



New South Wales

Health Records and Information Privacy Regulation 2012

under the

Health Records and Information Privacy Act 2002

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

JILLIAN SKINNER, MP
Minister for Health

Explanatory note

The object of this Regulation is to replace, with minor amendments, the *Health Records and Information Privacy Regulation 2006* which is repealed on 1 September 2012 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation:

- (a) prescribes the services of a chaplain in a public hospital or public health institution to be a health service and makes provision for the use and disclosure of health information for the purpose of providing chaplaincy services, and
- (b) makes provision for the use and disclosure of health information in connection with the Health Practitioner Regulation National Law as applied by other jurisdictions, and
- (c) prescribes research services by certain public bodies to be health services, and
- (d) provides for the Ministry of Health, the Health Administration Corporation, local health districts and statutory health corporations to be treated as a single agency for the purposes of the Health Privacy Principles (as set out in Schedule 1 to the *Health Records and Information Privacy Act 2002*) and the 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), clauses 10 (1) (k) and 11 (1) (l) of Schedule 1 and section 75 (the general regulation-making power).

2012 No 430

Health Records and Information Privacy Regulation 2012

Contents

	Page
1 Name of Regulation	3
2 Commencement	3
3 Definitions	3
4 Definition of "health service"	4
5 Health information may be used or disclosed for purpose of chaplaincy services	4
6 Health information may be used or disclosed for purpose of Health Practitioner Regulation National Law	4
7 Certain public sector agencies to be treated as a single agency	5
8 Savings	5

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1 Name of Regulation

This Regulation is the *Health Records and Information Privacy Regulation 2012*.

2 Commencement

This Regulation commences on 1 September 2012 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Health Records and Information Privacy Regulation 2006* which is repealed on 1 September 2012 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 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*.

Ministry means the Ministry of Health.

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

(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,

2012 No 430

Clause 4 Health Records and Information Privacy Regulation 2012

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 (l) 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,
 - (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 Health information may be used or disclosed for purpose of 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 Health information may be used or disclosed for purpose of 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 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,
- (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).

8 Savings

Any act, matter or thing that, immediately before the repeal of the *Health Records and Information Privacy Regulation 2006*, had effect under that Regulation continues to have effect under this Regulation.