

Health and Care Act 2022

New key provisions and rights for carers

Summary

The Health and Care Act 2022 comes into force on 1 July 2022 in England. There are four key provisions in relation to carers.

Carers UK will provide detailed briefings on each of the provisions and inclusion of carers.

- Section 10: Places a duty on NHS England to consult carers and other relevant representatives affecting commissioning or policy decisions affecting services.
- Section 25: Places a duty on Integrated Care Boards to promote the involvement of each carer, where appropriate, in relation to decisions about prevention, diagnosis, treatment and care
- Section 25: Places a duty on Integrated Care Boards to consult carers in commissioning or policy decisions affecting services
- Section 91: Places a duty on NHS Trusts and Foundation Trusts to involve carers, where appropriate, in planning for hospital discharge as soon as is feasible.

What this means practically is that there should be more engagement and involvement for carers on a strategic level but also individual level about things that will affect them because they are caring for a patient receiving health services.

This means that carers should be consulted on changes to health services, either new services or ways of delivering health services. It also means that there should be an approach to involving carers in regular decisions about the patient, whether this is about diagnosis, treatment or care. Finally they should be involved as soon as feasible in planning for hospital discharge.

It is important that guidance is read on each of these areas. This is because some of the guidance, such as on hospital discharge, will be statutory guidance. This means that it should be followed or the organisations with a responsibility relating to the statutory guidance have a very good reason for deviating from the guidance.

Carers UK hopes that this will deliver several important outcomes:

- Carers and the role that they undertake are better recognised.
- Carers can input into things that will change their lives before decisions are made.
- Carers should be able to get better information and better tailored support if they are properly listened to.
- Services will have better health and wellbeing outcomes for patients and for carers because information, advice and support would be better optimised around carers' and patients' needs.

Section 10: Duty on NHS England to consult carers – what it means

Section 10 inserts a new provision into the National Health Service Act 2006 which adds carers to the groups of people that NHS England must involve e.g. patients.

NHS England must make arrangements to ensure that carers of people to whom services that NHS is responsible for are involved and this means being consulted, provided with information or involved in other ways. This provision covers:

- * the planning of commissioning arrangements by NHS England
- * the development or consideration of proposals for any changes in commissioning which would impact on the manner the services are delivered to individuals or the range of health services available to them and
- * decisions of NHS England affecting the operation of the commissioning arrangements where the implementation of those decisions, if made, would have an impact.

This provision covers services that NHS England is responsible for commissioning, but also policy and strategic direction since any decisions it makes through this route might affect commissioning. If NHS England delegates any of these responsibilities, it still remains responsible for ensuring that carers are involved as set out above, although that involvement could take place by a delegated body. NHS England would have to satisfy itself that the right involvement had taken place in this instance.

The term “carers” is not defined, but statements made by Ministers during the passage of the Bill take this to mean unpaid carers and that **also includes parents of disabled children and young carers** where this might be relevant.

Carers UK has welcomed this provision as it makes the involvement of carers far more consistent throughout NHS legislation. It is important to us that carers are treated as a distinct, important and separate group rather than being included in the overarching term, “the public”.

Section 25: Integrated Care Board - duty to promote involvement of each carer

This new duty amends the National Health Service 2006 Act and effectively takes over the responsibility that was previously held by Clinical Commissioning Groups.

This is to **promote** the involvement of carers in decisions which relate to:

- The prevention or diagnosis of illness in the patients or
- Their care and treatment.

This means that Integrated Care Boards have a responsibility to encourage and promote carers’ involvement in key decisions or services but on an individual level about the patient for whom they care. Carers UK would consider the effect of this duty to mean that key policies or commissioning of services would include explicit references to the need to involve carers in these areas and that this approach should be actively promoted. We would want Integrated Care Boards to assure themselves that this approach was being delivered with in individual carers, where the Integrated Care Boards commission services.

Carers UK sees several elements as being critical to the delivery of this duty:

- There is a clear understanding of this duty in relation to carers.
- References to carers are clearly evidenced in policy and commissioning documents.
- At the individual patient and carer level, there are processes in place to identify carers and record them on the patient's care record, including the summary care record shared with social care. These processes should be monitored for levels of implementation
- Information governance for local health organisations understands and reflects carers' rights and clearly sets out the responsibilities of health organisations to share information and in which circumstances i.e. to protect the health and wellbeing of carers.
- Services are clear about confidentiality with permissions clearly sought and understood and where information can be transferred to safeguard the health and wellbeing of the carer or the patient.
- There are processes to establish and evidence where carers are involved. Ideally this would also build in learning about where this has made a difference.

Section 25: Carer involvement and consultation through Integrated Care Boards

This is a new and explicit provision. Previously carers were not mentioned in related legislation and they were included in the term, "the public". Legislation now recognises carers as a distinct and clear group which Carers UK has welcomed.

This provision is similar to the new involvement provision for NHS England and amends the National Health Services Act 2006.

The integrated Care Board must make arrangements so that carers of individuals to whom services are being provided or may be provided are involved. (paraphrased) Again this means either consulted, providing with information or other ways which is quite broad. This involvement must be in relation to:

The planning and commissioning arrangements of the Integrated Care Board

Any development and consideration of proposals by the Integrated Care Board for changes in commissioning arrangements where an implementation of the proposals would have:

- an impact on the way that services are delivered if they were implemented or
- the range of health services available to them and
- decisions of the integrated care board affecting the commissioning arrangements would have such an impact if implemented.

This means that this duty would apply in an Integrated Care Partnership. Local authorities already have strong responsibilities towards carers, including involvement and engagement.

Carers are not defined and again Ministers stressed during the passage of the Bill that this would include parents of disabled children and young carers.

We would therefore expect strong consultation and involvement mechanisms across all provisions which take into account for example:

- carers' health and wellbeing
- carers own ability to provide and continue to provide care
- any impact that service change might have on carers' ability to work, maintain relationships, pursue education or leisure activities.

Section 91: Carers rights to be involved at hospital discharge

Section 91 of the Act repeals the Community Care (Delayed Discharges, etc.) Act 2003 which contained several rights for carers.

It replaces Section 74 of the Care Act 2014 with a new provision which means that NHS Trusts and Foundation Trusts have a responsibility to involve carers as follows:

Discharge of hospital patients with care and support needs

(1) Where a relevant trust is responsible for an adult hospital patient and considers that the patient is likely to require care and support following discharge from hospital, the relevant trust must, as soon as is feasible after it begins making any plans relating to the discharge, take any steps that it considers appropriate to involve—

(a) the patient, and

(b) any carer of the patient.

This only affects patients who are adults i.e. aged 18 or over. Carers are defined as: an individual who provides or intends to provide care for an adult, otherwise than by virtue of a contract or as voluntary work; which is similar to the Care Act 2014 except that the Government has clarified that this also includes young carers who might be caring for an adult.

The NHS Trust must have regard to any guidance issued by NHS England. The Government can also stipulate whether that guidance is statutory guidance i.e. has the force of law.

The current guidance can be found here:

<https://www.gov.uk/government/publications/hospital-discharge-and-community-support-guidance>

Carers UK will be providing a more comprehensive analysis of this in a separate briefing.

What does this mean for NHS Trusts/Foundation Trusts in terms of adequately discharging their duty and demonstrating that they have done so. They would need to have:

- A system for identifying carers, including young carers.
- A system for recording carers on patient records including tracking involvement, including young carers.
- Be clearly aware of not just adults who might be carers, but also young carers.
- Have information for carers, and young carers about being involved and what that meant.
- NHS Trusts/Foundation Trusts are under a duty to cooperate with local authorities in the discharge of their functions under the Care Act 2014.

What does this mean for carers practically?

- As carers, they can expect to be consulted about changes to health services.
- As carers, they can expect there to be an approach to being involved by health services, where appropriate, in the prevention, diagnosis, treatment and care of the person they care for.
- They can expect to be involved, as early as possible, where appropriate in the planning for hospital discharge if the person they are caring for is likely to need care following a stay in hospital.
- Their ability to provide and continue to provide care should be considered – this means both a choice about caring, or elements of caring and what help, learning or information they might need to do so.

We would be expect:

Services to be proactive in identifying carers.

Services to be clear with carers what rights and entitlements they have.

To work proactively with the voluntary sector, carers and with local authorities.

To check that systems and processes are working well by regularly checking with carers and getting feedback from people experiencing the system.

Questions to ask

- Does your Integrated Care Board and Integrated Care Partnership have a clear statement about carers, carer involvement and objectives to support carers?
- Does your NHS Trust/Foundation Trust have a clear and published discharge policy which incorporates this provision and adopts good practice?
- Are there young carer specific policies and practices that are clear?
- Does the local patient care record include a code for unpaid carers to help identify and support carers?
- Does the local shared care record include a code on patient's records to identify the carer?
- Is there clear information and advice for carers about their rights, particularly at hospital discharge or when decisions are being made about health services for the patient?

Request for evidence

- How is your local area working with your local Integrated Care Board or Integrated Care Partnership to deliver these different policies?
- How are carers experiencing hospital discharge?
- Please contact policy@carersuk.org with any examples

Contact and disclaimer

Disclaimer: Whilst every effort has been made to ensure that this is an accurate document, it is not an authoritative statement of the law.

For further information about this policy briefing, please contact: Emily Holzhausen, Director of Policy and Public Affairs, Carers UK

T: 0207 378 4935

E: emily.holzhausen@carersuk.org

Website www.carersuk.org

@carersuk

Registered charity number 246329 (England and Wales) and SCO39307 (Scotland).
Company limited by guarantee registered in England and Wales number 864097