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Health and Social Care Bill - Amendments to the Mental Health Act 1983

The Government has today published a Health and Social Care Bill. The Bill includes a number of small amendments to the Mental Health Act 1983 (MHA). I thought members of the Mental Health Alliance might find it helpful if I summarised those amendments.

The Bill is largely concerned with the Government's plans for reform of the NHS set out in the Command Paper *Liberating the NHS: Legislative Framework and next steps*[1]. Most of the amendments to the Mental Health Act are consequential on those reforms, especially the proposed abolition of primary care trusts (PCTs) and strategic health authorities (SHAs), and the creation of the NHS Commissioning Board (the Board) and GP commissioning consortia.

Because PCTs are to be abolished, clause 32 transfers to commissioning consortia (and, where relevant, the Board) PCTs' duty to provide after-care under section 117 MHA. In doing so, it also makes a number of largely technical changes to ensure that the duty on consortia and the Board is aligned as closely as possible with their functions under the mainstream of NHS legislation in the NHS Act 2006 (as amended by the Bill). It does not change the fundamental duty to provide after-care to patients who qualify under section 117.

Clause 37 transfers from PCTs to commissioning consortia the duty under section 140 MHA to notify local social services authorities about the hospitals to which their patients can be admitted in cases of urgency, or which are especially suitable for children and young people under the age of 18.

Paragraph 7 of Schedule 5 similarly transfers from PCTs to consortia (and, where relevant, the Board) the duty in section 39 MHA to give information to the criminal courts about the availability of hospital places for defendants the court is considering detaining under the MHA.

[1] www.dh.gov.uk/en/Healthcare/LiberatingtheNHS/DH_122624

Paragraph 117 of Schedule 4 transfers to commissioning consortia the duty under section 236 of the NHS Act 2006 to pay fees to doctors who examine patients in connection with applications for detention under the MHA. (It also makes a small further change to tighten the rules which are meant to ensure that such fees do not have to be paid where the examination is carried out as part of a service for which the NHS is already paying.)

As announced in *Liberating the NHS: Legislative Framework and next steps,* clause 35 transfers the responsibility for arranging independent mental health advocate (IMHA) services to local social services authorities. At present, the responsibility formally lies with the Secretary of State, but has been delegated to PCTs. The Bill does not change the "qualifying patients" for whom IMHA services must be made available.

Decisions have yet to be taken about how the Secretary of State's powers to approve section 12 doctors and approved clinicians under the MHA should be exercised in future. At the moment these important approval functions are delegated to SHAs. But to provide flexibility for the future, clause 30 sets out new ways in which arrangements could be made for these functions to be exercised. The Secretary of State would be able to arrange with any willing party for them to exercise the approval functions. Instead (or in addition) the Secretary of State could require the NHS Commissioning Board or a Special Health Authority to do so.

The Government is also taking the opportunity to abolish a few powers in the MHA which no longer fit well with the way the NHS operates today.

Clause 31 removes the Secretary of State's anachronistic power to discharge people from detention (and supervised community treatment) in independent hospitals. The Secretary of State has no such power to discharge people from NHS hospitals. The clause also removes the little known power of NHS bodies to discharge patients from detention (and supervised community treatment) in independent hospitals.

Clause 33 repeals the old power in section 122 MHA for the Secretary of State to make "pocket money" payments to in-patients in mental health hospitals. This will not affect payments to those patients who have been transferred from prison to hospital and are not eligible for social security benefits. Like PCTs now, commissioning consortia (and, where relevant, the Board) will still be able to arrange for providers to make these payments as part of the in-patient services they commission.

Clause 34 removes Secretary of State's power to direct that patients in the high secure psychiatric hospitals be transferred to another hospital. That power appears to be left over from when the Department of Health directly managed the high secure hospitals. For similar reasons, clause 36 removes the option in section 134 MHA for people who do not want to receive correspondence from detained patients to notify the Secretary of State of that wish. They will still be able to notify the hospital managers or the approved clinician in the charge of the patient's case.

The Bill also includes two other changes to the MHA which are not directly related to the wider reforms of the NHS.

Part 7 of the Bill transfers the regulation of social workers in England from the General Social Care Council (GSCC)'s to the Health Professions Council (which is to be renamed the Health and Care Professions Council). Alongside this, it also transfers the GSCC's role in approving training courses for approved mental health professionals under the MHA.

Finally, clause 273 changes the rules on when the treatment of patients on supervised community treatment (SCT) needs to be approved by a second opinion appointed doctor (SOAD).

In summary, it means that a SOAD's certificate of approval will no longer be required where the patient is consenting to the treatment in question (and has the capacity to do so). Instead, it would be sufficient for the approved clinician in charge of the treatment to certify the patient's consent.

This would bring the system for SCT patients much more in line with that for patients detained in hospital. The Government and the Care Quality Commission believe this would help target the work of SOADs more effectively, without lessening safeguards for patients. We also conscious that some SCT patients resent having their decision to consent to medication second-guessed (as they see it) by a SOAD.

Unlike most of the changes described above, the change to the rules on SOADs for SCT patients applies to Wales as well, with the support of the Welsh Assembly Government. The other changes which apply to Wales as well are clause 31 (powers of discharge), clause 34 (transfer from high secure hospitals) and clause 36 (patient's correspondence).

There is more detailed information on these clauses, and the Bill in general, in the Explanatory Notes which will published shortly, and available (with the Bill) on Parliament's website at http://services.parliament.uk/bills/2010-11/healthandsocialcare.html

If you would like more information on these clauses in particular, please feel free to contact Richard Rook (020 7972 4648) or Clive Marritt (020 7972 4492) or by e-mail MentalHealthAct2007@dh.gsi.gov.uk

I will be arranging for this letter to be available on the Department's website.

Yours sincerely

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