

CARERS look after family, partners or friends in need of help because they are ill, frail or have a disability. The care they provide is unpaid.

POLICY BRIEFING

The NHS and responsibilities under the Carers (Equal Opportunities) Act 2004 (England)

April 2005

Introduction and purpose of briefing

The Carers (Equal Opportunities) Act places the majority of duties on social services. However, there are important links and duties on the NHS, which in combination with existing guidance and policy, mean that the NHS has an important role in implementing this Act.

The purpose of this briefing is to set out the duties of health bodies in relation to this Act, but also to review where the Act could impact on their policies and procedures.

Main duties of the Carers (Equal Opportunities) Act 2004

There are three main parts in the Act:

- * a duty on social services to inform carers of their right to an assessment
- * a duty on social services to ensure a carer's wishes for employment, learning or training opportunities and leisure are considered as part of the carer's assessment
- * a power for social services to call on the help of other bodies in providing support to carers.

A full briefing on the Act has been produced by Carers UK - see resources section at the end of this briefing.

Duties in the Act in relation to the NHS

There is one specific duty in relation to all health bodies in England and Wales that the Act requires them to fulfil.

This is under S. 3 – Co-operation between authorities – if a local authority social services department requests the help of a health body in providing or planning services to the carer, then they have a duty **to consider** this request.

The way the Act is worded, the local authority can be fairly broad in its scope of what sort of help it might request from the NHS body if, in its view, *it could be*

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anything that helps the carer to care and improves their ability to care.

Support that the local authority requests could include: therapeutic respite care for the person they care, nursing input, health promotion, back care training, etc.

If a Primary Care Trust (PCT), for example, did not look at the implications of this Act, or concluded that they did not have to do anything as a result of this new legislation, then they would be failing in their duties under this legislation, since they have a duty to consider a request for help.

Paragraph 21 of the draft Policy Guidance stresses the importance of partnership working across agencies. The draft Guidance refers to authorities developing a multi-agency carers strategy as good practice and recommends that authorities consider embedding carers' needs in other strategies, which could include the health needs of carers being taken into account in PCT's local development plans' (under s28 Health Act 1999).

The provisions give authorities a lever at strategic level to influence priorities of their colleagues in health. The draft Guidance gives the example of a local authority seeking information from, or the participation of, the NHS when deciding how to deliver carers' services that are linked to NHS services.

In addition to the Act applying on a strategic level, Section 3 will also give authorities the power to engage the NHS at an individual level. Paragraph 22 of the draft Guidance states that where a local authority believes that the provision of care might be enhanced by the provision of services from another authority, including health, that authority must give due consideration to that request.

Consideration of a request for help – what does that mean?

In considering the request, the NHS body should also be thinking about the general duties that it already has in relation to the health of patients, including carers, in the community. For example, under the NHS Act 1977, it has a general duty to promote and safeguard the health and welfare of the population. The NHS body should be aware of the health issues faced by carers. The health impact of caring is well documented and carers providing more than 50 hours care per week are twice as likely to report poor health as non-carers.¹

It would not be sufficient for a PCT, for example, to simply refuse a request for help. Giving due consideration means providing a good, sound and considered explanation as to why they will not help provide the services to the disabled person or carer. If a complaint were made by the carer, any complaints panel or judicial review process would expect this to happen, otherwise, the PCT cannot be said to have properly considered the request.

¹ See for example *In Poor Health*, Carers UK 2004 and *Hearts & Minds: The health effects of caring*, Michael Hirst, Carers UK, 2004. Both reports are available from www.carersuk.org.

Which other parts of the Act would affect the NHS?

The other parts of the Act all have implications for NHS bodies, which they need to consider as part of their decision-making. The draft Policy Guidance, paragraph 12, clearly states that it is the aim of the legislation to help carers “maintain their own health and well-being by ensuring that carers’ lives outside caring are properly taken into account by authorities.”

S. 1 – duty to inform carers of their right to an assessment.

Although this duty is placed on social services, it has important implications for NHS bodies and key NHS staff. Hospital discharge procedures will need to be checked again in relation to informing carers who are providing or about to be providing regular and substantial care. This is supposed to be good practice under the Community Care (Delayed Discharges etc.) Act 2003 guidance and the practice book which accompanies it.

Other areas in which there might be opportunities for better joint work and involvement include the new GMS (General Medical Services) contract under Chapter 9 where three points are awarded if the GP practice has a system which signposts carers to social services and tells them about their rights.

S. 2 Duty to assess carers for any wishes to work, learn, train or have leisure opportunities

Again, by social services being required to consider these issues, it is possible that it will affect the type of service decisions that might be made following a carer’s assessment. It could be that leisure opportunities for a husband and wife are uppermost but what they need is a piece of health equipment to help them take short trips together.

Similarly, if the carer wishes to continue working, the answer may be a health intervention which allows a person with a chronic illness to manage their own illness with less help. There are already numerous pieces of legislation which promote joint working between health and social services under which the health body would have responsibilities.

Pledges from Government in relation to the Act and the NHS

In the original draft of the Bill, there was a clause that placed a duty on health to co-operate with social services, particularly to promote the health and welfare of carers. The government did not believe that this legislation was the best format for the promotion of carers’ health, but nevertheless pledged to address these issues through other means.

New opportunities for joint work

Some work carried out by the NIACE (the National Institute for Adult and Continuing Education) has found that learning opportunities can have a very positive effect on a person's health, including carers' health. Those carers who have joined supported learning opportunities have found increased confidence and say that it has changed their lives. There have also been some small scale projects looking at GP prescribing of learning courses. For further information on learning, see resources section.

The Guidance for the Carers Grant 2005-6 allows for the Grant to be used to fund a Carers Development Worker, to develop carers' services locally and facilitate better working between social services and health, for example by developing links with the NHS through a pooled budget arrangement.

Good practice and Sharing Learning

One Strategic Health Authority has already set up meetings to discuss the implications of the new Act. From May this year Carers UK's website will have a Forum page to allow professionals to share practice ideas. We want to know whether your local NHS bodies are undertaking any activities to help implement the Act. This will help us to share information with other organisations who want to learn from others' activities. We also want to know if health bodies are not interested in this Act at all. www.carersuk.org.

What action would we expect from government, local health bodies such as Strategic Health Authorities, PCTs and NHS Trusts and GP practices to implement this legislation?

Government:

- Clear guidance, both policy and practice which explore these issues.
- Fulfilling their pledge to deliver good practice in health for carers.
- Clear and direct communication with health bodies to ensure that they are aware of their new duties and implications of the Act.
- Involvement of key health bodies such as the NHS Confederation, BMA, etc.
- Consideration of how monitoring procedures currently in place might be used to help implementation of the new Act.

Strategic Health Authorities, NHS Trusts and PCTs:

- As part of their strategic planning to consider the implications of this Act.
- Ensure that they have the procedures in place to ensure that requests for health are properly dealt with by social services departments.
- Consider which health services directly help to promote carers' health and well-being as well as further their opportunities for work, learning, training and leisure.

- Review of key procedures such as hospital discharge procedures to ensure that they incorporate the new duties under the Act.
- PCTs could review, locally, how many GP practices have taken the opportunity to have procedures in place to identify carers.
- Taking the spirit of the new Act, PCTs could develop, if they have not already done so, a strategy to support carers, with a particular focus on promoting their health and well-being as well as equal opportunities.
- All NHS Trusts and PCTs should consider how their procedures impact on carers who work, e.g. appointments during the day, etc.
- All NHS Trusts and PCTs should review their own employment policies to ensure that their personnel procedures support their own workers who are carers or who will become carers and ensure that there is a culture of support.

Monitoring bodies

- The Health Care Commission, Commission for Social Care Inspection and the Audit Commission should be incorporating these areas into their audits of NHS Trusts, PCTs and local authorities.
- Both bodies should review their own employment policies to ensure that they are supporting carers within the workplace.

GPs and their practices

- Could review their policies to support carers.
- Could implement new procedures to identify carers, asking for help from the local social services department in this.
- Could look at their role in promoting the health and welfare of carers – e.g. prescribing learning.
- Could consider how their practices might impact on a carer who is trying to juggle work and care.
- Review their own employment policies to ensure that carers are supported within the workplace.

Useful Resources

Briefings and other materials for Professionals

- A policy briefing on the Carers (Equal Opportunities) Act 2004 and Carers UK's response to the draft Policy Guidance are available from our website: www.carersuk.org under the Policy and Practice section
- Research reports on carers and health are also available from our website: www.carersuk.org

A copy of the Carers (Equal Opportunities) Act 2004 is available at: www.hmso.gov.uk/acts/acts2004/20040015.htm and Explanatory notes on the Act are available from: www.legislation.hmso.gov.uk/acts/en2004/2004en15.htm. A copy of the draft Policy Guidance is available online from: www.dh.gov.uk/consultations.

Carers UK leads the Action for Carers and Employment initiative which has developed a series of useful tools that can be used to help implement the Act. These include human resources training materials, which will soon be available from the ACE National website: www.acecarers.org.uk:

- Supporting Working Carers: A Manager's Guide
- Supporting Working Carers: A Carers Guide
- Supporting Working Carers: A Guide for Union Reps
- Juggling Work and Care Video

Useful Literature

Access and inclusion: developing education for carers across agencies, Jeannie Sutcliffe, 2000. ISBN 1 86201 084 6, price £8.95

How can different combinations of staff from continuing education, social services, health, carers' organisations and voluntary organisations work together to plan for change? The book offers case studies of good practice from organisations that have developed learning for carers by working across agencies.

Leaflets for Carers

- Balancing Life and Caring – a 12 page A5 booklet for carers, which gives an introduction to how carers can get help, and what the Carers (Equal Opportunities) Act will mean for them.
- Coming out of hospital – a 4 page A4 factsheet for carers for those facing the prospect of caring for someone who is coming out of hospital. The leaflet covers planning hospital discharge and the help carers can expect and outlines the hospital's role in discharge.

Training for Professionals:

Carers UK provide both in-house and training courses for professionals on key areas such as the NHS Overlap and carers' legislation - including the new Act. For detailed information about courses and booking visit our website www.carersuk.org. Alternatively, contact Sarah Sheehan on: 020 7566 7632 or e-mail: training@carersuk.org.

Become an Associate Member of Carers UK for as little as £40 per year and ensure that you keep in touch with the latest developments and information on carers and caring. For further information ring: 020 7566 7602.

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