

Health Information Privacy Code 2020

Amendment No 1

Information Paper

The first amendment to the Health Information Privacy Code 2020 ('the Code'), issued under the Privacy Act 2020, is designed to align the Code with structural reforms that are occurring within the public health and disability support sector. In particular, the Pae Ora (Healthy Futures) Bill provides for the disestablishment of District Health Boards (DHBs), and the establishment of new entities, including Health New Zealand and the Māori Health Authority. In addition, a new Ministry for Disabled People is being established, and some functions that currently sit with the Ministry of Health will be transferred to Health New Zealand. The timing of the amendment will reflect the commencement date for the structural reforms, being 1 July 2022. The proposed amendment also fixes two minor errors identified following the repeal and replacement of the Code in 2020.

The proposed amendment to the Code is technical in nature and is not intended to enact policy changes beyond those provided for in the Bill. As the Bill has not yet been enacted, any changes to the Bill or the names of the new agencies made subsequent to this consultation process will be incorporated into the amendment if they are also minor and technical in nature, and reasonably necessary for the effective operation of the Code.

Submissions

Address submissions to Office of the Privacy Commissioner at privacy.code@privacy.org.nz

If you do not have access to email, submissions may be posted to Health Information Privacy Code Submissions, Office of the Privacy Commissioner, PO Box 10094, Wellington 6143.

Submissions open on **6 April 2022** and close on **4 May 2022**.

Submissions may be published on the website of the Office of the Privacy Commissioner or be released on request. If you would like the Commissioner to keep your submission or part of your submission confidential, please indicate the reasons with your submission and the Commissioner will consider your request in accordance with the Official Information Act 1982.

If you would like to present your submissions in person, please let us know when you send your written submissions to the Commissioner.

Background

The Pae Ora (Healthy Futures) Bill provides for a new structure and new accountability arrangements for the publicly-funded health and disability support system, in order to protect, promote, and improve the health of all New Zealanders. It introduces a new set of principles

to provide common expectations across all levels of the health system and creates new entities:

- The Māori Health Authority (placeholder name), an independent entity that will work with Health New Zealand to commission and plan services, commission kaupapa Māori services and monitor the performance of the system for Māori.
- Health New Zealand (placeholder name), a new entity that will replace district health boards and lead the operation of the health system. It will work in partnership with the Māori Health Authority to design and deliver health services.

These changes are to come into effect from 1 July 2022.

Although not established directly by the Bill, the Government has also announced the creation of a new Ministry for Disabled People (also to be established by 1 July 2022), which is responsible for (among other things) operating the needs assessment system, providing for long term home based and community support for 43,000 people, providing equipment and modification services to 83,000 people, processing claims, and managing contracts and service providers. This amendment also recognises that the new Ministry for Disabled People will need to assign the National Health Index (NHI).

While some functions will be transferred to Health New Zealand, the Ministry of Health will continue to be the chief steward of the health system, with a focus on strategy, policy, regulation, and monitoring. As such, the Ministry of Health will remain a health agency for the purposes of the Code.

Scope of changes

Minor updates to the interpretation section of the Code

Many of the definitions in the Code are based on the definitions contained in the New Zealand Public Health and Disability Act 2000 (or prior legislation). However, the definitions in the Code exist independently, meaning that the repeal of the Act does not necessitate amendments to the definitions in the Code.

We have, however, proposed to amend the definition of “disability services” to “disability support services” (without changing the meaning of that term). That is to reflect the shift in terminology that has occurred in the sector.

We have also considered whether to propose amendments to remove any doubt that the Code covers information about end-of-life services. We are of the view that this is not necessary, and that the definition of health service in the Code encompasses end-of-life services.

Amendments to rule 13 – Health Provider Index/Common Provider Number

The Common Provider Number (CPN) is a unique identifier assigned to health practitioners by the Ministry of Health, and is one aspect of the Health Provider Index. The Health Provider Index also identifies organisations that provide health services and facilities/locations at which an organisation provides health services. It is used across the health sector to identify health practitioners, providers and facilities and reduce duplication of systems.

As part of the reforms, the responsibility for maintaining the Health Provider Index, including the CPN will likely transfer from the Ministry of Health to Health New Zealand. As Rule 13(4)

currently refers to “the Common Provider Number assigned to that individual by the Ministry of Health”, we propose an amendment to Rule 13(4)(b) whereby the reference to the Ministry of Health would be removed. That would be consistent with the reference to the National Health Index number (NHI), which does not specify which agency has primary responsibility for the national collection.

Amendments to Schedule 2 – Agencies approved to assign NHI number

The NHI number is a unique identifier that is assigned to every individual who uses health and disability support services in New Zealand. The NHI is used by health agencies to identify individuals and ensure they are matched with their correct health records. The NHI enables health agencies to more securely communicate with each other about a specified individual, as they do not have to provide additional information about the individual to make sure that each agency is communicating about the same person. This mitigates the risks of extraneous data sharing and sharing information about the wrong individual.

Schedule 2 of the Code sets out the agencies that are approved to assign an NHI number. Currently, this list refers to District Health Boards that will be de-established by the Pae Ora legislation.

We understand that the Māori Health Authority, Health New Zealand, and the Ministry for Disabled People will all have a need to assign the NHI, and we propose to add them to the list of agencies in Schedule 2. We also understand the Ministry of Health will continue to need to assign the NHI in its revised role as steward of the health system.

We also propose to amend Schedule 2 to reflect the way in which funding flows within the sector. While funding within the health sector is often via back-to-back contracts (for example DHB to Primary Health Organisation (PHO), PHO to GP practice), the current drafting requires the health agencies contract to be with the DHB (or ACC/the Ministry of Health) directly. Given there will be more state sector agencies that are likely to contract with health agencies to provide health and disability services, we propose to amend Schedule 2 to make it clear that a health agency that is funded whether wholly or partly and whether directly or indirectly by a state service to provide health or disability support services can assign the NHI to an individual. As with other existing agencies that can assign the NHI, health agencies must only assign the NHI for use in its operations where that is necessary to enable it to carry out its functions efficiently.

For completeness, while it is likely that the responsibility for maintaining the NHI will also transfer from the Ministry of Health to Health New Zealand, this does not need to be reflected in an amendment to the Code. That is because the Code does not refer to the Ministry of Health as the assignee (unlike with the CPN).

Updating the legislative reference in Schedule 3

Schedule 3 of the Code sets out use and disclosure rules in respect of information derived from newborn babies’ blood spot samples (also known as the Guthrie card). One of the permitted secondary purposes of the derived information is to comply with a notice in writing from the chairperson of a mortality review committee. Current drafting refers to a committee pursuant to Schedule 5 of the New Zealand Public Health and Disability Act. This reference

requires updating to reflect that the mortality review committee are continued and carried over by the new legislation.

Addressing technical errors

The Office has previously identified two minor drafting errors which are proposed to be fixed in this amendment, at clause 6(2) and Rule 12(1)(g).

Summary of proposed amendments

Section		Proposed change
Throughout the Code	“Disability Services/”Disability Service””	<ul style="list-style-type: none"> Change to “disability support services/disability support service” to align with Bill
Rule 12(1)(g)	[...] that the disclosure of the information is in accordance with an authorisation granted under section 30 of the Act.	<ul style="list-style-type: none"> Remove “that” to improve syntax of the clause
Clause 6(2)	Where an individual makes an information privacy request to a health agency that is not a private sector agency, the agency may, unless prohibited by law other than the Act or this code, make a reasonable charge	<ul style="list-style-type: none"> Remove “not” which was added in error in the 2020 repeal and replacement process.
Schedule 2 (3)	Agencies are approved to access and assign NHI numbers to an individual	<ul style="list-style-type: none"> Remove reference to District Health Boards Add Health New Zealand, the Ministry for Disabled People and Māori Health Authority
Schedule 2 (13)	Any health agency which has a contract with the Accident Compensation Corporation or a District Health Board or the Ministry of Health to provide health or disability services.	<ul style="list-style-type: none"> Change to “Any health agency that is funded (whether wholly or partly and whether directly or indirectly) by a State service to provide health or disability support services.”
Schedule 3	(e) comply with a notice in writing from the chairperson of a mortality review committee pursuant to Schedule 5 of the New Zealand Public Health and Disability Act 2000	<ul style="list-style-type: none"> Remove reference to New Zealand Public Health and Disability Act 2000 Add legislative reference to Pae Ora (Health Futures) Act 2022 – new Schedule 4

Questions for submitters:

1. Do you support the change to the title of the definition of 'disability support services'?
2. Do you agree that the definition of 'health information' encompasses information about end-of-life services and that no further change is needed?
3. Do you support the proposed changes Rule 13 and, in particular we would like your views on:
 - a. Whether the list of agencies specified at Rule 13 is appropriate, having regard to the structural changes that are to take effect on 1 July 2022;
 - b. Whether the proposal to extend the funding provision to include any health agency that is funded whether wholly or partly and whether indirectly or directly by a state service to provide health or disability support services is appropriate?
 - c. Does it go too far in permitting assignment of the NHI? If so, what change (if any) would you recommend we consider?
4. Are there any other changes occurring in the structural reform of the health and disability support sector that need to be reflected in changes to the Code?

DRAFT – FOR PUBLIC CONSULTATION
Health Information Privacy Code 2020

Amendment No 1

I, **LIZ MACPHERSON**, [Acting] Privacy Commissioner, now issue under section 37 of the Privacy Act 2020, this amendment to the Health Information Privacy Code 2020.

Issued by me at Wellington on [insert date].

The SEAL of the Privacy Commissioner was)
affixed to this amendment to the) [L.S]
Health Information Privacy Code 2020)
by the [Acting] Privacy Commissioner)

Liz MacPherson
[Acting] Privacy Commissioner

1. Title

This amendment is the Health Information Privacy Code 2020 Amendment No 1.

2. Commencement

This amendment will come into force on 1 July 2022.

Note: The amendment is to come into effect on the same day as the Pae Ora (Healthy Futures) legislation. Any changes to the commencement date of that legislation will affect the commencement date for the amendment.

3. Amendment to clause 3 (Interpretation)

(1) Clause 3(1) is amended as follows:

Delete: **disability services** includes goods, services, and facilities—

- (a) provided to people with disabilities for their care or support or to promote their inclusion and participation in society, and independence; or
- (b) provided for purposes related to or incidental to the care or support of people with disabilities or to the promotion of the inclusion and participation in society, and independence of such people

Substitute: **disability support services** includes goods, services, and facilities —

- (a) provided to people with disabilities for their care or support or to promote their inclusion and participation in society and their independence; or
- (b) provided for purposes related or incidental to the care or support of people with disabilities or to the promotion of the inclusion and participation in society of such people and their independence

(2) The definition of **health agency** in clause 3(1) is amended as follows:

Delete: disability services

Substitute: disability support services

Note: These amendments are to update terminology and reflect the wording of the equivalent definition currently provided for the Pae Ora (Health Futures) Bill.

(3) Clause 3(1) is amended by inserting a new definition of “state services” in the appropriate alphabetical order as follows:

Insert: **State services** has the meaning given in [section 5](#) of the Public Service Act 2020

Note: This amendment is to define “state services” which is referred to in the proposed amendment to Schedule 2 at [insert reference] below.

4. **Amendment to clause 4 (Application of the Code)**

(1) Clause 4(1)(c) is amended as follows:

Delete: disability services

Substitute: disability support services

(2) Clause 4(1)(e) is amended as follows:

Delete: disability service

Substitute: disability support service

(3) The heading “*Health and disability service providers*” in Clause 4(2) is amended as follows:

Delete: disability service

Substitute: disability support service

(4) Clauses 4(2)(a), 4(2)(b) and 4(2)(n) are amended as follows:

Delete: disability services

Substitute: disability support services

Note: These amendments are to update terminology and reflect the wording of the equivalent definition currently provided for the Pae Ora (Health Futures) Bill.

5. Amendment to clause 5 (Health information privacy rule 9)

Rule 9(2) is amended as follows:

Delete: disability services

Substitute: disability support services

Note: This amendment is to update terminology and reflect the wording of the equivalent definition currently provided for the Pae Ora (Health Futures) Bill.

6. Amendment to clause 5 (Health information privacy rule 11)

Rule 11(2)(i)(i) is amended as follows:

Delete: disability service

Substitute: disability support service

Note: This amendment is to update terminology and reflect the wording of the equivalent definition currently provided for the Pae Ora (Health Futures) Bill.

7. Amendment to clause 5 (Health information privacy rule 12)

Rule 12(1)(g) is amended as follows:

Delete: that

Note: This amendment removes the word “that” from rule 12(1)(g) so that the syntax of the clause when read as a whole makes sense.

8. Amendment to clause 5 (Health information privacy rule 13)

Rule 13(4)(b) is amended as follows:

Delete: by the Ministry of Health

Note: This amendment is to reflect the likelihood that this function will transfer from the Ministry of Health to Health New Zealand.

9. Amendment to clause 6 (Charges)

Clause 6(2) is amended as follows:

Delete: not

Note: This amendment is to correct an error in the Code. The intention of clause 6(2) is to permit private sector health agencies to charge for access in certain limited circumstances.

10. Amendment to Schedule 2: Agencies Approved to Assign NHI Number

(1) Paragraph 3 is amended in the following manner:

Delete: (3) District Health Boards

Substitute: (3) Health New Zealand

(2) Paragraph 13 is deleted and new paragraphs 13, 14, and 15 are inserted as follows:

Delete: (13) Any health agency which has a contract with the Accident Compensation Corporation or a District Health Board or the Ministry of Health to provide health or disability services.

Insert: (13) Māori Health Authority

(14) Ministry for Disabled People

(15) Any health agency that is funded (whether wholly or partly and whether directly or indirectly) by a State service to provide health or disability support services.

Note: These amendments remove references to agencies which no longer exist, and insert references to new agencies where appropriate. The amendments also update the previous “contracting” provision to better reflect funding arrangements in place within the health sector ensuring that all health agencies that receive public funding to provide health or disability support services are specified as an agency approved to assign the NHI number.

11. Amendment to Schedule 3: Use and Disclosure of Information Derived from Newborn Babies’ Blood Spot Samples

(1) The definition of “permitted secondary purpose” in Paragraph 1 is amended as follows:

Delete: (e) comply with a notice in writing from the chairperson of a mortality review committee pursuant to Schedule 5 of the New Zealand Public Health and Disability Act 2000

Substitute: (e) comply with a notice in writing from the chairperson of a mortality review committee pursuant to Schedule 4 of the Pae Ora (Healthy Futures) Act 2022

Note: This amendment reflects that the functions of the mortality review committee are continued and carried by the new legislation. Note this reference may change if the name of the legislation, or schedules within the legislation changes prior to enactment.

Legislative history

<i>[insert date]</i>	<i>Public notice of intention to issue Amendment No 1 (Privacy Act, s 33(3))</i>
<i>[insert date]</i>	<i>Amendment No 1 issued (Privacy Act, s 37)</i>
<i>[insert date]</i>	<i>Gazette notice concerning issue, commencement and availability (Privacy Act, s 35)</i>
<i>1 July 2022</i>	<i>Commencement of Amendment No 1</i>