

## **Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996**

### **1. Consumers have rights and providers have duties:**

- (1) Every consumer has the rights in this Code.
- (2) Every provider is subject to the duties in this Code.
- (3) Every provider must take action to—
  - (a) Inform consumers of their rights; and
  - (b) Enable consumers to exercise their rights.

### **2. Rights of consumers and duties of providers:**

The rights of consumers and the duties of providers under this Code are as follows:

#### **Right 1**

Right to be treated with respect

- (1) Every consumer has the right to be treated with respect.
- (2) Every consumer has the right to have his or her privacy respected.
- (3) Every consumer has the right to be provided with services that take into account the needs, values, and beliefs of different cultural, religious, social, and ethnic groups, including the needs, values, and beliefs of Māori.

#### **Right 2**

Right to freedom from discrimination, coercion, harassment, and exploitation

Every consumer has the right to be free from discrimination, coercion, harassment, and sexual, financial or other exploitation.

#### **Right 3**

Right to dignity and independence

Every consumer has the right to have services provided in a manner that respects the dignity and independence of the individual.

#### **Right 4**

Right to services of an appropriate standard

- (1) Every consumer has the right to have services provided with reasonable care and skill.
- (2) Every consumer has the right to have services provided that comply with legal, professional, ethical, and other relevant standards.
- (3) Every consumer has the right to have services provided in a manner consistent with his or her

needs.

(4) Every consumer has the right to have services provided in a manner that minimises the potential harm to, and optimises the quality of life of, that consumer.

(5) Every consumer has the right to co-operation among providers to ensure quality and continuity of services.

#### Right 5

##### Right to effective communication

(1) Every consumer has the right to effective communication in a form, language, and manner that enables the consumer to understand the information provided. Where necessary and reasonably practicable, this includes the right to a competent interpreter.

(2) Every consumer has the right to an environment that enables both consumer and provider to communicate openly, honestly, and effectively.

#### Right 6

##### Right to be fully informed

(1) Every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive, including—

(a) an explanation of his or her condition; and

(b) an explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option; and

(c) advice of the estimated time within which the services will be provided; and

(d) notification of any proposed participation in teaching or research, including whether the research requires and has received ethical approval; and

(e) any other information required by legal, professional, ethical, and other relevant standards; and

(f) the results of tests; and

(g) the results of procedures.

(2) Before making a choice or giving consent, every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, needs to make an informed choice or give informed consent.

(3) Every consumer has the right to honest and accurate answers to questions relating to services, including questions about—

(a) the identity and qualifications of the provider; and

(b) the recommendation of the provider; and

(c) how to obtain an opinion from another provider; and

(d) the results of research.

(4) Every consumer has the right to receive, on request, a written summary of information provided.

#### Right 7

Right to make an informed choice and give informed consent

(1) 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.

(2) 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.

(3) 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.

(4) 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.

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

(6) Where informed consent to a health care procedure is required, it must be in writing if—

(a) the consumer is to participate in any research; or

(b) the procedure is experimental; or

(c) the consumer will be under general anaesthetic; or

(d) there is a significant risk of adverse effects on the consumer.

(7) Every consumer has the right to refuse services and to withdraw consent to services.

(8) Every consumer has the right to express a preference as to who will provide services and have that preference met where practicable.

(9) Every consumer has the right to make a decision about the return or disposal of any body parts or bodily substances removed or obtained in the course of a health care procedure.

(10) No body part or bodily substance removed or obtained in the course of a health care procedure may be stored, preserved, or used otherwise than

(a) with the informed consent of the consumer; or

(b) for the purposes of research that has received the approval of an ethics committee; or

(c) for the purposes of 1 or more of the following activities, being activities that are each undertaken to assure or improve the quality of services:

(i) a professionally recognised quality assurance programme:

(ii) an external audit of services:

(iii) an external evaluation of services.

#### 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

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

(2) 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.

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

(4) Every provider must inform a consumer about progress on the consumer's complaint at intervals of not more than 1 month.

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

(6) 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.

(7) 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.

(8) 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.

### **3. Provider compliance**

(1) 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.

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

(3) For the purposes of this clause, the circumstances mean all the relevant circumstances, including the consumer's clinical circumstances and the provider's resource constraints.

### **4. 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(7) 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 include 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.

Optimizing 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 5** of the Privacy Act 2020 or matters to which **subpart 4** of Part 7 of that Act relates

Provider means a health care provider or disability services provider.

Research means health research or disability research.

Rights include 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.

## 5. Other enactments

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

### 5A. End of Life Choice Act 2019

(1) This clause sets out how this Code operates with the **End of Life Choice Act 2019** (the EOLC Act).

(2) For Right 4(2) of this Code, contravening **section 10(1)** of the EOLC Act may be found or held to be providing services that do not comply with relevant legal standards.

(3) Right 6(1)(b) and (c), and (2) of this Code is overridden by **section 10** (assisted dying must not be initiated by a health practitioner) of the EOLC Act.

(4) Right 7(2) to (5) of this Code is overridden by **section 6** (meaning competent to make an informed decision about assisted dying) of the EOLC Act.

(5) Under **clause 5** of this Code (and without limiting that clause), nothing in this Code requires a provider to act in breach of any duty or obligation imposed by the EOLC Act or prevents a provider from doing an act authorised by the EOLC Act.

Schedule clause 5A: inserted, on 6 November 2021, by **section 41** of the End of Life Choice Act 2019 (2019 No 67).