



New Zealand Public Health and Disability Amendment Act 2013

Public Act 2013 No 22
Date of assent 20 May 2013
Commencement see section 2

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Part 4A

Family care policies

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the New Zealand Public Health and Disability Amendment Act 2013.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the New Zealand Public Health and Disability Act 2000 (the **principal Act**).

4 New Part 4A inserted

After section 70, insert:

“Part 4A**“Family care policies****“70A Purpose of this Part**

“(1) The purpose of this Part is to keep the funding of support services provided by persons to their family members within sustainable limits in order to give effect to the restraint imposed by section 3(2) and to affirm the principle that, in the context of the funding of support services, families generally have primary responsibility for the well-being of their family members.

“(2) To achieve that purpose, this Act, among other things,—

“(a) prohibits the Crown or a DHB from paying a person for providing support services to a family member unless the payment is permitted by an applicable family care policy or is expressly authorised by or under an enactment:

“(b) declares that the Crown and DHBs have always been authorised, and continue to be authorised, to adopt or have family care policies that permit persons to be paid, in certain cases, for providing support services to family members:

- “(c) stops (subject to certain savings) any complaint to the Human Rights Commission and any proceeding in any court if the complaint or proceeding is, in whole or in part, based on an assertion that a person’s right to freedom from discrimination on any of the grounds of marital status, disability, age, or family status (affirmed by section 19 of the New Zealand Bill of Rights Act 1990) has been breached by—
- “(i) a provision of this Part; or
 - “(ii) a family care policy; or
 - “(iii) anything done or omitted in compliance, or intended compliance, with this Part or a family care policy.

“**70B Interpretation**

- “(1) In this Part, unless the context otherwise requires,—
- “**family care policy**, in relation to the Crown or a DHB,—
- “(a) means any statement in writing made by, or on behalf of, the Crown or by, or on behalf of, the DHB that permits, or has the effect of permitting, persons to be paid, in certain cases, for providing support services to their family members; and
 - “(b) includes any practice, whether or not reduced to writing, that has the same effect as a statement of the kind described in paragraph (a), being a practice that was followed by the Crown or by a DHB before the commencement of this Part
- “**family member** has the meaning given by subsection (2)
- “**support services** means disability support services (as defined in section 6(1)) or health services (as so defined), or both, being services of a kind that are generally funded, directly or indirectly, through Vote Health.
- “(2) Support services provided by a person (**person A**) to another person (**person B**) are provided to a **family member** in any case where person B is person A’s—
- “(a) spouse, civil union partner, or de facto partner; or
 - “(b) parent, step-parent, or grandparent; or
 - “(c) child, stepchild, or grandchild; or

- “(d) sister, half-sister, stepsister, brother, half-brother, or stepbrother; or
- “(e) aunt or uncle; or
- “(f) nephew or niece; or
- “(g) first cousin.

“70C Persons generally not to be paid for providing support services to family members

On and after the commencement of this Part, neither the Crown nor a DHB may pay a person for any support services that are, whether before, on, or after that commencement, provided to a family member of the person unless the payment is—

- “(a) permitted by an applicable family care policy; or
- “(b) expressly authorised by or under an enactment.

“70D Family care policy

- “(1) The Crown and any DHB are, and have always have been, authorised —
 - “(a) to adopt or have a family care policy:
 - “(b) to change a family care policy:
 - “(c) to cancel a family care policy:
 - “(d) to replace a family care policy.
- “(2) Any family care policy that the Crown or any DHB had immediately before the commencement of this Part continues in effect, and the Crown or the DHB may change, cancel, or replace that family care policy.
- “(3) A family care policy that the Crown or a DHB adopts or has on or after the commencement of this Part may state, and a family care policy that the Crown or a DHB adopted or had before that commencement has always been authorised to state or to have the effect of stating, 1 or more of the following:
 - “(a) cases in which persons may be paid for providing support services to family members, including, without limitation, by reference to 1 or more of the following matters:
 - “(i) the nature of the familial relationship between the person who provides the support services and the family member to whom the support services are provided:

- “(ii) the impairment or condition of the family member to whom the support services are provided, which may include references to the effects of the impairment or condition or the degree of its severity, or both:
 - “(iii) the age of the family member to whom the support services are provided:
 - “(iv) the place of residence of the family member to whom the support services are provided:
 - “(v) the place of residence of the person who provides the support services:
 - “(vi) the needs of the family member to whom the support services are provided and the needs of his or her family:
- “(b) the conditions that must be satisfied before payments for support services provided to a family member are made:
- “(c) the rates, or ways of setting the rates, of payment for support services provided to family members, which may be lower than the rates of payment for comparable support services provided to persons who are not family members:
- “(d) the limits on funding for support services provided to a family member, which may be expressed in any way, including by limiting the amounts that may be paid or the number of hours for which payment may be claimed.
- “(4) Where, after the commencement of this Part, the Crown or a DHB adopts a family care policy, or changes or cancels a family care policy, the chief executive of the Ministry of Health or the DHB, as the case requires, must make a copy of the document that states the family care policy, or that changes or cancels it, available for inspection, on request, during working hours at the appropriate head office and at any other places that the chief executive determines are appropriate.
- “(5) None of the following is a disallowable instrument for the purposes of the Legislation Act 2012:
- “(a) a family care policy:
 - “(b) a change to a family care policy:
 - “(c) a determination cancelling a family care policy.

- “(6) Before the commencement of section 38 of the Legislation Act 2012, subsection (5) must be read as if the reference to a disallowable instrument for the purposes of the Legislation Act 2012 were a reference to a regulation within the meaning of the Regulations (Disallowance) Act 1989.
- “(7) Subsection (6) and this subsection are repealed on the day after the commencement of section 38 of the Legislation Act 2012.

“**70E Claims of unlawful discrimination in respect of this Act or family care policy precluded**

- “(1) In this section, **specified allegation** means any assertion to the effect that a person’s right to freedom from discrimination on 1 or more of the grounds stated in section 21(1)(b), (h), (i), and (l) of the Human Rights Act 1993, being the right affirmed by section 19 of the New Zealand Bill of Rights Act 1990, has been breached—
- “(a) by this Part; or
 - “(b) by a family care policy; or
 - “(c) by anything done or omitted to be done in compliance, or intended compliance, with this Part or in compliance, or intended compliance, with a family care policy.
- “(2) On and after the commencement of this Part, no complaint based in whole or in part on a specified allegation may be made to the Human Rights Commission, and no proceedings based in whole or in part on a specified allegation may be commenced or continued in any court or tribunal.
- “(3) On and after the commencement of this Part, the Human Rights Commission must not take any action or any further action in relation to a complaint that—
- “(a) was made after 15 May 2013; and
 - “(b) is, in whole or in part, based on a specified allegation.
- “(4) On and after the commencement of this Part, neither the Human Rights Review Tribunal nor any court may hear, or continue to hear, or determine any civil proceedings that arise out of a complaint described in subsection (3).
- “(5) Nothing in this section or in section 70D affects—
- “(a) a complaint that is, in whole or in part, based on a specified allegation but that has been lodged with the Human

Rights Commission or any court before 16 May 2013;
or

- “(b) the jurisdiction of the Human Rights Review Tribunal or of a court to hear and determine proceedings that arise out of a complaint described in paragraph (a).
- “(6) Despite subsection (5)(b), if in proceedings to which that subsection applies the Human Rights Review Tribunal or a court finds that a specified allegation has been proved, the Human Rights Review Tribunal or the court may grant no remedy other than the declaration described in subsection (7).
- “(7) The declaration that may be granted by the Human Rights Review Tribunal or the court in proceedings to which subsection (5)(b) applies is a declaration that the policy to which the finding relates is inconsistent with the right to freedom from discrimination affirmed by section 19 of the New Zealand Bill of Rights Act 1990.

“70F Certificates relating to family care policies

- “(1) The chief executive of the Ministry of Health may sign in respect of the Crown, and a chief executive of a DHB may sign in respect of the DHB, a certificate that states facts of the following kind in relation to the Crown or that DHB:
- “(a) the contents of any family care policy that, in relation to any period of time, the Crown or the DHB currently has or that it previously had:
 - “(b) if the family care policy comes within paragraph (b) of the definition of that term set out in section 70B(1), a description of the practice followed by the Crown or the DHB.
- “(2) A certificate under this section is—
- “(a) admissible in all proceedings without proof of the signature or office of the person appearing to have signed the certificate; and
 - “(b) in the absence of proof to the contrary, sufficient evidence of the facts stated in it.

“70G Savings

- “(1) The proceedings between the Ministry of Health and Peter Atkinson (on behalf of the estate of Susan Atkinson) and 8

other respondents (being the proceedings that were the subject of the judgment of the Court of Appeal reported in *Ministry of Health v Atkinson* [2012] 3 NZLR 456) may be continued or settled as if this Part (other than this section) had not been enacted.

- “(2) Any claim in the proceedings in the High Court between Margaret Spencer and the Attorney-General (CIV 2012-404-006717) may, if, and only if, made in pleadings filed in the High Court before 16 May 2013, be heard and determined as if this Part (other than this section) had not been enacted.
- “(3) Subsection (4) applies to a contract or an arrangement—
- “(a) that contains commitments or assurances by the Crown or a DHB; and
 - “(b) that is in effect immediately before the commencement of this Part; and
 - “(c) that provides for or envisages payments for support services provided to a family member.
- “(4) The contract or arrangement—
- “(a) must, if any of its terms relating to payment for support services to a family member were not permitted or authorised by a family care policy, be construed as if they had been so permitted and authorised; and
 - “(b) if still in effect on the day before the first anniversary of the commencement of this Part, ceases to be in effect on the close of that day.
- “(5) Subsections (3) and (4) override section 70C.”
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Legislative history

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| 16 May 2013 | Introduction (Bill 118–1), first reading, second reading, committee of the whole House, third reading |
| 20 May 2013 | Royal assent |

This Act is administered by the Ministry of Health.
