

Health and Disability Services Eligibility Direction 2011

Pursuant to section 32 of the New Zealand Public Health and Disability Act 2000, the Minister of Health gives the following direction to every District Health Board.

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Part A

Information about this direction

A1 Title

This is the Health and Disability Services Eligibility Direction 2011.

A2 Commencement

This direction comes into force on the day after the date of its publication in the *Gazette*.

A3 Application of this direction

This direction applies to circumstances as they arise.

Compare: 1999 No 85 s 6

A4 Direction does not have retrospective effect

This direction does not have retrospective effect.

Compare: 1999 No 85 s 7

A5 Purpose of this direction

The purpose of this direction is to specify the persons who are eligible to receive services funded under the Act.

Defined in this direction: Act, services

A6 Overview of this direction

(1) A person's eligibility to receive services funded under the Act is dealt with in Part B.

(2) The definitions and other interpretation provisions for this direction are set out in the Schedule.

Defined in this direction: Act, services

A7 Revocation

Every direction under section 32 of the Act that was in force immediately before the commencement of this direction is revoked.

Defined in this direction: Act

Part B

Persons who are eligible to receive services funded under Act

Introduction

B1 Persons who are eligible to receive services funded under Act

- (1) A person is eligible to receive services funded under the Act if, at the time the services are received, the person is in New Zealand and meets all applicable criteria of 1 or more categories of eligible persons specified in this Part.
- (2) The Ministry of Health must, if requested in writing to do so, determine any question or dispute concerning whether a person is eligible to receive services funded under the Act.

Defined in this direction: Act, New Zealand, services

Category of eligibility: New Zealand citizens

B2 New Zealand citizen

A New Zealand citizen is eligible to receive services funded under the Act.

Defined in this direction: Act, New Zealand citizen, services

Categories of eligibility: certain holders of certain visas

B3 Certain holders of residence class visas

- (1) A person who holds a residence class visa is eligible to receive services funded under the Act.
- (2) Subclause (1) does not apply to Australian citizens and persons who hold a current permanent residence visa (including a resident return visa) issued by the Government of Australia who are granted a residence class visa as a result of an application under regulation 8 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, and the following provisions apply:
 - (a) the eligibility of an Australian citizen to receive services funded under the Act is set out in clauses B6 and B8:
 - (b) the eligibility of a holder of a current permanent residence visa (including a resident return visa) issued by the Government of Australia to receive services funded under the Act is set out in clauses B7 and B8.

Defined in this direction: Act, Australian citizen, residence class visa, services

B4 Holder of interim visa

A person is eligible to receive services funded under the Act if—

- (a) the person is the holder of an interim visa; and
- (b) immediately before the person became the holder of an interim visa, the person was eligible to receive services funded under the Act.

Defined in this direction: Act, interim visa, services

B5 Holder of work visa

A person is eligible to receive services funded under the Act if—

- (a) the person is the holder of a work visa; and
- (b) either—
 - (i) the person is entitled to work in New Zealand for a period that equals or exceeds 2 years commencing on the person's first day in New Zealand as a holder of the work visa; or
 - (ii) the person is entitled to work in New Zealand for a specified period of time that, together with the period of time the person has already been lawfully in New Zealand immediately before obtaining the work visa, equals or exceeds 2 years.

Defined in this direction: Act, New Zealand, services, work visa

Categories of eligibility: certain persons from Australia

B6 Australian citizen

(1) A person is eligible to receive services funded under the Act if the person is—

- (a) an Australian citizen; and
- (b) has been in New Zealand or intends to stay in New Zealand for at least 2 consecutive years.

(2) The 2-year period referred to in subclause (1)(b) starts on the first day that the person arrives in New Zealand.

Defined in this direction: Act, Australian citizen, New Zealand, services

B7 Holder of current permanent residence visa (including resident return visa) issued by Government of Australia

(1) A person is eligible to receive services funded under the Act if the person—

- (a) holds a current permanent residence visa (including a resident return visa) issued by the Government of Australia; and

- (b) has been in New Zealand or intends to stay in New Zealand for at least 2 consecutive years.
- (2) The 2-year period referred to in subclause (1)(b) starts on the first day that the person arrives in New Zealand.
Defined in this direction: Act, New Zealand, services

B8 Person covered by reciprocal health agreement with Australia

- (1) A person is eligible to receive services funded under the Act if—
 - (a) the person is a resident of Australia; and
 - (b) the person has not been in New Zealand and does not intend to stay in New Zealand for at least 2 consecutive years; and
 - (c) the services are required to be provided under the agreement referred to in the Schedule of the Health Benefits (Reciprocity with Australia) Act 1999.
- (2) The 2-year period referred to in subclause (1)(b) starts on the first day that the person arrives in New Zealand.
Defined in this direction: Act, New Zealand, resident of Australia, services

Category of eligibility: certain persons from United Kingdom

B9 Person covered by reciprocal health agreement with United Kingdom

- A person is eligible to receive services funded under the Act if—
- (a) the person is recognised by the Government of the United Kingdom as a national; and
 - (b) the person is ordinarily resident in the territory of the United Kingdom as defined in the agreement set out in the Schedule of the Health Benefits (Reciprocity with the United Kingdom) Act 1982; and
 - (c) the person is in New Zealand on a temporary basis; and
 - (d) the services are required to be provided under the agreement referred to in paragraph (b).
- Defined in this direction: Act, New Zealand, services

Categories of eligibility: refugees, protected persons, and victims of trafficking in people offences

B10 Refugee

- A person is eligible to receive services funded under the Act if the person is—
- (a) recognised as a refugee under the Immigration Act 2009; or

- (b) in the process of having a claim for recognition as a refugee determined by a refugee and protection officer; or
- (c) in the process of having an appeal for recognition as a refugee determined by the Immigration and Protection Tribunal.

Defined in this direction: Act, Immigration and Protection Tribunal, New Zealand, refugee, refugee and protection officer, services

B11 Protected person

A person is eligible to receive services funded under the Act if the person is—

- (a) recognised as a protected person under the Immigration Act 2009; or
- (b) in the process of having a claim for recognition as a protected person determined by a refugee and protection officer; or
- (c) in the process of having an appeal for recognition as a protected person determined by the Immigration and Protection Tribunal.

Defined in this direction: Act, Immigration and Protection Tribunal, protected person, refugee and protection officer, services

B12 Victim of trafficking in people offence

A person is eligible to receive services funded under the Act if—

- (a) the person is a victim of an offence against section 98D of the Crimes Act 1961 (which relates to trafficking in people by means of coercion or deception); or
- (b) the New Zealand Police suspects that the person is a victim of an offence against the section referred to in paragraph (a).

Defined in this direction: Act, services

Categories of eligibility: certain students and participants in certain schemes

B13 New Zealand Aid Programme student

A person is eligible to receive services funded under the Act if the person is a New Zealand Aid Programme student studying in New Zealand and receiving Official Development Assistance funding.

Defined in this direction: Act, New Zealand, services

B14 Commonwealth Scholarship student

A person is eligible to receive services funded under the Act if the person is—

- (a) a Commonwealth Scholarship student studying in New Zealand; and
- (b) receiving funding from a New Zealand university under the Commonwealth Scholarship and Fellowship Fund.

Defined in this direction: Act, New Zealand, services

B15 Participant in Foreign Language Teaching Assistantship Scheme

A person is eligible to receive services funded under the Act if the person is a participant in the Ministry of Education's Foreign Language Teaching Assistantship Scheme.

Defined in this direction: Act, services

Categories of eligibility: certain children

B16 Child in care and control of certain persons

A child is eligible to receive services funded under the Act if the child is—

- (a) not otherwise eligible under this direction to receive those services funded under the Act; and
- (b) for the time being, in the care and control of—
 - (i) a parent or guardian who meets the eligibility criteria specified in any of the following clauses:
 - (A) clause B2 (New Zealand citizen);
 - (B) clause B3 (Certain holders of residence class visas);
 - (C) clause B4 (Holder of interim visa);
 - (D) clause B5 (Holder of work visa);
 - (E) clause B6 (Australian citizen);
 - (F) clause B7 (Holder of current permanent residence visa (including resident return visa) issued by Government of Australia);
 - (G) clause B10 (Refugee);
 - (H) clause B11 (Protected person);
 - (I) clause B12 (Victim of trafficking in people offence);
 - (J) clause B13 (New Zealand Aid Programme student); or

- (ii) a person who is in the process of legally adopting the child and who meets the eligibility criteria specified in any of the clauses referred to in subparagraph (i)(A) to (J); or
- (iii) a person who has applied under sections 19, 27, 31, or 110 of the Care of Children Act 2004 to a court to be appointed as a guardian of the child and who meets the eligibility criteria specified in any of the clauses referred to in subparagraph (i)(A) to (J); or
- (iv) the chief executive of the Ministry of Social Development.

Defined in this direction: Act, child, guardian, legally adopting, parent, services

B17 Child requiring certain vaccinations

- (1) A child is eligible to receive vaccinations listed on the New Zealand Immunisation Schedule.
- (2) Subclause (1) applies whether or not the child is otherwise eligible under this direction to receive those services funded under the Act.

Defined in this direction: Act, child, services

B18 Child requiring Well Child/Tamariki Ora services

- (1) A child is eligible to receive Well Child/Tamariki Ora services.
- (2) Subclause (1) applies whether or not the child is otherwise eligible under this direction to receive those services funded under the Act.

Defined in this direction: Act, child, services, Well Child/Tamariki Ora services

B19 Certain persons who were previously eligible

A person is eligible to receive services funded under the Act until the person turns 20 years of age if, immediately before the commencement of this direction,—

- (a) the person was 18 or 19 years of age; and
- (b) the person was eligible to receive services funded under the Act because either or both of the person's parents or guardians—
 - (i) held a work visa; and
 - (ii) were eligible to receive services funded under the Act immediately before the commencement of this direction.

Defined in this direction: Act, guardian, parent, services, work visa

Categories of eligibility: certain partners

B20 Partners of New Zealand Aid Programme students

A person is eligible to receive services funded under the Act if the person is—

- (a) not otherwise eligible under this direction to receive those services funded under the Act; and
- (b) the partner of a person who is eligible under clause B13 (New Zealand Aid Programme student).

Defined in this direction: Act, partner, services

Categories of eligibility: certain pregnant women

B21 Pregnant woman who requires maternity-related services

A pregnant woman is eligible to receive maternity-related services funded under the Act if—

- (a) the pregnant woman is not otherwise eligible under this direction to receive those services funded under the Act; and
- (b) either—
 - (i) the pregnant woman's partner is eligible under any of clauses B2 to B7, B10 to B12, and B16 to receive services funded under the Act; or
 - (ii) the pregnant woman's unborn child (when it is born) will be eligible under clause B2 to receive services funded under the Act.

Defined in this direction: Act, maternity-related services, partner, services

B22 Pregnant woman who requires services to prevent transmission of HIV

A pregnant woman is eligible to receive services funded under the Act that relate only to preventing the transmission of HIV from the pregnant woman to her unborn child if the pregnant woman—

- (a) is infected with HIV; and
- (b) is not otherwise eligible under this direction to receive those services funded under the Act.

Defined in this direction: Act, services

Categories of eligibility: services to manage certain health risks

B23 Person who requires services relating to infectious diseases or quarantinable diseases

A person is eligible to receive services funded under the Act if—

- (a) the person has, or is suspected of having, an infectious disease or a quarantinable disease; and
- (b) the services relate only to all or any of the following, to the extent appropriate in the circumstances to address risks to other persons:
 - (i) the surveillance of a person with an infectious disease:
 - (ii) the surveillance of a person who is liable to quarantine under the Health Act 1956:
 - (iii) the diagnosis of the person's infectious disease or quarantinable disease:
 - (iv) the treatment of the person's infectious disease or quarantinable disease:
 - (v) follow-up services for the person's infectious disease or quarantinable disease:
 - (vi) contact tracing services for the person's infectious disease or quarantinable disease; and
- (c) the person is not otherwise eligible under this direction to receive those services funded under the Act.

Defined in this direction: Act, infectious disease, quarantinable disease, services

B24 Person who requires certain services in emergency

A person is eligible to receive services funded under the Act if—

- (a) the services required arise as a result of an emergency; and
- (b) the services are necessary to address immediate risks to the person or other persons; and
- (c) the person is not otherwise eligible under this direction to receive those services funded under the Act.

Defined in this direction: Act, emergency, services

B25 Ineligible persons who require services under certain legislation

- (1) A person is eligible to receive services funded under the Act if—
 - (a) the services relate only to compulsory services that the person receives, under any of the following Acts (or any regulations made under those Acts):

- (i) Alcoholism and Drug Addiction Act 1966:
 - (ii) Criminal Procedure (Mentally Impaired Persons) Act 2003:
 - (iii) Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:
 - (iv) Mental Health (Compulsory Assessment and Treatment) Act 1992; and
- (b) the person is not otherwise eligible under this direction to receive those services funded under the Act.
- (2) To avoid doubt, a person is eligible for assessments that are made to determine whether compulsory services should be received under any of the Acts specified, or regulations referred to, in subclause (1).

Defined in this direction: Act, services

Categories of eligibility: persons who receive services related to personal injury

B26 Persons who receive services related to personal injury

- (1) A person is eligible to receive services funded under the Act if the services relate only to public health acute services that are—
- (a) covered by a Crown funding agreement; and
 - (b) required by the person for the treatment of a personal injury for which the person has an entitlement under the Accident Compensation Act 2001; and
 - (c) the person is not otherwise eligible under this direction to receive those services funded under the Act.
- (2) A person is eligible to receive services funded under the Act if—
- (a) the services relate only to disability support services that are required by the person for the treatment of a personal injury for which the person has an entitlement under the Accident Compensation Act 2001; but has been disentitled under any of sections 118 to 122A of that Act; and
 - (b) the person is not otherwise eligible under this direction to receive those services funded under the Act.
- (3) A person is eligible to receive services funded under the Act if—
- (a) the services relate only to primary-referred pharmaceutical and laboratory services that are required by the person for the treatment of a personal injury for which the person has an entitlement under the Accident Compensation Act 2001; and
 - (b) the person is not otherwise eligible under this direction to receive those services funded under the Act.

Defined in this direction: Act, Crown funding agreement, disability support services, entitlement, personal injury, public health acute services, services

Categories of eligibility: prisoners

B27 Prisoner who requires services not available through prison health services

A person is eligible to receive services funded under the Act if—

- (a) the person is a prisoner; and
- (b) the services are not available through the prison health services; and
- (c) the person is not otherwise eligible under this direction to receive those services funded under the Act.

Defined in this direction: Act, prisoner, services

Schedule Definitions and interpretation

1 Definitions

(1) In this direction, unless the context otherwise requires,—

Act means the New Zealand Public Health and Disability Act 2000

Australian citizen has the same meaning as in section 4 of the Australian Citizenship Act 2007 of the Parliament of the Commonwealth of Australia

child means a person who is under the age of 18 years

Crown funding agreement has the same meaning as in section 6(1) of the Act

Department has the same meaning as in section 4 of the Immigration Act 2009

DHB has the same meaning as in section 6(1) of the Act

disability support services has the same meaning as in section 6(1) of the Act

emergency has the same meaning as in section 4 of the Civil Defence Emergency Management Act 2002

entitlement has the same meaning as in section 6(1) of the Accident Compensation Act 2001

guardian means—

- (a) a testamentary guardian within the meaning of section 26 of the Care of Children Act 2004;
- (b) a Court-appointed guardian within the meaning of section 27 of that Act;
- (c) a person who is treated by the Department as having a dependent child within the meaning of section 4 of the Immigration Act 2009

health services has the same meaning as in section 6(1) of the Act

Immigration and Protection Tribunal means the Immigration and Protection Tribunal established by section 217 of the Immigration Act 2009

infectious disease—

- (a) has the same meaning as in section 2(1) of the Health Act 1956; and
- (b) includes tuberculosis within the meaning of section 2(1) of the Tuberculosis Act 1948

interim visa has the meaning set out in section 80 of the Immigration Act 2009

legally adopting, in relation to a child, means that the child is in the process of being adopted in accordance with the Adoption Act 1955 or the Adoption (Intercountry) Act 1997

maternity-related services means—

- (a) primary maternity services within the meaning of clause B1 of the Primary Maternity Services Notice 2007; and
- (b) all maternity services provided by DHBs; and
- (c) any other secondary or tertiary services for a condition of the mother or child that a clinician has determined will significantly impact on the pregnancy or its outcome

Minister means the Minister of Health

New Zealand—

- (a) includes all waters within the outer limits of the territorial sea of New Zealand as defined in section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977; but
- (b) does not include the Cook Islands, Niue, Tokelau, or the Ross Dependency

New Zealand citizen has the same meaning as in section 4 of the Immigration Act 2009

parent means—

- (a) a birth parent:
- (b) an adoptive parent within the meaning of section 2 of the Adoption Act 1955:
- (c) an adoptive parent recognised under the Adoption (Intercountry) Act 1997:
- (d) a person who is treated by the Department as having a dependent child within the meaning of section 4 of the Immigration Act 2009:
- (e) a person who is named as a father in a declaration of paternity under section 10 of the Status of Children Act 1969

partner means, as the case may require,—

- (a) in the case of a person who is married, the spouse of that person; or
- (b) in the case of a person who is in a civil union, the civil union partner of that person; or
- (c) in the case of a person who is in a de facto relationship, the de facto partner (within the meaning of section 29 of the Interpretation Act 1999) of that person

personal injury has the same meaning as in section 6(1) of the Accident Compensation Act 2001

prisoner—

- (a) means a prison inmate; and

- (b) includes a prisoner detained only by reason of the fact that he or she is awaiting trial or is on remand in custody during the trial or before sentence

protected person has the same meaning as in section 4 of the Immigration Act 2009

public health acute services has the same meaning as in section 6(1) of the Accident Compensation Act 2001

quarantinable disease has the same meaning as in section 2(1) of the Health Act 1956

refugee has the same meaning as in section 4 of the Immigration Act 2009

refugee and protection officer has the same meaning as in section 4 of the Immigration Act 2009

residence class visa has the same meaning as in section 4 of the Immigration Act 2009

resident of Australia has the same meaning as the definition of **resident** in Article 1(4) of the Agreement on Medical Treatment for Temporary Visitors Between the Government of New Zealand and the Government of Australia set out in the Schedule of the Health Benefits (Reciprocity with Australia) Act 1999

services means health services and disability support services

visa has the same meaning as in section 4 of the Immigration Act 2009

Well Child/Tamariki Ora services—

- (a) means all services covered by the Well Child/Tamariki Ora Framework; and
- (b) includes the services covered by the Well Child National Schedule

work visa means a temporary entry class visa issued primarily for the purposes of work.

- (2) A term or expression used in this direction that is defined in the Act and used, but not defined, in this direction has the same meaning as in the Act.

2 Interpretational aids: list of defined terms

- (1) The list of defined terms following a clause is included in this direction only as interpretational aids. If there is conflict between an interpretational aid and a provision of this direction, the provision prevails.
- (2) If a defined term is used in a clause and is not included in the list of defined terms following the clause, the term is nevertheless used in the clause as defined.

DIRECTION dated this day of 2011

Hon Tony Ryall
Minister of Health
