



New South Wales

Health Records and Information Privacy Regulation 2022

under the

Health Records and Information Privacy Act 2002

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Health Records and Information Privacy Act 2002*.

Minister for Health

Explanatory note

The object of this Regulation is to repeal and remake, with minor amendments, the provisions of the *Health Records and Information Privacy Regulation 2017*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation—

- (a) prescribes certain services to be health services, and
- (b) makes provision for the use and disclosure of health information for a secondary purpose in certain circumstances, and
- (c) provides for the Ministry of Health, the Health Administration Corporation, local health districts, statutory health corporations and the Cancer Institute (NSW) to be treated as a single agency for the purposes of the Health Privacy Principles and any health privacy codes of practice, and
- (d) prescribes certain health records linkage systems administered by the Health Administration Corporation as not being health records linkage systems for the purposes the Health Privacy Principles.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Health Records and Information Privacy Regulation 2022*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Note— This Regulation repeals and replaces the *Health Records and Information Privacy Regulation 2017*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definitions

(1) In this Regulation—

accredited chaplain, in relation to a public hospital or health institution, means a person—

- (a) who has been accredited for the purposes of providing chaplaincy services in the hospital or institution by the chief executive of a public health organisation that is responsible for controlling that hospital or institution, and
- (b) whose accreditation has not been revoked.

chief executive, in relation to a public health organisation, has the same meaning as in the *Health Services Act 1997*.

health institution, **public health organisation** and **public hospital** have the same meanings as in the *Health Services Act 1997*.

the Act means the *Health Records and Information Privacy Act 2002*.

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) A reference in this Regulation to a hospital or health institution controlled by a public health organisation includes a reference to a hospital or health institution that is conducted by or on behalf of the organisation.

Note— The *Health Services Act 1997*, Dictionary, Part 2, clause 2 contains a similar provision in relation to references in that Act to hospitals, health institutions and services controlled by a public health organisation or other body or person.

4 Definition of “health service”—the Act, s 4

For the Act, section 4(1), definition of **health service**, paragraph (1), the following are prescribed—

- (a) the services provided by an accredited chaplain in a public hospital or a health institution controlled by a public health organisation,

- (b) research services conducted by or on behalf of one or more of the following—
 - (i) the Ministry of Health,
 - (ii) the Health Administration Corporation,
 - (iii) a public health organisation or public hospital,
 - (iv) the Cancer Institute (NSW),
- (c) research services conducted pursuant to an agreement with an organisation referred to in paragraph (b)(i)–(iv).

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Part 2 Use or disclosure of health information—the Act, Sch 1, cl 10 and 11

5 Chaplaincy services

For the Act, Schedule 1, clauses 10(1)(k) and 11(1)(l), an organisation may use or disclose health information for a secondary purpose if—

- (a) the organisation is a public health organisation, and
- (b) the secondary purpose is the service of an accredited chaplain in a public hospital or health institution that is controlled by the organisation, and
- (c) in the case of a disclosure—the person to whom the disclosure is made is an accredited chaplain for the hospital or institution, and
- (d) the individual to whom the health information relates would reasonably expect the organisation to use or disclose the information for the secondary purpose.

6 Professional misconduct

- (1) For the Act, Schedule 1, clauses 10(1)(k) and 11(1)(l), an organisation may use or disclose health information for a secondary purpose if—

- (a) the organisation has reasonable grounds to suspect that a person has or may have engaged in conduct that may be unsatisfactory professional performance, professional misconduct or unprofessional conduct under the Health Practitioner Regulation National Law, and
- (b) the organisation uses or discloses the information as a necessary part of an investigation of the matter by, or in reporting concerns to, relevant persons or authorities, including a National Board or an investigator appointed under the Health Practitioner Regulation National Law by a National Board.

- (2) In this section—

Health Practitioner Regulation National Law means the Health Practitioner Regulation National Law as in force from time to time, as set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland and as applied by a participating jurisdiction (within the meaning of that law) other than New South Wales.

National Board has the same meaning as it has in the Health Practitioner Regulation National Law.

7 Complaints

- (1) For the Act, Schedule 1, clauses 10(1)(k) and 11(1)(l), an organisation may use or disclose health information for a secondary purpose if—

- (a) the organisation has reasonable grounds to suspect a complaint has been made against a registered health practitioner, and
- (b) in response to the complaint, the information is used or disclosed to assist the management of the practitioner under the *Health Practitioner Regulation National Law (NSW)*, Part 8.

- (2) In this section—

complaint, against a registered health practitioner, means a complaint made about the practitioner under—

- (a) the *Health Practitioner Regulation National Law (NSW)*, Part 8, or
- (b) the *Health Care Complaints Act 1993*, Part 2.

8 Organ donor registers

- (1) For the Act, Schedule 1, clauses 10(1)(k) and 11(1)(l), an organisation may use or disclose health information if—
- (a) the information relates to whether a person had, during the person’s lifetime, given consent, or expressed an objection, to the removal after that person’s death of tissue from that person’s body (including, in the case of consent, details and any conditions of the consent), and
 - (b) the information was obtained from, or comprised part of, the organ donor register administered by Transport for NSW, and
 - (c) the information is disclosed for the purpose of providing that information to—
 - (i) the Australian Organ Donor Register, or
 - (ii) the NSW Organ and Tissue Donation Service.

- (2) In this section—

Australian Organ Donor Register means the Australian Organ Donor Register administered by the Commonwealth and referred to in the *Human Services (Medicare) (Medicare Programs) Specification 2021* of the Commonwealth, Schedule 1.

NSW Organ and Tissue Donation Service means the NSW Organ and Tissue Donation Service of the South Eastern Sydney Local Health District.

tissue has the same meaning as it has in the *Human Tissue Act 1983*.

Part 3 Miscellaneous

9 Exemption for My Health Record system—the Act, s 75

- (1) The Act, Schedule 1, clause 15 does not apply to an organisation to the extent that the organisation includes health information about an individual registered for the My Health Record system.
- (2) In this section—
My Health Record system has the same meaning as it has in the *My Health Records Act 2012* of the Commonwealth.

10 Health records linkage systems—the Act, Sch 1, cl 15

For the Act, Schedule 1, clause 15, definition of *health records linkage system*, the following systems administered by the Health Administration Corporation are prescribed as not being health records linkage systems—

- (a) the system known as HealtheNet,
- (b) the system known as Clinical Health Information Exchange.

11 Certain public sector agencies to be treated as a single agency

The following public sector agencies are to be treated as a single agency for the purposes of all of the Health Privacy Principles and any health privacy codes of practice—

- (a) the Ministry of Health,
- (b) the Health Administration Corporation,
- (c) local health districts within the meaning of the *Health Services Act 1997*,
- (d) statutory health corporations within the meaning of the *Health Services Act 1997*,
- (e) the Cancer Institute (NSW).

12 Repeal and savings

- (1) The *Health Records and Information Privacy Regulation 2017* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Health Records and Information Privacy Regulation 2017*, had effect under that Regulation continues to have effect under this Regulation.