

The Code of Health and Disability Services Consumers' Rights

The Code of Health and Disability Services Consumers' Rights (1996), or "*The Code of Rights*" or "*the Code*", as it is known, sets out the 10 rights consumers can expect from their health or disability service providers. Providers and individual health practitioners are obliged to uphold the 10 rights by law¹. If a consumer feels their rights under the Code have been breached, they can lay a complaint with the Health and Disability Commissioner (HDC). An investigation by the HDC can find a provider or individual has breached one or more of the rights, and penalties can be imposed.

The ten rights

The Code of Rights gives people 10 rights. These are:

- Right 1** Right to be treated with respect.
- Right 2** Right to freedom from discrimination, coercion, harassment, and exploitation.
- Right 3** Right to dignity and independence
- Right 4** Right to services of an appropriate standard.
- Right 5** Right to effective communication.
- Right 6** Right to be fully informed.
- Right 7** Right to make an informed choice and give informed consent.
- Right 8** Right to support.
- Right 9** Rights in respect of teaching or research.
- Right 10** Right to complain.

Tekau ō mōtaka i raro i te Rārangi Mōtika. Koia ēnei ngā mōtaka:

1. Kia manaakitia koe hei tangata.
2. Kia manaakitia koe, kia kua koe e tāmia e wai rānei, kia kua hoki e tūkinotia e te kaikiri o te tangata.
3. Kia hāpainga tō rangatiratanga, me tō mana motuhake.
4. Kia taea e koe ngā ratonga whai tikanga, ā, kia tika te taurima i a koe, me to teitei o ngā pūkenga o te hunga manaaki i a koe.
5. Kia tae katoa mai ngā kōrero ki mua i tō aroaro mā roto i tētahi huarahi

¹ The legislation specifically relevant to this position statement includes the Health and Disability Commissioner Act 1994, the Health and Disability Services (Safety) Act 2001, and the Health Practitioners Competence Assurance Act 2003.

whakamōhio ngāwari kit e whakarongo, kia tino taea ai tō kōrerorero tahi ki te kaiwhakahaere o taua ratonga.

6. Kia tino tae ake ngā kōrero whai pānga ki mua i a koe mō tō hauora me tō hauatanga; te āhua o te ratonga e horahia ana, ngā ingoa me ngā tūranga o ngā kaimahi, me ngā kōrero katoa mō ngā whakamāutautau me ngā whakahaere e tika ana mōu, me ngā hua o aua whakamāutautau ina puta ake ana. I Aotearoa nei, e whakamanawatia ana ngā tāngata kia patapatai, kia inoi hoki ki ētahi atu kōrero kia mōhio ai rātou he aha te aha
7. Kia riro māu anō e whakatau ngā tikanga tiaki i a koe, kia huri hoki koe i tō whakatau, kia haere ki huarahi kē.
8. Kia noho mai he kaitautoko i tō taha i te nuinga o te wā.
9. Kia pā tonu ēnei mōtika katoa, kit e inoia koe kia uru ki tētahi rangahautanga, ki tētahi wāhanga whakangungu kaimahi rānei.
10. Kia āhei koe te whakatakoto whakapae, ā, kia āta tirohia hoki tō whakapae.

Full detail about each right is outlined on the Health and Disability Commissioner website: www.hdc.org.nz.

Who does the Code apply to?

The Code applies to all health and disability service providers in both the public and private sector. It applies to both regulated and unregulated health care workers, eg, nurses, midwives, doctors, physiotherapists, and health care assistants. It also covers providers, such as hospitals, hospices, medical centres, rest homes, homes for the disabled, community services, and alcohol and drug rehabilitation centres. These rights are also embedded in the Health and Disability Services Standards which are mandatory for hospital and residential services (NZS 8134:2008).

Health services include health treatment, procedures and examinations, health teaching and research, health promotion, nursing and midwifery services, rehabilitation services, diagnostic services, psychotherapy, counselling, contraception, fertility and sterilisation services.

Disability services include goods, services and facilities which provide care or support to people with disabilities.

The Code covers everything you do as a health professional, from how you communicate with a patient and/or client, to the standard of your clinical work.

Note: Any complaint made to a health regulating authority under the Health Practitioners Competence Assurance Act (2003) must be referred to the Commissioner.

How might I be involved in an investigation?

You may be involved if a complaint is against you as the person who directly provided the care.

You may also be involved as a witness, if there is an investigation into the actions of one of your colleagues, or an investigation of the services provided by your organisation to a consumer or group of consumers. Examples of cases can be found on the HDC website (www.hdc.org.nz).

Investigations

Patients/consumers or their family members/whānau may complain directly to the Commissioner or may enlist the support of an advocate. The HDC funds an independent advocacy service to assist people who have questions about, or are unhappy with the service they have received (<http://advocacy.hdc.org.nz/>). In many instances, complaints to the HDC will be referred for follow up by the advocacy service, which will then provide a report of the outcome to the HDC. If the HDC is satisfied with the investigation process and the result for the complainant, then often the investigation does not progress to a full investigation by the HDC.

Note: The HDC does not need a complaint about a provider to undertake an investigation. They have the authority to investigate the quality of any health and disability service which gives rise for concern.

Most of the complaints New Zealand Nurses Organisation (NZNO) members are involved in are in relation to **Right four:** the right to services of an appropriate standard; and **Right five:** the right to effective communication. The Nursing and Midwifery Councils of New Zealand are required under the Health Practitioners Competence Assurance Act 2003 to specify the scope of practice and qualifications necessary to become registered or enrolled under the Act, and set ongoing competence requirements. There are specific competencies related to standards of care and communication. As a regulated health professional you are obliged to meet these competencies and can be found in breach of the Code of Rights if you do not.

What can the Commissioner do?

The Health and Disability Commissioner has broad powers and has a number of options available if an investigation finds a breach of the code has occurred. These include:

- > refer any registered health professional to their regulating authority eg, registered and enrolled nurses may be referred to the Nursing Council; registered midwives to the Midwifery Council.
- > report their opinion, with reasons, to any health care provider or disability services provider whose action was the subject of the investigations and make any recommendations they see fit;
- > report the Commissioner's opinion of any breach of the Code that has been identified, with reasons, together with any recommendations the Commissioner thinks fit, to all or any of the following:
 - any authority or professional body;
 - the Accident Compensation Corporation (ACC);

- any other person the Commissioner considers appropriate (including the police);
- > report their findings to the Minister of Health; and
- > refer any health care provider or disability services provider to the Director of Proceedings.

HDC investigations can be very complex processes. The HDC may choose to get an expert opinion from clinicians as to what a reasonable standard of care would be, given the situation in question.

How will I know?

Generally you will get a letter about any complaint and/or investigation from the Commissioner's office or an HDC advocate. Sometimes you may find out through your employer, particularly if the complaint is about a number of people/issues rather than an individual health practitioner.

Most often, an HDC complaint occurs after there has been a complaint and subsequent incident review within your organisation (see the NZNO Fact Sheet on Serious and Sentinel Events (NZNO, 2011) for further information on serious and sentinel event investigations). A complaint may be made to the HDC some time – possibly a year or more – after the incident took place. This is why clear and accurate documentation is vital (see the NZNO Documentation pamphlet (NZNO, 2010) for further information on appropriate documentation).

HDC investigations may occur at the same time as ACC investigations or Coroners cases. They are separate processes.

An HDC investigation will generally go through the following steps:

- > parties are notified of the complaint in writing;
- > the provider is given the opportunity to respond;
- > there may be some interviewing of parties and witnesses (sometimes the complainant may want to meet with the health provider face to face)
- > the Commissioner will give a provisional opinion on whether there has been a breach of the Code;
- > parties will have the opportunity to respond to the provisional opinion; and
- > the Commissioner will give a final opinion on whether there has been a breach of the Code.

What should I do if I am involved in an investigation?

- > Inform your NZNO organiser as soon as you learn you are involved in an investigation – even if you are only providing information to the investigation. Your organiser will assist you with what you need to do next. You may need to activate your indemnity cover.
- > If asked to give a statement or interview, ask for time to get in contact with your NZNO organiser first. Seeking advice does not mean you are admitting fault.
- > Any information you provide in a statement or interview for the HDC may be used in other investigation processes, eg police or ACC investigations.
- > See the NZNO fact sheet on your rights and responsibilities in an investigation (NZNO, 2011) for further information. This fact sheet has details on how NZNO can help you in an investigation, and some simple steps for managing an interview.

Get in touch with NZNO as soon as you are aware you are involved in any investigation - 0800283848.

Related NZNO Documents

New Zealand Nurses Organisation. (2011). *Investigations: your rights and responsibilities*. Wellington: New Zealand Nurses Organisation.

New Zealand Nurses Organisation. (2011). *Serious and sentinel events*. Wellington: New Zealand Nurses Organisation.

New Zealand Nurses Organisation. (2010). *Documentation*. Wellington: New Zealand Nurses Organisation.

New Zealand Nurses Organisation. (2012) *Standards of professional nursing practice*. Wellington: New Zealand Nurses Organisation.

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Mission statement

NZNO is committed to the representation of members and the promotion of nursing and midwifery. NZNO embraces Te Tiriti o Waitangi and works to improve the health status of all peoples of Aotearoa/ New Zealand through participation in health and social policy development.

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