental practitioners in maintaining adequate health records or lessen the Board's ability to take any necessary regulatory action if needed.
28. This option emphasises the *Code of conduct* as the central source for expected standards about health records. Concurrently, it reduces unnecessary regulation while still adequately managing the risk to the public and providing adequate guidance to dental practitioners. It is proposed that the focus shift to supporting practitioners to ensure their record keeping is adequate through online information highlighting the Board's expectations and other useful resources. The Board considers that there are adequate resources available to dental practitioners through professional associations, employers and state and territory authorities, which provide further guidance on health record management if needed.
29. If the guidelines are retired, the Board is proposing to develop an online resource, in line with its other published resources, such as, the fact sheets for the use of botulinum toxin and dermal fillers by dentists and the use of teeth whitening products by dental practitioners.
30. The resource is not designed to replace or function as a guideline. Instead it is designed to manage the change from using the guidelines in conjunction with the *Code of conduct* to only using the *Code of conduct* for health record management, provide information on the relevant sections in the code and incorporate information to available health record resources.
31. An online resource allows the Board to update the information when needed and to ensure that it remains relevant if there are any legislative or *Code of conduct* changes.
32. The proposed fact sheet is available at [Attachment A](#).
33. The advantages of retiring the guidelines are:
 - emphasises the *Code of conduct* as the central source for the Board's expectations on health record management
 - aligns with the National Scheme's regulatory principles by responding in ways that are proportionate while managing the risks by reducing unnecessary regulation and continuing to adequately manage the risks to public
 - improves dental practitioners' experiences with the Board through centralising expected standards
 - the use of plain, unambiguous language in the *Code of conduct* is easily understood by dental practitioners and consumers of dental services
 - shifts focus to supporting practitioners to ensure their record keeping is adequate, through online resources (fact sheet) and links to other available resources, ensuring a consistent approach with the Board's other online resources, and
 - online resources (fact sheet) allows the Board to make timely updates to any relevant changes to health record and privacy legislation when needed.
34. The disadvantages of retiring the guidelines are:
 - removal of a resource for dental practitioners, dental students, stakeholders and consumers to seek guidance from the Board
 - dental practitioners, Ahpra staff and the National Board will need to become familiar with retirement of guidelines, and
 - stakeholders, in particular, professional associations, education providers and indemnity insurers, will need to update their resources, such as CPD modules and guidance documentation, which references the guidelines.

This option aligns with the National Scheme's regulatory principles, in that, the Board's actions are designed to protect the public and not punish dental practitioners, through responding in ways that are proportionate and by managing any risks. It further aligns with the Board's strategic direction by

working towards improving dental practitioners' experiences with the Board through streamlining guidance to the profession and lessening the regulatory burden on registrants.

Preferred option

35. The Board prefers option two.

Issues for consultation

Potential benefits and costs of the proposal

36. The benefits of the preferred option are:

- the *Code of conduct* becomes the central source for health record management for dental practitioners
- the approach would be more user-friendly as it would reduce the number of documents covering the same content
- regulation which is proportional to the level of risk to public safety
- maintains the balance between protecting the public while reducing unnecessary regulation, and
- closer alignment with the Board's approach to other regulatory resources.

37. The costs of the preferred option are likely to be minimal. Dental practitioners, other stakeholders, Ahpra and National Boards will need to become familiar with the proposed retirement of the guidelines and understand the requirements in the *Code of conduct*.

Estimated effects of the proposed changes to the pathway

38. The changes proposed in the retirement of guidelines do not substantially change current requirements. There is a minor effect anticipated on practitioners and other stakeholders arising from the changes proposed.

39. There would be no financial impact for dental practitioners as any changes will not affect application or registration fees.

Relevant sections of the National Law

40. The relevant section of the National Law is:

- section 39 which states a National Board may develop and approve codes and guidelines to provide guidance to the health practitioners it registers and about other matters relevant to the exercise of its functions.

41. The guidelines are published on the Board's website, accessible at www.dentalboard.gov.au.

Questions for consideration

The Board is inviting feedback on proposed options, specifically:

1. Are the current guidelines necessary?
2. Do you agree with the proposal that the Board retires the current guidelines? That includes positioning the *Code of conduct* as the document to provide dental practitioners with guidance on health records management with supplementary information through a fact sheet.
3. Is the content of the fact sheet helpful, clear and relevant?
4. Is there any content that needs to be changed, added or deleted to the fact sheet?

Attachments

Attachment A Proposed *Fact sheet – Health records*

Attachment B Board's statement of assessment against the *COAG principles for best-practice regulation* – retire the *Dental records guidelines*

DRAFT Fact sheet

Date

Maintaining your patient health records

The Dental Board of Australia (the Board) expects all registered dental practitioners to maintain health records that serve the best interests of patients or clients and that contribute to the safety and continuity of their dental care.

Key things you need to know

The Board expects you to:

- Practice in accordance with the Board's regulatory standards, codes and guidelines by:
 - acting in accordance with the standards set out in the [Code of conduct](#) including expectations about confidentiality and privacy and informed consent
 - completing ongoing [continuing professional development](#) (CPD) that contributes to the development, maintenance and enhancement of knowledge, skills and performance. CPD courses on record keeping are readily available for dental practitioners and can cover topics such as, privacy and consent, legislative requirements, access and retention, and
 - ensuring you have appropriate [professional indemnity insurance](#) (PII) arrangements in place for all aspects of your practice. PII providers can provide guidance on maintaining adequate health records.
- Be aware and comply with:
 - state and territory legislative requirements including (but not limited to) authorities that regulate health records or any other relevant legislation and/or regulatory requirements, and
 - privacy legislation and/or any other relevant privacy requirements related to health record management.
- Understand the principles of maintaining health records by being aware of:
 - what constitutes a health record
 - your obligations and responsibilities when making a health record, and
 - what information should be recorded in a patient or client's health record.

Resources to help you

Code of conduct

The [Code of conduct](#) is a key part of the Board's regulatory framework for the dental profession to protect the public and support the other objectives of the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).

The Code of conduct defines the Board's expectations for dental practitioners' professional conduct, including the importance of maintaining a high level of professional competence in order to provide the best dental care to patients or clients.

It also describes the Board's expectations of what constitutes good practice when maintaining health records.

Section 8.4 Health records

Section 8.4 of the Code of conduct specifically refers to health records and provides you with guidance on the Board's expectations on how to manage them. It states:

Maintaining clear and accurate health records is essential for the continuing good care of patients or clients. Practitioners should be aware that some National Boards have specific guidelines in relation to records. Good practice involves:

- a. *keeping accurate, up-to-date, factual, objective and legible records that report relevant details of clinical history, clinical findings, investigations, information given to patients or clients, medication and other management in a form that can be understood by other health practitioners*
- b. *ensuring that records are held securely and are not subject to unauthorised access, regardless of whether they are held electronically and/or in hard copy*
- c. *ensuring that records show respect for patients or clients and do not include demeaning or derogatory remarks*
- d. *ensuring that records are sufficient to facilitate continuity of care*
- e. *making records at the time of events or as soon as possible afterwards*
- f. *recognising the right of patients or clients to access information contained in their health records and facilitating that access, and*
- g. *promptly facilitating the transfer of health information when requested by patients or clients.*

Other relevant sections of the code

The Board's expectations about health records are also detailed throughout the Code of conduct, including:

- **Section 2 - Providing good care**
 - Introduction (section 2.1)
 - Good care (section 2.2)
- **Section 3 - Working with patients or clients**
 - Effective communication (section 3.3)
 - Confidentiality and privacy (section 3.4)
 - Informed consent (section 3.5)
 - Ending a professional relationship (section 3.13)
 - Understanding boundaries (section 3.14)
 - Closing or relocating a practice (section 3.16)

You have a professional responsibility to be familiar with the Code of conduct and apply it to your practice.

Other resources

There are a range of health record resources available to dental practitioners through professional associations, insurers and government health departments, designed to give more detailed guidance and advice on health record management.

These resources can provide dental practitioners advice on what should be recorded in a health record, how to achieve good record keeping and practical examples of the importance of accurate record keeping.

You should seek advice from your professional association, insurer or your employer if you are still not sure how to comply with maintaining health records.

Review

This fact sheet will be reviewed as required. This will generally be every three years.

Statement of assessment against the *COAG principles for bestpractice regulation*

Proposal to retire the *Dental records guidelines*

The Australian Health Practitioner Regulation Agency (Ahpra) has *Procedures for the development of registration standards, codes and guidelines* which are available at: www.Ahpra.gov.au.

These procedures have been developed by Ahpra in accordance with section 25 of the Health Practitioner Regulation National Law as in force in each state and territory (the National Law) which requires Ahpra to establish procedures for ensuring that the National Registration and Accreditation Scheme (the National Scheme) operates in accordance with good regulatory practice.

Below is the Dental Board of Australia's (the Board) assessment of its proposed retirement of the *Dental record guidelines* against the *Council of Australian Government's (COAG) Principles for best-practice regulation*.

1. The proposal takes into account the National Scheme's objectives and guiding principles set out in section 3 of the National Law

Board assessment

The Board considers that the proposed retirement of the guidelines meets the objectives and guiding principles of the National Law by enabling the continuous development of a flexible, responsive and sustainable Australian health workforce and to allow innovation in the education of, and service delivery by, health practitioners.

The proposal considers the National Scheme's guiding principle of operating in a transparent, accountable, efficient, effective and fair way.

2. The consultation requirements of the National Law are met

Board assessment

The National Law requires wide-ranging consultation on proposed registration standards and guidelines and that the Board needs to consult with the other National Boards on matters of shared interest.

The Board will ensure public exposure of its proposals and the opportunity for public feedback through an eight-week public consultation process.

This process will include the publication of the consultation paper on the Board's website and informing dental practitioners through the Board's electronic newsletter sent to all registered dental practitioners. The Board has drawn this consultation paper to the attention of stakeholders including other National Boards.

The Board will consider the feedback it receives when finalising its revised registration guidelines.

3. The proposal takes into account the *COAG Principles for best-practice regulation*

Board assessment

In proposing the retirement of the guidelines, the Board has considered the *Council of Australian Government's (COAG) Principles for best-practice regulation*.

As an overall statement, the Board has taken care not to propose unnecessary regulatory burdens that would create unjustified costs for the profession or the community.

The Board makes the following assessment specific to each of the COAG principles expressed in the Ahpra procedures.

A. Whether the proposal is the best option for achieving the proposal's stated purpose and protection of the public

Board assessment

The Board has proposed the retirement of the *Dental record guidelines* as the guidelines are considered too prescriptive and, at times, are used as checklist which is not the intended purpose of a guideline. It is considered that there is adequate guidance about health records in the *Code of conduct* to allow for the Board to step back from the current prescriptive approach.

The proposal aligns with the National Scheme's regulatory principles which underpins the work of the Board, in that, the Board's actions are designed to protect the public and not punish dental practitioners, through responding in ways that are proportionate and by managing any risks. It further aligns with the Board's strategic direction by working towards improving dental practitioners' experiences with the Board through streamlining guidance to the profession and lessening the regulatory burden on registrants.

B. Whether the proposal results in an unnecessary restriction of competition among health practitioners

Board assessment

The Board considered whether its proposal could result in an unnecessary restriction of competition among health practitioners. The proposal does not substantially change current requirements for registration and removes requirements that are no longer necessary. It is not expected to affect the current levels of competition among health practitioners.

C. Whether the proposal results in an unnecessary restriction of consumer choice

Board assessment

The Board considers that the proposal of the retirement of the guidelines will support consumer choice by continuing to facilitate access to health services provided by dental practitioners in a framework that ensures public protection.

D. Whether the overall costs of the proposal to members of the public and/or registrants and/or governments are reasonable in relation to the benefits to be achieved

Board assessment

The Board considered the overall costs of the proposed retirement of the guidelines to members of the public, dental practitioners and governments. It concluded that the likely costs are minimal when offset against the benefits of retiring the guidelines will contribute to the National Scheme.

Subject to stakeholder feedback on the proposal, the proposed retirement of the guidelines should have very minimal effects on the costs to dental practitioners as the proposals do not substantially change current requirements for registration and removes requirements that are no longer considered to be necessary.

E. Whether the requirements are clearly stated using 'plain language' to reduce uncertainty, enable the public to understand the requirements, and enable understanding and compliance by registrants

Board assessment

The Board considers the proposed public consultation has been written in plain English and that it will help practitioners to understand the reasons for the Board's proposed options.

F. Whether the Board has procedures in place to ensure that the proposed registration standard, code or guidelines remains relevant and effective over time

Board assessment

Not applicable.