

May 21 2013
Introduction

Thank you for the opportunity to provide this submission on the **Review of Health and Disability Services Standards**.

As the Children's Commissioner, I have the statutory responsibility to ensure that children's and young people's rights, interests and welfare are upheld. This includes advancing and monitoring the application of the UN Convention on the Rights of the Child (UNCROC) by departments of State and other Crown instruments¹. The Children's Commissioner's Act 2003 outlines the independence of my role and the functions and responsibilities of the Commissioner. I make this submission with those responsibilities in mind.

I will give comment to specific standards within each of the Health and Disability Standards.

The New Zealand Standard: Health and Disability Standards (General) Standard: NZS 8134.0:2008

Overall, the standards are thorough, although they are general in their focus and application. There is little specific reference given to children or of specific criteria or standards regarding children.

- The definitions within the document contain a definition for a "young person" (taking the Children, Young Persons and their Families Act 1989 definition of 14-16 years) but contain no definition of "child" or "children". I think it would be preferable for the definition section to include a definition for "child" of 0-17 years inclusive, consistent with the UNCROC definition and that of the Care of Children Act 2004.

The New Zealand Standard: Health and Disability Standards (Restraint Minimisation and Safe Practice) Standards: NZS 8134.2:2008

In reviewing the standards above best practice for young people has been considered with reference to the UNCROC, with particular reference to Articles 19, 23, 25 and 32.

The standards are generally robust and appear to offer a high level of compliance and safety based on clear assessment and review processes. I have a few comments and have referred to the PDF pages numbers as several page numbers repeat throughout the document.

When considering the legislative and other sources that inform the development of these standards, I consider that the Crimes of Torture (Amendment) Act 2006 to offer valuable consideration. The Act outlines how monitoring will occur to ensure that anyone detained is not subjected to torture, cruel, inhuman or degrading treatment or punishment. Additionally, the UNCROC should also be used as a key reference as it provides the basic rights of children and the obligation of governments to fulfil those rights.

With respect to specific items:

¹ Children's Commissioner Act 2003, section 12(1)(f)

- Guidance G2.2.1 - Lists key factors to consider - I believe that "age and understanding of the consumer" should also be considered.
- Guidance G2.3.1 - Lists what policies should entail - I believe that "policies on alternative to using restraint" should also be included.
- Guidance G2.3.6 (d) - Lists what the training should include - I believe that training should also include de-escalation techniques and the special needs and consideration associated with those under 18 years of age should also be included.

The New Zealand Standard: Health and Disability Services (Core) Standards: NZS 8134.1.2:2008

Overall, the standards are thorough, there is little specific reference given to children or of specific criteria or standards regarding children.

- With regard to Standard 1.10: The Consumer Rights standard on informed consent does not refer to the specific Care of Children Act 2004 or the common law Gillick principle as regards informed consent of children to medical treatment. However, I note that Clause 7.1 of the Code alludes to differential informed consent stating "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". I suggest that consideration is given to guidance being more explicit regarding the source of standards for the informed consent of children.
- With regard to 'Standard 2.5: Consumers are involved in the planning, implementation and evaluation at all levels of the service to ensure services are responsive to the needs of individuals', I think that the guidance specific mention should be made that consumer advisory groups reflect the age focus of the service and that young people should be included.
- With regard to 'Standard 2.7: Human resource management processes are conducted in accordance with good employment practice and meet the requirements of legislation', I would like to acknowledge positively the inclusion in the guidance for 2.7.1 that service providers should have a thorough understanding of legislation that impacts on children and young people if they provide services for children and young people.

The New Zealand Standard: Health and Disability Services (Safe and Appropriate Environment) Standards: NZS 8134.1.4:2008

I note that Standard 4.5 contains the requirement to consider the age of service users "Consumers are provided with safe, adequate and age-appropriate, and accessible areas to meet their relaxation, activity and dining needs." However, Standards 4.3 and 4.4 that refer to the provision of bed space and personal hygiene facilities do not explicitly consider age-appropriateness. I think that it is important to promote the provision of health care to children in a child and youth orientated manner.

Conclusion

Thank you for your consideration of my submission. If you require further information, please contact my Principal Advisor, Terry Quirke, at 04 495 7802 or t.quirke@occ.org.nz

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