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Regulation is to replace, with minor amendments, the Health Records and Information Privacy Regulation 2006 which is repealed on 1 September 2012 by section 10 (2) of the Subordinate Legislation Act 1989.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

under the

Health Records and Information Privacy Act 2002

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 This Regulation replaces the Health Records and Information Privacy Regulation 2006 which is repealed on 1 September 2012 by section 10 (2) of the Subordinate Legislation Act 1989.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,
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.