



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*.

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amendments, the provisions of the *Health Records and Information Privacy Regulation 2017*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).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 as 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 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 of 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Regulation repeals and replaces the *Health Records and Information Privacy Regulation 2017*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).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 the public health organisation that controls the 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- (b) whose accreditation has not been revoked.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 public hospital or health institution controlled by a public health organisation includes a reference to a public hospital or health institution that is conducted by or on behalf of the organisation.

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) services provided by an accredited chaplain in a public hospital or health institution controlled by a public health organisation,
- (b) research services conducted by or on behalf of the following—
 - (i) the Ministry of Health,

- (ii) the Health Administration Corporation,
 - (iii) a public health organisation,
 - (iv) a public hospital,
 - (v) the Cancer Institute (NSW),
- (c) research services conducted under an agreement with an organisation referred to in paragraph (b).

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

5 Chaplaincy services

- (1) For the Act, Schedule 1, clauses 10(1)(k) and 11(1)(l), a public health organisation may use or disclose health information for the secondary purpose of providing the service of an accredited chaplain in a public hospital or health institution controlled by the public health organisation.
- (2) Subsection (1) applies only if the individual to whom the health information relates would reasonably expect the public health organisation to use or disclose the health information for the secondary purpose.
- (3) Subsection (1) applies only to the disclosure of health information if the disclosure is made to an accredited chaplain for the public hospital or health institution.

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 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 use or disclosure is necessary as 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—

 - (a) the Health Practitioner Regulation National Law—
 - (i) as in force from time to time, set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland, and
 - (ii) as it applies, including with any modifications, as a law of a State or Territory other than New South Wales, or
 - (b) the law of another State or Territory that substantially corresponds to the law referred to in paragraph (a).

National Board has the same meaning as 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) the health information is only used or disclosed—
 - (i) at the request of a council established under the *Health Practitioner Regulation National Law (NSW)*, section 41B, and
 - (ii) to assist the council with the management of the registered health practitioner under the *Health Practitioner Regulation National Law (NSW)*, Part 8, and

- (c) the health information only relates to a patient of the registered health practitioner.
- (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.

Part 3 Miscellaneous

8 Exemption for My Health Record system—the Act, s 75(2)(c)

- (1) The Act, Schedule 1, clause 15 does not apply to an organisation to the extent that the organisation includes in the My Health Record system 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 in the *My Health Records Act 2012* of the Commonwealth.

9 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 a health records linkage system—

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

10 Certain public sector agencies to be treated as single agency—the Act, s 75(2)(d)(iii)

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

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

11 Repeal and savings

- (1) The *Health Records and Information Privacy Regulation 2017* is repealed.
- (2) An 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.