Te Kaunihera Tapuhi o Aotearoa
Nursing Council of New Zealand

Submission/ Tāpaetanga on:

Health Information Privacy Code 2020 Proposed Amendments

Introduction

1. Thank you for the opportunity to comment on the Privacy Commissioner's proposed amendments to the current Health Information Privacy Code 2020 (The Code).
2. Te Kaunihera Tapuhi o Aotearoa, the Nursing Council of New Zealand (the Council) is the authority responsible for the registration of nurses in Aotearoa New Zealand.[1] Under the Health Practitioners Competence Assurance Act 2003 our primary function is to protect the health and safety of members of the public by ensuring that nurses are competent and fit to practice, with the right qualifications and standards to support their practice.
3. Several proposed changes are pro forma amendments reflecting new structures, legislation, or corrections to drafting errors. We have not commented on these, and focused our submission on the specific consultation questions asked by the Commissioner.

Changing Disability Terminology

4. We support the use of language that is preferred by the communities who are served by the health and disability support system. As the discussion document implies that the proposal to change 'disability services' to 'disability support services' reflects the preferences of disabled New Zealanders, we support this move. Our position is, however, contingent on the change being supported by this community during the consultation process.

End of Life Services

5. We agree that the definition of 'health services' within the current Code sufficiently encompasses end-of-life services. We note in particular that the End of Life Choice Act 2019 clearly positions assisted dying and the activities involved in it as a form of health service. In addition, clause 4 of the Code define personal health services as being those provided for "improving or protecting the health" of a person and s 4 of the End of Life Choice Act defines the purpose of assisted dying as being to "relieve the [terminally ill] person's suffering". This falls under a broad definition of 'improving' that person's health and so is included in the Code's definition.

[1] Clause 3 of the Code refers to/ defines us as a 'health professional body'. This differs from the HPCA's terminology – 'responsible authorities' – and we note that the Code's term risks confusion with bodies intended to *represent* rather than *regulate* a profession (e.g. professional associations). Conversely, cl 4 (2) distinguishes between health professional bodies (f) and agencies "having statutory responsibility for the registration of any health practitioners" (e). We recommend that future reviews of the Code consider the suitability of this term.

Rule 13: Common Provider Number (CPN)

6. We support removing the reference to the body responsible for CPN numbers from Rule 13 4(b) (rather than simply replacing the reference to the Ministry with a reference to Health NZ). Doing so future-proofs the Code by avoiding the need for additional updates should the issuing agency change again, and does not have any meaningful drawbacks.

Schedule 2: National Health Index (NHI) assignment

7. We support the addition of the proposed agencies and retention of the Ministry of Health in the list of assigning agencies. We do not believe that the health system reforms – or any other changes in the sector – require any additional agencies to be added to this list.
8. The proposed extension of contracted/ funded organisations who can assign NHI numbers is significant, in that it recognises funding for disability support and health services may flow from almost any arm of the State. While this appropriately reflects the complexity of modern service delivery, it may also have some unintended consequences at the margins.
9. For example, tertiary education organisations (TEOs) funded through the new Unified Funding System will receive funding specifically to support disabled learners. While a TEO would also need to qualify as a health agency under cl 4(2), it appears that any organisation offering health practitioner education or wellbeing services for their students (including pastoral care) could argue that they are able to assign NHI numbers. Schools receiving funding through pools such as the Ongoing Resourcing Scheme may also be eligible – although this may be an example of an *intended* consequence of the proposed change.
10. On balance we believe that the point, highlighted in the discussion document, that NHI numbers can only be assigned where necessary for effective functioning will likely be sufficient for preventing any abuse in the context of what is likely to be a small number of edge cases. However, the Commissioner may wish to consider:
    a. Changing ‘funded’ to ‘contracted’ in the new text, representing a more deliberate decision on the part of the State to purchase health and/or support services (rather than provision which occurs as part of an organisation’s broader funded activities).
    b. For the purposes of this Schedule only, specifying that certain types of clause 4(2) health agencies are excluded from eligibility.

Conclusion

11. In summary, we support the Commissioner’s proposed changes.
12. Once again, thank you for the opportunity to comment on these proposals. If you have any questions regarding the issues raised in this submission, or wish to discuss any aspect of the proposal’s intersection with nursing in more detail, please do not hesitate to contact us.

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