

June 2018

Notification requirements for events arising from medical treatment

The primary piece of legislation governing work health and safety in New Zealand is the Health and Safety at Work Act 2015 (HSWA).

Key points

- HSWA requires PCBUs to tell us about any notifiable event that arises from work. DHBs, private medical institutions and other employers are all PCBUs.
- The requirement to tell us about a notifiable event applies to a registered health professional only if they are a PCBU in their own right.
- The definition of notifiable event is very broad, but we recognise that there are regulatory processes for dealing with notifiable events arising from medical treatment under other legislation. These processes involve experienced medical professionals.
- Because of this, our approach is that when a notifiable event is required to be notified through another regulatory process:
 - WorkSafe New Zealand **does not** expect you to tell us about notifiable events arising from medical treatment administered by a registered health professional
 - we **will not** take enforcement action against a PCBU for not telling us about a notifiable event if it is the result of medical treatment administered to a patient.
- You **must** tell us about any notifiable events:
 - arising out of non-clinical patient care
 - resulting from the failure of equipment used in administering treatment.

Policy clarifications set out WorkSafe's view of HSWA in relation to a clearly defined sector, a particular set of circumstances, or a specific function.

This policy clarification sets out our expectations of registered health professionals regarding the reporting of a notifiable event arising from medical treatment.

This policy clarification should be read by:

- registered health professionals
- officials of representative associations for registered health professionals
- directors, chief executives, health and safety managers of District Health Boards (DHBs) and other PCBUs that employ registered health professionals.

What does the law say?

A PCBU must ensure that WorkSafe is notified as soon as possible after becoming aware that a notifiable event arising out of the conduct of the business or undertaking has occurred.

This allows WorkSafe to immediately investigate or follow up on events that involve death, serious injury or illness, or have the potential to cause death or serious injury or illness (serious health and safety risks).

What is a notifiable event?

A notifiable event is any of the following events that arise from work:

- a death
- a notifiable illness or injury or
- a notifiable incident.

The occurrence of a notifiable event triggers requirements to preserve the site, notify the regulator and keep records. Deaths, injuries or illnesses that are unrelated to work are not notifiable events.

What is WorkSafe's approach to notifications in the health sector?

WorkSafe recognises that there is a risk that medical treatment administered to a patient by a registered health professional may give rise to a notifiable event. By 'treatment', we mean a medical procedure that is carried out to achieve a therapeutic purpose. A medical procedure has a therapeutic purpose if the procedure's purpose is to cure, prevent, remove, ameliorate or investigate a patient's pathological condition, cosmetic deformity, psychiatric disorder, or injury. Treatment does not include services that relate to a patient's everyday need for sustenance or attention to, and assistance with, personal hygiene.

WorkSafe acknowledges that there are comprehensive investigative processes and reporting structures for medical treatment incidents involving patients under other legislation. These processes and structures are specifically designed to deal with such incidents.

In view of this, WorkSafe's position on the reporting of notifiable events in the health sector is that:

- when notifiable events arising from medical treatment administered by a registered health professional to a patient are required to be reported to another regulatory body, they do not need to be reported to WorkSafe
- where it appears that the notifiable event has occurred not because of the actions or decisions of a registered health professional, or person acting at their direction, but instead is the result of the failure of equipment used in administering treatment, that occurrence must be reported to WorkSafe
- notifiable events arising out of non-clinical patient care must be reported to WorkSafe
- enforcement action will not be taken against DHBs, other employers of registered health professionals, or self-employed registered health professionals, for failure to notify WorkSafe of a notifiable event when the event is required to be reported to another regulatory body.