

NZ Privacy Act 2020

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Too much information? NZ medical practitioner's obligations under The Privacy Act 2020

The new *Privacy Act* (the Act) comes into force on 1 December 2020. In the lead up to its implementation, Wotton + Kearney is publishing a series of short articles addressing the new law's potential impacts and some frequently asked questions.

AT A GLANCE:

- New Zealand's *Privacy Act 2020* will come into effect on 1 December 2020.
- The new legislation updates New Zealand 27-year-old privacy framework, including a new Health Information Privacy Code.
- This provides a timely reminder for medical practitioners as to how they deal with information requests under the Act and Code.

It is common for health practitioners to receive a request for a patient's health information, either from the patient or from a third party, such as the Accident Compensation Corporation (ACC).

Like the predecessor legislation, the new Act will use a Health Information Privacy Code (Code) to set out a framework for practitioners to consider when responding to information requests.

Under the Code, practitioners continue to have an obligation to provide patients with their health information. They also have an obligation to ensure the safety of the private health information. This article looks at those obligations and provides useful guidance on compliance.

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PATIENT REQUESTS FOR INFORMATION

Patients have a right to access their personal health records under Rule 6 of the Code. Where a request is made under Rule 6, a practitioner must confirm whether:

- they may have the requested information and whether the information is retrievable, and
- the patient has the right to access the information.

There are limited situations where the request can be refused. These situations include times when a practitioner believes the information would:

- be likely to endanger an individual's safety
- be likely to prejudice the health of the requestor
- prevent the detection and investigation of criminal offences, or the requestor's rehabilitation or safe custody
- be against the interests of a requestor who is under 16 years of age, or
- involve an unwarranted breach of someone else's privacy, including deceased people.

A full list of the grounds that can be used to withhold information is included in [Part 4 of the Act](#).

If a practitioner believes the information should be withheld under one of the above exceptions, practitioners should keep detailed and informative notes on their decision to withhold information and ensure they discuss their reasoning with the patient. The practitioner must also advise the patient of their right to make a complaint to the Privacy Commissioner about the decision.

PATIENT REQUESTS FOR AMENDMENTS TO INFORMATION

Under Rule 7, patients have the right to correct health information about themselves if they believe it is wrong. While the rule does not impose an obligation on the practitioner to change the information, practitioners can add a note about the patient's view on what the correct statement should be (a statement of correction).

It is prudent for practitioners to thoroughly record their reasoning to alter, or not to alter, patient information when a request under Rule 7 is made as patients can make a complaint to the Privacy Commissioner about those actions.

INFORMATION REQUESTS FROM A THIRD PARTY

There will be situations where health practitioners are requested, or are required, to share private health information about their patients with third parties. These situations include requests from the ACC, the police and the Coroner.

If such a request is made disclosure is governed by Rule 11 of the Code (as well as other legalisation including s22C and D of the Health Act (1956)). Disclosure is only permitted to third parties in limited circumstances, including when:

- disclosure is permitted by the patient to a nominated representative
- disclosure of information is necessary to uphold or enforce the law
- disclosure is necessary for court proceedings, or
- disclosed information is going to be used in a form that does not identify the patient.

This rule applies to all patients. If a patient is deceased at the time of the request, practitioners should satisfy themselves that the person(s) requesting the information has the authority to do so. Private health information can only be disclosed to the deceased estate or nominated representatives.

OTHER ISSUES TO CONSIDER WHEN RELEASING INFORMATION

Regardless of whether a patient or a third party makes an information request, the practitioner must check that the information to be released is accurate and relevant to the request. Even when information can be released, it does not give blanket rights to a party for the patient's full medical file.

The new Act also provides further safeguards to NHI numbers (unique identifiers). Accordingly, the new Code requires practitioners to ensure the risk of misuse of a patient's NHI is minimised before the NHI is disclosed. The Code provides the example risk mitigation measure of truncating account numbers on receipts or correspondence.

The new Act and Code also contain additional considerations if the disclosure is to an overseas agency.

CONCLUSION

With the new Privacy Act and Code coming into force on 1 December 2020, medical practitioners should ensure they are familiar with the privacy requirements for requests for private health information.

To minimise the risk of complaints and subsequent regulatory actions, practitioners should ensure they understand what health information can be disclosed and to whom, all of the reasons for withholding information, their communication obligations and the need to keep detailed notes about information disclosure decisions.

Need to know more?

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