

I, BRUCE HOULTON SLANE, Privacy Commissioner, having given notice in accordance with section 48(1) of the Privacy Act 1993 of my intention to issue a code of practice and having satisfied the other requirements of the subsection, now issue under section 46 of the Act the Health Information Privacy Code 1994.

Issued by me at Auckland on 28 June 1994

THE SEAL of the)
Privacy Commissioner was)
affixed to this code of practice)
by the Privacy Commissioner)



A handwritten signature in black ink, appearing to read "B H Slane".

B H SLANE
Privacy Commissioner

PART 1

PRELIMINARY

Title

1. This code of practice may be referred to as the Health Information Privacy Code 1994.

Commencement and review

- 2.(1) This code is to come into force on 30 July 1994.

(2) The Commissioner is to review this code before 1 July 1999.

Interpretation

- 3.(1) In this code:

commencement, in relation to this code, means the coming into force of the code;

disability services includes goods, services, and facilities:

- (a) provided to people with disabilities for their care or support or to promote 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 independence of such people.

ethics committee means:

- (a) the Ethics Committee of the Health Research Council of New Zealand;
- (b) the National Advisory Committee on Health and Disability Services Ethics; or
- (c) an ethics committee constituted in accordance with the currently applicable Standard for Ethics Committees promulgated by the Ministry of Health;

health agency means an agency referred to in subclause 4(2) and, for the purposes of rules 5 to 11, is to be taken to include :

- (a) where an agency holds health information obtained in the course of providing health or disability services but no longer provides such services - that agency; and
- (b) with respect to any health information held by a health agency (being a natural person) at the time of the person's death - his or her personal representative;

health information means information to which this code applies under subclause 4(1);

health registration statute means an enactment listed in Schedule 1;

health services includes goods, services, and facilities provided to people for health purposes or provided for related or incidental purposes;

health training institution means a school, faculty or department referred to in paragraph 4(2)(h);

hospital means a licensed hospital within the meaning of the Hospitals Act 1957;

principal caregiver, in relation to any individual, means the friend of the individual or the member of the individual's family group or whanau who is most evidently and directly concerned with the oversight of the individual's care and welfare;

registered health professional means a person who is registered or enrolled under a health registration statute;

representative, in relation to an individual, means:

- (a) where that individual is dead - that individual's personal representative;
- (b) where the individual is under the age of 16 years - that individual's parent or guardian; or
- (c) where the individual, not being an individual referred to in paragraphs (a) or (b), is unable to give his or her consent or authority, or exercise his or her rights - a person appearing to be lawfully acting on the individual's behalf or in his or her interests;

rule means a rule set out in clause 5;

the Act means the Privacy Act 1993.

- (2) Terms used in this code and defined in the Privacy Act 1993 or Acts Interpretation Act 1924 have the same meanings respectively as in those Acts.

Application of code

- 4.(1) This code applies to the following information or classes of information about an identifiable individual:
- (a) information about the health of that individual, including his or her medical history;
 - (b) information about any disabilities that individual has, or has had;
 - (c) information about any health services or disability services that are being provided, or have been provided, to that individual;
 - (d) information provided by that individual in connection with the donation, by that individual, of any body part or any bodily substance of that individual or derived from the testing or examination of any body part, or any bodily substance of that individual; or
 - (e) information about that individual which is collected before or in the course of, and incidental to, the provision of any health service or disability service to that individual.
- (2) This code applies in relation to the following agencies or classes of agency:
- (a) an agency which provides health or disability services;
 - (b) within a larger agency, a division or administrative unit (including an individual) which provides health or disability services to employees of the agency or some other limited class of persons;
 - (c) the Public Health Commission, a regional health authority, or an agency that has been declared by the Minister of Health by notice in the Gazette to be a purchaser for the purposes of the Health and Disability Services Act 1993;
 - (d) the Accident Rehabilitation and Compensation Insurance Corporation;
 - (e) an exempt employer under the Accident Rehabilitation and Compensation Insurance Act 1992;
 - (f) a person who is approved as a counsellor for the purposes of the Accident Rehabilitation and Compensation Insurance Act 1992;
 - (g) an agency having statutory responsibility for the registration or discipline of professionals under a health registration statute;
 - (h) a school, faculty or department of a tertiary educational institution which provides the training or a component of the training necessary for the registration of a health professional;
 - (i) an agency which provides services in respect of health information, including an agency which provides those services under an agreement with another agency;

- (j) an agency which provides health, disability or medical insurance but only in respect of providing that insurance;
- (k) the agencies specified in Schedule 2.

PART 2

HEALTH INFORMATION PRIVACY RULES

Health information privacy rules

5. The information privacy principles are modified in accordance with the Act by the following rules which apply to health information and health agencies:

Rule 1

Purpose of Collection of Health Information

Health information must not be collected by any health agency unless:

- (a) the information is collected for a lawful purpose connected with a function or activity of the health agency; and
- (b) the collection of the information is necessary for that purpose.

Rule 2

Source of Health Information

- (1) Where a health agency collects health information, the health agency must collect the information directly from the individual concerned.
- (2) It is not necessary for a health agency to comply with subrule (1) if the agency believes on reasonable grounds:
 - (a) that the individual concerned authorises collection of the information from someone else having been made aware of the matters set out in subrule 3(1);
 - (b) that the individual is unable to give his or her authority and the health agency having made the individual's representative aware of the matters set out in subrule 3(1) collects the information from the representative or the representative authorises collection from someone else;

- (c) that compliance would:
 - (i) prejudice the interests of the individual concerned;
 - (ii) prejudice the purposes of collection; or
 - (iii) prejudice the safety of any individual;
- (d) that compliance is not reasonably practicable in the circumstances of the particular case;
- (e) that the collection is for the purpose of assembling a family or genetic history of an individual and is collected directly from that individual;
- (f) that the information is publicly available information;
- (g) that the information:
 - (i) will not be used in a form in which the individual concerned is identified;
 - (ii) will be used for statistical purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
 - (iii) will be used for research purposes (for which approval by an ethics committee, if required, has been given) and will not be published in a form that could reasonably be expected to identify the individual concerned;
- (h) that non-compliance is necessary:
 - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences;
 - (ii) for the protection of the public revenue; or
 - (iii) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or
- (i) that the collection is in accordance with an authority granted under section 54 of the Act.

Rule 3 Collection of Health Information from Individual

- (1) Where a health agency collects health information directly from the individual concerned, or from the individual's representative, the health agency must take such steps as are, in the circumstances, reasonable to ensure that the individual concerned (and the representative if collection is from the representative) is aware of:
 - (a) the fact that the information is being collected;
 - (b) the purpose for which the information is being collected;
 - (c) the intended recipients of the information;

- (d) the name and address of:
 - (i) the health agency that is collecting the information; and
 - (ii) the agency that will hold the information;
 - (e) whether or not the supply of the information is voluntary or mandatory and if mandatory the particular law under which it is required;
 - (f) the consequences (if any) for that individual if all or any part of the requested information is not provided; and
 - (g) the rights of access to, and correction of, health information provided by rules 6 and 7.
- (2) The steps referred to in subrule (1) must be taken before the information is collected or, if that is not practicable, as soon as practicable after it is collected.
- (3) A health agency is not required to take the steps referred to in subrule (1) in relation to the collection of information from an individual, or the individual's representative, if that agency has taken those steps in relation to the collection, from that individual or that representative, of the same information or information of the same kind for the same or a related purpose, on a recent previous occasion.
- (4) It is not necessary for a health agency to comply with subrule (1) if the agency believes on reasonable grounds:
- (a) that non-compliance is authorised by the individual concerned;
 - (b) that compliance would:
 - (i) prejudice the interests of the individual concerned; or
 - (ii) prejudice the purposes of collection;
 - (c) that compliance is not reasonably practicable in the circumstances of the particular case; or
 - (d) that non-compliance is necessary to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences.

Rule 4 Manner of Collection of Health Information

Health information must not be collected by a health agency:

- (a) by unlawful means; or
- (b) by means that, in the circumstances of the case:
 - (i) are unfair; or
 - (ii) intrude to an unreasonable extent upon the personal affairs of the individual concerned.

Rule 5
Storage and Security of Health Information

- (1) A health agency that holds health information must ensure:
 - (a) that the information is protected, by such security safeguards as it is reasonable in the circumstances to take, against:
 - (i) loss;
 - (ii) access, use, modification, or disclosure, except with the authority of the agency; and
 - (iii) other misuse;
 - (b) that if it is necessary for the information to be given to a person in connection with the provision of a service to the health agency, including any storing, processing, or destruction of the information, everything reasonably within the power of the health agency is done to prevent unauthorised use or unauthorised disclosure of the information; and
 - (c) that, where a document containing health information is not to be kept, the document is disposed of in a manner that preserves the privacy of the individual.
- (2) This rule applies to health information obtained before or after the commencement of this code.

Rule 6
Access to Personal Health Information

- (1) Where a health agency holds health information in such a way that it can readily be retrieved, the individual concerned is entitled :
 - (a) to obtain from the agency confirmation of whether or not the agency holds such health information; and
 - (b) to have access to that health information.
- (2) Where, in accordance with paragraph (1)(b), an individual is given access to health information, the individual must be advised that, under rule 7, the individual may request the correction of that information.
- (3) The application of this rule is subject to:
 - (a) Part IV of the Act (which sets out reasons for withholding information);
 - (b) Part V of the Act (which sets out procedural provisions relating to access to information); and
 - (c) clause 6 (which concerns charges).

- (4) This rule applies to health information obtained before or after the commencement of this code.

Rule 7
Correction of Health Information

- (1) Where a health agency holds health information, the individual concerned is entitled:
- (a) to request correction of the information; and
 - (b) to request that there be attached to the information a statement of the correction sought but not made.
- (2) A health agency that holds health information must, if so requested or on its own initiative, take such steps (if any) to correct the information as are, in the circumstances, reasonable to ensure that, having regard to the purposes for which the information may lawfully be used, it is accurate, up to date, complete, and not misleading.
- (3) Where an agency that holds health information is not willing to correct the information in accordance with such a request, the agency must, if so requested, take such steps (if any) as are reasonable to attach to the information, in such a manner that it will always be read with the information, any statement provided by the individual of the correction sought.
- (4) Where the agency has taken steps under subrule (2) or (3), the agency must, if reasonably practicable, inform each person or body or agency to whom the health information has been disclosed of those steps.
- (5) Where an agency receives a request made under subrule (1), the agency must inform the individual concerned of the action taken as a result of the request.
- (6) The application of this rule is subject to the provisions of Part V of the Act (which sets out procedural provisions relating to correction of information).
- (7) This rule applies to health information obtained before or after the commencement of this code.

Rule 8
Accuracy etc of Health Information to be Checked Before Use

- (1) A health agency that holds health information must not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date, complete, relevant, and not misleading.
- (2) This rule applies to health information obtained before or after the commencement of this code.

Rule 9
Retention of Health Information

- (1) A health agency that holds health information must not keep that information for longer than is required for the purposes for which the information may lawfully be used.
- (2) Subrule (1) does not prohibit any agency from keeping any document that contains health information the retention of which is necessary or desirable for the purposes of providing health services or disability services to the individual concerned.
- (3) This rule applies to health information obtained before or after the commencement of this code.

Rule 10
Limits on Use of Health Information

- (1) A health agency that holds health information obtained in connection with one purpose must not use the information for any other purpose unless the health agency believes on reasonable grounds:
 - (a) that the use of the information for that other purpose is authorised by:
 - (i) the individual concerned; or
 - (ii) the individual's representative where the individual is unable to give his or her authority under this rule;
 - (b) that the purpose for which the information is used is directly related to the purpose in connection with which the information was obtained;
 - (c) that the source of the information is a publicly available publication;
 - (d) that the use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to:
 - (i) public health or public safety; or
 - (ii) the life or health of the individual concerned or another individual;
 - (e) that the information:
 - (i) is used in a form in which the individual concerned is not identified;
 - (ii) is used for statistical purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
 - (iii) is used for research purposes (for which approval by an ethics committee, if required, has been given) and will not be published in a form that could reasonably be expected to identify the individual concerned;
 - (f) that non-compliance is necessary:
 - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences; or

- (ii) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation);
 - (g) that the use of the information is in accordance with an authority granted under section 54 of the Act.
- (2) This rule does not apply to health information obtained before the commencement of this code.

Rule 11
Limits on Disclosure of Health Information

- (1) A health agency that holds health information must not disclose the information unless the agency believes, on reasonable grounds:
- (a) that the disclosure is to:
 - (i) the individual concerned; or
 - (ii) the individual's representative where the individual is dead or is unable to exercise his or her rights under these rules;
 - (b) that the disclosure is authorised by:
 - (i) the individual concerned; or
 - (ii) the individual's representative where the individual is dead or is unable to give his or her authority under this rule;
 - (c) that the disclosure of the information is one of the purposes in connection with which the information was obtained;
 - (d) that the source of the information is a publicly available publication;
 - (e) that the information is information in general terms concerning the presence, location, and condition and progress of the patient in a hospital, on the day on which the information is disclosed, and the disclosure is not contrary to the express request of the individual or his or her representative; or
 - (f) that the information to be disclosed concerns only the fact of death and the disclosure is by a registered health professional, or by a person authorised by a health agency, to a person nominated by the individual concerned, or the individual's representative, partner, spouse, principal caregiver, next of kin, whanau, close relative or other person whom it is reasonable in the circumstances to inform.
- (2) Compliance with paragraph (1)(b) is not necessary if the health agency believes on reasonable grounds that it is either not desirable or not practicable to obtain authorisation from the individual concerned and:
- (a) that the disclosure of the information is directly related to one of the purposes in connection with which the information was obtained;

- (b) that the information is disclosed by a registered health professional to a person nominated by the individual concerned or to the principal caregiver or a near relative of the individual concerned in accordance with recognised professional practice and the disclosure is not contrary to the express request of the individual or his or her representative;
- (c) that the information:
 - (i) is to be used in a form in which the individual concerned is not identified;
 - (ii) is to be used for statistical purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
 - (iii) is to be used for research purposes (for which approval by an ethics committee, if required, has been given) and will not be published in a form which could reasonably be expected to identify the individual concerned;
- (d) that the disclosure of the information is necessary to prevent or lessen a serious and imminent threat to:
 - (i) public health or public safety; or
 - (ii) the life or health of the individual concerned or another individual;
- (e) that the disclosure of the information is essential to facilitate the sale or other disposition of a business as a going concern;
- (f) that the information to be disclosed briefly describes only the nature of injuries of an individual sustained in an accident and that individual's identity and the disclosure is:
 - (i) by a person authorised by the person in charge of a hospital;
 - (ii) to a person authorised by the person in charge of a news medium;for the purpose of publication or broadcast in connection with the news activities of that news medium and the disclosure is not contrary to the express request of the individual concerned or his or her representative;
- (g) that the disclosure of the information:
 - (i) is required for the purposes of identifying whether an individual is suitable to be involved in health education and so that individuals so identified may be able to be contacted to seek their authority in accordance with paragraph (1)(b); and
 - (ii) is by a person authorised by the health agency to a person authorised by a health training institution;
- (h) that the disclosure of the information:
 - (i) is required for the purpose of a professionally recognised accreditation of a health or disability service;
 - (ii) is required for a professionally recognised external quality assurance programme; or
 - (iii) is required for risk management assessment and the disclosure is solely to a person engaged by the agency for the purpose of assessing the agency's risk; and the information will not be published in a form which could reasonably be expected to identify any individual nor disclosed by the accreditation or quality assurance or risk management organisation to third parties except as required by law;

- (i) that non-compliance is necessary:
 - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution and punishment of offences; or
 - (ii) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation);
 - (j) that the individual concerned is or is likely to become dependent upon a controlled drug, prescription medicine or restricted medicine and the disclosure is by a registered health professional to a Medical Officer of Health for the purposes of section 20 of the Misuse of Drugs Act 1975 or section 49A of the Medicines Act 1981; or
 - (k) that the disclosure of the information is in accordance with an authority granted under section 54 of the Act.
- (3) Disclosure under subrule (2) is permitted only to the extent necessary for the particular purpose.
- (4) Where under section 22F(1) of the Health Act 1956, the individual concerned or a representative of that individual requests the disclosure of health information to that individual or representative, a health agency:
- (a) must treat any request by that individual as if it were a health information privacy request made under rule 6; and
 - (b) may refuse to disclose information to the representative if:
 - (i) the disclosure of the information would be contrary to the individual's interests;
 - (ii) the agency has reasonable grounds for believing that the individual does not or would not wish the information to be disclosed; or
 - (iii) there would be good grounds for withholding the information under Part IV of the Act if the request had been made by the individual concerned.
- (5) This rule applies to health information about living or deceased persons obtained before or after the commencement of this code.
- (6) Notwithstanding subrule (5) this rule applies to health information about any identifiable deceased person, for not more than 20 years after the day of that person's death.

Rule 12 Unique Identifiers

- (1) A health agency must not assign a unique identifier to an individual unless the assignment of that identifier is necessary to enable the health agency to carry out any one or more of its functions efficiently.

- (2) A health agency must not assign to an individual a unique identifier that, to that agency's knowledge, has been assigned to that individual by another agency, unless:
 - (a) those 2 agencies are associated persons within the meaning of section 8 of the Income Tax Act 1976; or
 - (b) it is permitted by subrule (3) or (4).
- (3) The following agencies may assign the same National Health Index number to an individual:
 - (a) any agency authorised expressly by statute or regulation;
 - (b) any agency or class of agencies listed in Schedule 3; and
 - (c) any agency or registered health professional or class of agency or class of registered health professional approved for the purpose by the Director General of Health and notified by the Director General to the Privacy Commissioner.
- (4) Notwithstanding subrule (2) any health agency, having given written notice to the Commissioner of its intention to do so, may assign, to a registered health professional, as a unique identifier, the registration number assigned to that individual by the relevant statutory registration body.
- (5) A health agency that assigns unique identifiers to individuals must take all reasonable steps to ensure that unique identifiers are assigned only to individuals whose identity is clearly established.
- (6) A health agency must not require an individual to disclose any unique identifier assigned to that individual unless the disclosure is for one of the purposes in connection with which that unique identifier was assigned or for a purpose that is directly related to one of those purposes.
- (7) Subrules (1) to (5) do not apply in relation to the assignment of unique identifiers before the commencement of this code.
- (8) Subrule (6) applies to any unique identifier, whether assigned before or after the commencement of this code.

PART 3 MISCELLANEOUS

Charges

- 6.(1) For the purposes of charging under section 35 of the Act in relation to information privacy requests concerning health information, a health agency that is not a public sector health agency must not require the payment, by or on behalf of any individual who wishes to make a request, of any charges in respect of a matter referred to in paragraphs 35(1)(a) to (f) of the Act except in accordance with this clause.
- (2) Where an individual makes an information privacy request to a health agency that is not a public sector health agency, the agency may, unless prohibited by a law other than the Act or this code, make a reasonable charge:

- (a) where, on a particular day, that agency has made health information available to that individual in response to a request - for making the same or substantially the same health information available in accordance with any subsequent request within the period of 12 months after that day; or
 - (b) for providing a copy of an x-ray, a video recording or a CAT scan photograph.
- (3) Where an agency intends to make a charge under subclause (2) and the amount of the charge is likely to exceed \$30, the agency must provide the individual with an estimate of the charge before dealing with the request.

Privacy officers

7. Each privacy officer must provide to the Privacy Commissioner, on request, statistics detailing:
- (a) the number of information privacy requests received by the agency;
 - (b) the number of complaints received by the agency in relation to breaches of this code.

Complaints of breach of code

8. A health agency must designate a person or persons to deal with complaints alleging a breach of this code.

SCHEDULE 1 HEALTH REGISTRATION STATUTES

- 1 Physiotherapy Act 1949
- 2 Occupational Therapy Act 1949
- 3 Dietitians Act 1950
- 4 Medical Auxiliaries Act 1966
- 5 Medical Practitioners Act 1968
- 6 Pharmacy Act 1970
- 7 Optometrist and Dispensing Opticians Act 1976
- 8 Nurses Act 1977
- 9 Psychologists Act 1981
- 10 Chiropractors Act 1982
- 11 Dental Act 1988

SCHEDULE 2 SPECIFIED HEALTH AGENCIES

1. Ministry of Health
2. Health Research Council
3. New Zealand Council on Healthcare Standards
4. Communicable Disease Centre, Institute of Environmental Science and Research Limited
5. The Interchurch Council on Hospital Chaplaincy
6. Health Benefits Limited

SCHEDULE 3 AGENCIES APPROVED TO ASSIGN NHI NUMBER

1. Ministry of Health
2. Regional health authorities
3. Public Health Commission
4. Licensed hospitals
5. Registered medical practitioners
6. Royal NZ Plunket Society
7. Blood Transfusion Service
8. Accident Rehabilitation and Compensation Insurance Corporation.