

Public consultation paper

April 2024

Public consultation on proposed revision of *Guidelines on patient health records*

You are invited to provide feedback

The existing *Guidelines on patient health records* (the guidelines) were first published in 2012 when the profession of Chinese medicine was first regulated under the National Registration and Accreditation Scheme (the National Scheme). The guidelines are now due for review, having previously been reviewed in 2016.

The Chinese Medicine Board of Australia (the Board) is inviting stakeholders to provide feedback on the *proposed revised Guidelines on patient health records* (the proposed revised guidelines).

The proposed revised guidelines are at **Attachment A**.

To submit feedback on the proposed revised guidelines, please [provide your comments using the online survey](#) by **5pm (AEST) on Wednesday 5 June 2024**.

If you are unable to complete the online survey, please contact us at chinesemedicineconsultation@ahpra.gov.au.

Publication of submissions

The Board and Ahpra publishes submissions at its discretion (further details are provided below, as well as in the online survey).

The Board and Ahpra generally publishes submissions on its website to encourage discussion and inform the community and stakeholders.

We do not publish submissions that contain offensive or defamatory comments or are outside the scope of the subject of the consultation. Published submissions will include the names (if provided) of the individuals and/or the organisations that made the submission (unless confidentiality is requested). Before publication, we may remove personally 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 Ahpra or the Board.

The Board and Ahpra accepts 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 These submissions will not be published on the website or elsewhere.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 (Cth)*, which has provisions designed to protect personal information and information given in confidence.

Please let the Board know if you want your submissions to be treated fully or partly confidential as outlined in a question in the online survey.

Please note, published submissions will include the names of the individuals and/or organisations that made the submission unless confidentiality is requested.

If you have any questions, you can contact the Board at chinesemedicineconsultation@ahpra.gov.au

Next steps

After the public consultation closes, the Board will review and consider all feedback from this consultation before making decisions about implementation and the supporting documents.

Summary

1. The Board is seeking feedback on a draft of the proposed revised *Guidelines on patient health records*.
2. The proposed revised guidelines will, after a transition period, require all practitioners to make records in English, regardless of whether or not they have an English language condition on their registration.

Background and context

3. The current version of the *Patient health records guidelines* has been in effect since August 2016 and provides guidance for practitioners on their requirements regarding patient health records.
4. The proposed revised guidelines have been developed and reviewed by the Chinese Medicine Board of Australia under section 39 of the National Law. The proposed revised guidelines are developed to provide guidance to registered Chinese medicine practitioners and registered Chinese medicine students.
5. When exercising professional judgment related to each individual patient, practitioners are expected to make and maintain their records in accordance with approved standards, codes and guidelines and the [shared Code of conduct](#). The guidelines currently in effect set out the expected minimum standard for record making. Practitioners are expected to use professional judgment in deciding what to record on an individual basis.
6. Where there are laws related to the making of health records, practitioners must comply with those laws. If there is any inconsistency between the proposed revised guidelines and the provisions of any Act or Regulation, the provisions of the Act or Regulation prevail.
7. Chinese medicine practitioners are required to work effectively as part of the health care system, not just with other registered Chinese medicine practitioners, but with practitioners in other health professions. This directive appears as a threshold requirement as part of the [Professional capabilities for Chinese medicine practitioners](#) and as part of the requirements under the shared *Code of conduct*.
8. The Board is mindful that some 'grandparented' practitioners with English-language-related conditions on their registration have now been subject to these conditions for at least 10 years. The intent of the grandparenting provisions was to ensure that practitioners who were legitimately practising the profession were not unjustly disadvantaged because they were not state or territory registrants or did not hold a qualification obtained by completing an approved program of study.
9. The original version of the guidelines, effective from July 2012, stated that all Chinese medicine practitioners were expected to make records in English, with an exemption allowed for 'grandparented' practitioners, permitting them to make records in a different language, except for identifying details, which were to be made in English.
10. From 1 July 2015, when the grandparenting provisions of the National Law expired, all new applicants for registration were required to meet the [English language registration standard](#). Imposing the English language condition on a practitioner's registration was ceased at this time and all Chinese medicine practitioners registered since then must make their records in English. Approximately 15% of the registered Chinese medicine practitioners have English-language-related conditions on their registration.
11. The current guidelines came into effect in August 2016. The revisions permitted practitioners with an English language condition on their registration to make patient identifying details and contact details

of their records in English, while the remainder of the record could be in a language other than English.

12. Chinese medicine practitioners with English language conditions on their registration can have them removed at any time by applying for a review of conditions on the appropriate form in accordance with section 125(1) of the National Law.

Revisions to the current guidelines

13. The Board periodically reviews all of its guidelines, standards and other policy documents.
14. In 2022, the Board undertook a review of the *Patient health records guidelines*, with the aims of:
 - Ensuring that other healthcare practitioners can access and understand health records, especially in an emergency situation.
 - Continuing to ensure each patient using the services of a Chinese medicine practitioner has an individual health record.
 - Clearly articulating the Board's expectations of practitioners regarding patient identify information, transfer of information and the type of information that should form part of a patient health record.
 - Continuing to ensure that patient health records made by Chinese medicine practitioners align with requirements of practitioners in other National Board and Ahpra policies.
 - Ensuring continuity of care for patients and better integration of Chinese medicine into the health care system.
 - Updating the title of guidelines to *Guidelines on patient health records* in line with the Board's other guidelines.
15. The proposed revised guidelines would apply to all registered Chinese medicine practitioners, and anyone working under their supervision.

Preliminary consultation on the proposed revised guidelines

16. In September 2023, the Board undertook preliminary consultation with stakeholders on the proposed revised guidelines. This allowed the Board to test and refine its proposals, before deciding on whether to proceed to public consultation. Stakeholders, including professional associations, the Commonwealth, state and territory health departments and co-regulators, submitted written responses.
17. The feedback received from the preliminary consultation was generally positive and receptive toward the proposed revised guidelines.
18. Following assessment of the feedback received, the Board made minor amendments to the proposed revised guidelines, such as changes in wording and shortening the introductory section.
19. There were some comments from stakeholders that raised concerns about proposed changes in the proposed revised guidelines or seeking clarity on certain elements. The Board resolved to address concerns by providing more extensive rationale for changes and clarity in this public consultation paper.
20. Given the generally positive feedback among stakeholders for the proposed revised guidelines, the Board decided to proceed to public consultation to seek the wider view of stakeholders, including practitioners and the public.

Options statement

21. The Board has considered two options in developing this proposal.

Option 1 – Status quo (continue with the guidelines currently in effect)

22. The guidelines currently in effect allow Chinese medicine practitioners with English language conditions on their registration to make patient health records in their preferred language, other than patient identification and emergency contact information, which must be made in English.
23. This version also states that if a copy of a patient health record is requested by the patient, or required by the Board or an authorised third party, it is the practitioner's responsibility to arrange for an English translation.
24. This option does not address the risk to public safety in the event of an emergency and / or through a lack of continuity of care when some health records are not made in English. This option does not address the paramount principle under the Health Practitioner Regulation National Law, as in effect in each state and territory (the National Law) which makes protection of the public, and public confidence in the safety of services paramount considerations in all decision-making under the National Scheme.

Option 2 – Implement the proposed revised guidelines

25. Subject to feedback at public consultation, the proposed revised guidelines would require all Chinese medicine practitioners to make patient health records in English following a transition period.
26. This option will reduce the risk to the public in the event of an emergency and / or through a lack of continuity of care that is currently caused by some health records not being made in English. This option addresses the paramount principle of public safety and confidence and aligns with language requirements under the National Scheme.

Preferred option

27. The Board considers Option 2 the best option for achieving public safety, high quality and professional practice and regulatory effectiveness. The Board's position is that there is currently a risk to public safety due to some health records not being made in English, and that all health records should be made in English for the greater safety of patients in the event of an emergency and to ensure continuity of care. The Board's view is that Option 2 serves the best interests of the public by ensuring continuity of care and public safety, aligns with the *Professional capabilities for Chinese medicine practitioners* and the shared *Code of conduct* and offers improved guidance to registrants.

Rationale for requiring Chinese medicine practitioners to make health records in English

28. The Board must ensure that the guideline remains relevant and fit for purpose and is consistent with the guidance given to other professions regulated under the National Scheme.
29. Patient health records are legal documents. An adequate record of every patient consultation is an essential part of competent Chinese medicine practice for the following reasons:
 - a) Good patient health records facilitate high-quality and comprehensive care by making detailed and relevant information readily available to any treating practitioners.
 - b) Patient health records are a repository of valuable information for teaching, education and research.
 - c) Patient health records should be the basis for quality management and improvement activities undertaken regularly by Chinese medicine practitioners.
 - d) Patient health records form the basis for retrieval of treatment details to assist in disputes or in giving evidence and may, in themselves, be used as evidence in courts and tribunals.
30. The Board believes public safety is best achieved if all patient health records are made in English. All 16 professions in the National Scheme have a registration standard for English language skills. All registered health practitioners in Australia, with the exception of the small cohort of those Chinese medicine practitioners with English language conditions, have met their Board's English language standard and demonstrated sufficient competency in English.
31. By making records in English, health practitioners ensure that other health practitioners can quickly access important information about patients in the event of an emergency or to continue the care of that patient.

32. The Board is concerned that the guidelines currently in effect only require records not made in English to be translated upon request. In the event of an emergency or the sudden absence of the original treating practitioner, a situation may arise where health records cannot be read by other health providers, which may impact on continuity of care or patient safety.
33. For the safety of the public, it is imperative that health records are available to other health practitioners in English. For example, in a situation where a non-English-speaking patient who has received Chinese medicine services presents to an emergency department, there is no guarantee that translation services will be immediately available in an emergency. It is therefore vital for staff present that they can access and read the patient's health record quickly to understand the patient's medical history and what actions are necessary. The responsibility of translating the health record does not lie with the patient or other health practitioners.
34. The Board also considered that the exception for Chinese medicine practitioners with English language conditions does not align with a practitioner's responsibility under the *shared Code of conduct* and *Professional capabilities for Chinese medicine practitioners* to make health records in a form that can be understood by other health practitioners and to maintain records that facilitate continuity of care.
35. The Board will not require Chinese medicine practitioners to translate records made in another language prior to the introduction of the proposed revised guidelines unless they are requested to do so by the patient or required by the Board or an authorised third party.
36. When tested with stakeholders at preliminary consultation, the proposed change of requiring all Chinese medicine practitioners to make their records in English received strong support. Given the strength of this feedback, and that the Board has foreshadowed its position on reviewing the use of non-English languages when making records for almost a decade, the Board is now seeking the views of all stakeholders on the proposed change at public consultation.

Transitional arrangements

37. The Board is mindful that the proposed changes to the guidelines will have more of an impact on Chinese medicine practitioners with English language conditions. The Board is proposing a transition period, during which these practitioners may continue to make records in a language other than English but must translate these records into English within a predetermined window of time.
38. The purpose of the transitional arrangements is to give Chinese medicine practitioners with English language conditions on their registration, a period in which to prepare for making health records in English. The Board considers that having a transition period would give time for practitioners to alter or amend their practice or to put in place other arrangements to ensure that they are able to make patient health records in English.
39. The proposed transitional arrangements were generally received well by stakeholders at preliminary consultation. Some stakeholders suggested minor amendments to the arrangements in their feedback. The Board is therefore exploring options on adjustments to the transitional arrangements in this consultation.
40. The transitional arrangements in the proposed revised guidelines will be in effect for 12 months. The Board is seeking feedback on whether this is a suitable period of time, or whether any other considerations should be taken into consideration.
41. The transitional arrangements in the proposed revised guidelines will require practitioners who do not make records in English to translate the record into English within 24 hours. The Board is seeking feedback on whether this is a suitable timeframe.

Mitigating the impacts of the changes in proposed revised guidelines

42. The Board acknowledges that the proposed revised guidelines will impact more on practitioners with English language conditions, due to changing the way in which they make health records.
43. Preliminary consultation has not indicated that there will be impacts on other practitioners, businesses and other stakeholders. This will be tested further at public consultation.

44. The Board is mindful of the significance of the changes for practitioners with English language conditions and believes that the following factors will support the practitioners to practice in accordance with the proposed revised guidelines, should they come into effect:
- a. The transitional period will give a significant period of time for these practitioners to amend their way of making patient records.
 - b. Subject to the feedback of this consultation, the Board may consider if there are any resources within its regulatory role that it can develop to support practitioners in their transition to making health records in English.

The Board is interested in your feedback about the proposed revised guidelines

45. Specific questions the Board would like you to address are:

- Q1 For the benefit of public safety and supporting the threshold requirement as part of the *Professional capabilities for Chinese medicine practitioners* and as part of the requirements under the shared *Code of conduct*, the Board is proposing that all patient health records should be made in English. This proposal aims to improve continuity of care for patients and support Chinese medicine practitioners to work effectively as part of the healthcare system, integrating Chinese medical practice into the broader healthcare environment.

Do you agree that making patient health records in English will help achieve these goals?

<MULTIPLE CHOICE – Yes / Uncertain / No>

Please give a reason for your answer.

- Q2 Do you consider a period of transitional arrangements an effective method of giving Chinese medicine practitioners with English language conditions on their registration time to adjust or alter their practice or put in place arrangements to ensure patient health records are made in English?

<MULTIPLE CHOICE – Yes / Uncertain / No>

Please say why or why not.

- Q3 Do you consider 12 months to be a suitable period of time for the transitional arrangements to be in place in order for Chinese medicine practitioners with English language conditions to prepare for making health records in English?

<MULTIPLE CHOICE Yes / Uncertain / No>

If no, what do you consider to be an appropriate length of time for transitional arrangements to be in place? Please give a reason for your answer.

- Q4 Do you consider 24 hours to be a suitable window of time for Chinese medicine practitioners with English language conditions to have health records translated to English during the transitional period?

<MULTIPLE CHOICE – Yes / Uncertain / No>

If No, what do you consider to be an appropriate length of time for health records to be translated?

- Q5 Outside of the changing requirements regarding the language in which health records are made, are there any other implementation issues that the Board should be aware of?

<MULTIPLE CHOICE – Yes / Maybe / No>

If Yes or Maybe, please explain what other implementation issues the Board should be aware of.

Q6 Is the wording and language of the proposed revised guidelines helpful, clear, relevant and workable?

<MULTIPLE CHOICE – Yes / No>

If No please explain why.

Q7 Is there any content that needs to be changed or deleted in the proposed revised guidelines?

<MULTIPLE CHOICE – Yes / No>

If Yes, please explain what should be changed.

Q8 The Board may consider developing supporting materials should the proposed revised guidelines come into effect. Which of the following, if any, would you like to see the Board develop? You may select multiple options.

<MULTIPLE CHOICE – FAQs / Health record templates / None / Other (Please specify what other resources you would like to Board to consider developing.)>

Q9 Are there any potential negative or unintended impacts that the proposed revised guidelines may have for Aboriginal and Torres Strait Islander Peoples?

<MULTIPLE CHOICE – Yes / No>

If Yes, please explain what they may be.

Q10 The Board's Statement of assessment against Ahpra's Procedures for development of registration standards, codes and guidelines, included at Attachment B, identifies potential regulatory impacts from this proposal that the Board will take into account when considering whether to implement the proposed revised guidelines. Are there any additional potential regulatory impacts that the Board should also take into account?

Q11 Do you have any comments on the Board's Statement addressing Patient and Consumer Health and Safety Impact, included as **Attachment C**?

Q12 Do you have any other comments on the proposed revised guidelines?

Relevant sections of the National Law

46. Relevant sections of the National Law are sections 35(1)(c)(iii) and 39.

Please provide feedback via the online survey by 5pm (AEST) on Wednesday 5 June 2024.

Attachments

A. Proposed revised *Guidelines on patient health records*

B. Board's *Statement of assessment* against Ahpra's procedures for development of registration standards, codes and guidelines.

C. National Board's Patient and Consumer Health and Safety Impact Statement.