



**Isle of Man
Government**

Reiltys Ellan Vannin



NATIONAL HEALTH AND CARE SERVICE BILL

Report on Public Consultation

Department of Health and Social Care
Slaynt as Kiarail y Theay

FEBRUARY 2016

1. Foreword by the Minister for Health and Social Care



I am pleased to present this report on the responses to the public consultation on the proposed new National Health and Care Service Bill.

This is an important piece of legislation which will serve to ensure that the Department of Health and Social Care can continue to be legally compliant in the delivery of its obligations in respect of the delivery of care, including where those obligations are closely linked to regulatory regimes in the United Kingdom.

It is acknowledged that more legislation may

be required in the future to further dovetail the Department's Health legislation with its Social Care legislation as integrated care is developed in accordance with the recently published 5-year strategy.

The introduction of a National Health and Care Service Charter will also enable the Department to closely link its principle health and care legislation to the strategy and the development of the proposed National Health and Care Service Schemes will build on this.

As regards the one significant new provision, the proposed introduction of a charge for patients who refuse to leave a Department facility when their care is completed, I must re-iterate that the option of charging would only be used as a last resort if every other legitimate avenue to discharge the individual to a more appropriate care facility had been rejected by the individual or their family.

Thank you for taking the time to read this report.

A handwritten signature in black ink that reads "Howard Quayle". The signature is written in a cursive style with a long horizontal line underneath.

Hon.

Howard Quayle, MHK

Minister for Health and Social Care

2. Background

The purpose of this consultation was to invite comments on the proposed provisions of the draft National Health and Care Service Bill.

This Bill principle aim of this Bill is to make sure that going forward the legislation in this area is up to date, fit for purpose and can more easily be managed to achieve the current and future provision and promotion of care services.

The Bill was intentionally drafted as a framework document under which there will be supporting schemes and procedures which will contain the detail about how the National Health and Care Service will actually operate.

It is anticipated that the National Health and Care Service Charter, which the Bill requires the Department to publish and maintain, will reference the recently published Department of Health and Social Care five year strategy. The Schemes will contain more detail about how care will be provided in order to achieve the strategic aims.

This consultation was publicised by way of a press release to the local media and emails and/or letters to various persons and organisations including-

- Tynwald Members
- Acting Attorney General
- Chief Officers of Government Departments, Statutory Boards and Offices
- Local Authorities
- Isle of Man Chamber of Commerce
- Isle of Man Trade Union Council
- Isle of Man Law Society
- Health Services Consultative Committee
- Isle of Man representative bodies for health care professionals
- Isle of Man Health and Care Association
- Positive Action Group

19 responses to the consultation were received.

Following the consultation the Department has had further discussions with the Attorney General's Chambers. Some small changes have been made to the Bill and certain provisions have been moved round.

4. Summary of Responses and Changes

Where a clause from the Bill is not mentioned in the following text it can be taken that no specific comments were made and that no significant changes have been made to it.

Title of Bill

It was suggested that the word 'National' should be removed from the title of the Bill and that the phrase 'Isle of Man Health and Care Service' should be used instead to avoid confusion with the UK National Health Service.

It was also suggested that 'Social Care' should be referred to rather than just 'Care'.

The Department has taken the view that it would prefer to only add the word 'Care' into the title to reflect the fact that the Department of Health and Social Care has responsibility for care beyond just health. The reasons for this are a) because this legislation does not change the basic NHS model for the provision of the care which the Bill covers, b) the title recognises the continued close links between the IOM and UK National Health Services, and c) there are historic connotations of the term 'the National Health Service'.

Interpretation

There were some questions about exactly what was included within the definition of care, and therefore what this legislation could be considered to provide for.

The Bill has been slightly amended to clarify that although 'care' is defined in the Bill to include both health and other services this is only to prevent any potential issues going forward as services are integrated within the Department of Health and Social Care, and does not mean that this legislation will override other existing Social Care or other legislation.

Department's responsibility to provide care

There was a concern that the statement that 'Nothing in this Act is to be taken as prohibiting the Department from providing care to individuals otherwise than under a Scheme' gave the Department the power to do whatever it wanted without reference to a Scheme.

This was not the intention, which was simply to provide for care to be provided outside of a scheme e.g. private care. This statement has been amended and relocated for clarification.

Schemes

The various responses seem to be supportive of the move towards the development of an NHS Charter, setting out the Department's general commitments in respect of the National Health and Care Service, and Schemes which will set out how care will be provided. Comments included

"This might enable better service delivery while using resources and funds more effectively, depending upon the care, quality and insight shown by those drafting the scheme."

"It is fact that we cannot carry on in the way we are providing more and different types of care, raising standards and complying with all the political pressures for raising standards and audits with an ever decreasing or not increasing budget. Something has to give."

"...a simple, clear well written charter that promotes equal access, delivers care and services without favour would be extremely valuable."

4. Summary of Responses and Changes

An amendment has been included in the Bill to require the Department to review, and if appropriate, to revise the NHCS Charter at least once every five years.

There were a number of questions about the detail of the schemes and procedures. It should be re-iterated that the Bill is only intended to act as a framework and the detail will be the subject of a wider programme of development (including consultation) as the schemes and procedures are developed.

There were some further questions and concerns about why the Department was proposing to move away from secondary legislation (Regulations) towards Schemes and procedures to contain the detail of service provision.

This is mostly to avoid an unnecessarily long legislative process whereby the Department and Tynwald can get bogged down with having to obtain formal approval for even the smallest change to a procedure or policy. Under the proposed process the procedures will be managed and adapted by the Department on a day to day basis with consultation, including with the public and Tynwald members, as required on any significant changes to the Schemes. The Bill still requires the Schemes to be laid before Tynwald.

The Department has agreed that it would be prudent to add to the Bill some more detail about the standards of care which it will be expected to provide under the NHCS.

Consultation

There were some comments that the Bill should include a requirement for the Department to consult, including specifically with the Health Services Consultative Committee, about, for example, the schemes.

The Department would find it almost impossible to gain Tynwald approval for the schemes and any changes which were made to them unless there had been proper consultation and a general acceptance of what was in them, so a legal requirement to consult was felt to be unnecessary.

Independent Reviews

It was suggested that *"It would be helpful to have a timescale in the Act so that the Department was held to account if they did not regularly review their schemes."*

It is anticipated that each scheme will be kept under constant review so a timetable in the Bill would not achieve anything.

Charges

One responder felt that "Charging for the basics such as eye tests will just get the public hacked off. And it won't generate that much...You need to make 'big cuts' by way of doing certain care pathways differently..."

The charging provisions have remained virtually the same from the NHS Act 2001.

There were a couple of comments that any income from charges should go directly into DHSC funds for future service provision, and not into general revenue as stated in the Bill.

This is the Government's standard wording for this type of provision and the Department is not in a position to change it.

4. Summary of Responses and Changes

Potential Savings

A comment was made that

"This is also clearly an attempt to make savings and on the face of it is a repeat attempt to do what the last merger of NHS and DSC patently failed to do by a commissioning half-measure."

This legislation does not set out to make any specific savings but by stating that the Department must take into consideration the funds and resources available to it there will be a formal legal recognition that the Department cannot be expected to fund every possible element of care provision.

The opportunity will also be taken to review processes and resources as part of the development of the schemes and procedures with a view to further reducing costs (including staffing costs) wherever this is practicable.

Commissioning

Some responders specifically stated their support for commissioning.

The reference in the Bill simply confirms a legal basis for commissioning going forward.

List of Providers

There was a suggestion that more detail about the qualification requirements for service providers should be included in the Bill.

This section simply confirms a long established professional requirement for lists to be held. There is an existing procedure which largely mirrors the procedure in the UK. This contains the detail about how applicants are to be assessed and processed and will be reviewed and published as part of the process of developing the schemes and procedures under the Act.

Recovery of Third Party Costs

The question was asked as to whether the provisions of the Bill would allow for third parties (such as the Fire and Rescue Service) to recover any costs which might be associated with assisting the Department of Health and Social Care with the patient care process.

The Bill states that the terms and conditions of a Scheme may provide for payments to be made to contribute towards specified care related costs. This provision is also in the existing NHS Act 2001.

Private Use of Facilities

The responses were generally supportive of the proposal to extend the potential use of Department facilities for use for private care provision as long as this did not adversely affect National Health and Care service provision.

One comment stated *"...facilities which are not in use at any given hour or day should and must be hired out...We could be making some real money here."*

However, another said *"I personally do not believe that the Department's health facilities should be used at all for private health provision. The National Health Service was founded on the principle of medical services that are free at the point of use, and I believe that private healthcare should not be able to ride on the back of it."*

4. Summary of Responses and Changes

Another responder asked the question *"In what circumstances is it envisaged wings being privately run by Charities?"*

This provision is only intended to give the Department an option, which it doesn't currently have, to allow its facilities to be more widely used (at a cost to the user) rather than them just lying empty at times when the Department cannot use them itself. The wording in the Bill has been simplified to give more clarity.

Refusal to Vacate Department Facilities

Various responders commented on a new provision whereby a contract was to be created when an individual used any of the Department's facilities for the reception of care.

One responder commented "Bed blocking and the threat by families of legal action should not prevent the Department from moving a patient who clearly does not require the care of any particular...institution." "However, we must NOT just discharge someone without a discharge plan in place."

After further discussion with the Attorney General's Chambers it was agreed that a contract provision of this sort might be open to legal challenge. Therefore, the Department has agreed to a revised provision whereby a charge may be levied if an individual refuses to leave a facility after they have been informed that they no longer need to stay there.

It is important to note that the Department already has a detailed procedure in place whereby an individual is carefully assessed before they are discharged from care by the responsible clinician. Beyond that the procedure also includes a requirement for the individual to be assessed and for a care package to be put together so that they are discharged to the most appropriate place for their ongoing care. It is only after both of these processes have been completed and, in the opinion of the Department, there is no reason for the individual to stay in a particular facility, that a charge would be considered if the individual and/or their family could afford it.

This provision is in no way to be seen as a measure for the Department to remove individuals from facilities because of capacity issues. It is a 'last resort' measure for when an individual refuses to leave one facility when they no longer need to be there and there is a suitable alternative facility available.

Notwithstanding the above the admission and discharge process is to be fully reviewed as part of the process of developing the schemes and procedures under the new legislation.

Complaints

The comment was made that

"On the basis of a long period of teething problems in the smooth operation of processes that are amended, it is anticipated a substantial increase in complaints is likely..."

In the short term there is no particular intention to change processes, just to revise how they are established under the legislation. However, the opportunity will be taken to review the processes, in consultation with all relevant stakeholders as part of the process of preparing the new Schemes under the Bill.

4. Summary of Responses and Changes

The comment was also made that extending the provision for referring complaints to the IRB to include the service provider as well as the service user could increase the number of complaints which the IRB has to deal with.

This possibility is acknowledged but it is not anticipated that this will actually happen.

It was also suggested that the complaints process should include provision for patient's to make comments and suggestions (the patient's voice).

This section is intended to confirm the patient's right to complain. There is no reason why the procedure, or an alternative procedure, could not include a process for garnering comments and suggestions.

Independent Review Body for Complaints

The question was asked as to whether there was an intention to extend the remit of the existing Health Independent Review Body to include complaints about social care.

The comment was also made that it *"Would be better to introduce a professional ombudsman rather than a voluntary IRB."*

As mentioned above the complaints process under the Act is to be reviewed as part of the process of developing the schemes and the role of the IRB will be included in that review.

Miscellaneous

A request was received on behalf of the Department of Home Affairs and the Drugs and Alcohol Steering Group for amendments to the Misuse of Drugs Act 1976 to be included in this Bill to remove the requirement for an Advisory Council on the Misuse of Drugs to be appointed and to replace it with alternative provision.

The Department is of the view that this matter needs further detailed discussion and that to try to include it in this Bill would run the risk of the Bill being unnecessarily delayed.

One of the responders referred to a recent advertisement for membership of the Health Services Consultative Committee, which is established under the Bill, and "...noted that there is a bar on membership for any person with a medical background....this is ill-considered and quite disturbing."

This is not strictly correct. The Health Services Consultative Committee Constitution Regulations 2012 state that a person with whom the Department has made arrangements for the provision of health services under the (National Health Service) Act (2001) may not be a member of the Committee. The nature of this committee is that it needs to be independent so it would be inappropriate for health practitioners with links to the Department to be members. However, there would be nothing to stop, for example, a private health practitioner who had no links to the Department being a member.

5. Conclusion

Conclusion

This consultation process has proved useful and has resulted in some helpful adjustments being identified which have been incorporated into the Bill.

Those who responded to the consultation are thanked for their comments and further contributions are always welcome via the contact details below. Copies of the latest version of the Bill are available, on request, from:

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