

The NHS and Carers Rights

How the existing law relates to “Universal Personalised Care”

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The NHS Long Term Plan includes key commitments to improve support for carers and develop what is described as more personalised support for patients and carers. To help take this forward NHS England have published “[Universal Personalised Care: Implementing the Comprehensive Model](#)” - January 2019

This policy includes moves towards joint health and social care assessments and care planning, carers’ personal health budgets, more personalised outcomes from Continuing Health Care and Care Programme Approach Assessments and wider use of social prescribing.

There are already a range of general legal obligations for health and social care to cooperate and public law duties that need to be reflected in the implementation of Universal Personalised Care. This short paper focuses on the current legal obligations of the NHS within this. There are a number of duties on the NHS and local authorities to work together constructively. The NHS Act 2006 section 82 requires NHS bodies and local authorities ‘to co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales’.

The Care Act 2014, section 6 adds a further joint working duty on local authorities and NHS bodies to cooperate with each other. This general duty is augmented by a power in section 7 that enables local authorities to request co-operation in specific cases.

These obligations are described in more detail in L Clements [Carers & their Rights - 7th Edition 2018](#).

The scope of these requirements and public law duties relating to care assessments undertaken by the NHS appear to have already effectively been defined within paragraphs 323 to 330 of the [National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care](#) (Oct 2018).

What this says has clarified how existing public law duties and duties to cooperate apply to carers. It follows that the same should reasonably be assumed to apply to all assessments for personal health budgets or other personalised support from the NHS unless there is good reason to do otherwise.

There are, of course, also similar long standing NHS obligations to consider carers needs within mental health Care Programme Approach assessments. These are outlined Standard 6 of the Department of Health National Service Framework 1999. This is still in force and complements these carers’ rights under the Care Act and Children Act.

The 2018 Continuing Health Care Guidance references the important role played by carers and includes (among other things) requirements for:

- Joint health and social care responsibility to identify carers;
- Working in partnership with carers to support them in their caring role;

- Involving carers and family members in assessments where appropriate;
- Undertaking an assessment of the carer's ability to continue to care, ensuring that the responsibilities on the carer are appropriate and sustainable;
- Provision of respite care;
- Establishing if there is an 'appearance of need for support' – which would mean that the carer should be referred for a carer's assessment;
- Considering training that carers may need to support them in their caring role;
- to agree with carers, contingency plans if the carer is unexpectedly unable to continue their caring role' – and to provide them with 'information on who to contact out of hours (progressing this across the whole system is a priority in the NHS Long Term Plan);
- Assessments of need for young carers and parent carers as appropriate and referrals for preventative support or for either young carers' needs assessments or parent carers assessments as appropriate.

Earlier Continuing Healthcare guidance from 2016 also flagged up the value of NHS bodies commissioning carer awareness training for their staff and this point is also reinforced in the NHS England Carers Toolkit described below.

The NHS Constitution

The [NHS Constitution](#) (2015) (to which every NHS body in England must have regard - Health Act 2009 section 2) commits the NHS to 'work in partnership with patients and carers' and to ensure that its services are 'coordinated around and tailored to, the needs and preferences of patients, their families and their carers'. It lists seven key principles to 'guide the NHS in all it does', of which Principle Four recognises that:

"Patients, with their families and carers, where appropriate, will be involved in and consulted on all decisions about their care and treatment"

NHS England's Carers Toolkit

The guidelines in [NHS England's Carers Toolkit](#) referred to above include a template for a local Carers Memorandum of Understanding. This recommends seven principles to be detailed in each local area's agreement. These should also be particularly helpful in planning implementation of Universal Personalised Care Model and broader plans for Integration within developing Integrated Care Systems.

The Toolkit recommends that parties to each local Carers Memorandum of Understanding should agree that:

Principle 1

We will support the identification, recognition and registration of carers and young carers in all organisations including primary care.

Principle 2

Carers will have their support needs assessed and will receive an integrated package of support in order to maintain and/or improve their physical and mental health.

Principle 3

Carers will be empowered to make choices about their caring role and access appropriate services and support for them and the person they look after.

Principle 4

The staff of partners to this agreement will be aware of the needs of carers and of their value to our communities.

Principle 5

Carers will be supported by information sharing (with their consent) between health, social care, carer support organisations and other partners to this agreement.

Principle 6

Carers will be respected and listened to as expert care partners, and will be actively involved in care planning, shared decision- making and reviewing services.

Principle 7

The support needs of carers who are more vulnerable or at key transition points will be identified early.

While these principles do not have specific legal force, there is a public law obligation on NHS bodies to act reasonably and the degree to which these have been followed would be a factor in determining whether a body had acted reasonably.

Joint Assessment and Care Planning

The NHS Long Term Plan includes commitments to develop joint health and social care assessments and care planning. This is also a commitment in the Government' Carers Action Plan 2018 – 2020. The action plan includes (para 1.16):

Three pilots in Gloucestershire, Lincolnshire and Nottinghamshire have recently been announced that will test a more integrated, single assessment process. Over the next two years, every single person accessing adult social care in these three areas will be given a joint health and social care assessment - including a needs assessment, and subsequently a single, joint plan that will meet the bespoke needs of the individual. All assessments and plans will take into account the role, health and wellbeing of their carers as a fundamental part of the process.

To be lawful these arrangements must reflect local authorities' legal duties and be fully Care Act 2014 compliant – ensuring identification of carers and pathways to assessments. They will also need to reflect statutory responsibilities under the Children Act 1989 section 17, to identify children in the household, determine whether they are young carers and if so what support is needed (including referral for a young carers need assessment).

The NHS duties of cooperation mean that NHS bodies should help facilitate the above, but in any event any council entering into joint arrangements must ensure that their inter-agency agreement secures compliance with their obligations to carers. A failure in this respect would be open to a maladministration challenge.

Conclusion

The NHS is already under a number of legal obligations to consider the needs of carers and young carers – including when undertaking a care and support needs assessment. The Department of Health and Social Care has been consulting on legislative changes to support implementation of the NHS Long Term Plan. This provides an ideal opportunity to consolidate these rights so that they are more accessible and readily understood by health and social care professionals and carers.

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