



New South Wales

Health Records and Information Privacy Regulation 2017

under the

Health Records and Information Privacy Act 2002

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

BRAD HAZZARD, MP
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amendments, the provisions of the *Health Records and Information Privacy Regulation 2012*, which would otherwise be repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation:

- (a) prescribes the following to be **health services**:
 - (i) the services of an accredited chaplain in a public hospital or public health institution,
 - (ii) research services by certain public bodies or conducted pursuant to an agreement with those public bodies, and
- (b) makes provision for the use and disclosure of health information for a secondary purpose in the following circumstances:
 - (i) for the purpose of providing certain chaplaincy services,
 - (ii) in connection with the Health Practitioner Regulation National Law as applied by jurisdictions other than New South Wales, 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 all of the Health Privacy Principles (as set out in Schedule 1 to the *Health Records and Information Privacy Act 2002*) and any health privacy codes of practice (as made under Part 5 of that Act).

This Regulation is made under the *Health Records and Information Privacy Act 2002*, including paragraph (l) of the definition of **health service** in section 4 (1), section 75 (the general regulation-making power) and clauses 10 (1) (k) and 11 (1) (l) of Schedule 1.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, 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.

Contents

	Page
1 Name of Regulation	3
2 Commencement	3
3 Definitions	3
4 Definition of “health service”	3
5 Use or disclosure of health information—chaplaincy services	4
6 Use or disclosure of health information—Health Practitioner Regulation National Law	4
7 Use or disclosure of health information—organ donor registers	4
8 Exemption for My Health Record system trial	5
9 Certain public sector agencies to be treated as a single agency	5
10 Repeal and savings	5

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1 Name of Regulation

This Regulation is the *Health Records and Information Privacy Regulation 2017*.

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 2012*, which would otherwise be repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

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 it has in the *Health Services Act 1997*.

health institution, **public health organisation** and **public hospital** have the same meanings as they have 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 such an organisation.

Note. Clause 2 of Part 2 of the Dictionary to the *Health Services Act 1997* 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.

(3) Notes included in this Regulation do not form part of this Regulation.

4 Definition of “health service”

For the purposes of paragraph (1) of the definition of **health service** in section 4 (1) of the Act, 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).

5 Use or disclosure of health information—chaplaincy services

For the purposes of clauses 10 (1) (k) and 11 (1) (l) of Schedule 1 to the Act, 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 Use or disclosure of health information—Health Practitioner Regulation National Law

- (1) For the purposes of clauses 10 (1) (k) and 11 (1) (l) of Schedule 1 to the Act, 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 clause:

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 Use or disclosure of health information—organ donor registers

- (1) For the purposes of clauses 10 (1) (k) and 11 (1) (l) of Schedule 1 to the Act, an organisation may use or disclose health information if:

- (a) the information relates to whether a person had, during the person's lifetime, given his or her 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 Roads and Maritime Services, 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 clause:

Australian Organ Donor Register means the Australian Organ Donor Register administered by the Commonwealth and referred to in Schedule 1 to the *Human Services (Medicare) (Medicare Programs) Specification 2015* of the Commonwealth.

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*.

8 Exemption for My Health Record system trial

(1) Clause 15 of Schedule 1 to the Act 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 trial in the My Health Record system.

(2) In this clause:

My Health Record system has the same meaning as it has in the *My Health Records Act 2012* of the Commonwealth.

My Health Record system trial means any trial of the opt-out model contained in Part 2 of Schedule 1 to the *My Health Records Act 2012* of the Commonwealth that is established by rules under clause 1 of Schedule 1 to that Act.

9 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).

10 Repeal and savings

(1) The *Health Records and Information Privacy Regulation 2012* is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the *Health Records and Information Privacy Regulation 2012*, had effect under that Regulation continues to have effect under this Regulation.