

24<sup>th</sup> November 2020

[REDACTED]

Dear [REDACTED]

### **Official Information Act Request for – Surgery & Eligibility**

I write in response to your Official Information Act request received by us 22<sup>nd</sup> October 2020, you requested the following information:

1. **What is the legal authority or policy Counties Manukau follow in order to ascertain whether there are grounds to deny someone surgical treatment?**
2. **In what circumstances would a person be denied setting up a payment plan for a surgery they require and be expected to pay the full amount upfront before it goes ahead and where does it state this?**
3. **What is the legal authority or policy that outlines what constitutes an “emergency surgery” and who makes this assessment?**
4. **If someone is an immigrant on a work visa, does this affect their access to medical treatment? Furthermore, does this answer change if they are also married to a NZ permanent resident?**
5. **What is the eligibility scheme for determining whether someone is put on the acute list or the elective list for surgery and if someone pays for a surgery upfront are they classified as a private patient and skip the waitlist? And what is the policy or source that governs this?**
6. **In what circumstances can someone be denied treatment when they are in unbearable pain and does this contravene a physician’s “duty of care?” Please also outline the source that addresses this also.**

### **Counties Manukau Health Response:**

For context Counties Manukau Health (CM Health) employs over 7,500 staff and provides health and support services to people living in the Counties Manukau region (approx. 569,400 people). We see over 118,000 people in our Emergency Department each year, and over 2,000 visitors come through Middlemore Hospital daily.

Eligibility determination for health care is complex and case-specific, and it can take some time to collect and assess the facts against the Ministry of Health’s Health and Disability Services Direction criteria. Our approach is to provide any required acute or urgent healthcare immediately, and in a compassionate manner. All patients requiring treatment for an acute injury or illness will be treated, regardless of their

eligibility for funded services. We have an Eligibility Team who then completes the determination of entitlements procedure.

If people are not seriously ill or injured, but require medical treatment, they should make an appointment with a health centre, general practitioner (GP) or medical centre – and pay for the appointment. We manage all referrals for non-acute/ elective / planned care to confirm eligibility prior to accepting a referral.

The publicly available documents detailed below guide decision making around what treatment District Health Boards will offer and to whom:

- **Operational Policy Framework 2020/21** – this framework is a set of business rules, policy and guideline principles that outline the operating functions of district health boards as agreed by the Ministry of Health.
  - <https://nsfl.health.govt.nz/accountability/operational-policy-framework-0/operational-policy-framework-202021>
- **Health & Disability Services Eligibility Direction 2011** – this direction describes the groups of people who are eligible for publicly funded (i.e. at no cost to the patient or a subsidised cost) health and disability services in New Zealand.
  - <https://www.health.govt.nz/new-zealand-health-system/eligibility-publicly-funded-health-services/eligibility-direction>
- **Service Coverage Schedule 2020/21** – this schedule defines the agreed level of service coverage that the Ministry of Health and DHBs are held accountable to.
  - <https://nsfl.health.govt.nz/accountability/service-coverage-schedule/service-coverage-schedule-202021>

**1. What is the legal authority or policy Counties Manukau follow in order to ascertain whether there are grounds to deny someone surgical treatment?**

As per our correspondence with you on the 20<sup>th</sup> November 2020, we believe your question is requesting legal advice. This is best answered by conversation with our Legal Team, our Chief Legal Advisor, John Hanson has offered to speak with you on this topic. Please contact him by calling 09 276 0000.

**2. In what circumstances would a person be denied setting up a payment plan for a surgery they require and be expected to pay the full amount upfront before it goes ahead and where does it state this?**

We do not routinely provide public health services for people who are ineligible for New Zealand Public Health. We encourage any people who are ineligible for public health services to seek treatment through private providers.

There is publicly available information on the '*Eligibility questions and answers for service providers*' webpage on the Ministry of Health website:

- <https://www.health.govt.nz/new-zealand-health-system/eligibility-publicly-funded-health-services/eligibility-questions-and-answers-service-providers>

In relation to the Ministry of Health topic point around "*Acute & Elective Care*", CM Health currently experiences over demand for both acute and planned care services and therefore it is very unlikely that there is any capacity for ineligible patient treatment to be considered.

Ineligible patients who require elective surgery or other non-acute treatment can be referred to private health care providers.

**3. What is the legal authority or policy that outlines what constitutes an “emergency surgery” and who makes this assessment?**

As above in question 1 and as per our correspondence with you on the 20<sup>th</sup> November 2020, we believe your question is requesting legal advice. This is best answered by conversation with our Legal Team, our Chief Legal Advisor, John Hanson has offered to speak with you on this topic. Please contact him by calling 09 276 0000.

**4. If someone is an immigrant on a work visa, does this affect their access to medical treatment? Furthermore, does this answer change if they are also married to a NZ permanent resident?**

The link below will direct you to publicly available information on the Ministry of Health website. The criteria for eligibility is established in the Ministry of Health, Health and Disability Services Eligibility Direction 2011. This direction provides information, describes the groups of people who are eligible for publicly funded (i.e. at no cost to the patient or a subsidised cost) health and disability services in New Zealand.

- <https://www.health.govt.nz/system/files/documents/pages/eligibility-direction-2011.pdf>

In addition, a publicly available guide about meeting the specified eligibility criteria can be found on the Ministry of Health website at the below link. This guide provides information on eligibility for publicly funded health and disability services, identifies eligibility criteria and what is required to prove eligibility.

- <https://www.health.govt.nz/new-zealand-health-system/eligibility-publicly-funded-health-services/guide-eligibility-publicly-funded-health-services>

**5. What is the eligibility scheme for determining whether someone is put on the acute list or the elective list for surgery and if someone pays for a surgery upfront are they classified as a private patient and skip the waitlist? And what is the policy or source that governs this?**

Acute patients are treated according to clinical priority at the time of presentation to a DHB Emergency Department.

Planned care (elective) waitlist management is governed by clinical priority (for eligible patients). All patients are clinically assessed and prioritised, and patients only remain on surgical waiting lists if they meet the eligibility criteria. DHBs are expected to make use of nationally-recognised prioritisation tools to ensure the decision making process around prioritisation is fair and clear.

More information on planned care (elective) services is publicly available on the Ministry of Health website at the following link:

- <https://www.health.govt.nz/our-work/hospitals-and-specialist-care/planned-care-services>

In addition, the Service Coverage Schedule Document referenced above outlines this in broad terms by identifying criteria for publicly funded treatment such as for Emergency and Acute Services and Planned Care (Elective and Arranged Services):

- <https://nsfl.health.govt.nz/accountability/service-coverage-schedule/service-coverage-schedule-202021>

**6. In what circumstances can someone be denied treatment when they are in unbearable pain and does this contravene a physician's "duty of care?" Please also outline the source that addresses this also.**

As above in questions 1 & 3 and as per our correspondence with you on the 20<sup>th</sup> November 2020, we believe your question is requesting legal advice. This is best answered by conversation with our Legal Team, our Chief Legal Advisor, John Hanson has offered to speak with you on this topic. Please contact him by calling 09 276 0000.

In addition, the link below is a Medical Council of New Zealand standard titled "*A doctors duty to help in a medical emergency*" which is publicly available for information:

- <https://www.mcnz.org.nz/assets/standards/afd1af693d/A-doctors-duty-to-help-in-a-medical-emergency.pdf>

You are entitled to seek a review of the response by the Ombudsman under section 28(3) of the Official Information Act. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or Freephone 0800 802 602.

Please note that this response or an edited version of this may be published on the Counties Manukau Health website. If you consider there are good reasons why this response should not be made publicly available, we will be happy to consider this.

Yours sincerely



**Fepulea'i Margie Apa**  
**Chief Executive Officer**  
**Counties Manukau Health**