The Health & Disability Commissioner

The Health and Disability Commissioner is an independent agency set up to:

- promote and protect the rights of consumers who use health and disability services;
- help resolve problems between consumers and providers of health and disability services; and
- improve the quality of health care and disability services.

The Code of Health and Disability Services Consumers’ Rights applies to all health and disability services in New Zealand.

The Code gives rights to all consumers, and places obligations on people and organisations providing services.

THE CODE OF HEALTH AND DISABILITY SERVICES CONSUMERS’ RIGHTS

U sing Your Rights

If you believe your rights have been breached, it is best to talk or write directly to the person or organisation giving you the service. Very often they will welcome your complaint as it helps them improve their standard of service or uncover a problem. If you feel uncomfortable or unable to do this you can take a friend or relative with you as support. You can also have the support of an independent Health and Disability Advocate who is trained to help people in your situation.

For further information and help, or to request further information, contact:

- The Nationwide Advocacy Service
  
  Free Phone: 0800 555 050 Email: advocacy@hdc.org.nz
  Free Fax: 0800 2 SUPPORT / 0800 2 787 7678

This leaflet contains the regulation known as the Code of Health and Disability Services Consumers’ Rights. The Health and Disability Commissioner has produced a range of leaflets, posters and videos about patients’ rights and the Advocacy Service.

THE HEALTH & DISABILITY COMMISSIONER

The Health and Disability Commissioner PO Box 1790, Auckland

Auckland: ph/TTY (09) 373 1060
Wellington: (04) 494 7900
Other areas: ph/TTY 0800 11 22 33
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Website: www.hdc.org.nz

Information in e text is available via our website.
Right 7
Right to Make an Informed Choice and Give Informed Consent

(i) Services may be provided to a consumer only if that consumer makes an informed choice and gives informed consent, except where any enactment, or the common law, or any other provision of this Code provides otherwise.

(ii) Every consumer must be presumed competent to make an informed choice and give informed consent, unless there are reasonable grounds for believing that the consumer is not competent.

(iii) Where a consumer has diminished competence, that consumer retains the right to make informed choices and give informed consent, to the extent appropriate to his or her level of competence.

(iv) Where a consumer is not competent to make an informed choice and give informed consent, and no person entitled to consent on behalf of the consumer is available, the provider may provide services where —

(a) it is in the best interests of the consumer; and

(b) reasonable steps have been taken to ascertain the views of the consumer; and

(c) either, —

(i) if the consumer’s views have been ascertained, and having regard to those views, the provider believes, on reasonable grounds, that the provision of the services is consistent with the informed choice the consumer would make if he or she were competent; or

(ii) if the consumer’s views have not been ascertained, the provider takes into account the views of other suitable persons who are interested in the welfare of the consumer and available to advise the provider.

(v) Every consumer may use an advance directive in accordance with the common law.

Right 8
Right to Support

Every consumer has the right to have one or more support persons of his or her choice present, except where safety may be compromised or another consumer’s rights may be unreasonably infringed.

Right 9
Rights in Respect of Teaching or Research

The rights in this Code extend to those occasions when a consumer is participating in, or it is proposed that a consumer participate in, teaching or research.

Right 10
Right to Complain

(i) Every consumer has the right to complain about a provider in any form appropriate to the consumer.

(ii) Every consumer may make a complaint to —

(a) the individual or individuals who provided the services complained of; and

(b) any person authorised to receive complaints about that provider; and

(c) any other appropriate person, including —

(I) an independent advocate provided under the Health and Disability Commissioner Act 1994; and

(ii) the Health and Disability Commissioner.

(1) Every provider must facilitate the fair, simple, speedy, and efficient resolution of complaints.

(2) Every provider must inform a consumer about progress in the consumer’s complaint at intervals of not more than 1 month.

(3) Every provider must comply with all the other relevant rights in this Code when dealing with complaints.

(4) Every provider, unless an employee of a provider, must have a complaints procedure that ensures that —

(a) the complaint is acknowledged in writing within 5 working days of receipt, unless it has been resolved to the satisfaction of the consumer within that period; and

(b) the consumer is informed of any relevant internal and external complaints procedures, including the availability of —

(I) independent advocates provided under the Health and Disability Commissioner Act 1994; and

(ii) the Health and Disability Commissioner; and

(c) the consumer’s complaint and the actions of the provider regarding that complaint are documented; and

(d) the consumer receives all information held by the provider that is or may be relevant to the complaint.

(3) Within 10 working days of giving written acknowledgement of a complaint, the provider must —

(a) decide whether the provider —

(i) accepts that the complaint is justified; or

(ii) does not accept that the complaint is justified; or

(b) if it decides that more time is needed to investigate the complaint, —

(i) determine how much additional time is needed; and

(ii) if that additional time is more than 20 working days, inform the consumer of that determination and of the reasons for it.

(4) As soon as practicable after a provider decides whether or not it accepts that a complaint is justified, the provider must inform the consumer of —

(a) the reasons for the decision; and

(b) any actions the provider proposes to take; and

(c) any appeal procedure the provider has in place.

Provider Compliance

(i) A provider is not in breach of this Code if the provider has taken reasonable actions in the circumstances to give effect to the rights, and comply with the duties, in this Code.

(ii) The onus is on the provider to prove that it took reasonable actions.

(iii) For the purposes of this clause, “the circumstances” means all the relevant circumstances, including the consumer’s clinical circumstances and the provider’s resource constraints.

Definitions

In this Code, unless the context otherwise requires, —

“Advance directive” means a written or oral directive —

(a) by which a consumer makes a choice about a possible future health care procedure; and

(b) that is intended to be effective only when he or she is not competent.

“Choice” means a decision —

(a) to receive services;

(b) to refuse services;

(c) to withdraw consent to services.

“Consumer” means a health consumer or a disability services consumer, and, for the purposes of Rights 5, 6, 7(1), 7(2) to 7(10), and 10, includes a person entitled to give consent on behalf of that consumer.

“Discrimination” means discrimination that is unlawful by virtue of Part II of the Human Rights Act 1993.

“Duties” includes duties and obligations corresponding to the rights in this Code.

“Ethics committee” means an ethics committee —

(a) established by, or appointed under, an enactment, or

(b) approved by the Director-General of Health.

“Exploitation” includes any abuse of a position of trust, breach of a fiduciary duty, or exercise of undue influence:

“Optimise the quality of life” means to take a holistic view of the needs of the consumer in order to achieve the best possible outcome in the circumstances:

“Privacy” means all matters of privacy in respect of a consumer, other than matters of privacy that may be the subject of a complaint under Part VII or Part VIII of the Privacy Act 1993 or matters to which Part X of that Act relates:

“Provider” means a health care provider or a disability services provider.

“Research” means health research or disability research:

“Rights” includes rights corresponding to the duties in this Code:

“Services” means health services, or disability services, or both, and includes health care procedures.

“Teaching” includes training of providers.

Other Enactments

Nothing in this Code requires a provider to act in breach of any duty or obligation imposed by any enactment or prevents a provider doing an act authorised by any enactment.

Other Rights Not Affected

An existing right is not overridden or restricted simply because the right is not included in this Code or is included only in part.