Right 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. ensure the quality of the provider's advice, care, and services;
   b. provide information to consumers about the services provided;
   c. ensure that the services provided are of an appropriate standard;
   d. provide consumers with written information about the services provided;
   e. provide consumers with information about the provider's qualifications and experience;
   f. provide consumers with information about the provider's fees and charges;
   g. provide consumers with information about the provider's complaints procedures;
   h. provide consumers with information about the provider's requirements for payment.

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. It covers a wide range of providers (whether public or private) including:
- hospitals
- doctors
- home care providers
- nurses
- therapeutic masseurs
- optometrists
- midwives

In making a complaint, it is important that consumers act in good faith, are fair and truthful, and share all information they know to be relevant.

The Commissioner's jurisdiction is restricted to the quality of care; it does not cover issues of funding or entitlement to a service.

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
Fax: (09) 373 1061
Email: hdc@hdc.org.nz
Website: www.hdc.org.nz
Information in e text is available via our website.

USING 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 2787 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.
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 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.

(11) 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.

(12) 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.

(13) 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.

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

(15) 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.

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

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

(18) 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.

(19) 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 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 one 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.