



# Community Care (Delayed Discharges etc.) Act 2003

## CHAPTER 5

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# Community Care (Delayed Discharges etc.) Act 2003

## 2003 CHAPTER 5

An Act to make provision requiring social services authorities to make payments in cases where the discharge of patients is delayed for reasons relating to the provision of community care services or services for carers; and to enable the Secretary of State and the National Assembly for Wales to require certain community care services and services for carers provided by social services authorities to be free of charge to persons receiving those services. [8th April 2003]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### DELAYED DISCHARGE PAYMENTS

##### *Preliminary*

#### **1 Meaning of “NHS body” and “qualifying hospital patient”**

(1) In this Part—

“NHS body” means—

- (a) a National Health Service trust; or
- (b) a Primary Care Trust (in England) or a Local Health Board (in Wales); and

“qualifying hospital patient” means, subject to subsection (2), a person being accommodated at—

- (a) a health service hospital; or

- (b) an independent hospital in pursuance of arrangements made by an NHS body,  
who is receiving (or who has received or is expected to receive) care of a description prescribed in regulations.
- (2) The term “qualifying hospital patient” does not include any person who is ordinarily resident outside England and Wales.
- (3) An NHS body may make arrangements with any person connected with the management of an independent hospital in the United Kingdom for that person (or any employee of his) to do, on behalf of the NHS body and in accordance with the arrangements, anything which is required or authorised to be done by the NHS body by or under this Part in relation to qualifying hospital patients accommodated in that hospital.
- (4) Anything done or omitted to be done by or in relation to the authorised person (or any employee of his) in pursuance of such arrangements is to be treated as done or omitted to be done by or in relation to the NHS body.
- (5) Nothing in subsection (3) or (4) prevents anything being done by or in relation to the NHS body.

*Determination of need for community care services etc. on discharge*

**2 Notice of patient’s likely need for community care services**

- (1) This section applies where—
- (a) a person (“the patient”) is or is expected to become a qualifying hospital patient at a particular hospital, and
  - (b) the responsible NHS body considers that it is unlikely to be safe to discharge the patient from hospital unless one or more community care services are made available for him.
- (2) It is the duty of the responsible NHS body to give notice of the patient’s case for the purposes of this Part—
- (a) to the social services authority appearing to the NHS body to be the authority in whose area the patient is ordinarily resident when the notice is given, or
  - (b) if it appears to them that the patient has no settled residence, to the social services authority in whose area the hospital is situated.
- (3) That notice—
- (a) must state that it is given under this section; and
  - (b) if given before the day on which the patient is admitted to the hospital, must not be given earlier than the beginning of the period of eight days ending with the day on which he is expected to be admitted.
- (4) Before giving a notice under this section the responsible NHS body must consult—
- (a) the patient; and
  - (b) if the responsible NHS body is aware of the identity of a person who is a carer in respect of the patient and it is reasonably practicable to consult him, that carer.
- (5) In this Part “the responsible NHS body”, in relation to a person who is or is expected to become a qualifying hospital patient, means—

- (a) if the hospital concerned is a health service hospital, the NHS body managing the hospital; or
  - (b) if the hospital concerned is an independent hospital, the NHS body making the arrangements for the patient to be accommodated.
- (6) In this Part “the responsible authority”, in relation to a person whose case has been notified under this section, means (subject to any regulations under section 10) the social services authority to which the notice is given.

### **3 Notices under section 2: supplementary**

- (1) A notice under section 2 remains in force until the patient to which it relates is discharged, unless it has previously ceased to have effect by virtue of subsection (2) or (3).
- (2) The responsible NHS body may withdraw the notice by giving notice of withdrawal to the responsible authority.
- (3) Regulations may prescribe other circumstances in which the notice ceases to have effect.
- (4) If the notice ceases to have effect before the patient is discharged –
- (a) no further steps under section 4, 5 or 6 resulting from the notice shall be taken and no liability (or further liability) to make a payment under section 6(2) shall accrue; and
  - (b) the responsible NHS body may (subject to section 2(1)) give a fresh notice under section 2 in relation to the patient;
- but paragraph (a) does not affect any liability which accrues before the notice ceases to have effect.
- (5) Regulations may provide for –
- (a) the form and content of –
    - (i) notices under section 2; and
    - (ii) notices of withdrawal under subsection (2),and the manner in which such notices are to be given;
  - (b) circumstances in which notices under section 2 must be withdrawn; and
  - (c) determining the day on which a notice under section 2 or a notice of withdrawal under subsection (2) is given (including provision prescribing circumstances in which a notice under section 2 is to be treated for any specified purpose as having been given on a day other than that on which it was in fact given).

### **4 Duties of responsible authority following notice under section 2**

- (1) The duties in this section apply where notice of a patient’s case under section 2 has been given.
- (2) The responsible authority must –
- (a) carry out an assessment of the patient’s needs with a view to identifying any community care services that need to be made available in order for it to be safe to discharge him; and
  - (b) after consulting the responsible NHS body, decide which of those services (if any) the authority will make available for the patient.

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- (3) The responsible authority must, in the circumstances mentioned in subsection (4), also—
- (a) carry out an assessment of the needs of any person who is a carer in respect of the patient (“the carer”) with a view to identifying any services which—
    - (i) the authority may provide under section 2 of the Carers and Disabled Children Act 2000 (c. 16)); and
    - (ii) need to be made available to the carer in order for it to be safe to discharge the patient; and
  - (b) after consulting the responsible NHS body, decide which of those services (if any) the authority will make available to the carer.
- (4) The duties in subsection (3) apply only where the carer—
- (a) asks the responsible authority to carry out an assessment under subsection (3); or
  - (b) has, within the period of twelve months ending with the day on which the notice under section 2 was given (or at any time after that day), asked the responsible authority to carry out an assessment under section 1 of the Carers and Disabled Children Act 2000.
- (5) The duties in subsection (2) or (3) apply whether or not the patient’s needs for community care services or the carer’s needs for services (as the case may be) have previously been assessed.
- (6) The responsible authority must keep under review—
- (a) the needs of the patient; and
  - (b) the needs of any carer whose needs it has assessed under subsection (3)(a),
- so far as affecting the services that need to be made available in order for it to be safe to discharge the patient.
- (7) The responsible authority may, after consulting the responsible NHS body, alter—
- (a) its decision under subsection (2)(b); or
  - (b) any decision taken by it under subsection (3)(b),
- to take account of any change in circumstances since the assessment carried out under subsection (2)(a) or (3)(a) (as the case may be).
- (8) The responsible authority must inform the responsible NHS body of the decision under subsection (2)(b), of any decision under subsection (3)(b) and of any alteration made under subsection (7).
- (9) Anything done under subsection (2) above is to be treated as done under section 47(1) of the National Health Service and Community Care Act 1990 (c. 19) (but without prejudice to anything to be done under that section in relation to any other community care services).
- (10) Anything done under subsection (3) above is to be treated as done under section 1 or 2 of the Carers and Disabled Children Act 2000 (but without prejudice to anything to be done under that section in relation to other services which may be provided to the carer).

## **5 Duties of responsible NHS body following notice under section 2**

- (1) The duties under this section apply where notice of a patient's case under section 2 has been given.
- (2) The responsible NHS body, and any other NHS body which is considering whether to provide services to the patient after discharge, must consult the responsible authority before deciding what services (if any) it will make available to him in order for it to be safe to discharge the patient.
- (3) The responsible NHS body must give the responsible authority notice of the day on which it proposes to discharge the patient.
- (4) The notice under subsection (3) remains in force until the end of the relevant day, unless it has previously been withdrawn.
- (5) The responsible NHS body may withdraw the notice under subsection (3) at any time before the end of the relevant day by giving notice of withdrawal to the responsible authority.
- (6) For the purposes of this Part “the relevant day”, in relation to a qualifying hospital patient, is the later of –
  - (a) the day specified in the notice under subsection (3); and
  - (b) the last day of the prescribed minimum interval after the notice under section 2 is given.
- (7) Regulations may prescribe a period as the minimum interval after a notice under section 2 is given; but that period must –
  - (a) begin with the day after that on which the notice under section 2 is given; and
  - (b) be a period of at least two days.
- (8) Until 31st March 2005 the period of two days referred to in subsection (7) is exclusive of Sundays and public holidays in England and Wales.
- (9) If the notice under subsection (3) is withdrawn before the end of the relevant day –
  - (a) the duty under subsection (3) applies again; and
  - (b) when a fresh notice under subsection (3) is given, subsection (6) applies again for the purpose of identifying a new “relevant day”.
- (10) Regulations may provide for –
  - (a) the time at which notices under subsection (3) are to be given;
  - (b) the form and content of –
    - (i) notices under subsection (3); and
    - (ii) withdrawal notices under subsection (5);and the manner in which such notices are to be given;
  - (c) circumstances in which notices under subsection (3) must be withdrawn; and
  - (d) determining the day on which a notice under subsection (3) or a notice of withdrawal under subsection (5) is given (including provision prescribing circumstances in which a notice under subsection (3) is to be treated for any specified purpose as having been given on a day other than that on which it was in fact given).

*Delayed discharge payments***6 Liability to make delayed discharge payments**

- (1) This section applies where notice of a patient's case under section 2 and notice of the proposed discharge day under section 5(3) have both been given (and are in force).
- (2) If by the end of the relevant day –
  - (a) the patient has not been discharged and the responsible authority has not complied with its duties under section 4(2); or
  - (b) it has not been possible to discharge the patient because, and only because, either of the conditions in subsection (3) is satisfied (or both are satisfied),the responsible authority must make a payment of the amount prescribed in regulations for each day of the delayed discharge period.
- (3) The conditions referred to in subsection (2) are that –
  - (a) the responsible authority has not made available for the patient a community care service which it decided under section 4(2)(b) to make available for him;
  - (b) the responsible authority has not made available for the patient's carer a service which it decided under section 4(3)(b) to make available to the carer.
- (4) For this purpose "the delayed discharge period" is, subject to subsections (5) and (7), the period –
  - (a) beginning with the day after the relevant day, and
  - (b) ending with the day on which the patient is discharged.
- (5) If on any day before that on which the patient is discharged the responsible authority gives notice to the responsible NHS body that –
  - (a) it has complied with its duties under section 4(2),
  - (b) every community care service that it decided under section 4(2)(b) to make available has been made available for the patient, and
  - (c) every service that it decided under section 4(3)(b) to make available to a carer has been made available,the delayed discharge period ends with that day.
- (6) The references in subsections (3) and (5) to services "decided under" section 4(2)(b) or (3)(b) are, in a case where the decision in question has been altered under section 4(7), to any services specified in the altered decision.
- (7) Regulations may –
  - (a) require days after the relevant day not to be treated as days of the delayed discharge period;
  - (b) prescribe circumstances (other than those mentioned in subsections (4) and (5)) in which the delayed discharge period ends;
  - (c) make provision for determining the day on which a patient is discharged (including provision prescribing circumstances in which a patient is to be treated for the purposes of this section as having been discharged on a day other than that on which he was in fact discharged).



## **7 Delayed discharge payments: supplementary**

- (1) In prescribing an amount under section 6(2) the appropriate Minister must have regard (among other things) to either or both of the following matters –
  - (a) costs to NHS bodies of providing accommodation and personal care to patients who are ready to be discharged; and
  - (b) costs to social services authorities of providing community care services to, and services to carers in relation to, persons who have been discharged.
- (2) Any payment which the responsible authority is required to make under section 6 in relation to qualifying hospital patient shall, subject to subsection (3), be made to the responsible NHS body.
- (3) In cases of any description prescribed in regulations the payment shall be made to the person prescribed in relation to cases of that description.

### *Disputes*

## **8 Ordinary residence**

- (1) Any question arising under this Part as to the ordinary residence of a person who is or is expected to become a qualifying hospital patient shall be determined by the Secretary of State or by the Assembly.
- (2) The Secretary of State and the Assembly must make and publish arrangements for determining which cases are to be dealt with by the Secretary of State and which are to be dealt with by the Assembly.
- (3) Those arrangements may include provision for the Secretary of State and the Assembly to agree, in relation to any question that has arisen, which of them is to deal with the case.

## **9 Dispute resolution**

- (1) Regulations may make provision for panels appointed by Strategic Health Authorities in England and by Local Health Boards in Wales to assist in the resolution of disputes between two or more public authorities about matters arising under or in relation to this Part.
- (2) The persons forming a panel for the purpose of a particular dispute must be appointed by a Strategic Health Authority or Local Health Board from lists of persons required by the regulations to be kept by the Authority or Board.
- (3) The regulations must contain such provision as the appropriate Minister considers appropriate for ensuring that each social services authority situated (or any part of whose area is situated) in the area of a Strategic Health Authority or a Local Health Board is consulted about the persons whose names appear on any list kept by the Authority or Board for the purposes of subsection (2).
- (4) The regulations may make provision about the panels, including in particular –
  - (a) provision for determining who is to appoint a panel in the case of a dispute between public authorities which are not all situated in the area of a single Strategic Health Authority or Local Health Board;

- (b) provision specifying the descriptions of disputes which may be referred to a panel;
  - (c) provision about the recommendations (including recommendations relating to the payment of any amount by one party to another) which may be made by a panel in relation to any dispute referred to it.
- (5) Regulations may prohibit a public authority from bringing legal proceedings against another public authority in relation to a dispute before such steps have been taken in relation to a panel appointed by virtue of this section as may be prescribed in the regulations.
- (6) For the purposes of this section “public authority” means an NHS body or a social services authority.

### *Supplemental*

## **10 Adjustments between social services authorities**

- (1) Regulations may make provision as to the application of this Part in cases where, in relation to a qualifying hospital patient, it appears to the responsible authority for the time being that the patient is ordinarily resident in the area of another social services authority.
- (2) The regulations may, among other things, authorise or require a social services authority –
- (a) to accept a notice given to it under section 2 notwithstanding that it may wish to dispute that it was the right authority to be notified;
  - (b) to become the responsible authority for a patient’s case in place of the social services authority previously responsible;
  - (c) to recover expenditure incurred –
    - (i) in the performance of functions under this Part in relation to a qualifying patient;
    - (ii) in the provision of community care services which are the subject of a decision under section 4(2)(b); or
    - (iii) in the provision of services to a carer which are the subject of a decision under section 4(3)(b),
 from another social services authority.
- (3) The regulations may modify the effect of any provision of this Part as it applies in any cases falling within subsection (1).

## **11 Regulations and orders**

- (1) Any power to make regulations or an order under this Part is exercisable by the appropriate Minister by statutory instrument.
- (2) Regulations under this Part may –
- (a) make different provision for different cases and circumstances and different provision for different areas;
  - (b) make supplementary, consequential, incidental, transitional or saving provision.
- (3) Regulations under section 1 which –

- (a) prescribe care for the purposes of the definition of “qualifying hospital patient”; and
  - (b) are made by the Secretary of State (or by the Secretary of State and the Assembly acting jointly),
- may not prescribe a description of care which is, or includes, mental health care unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument which –
- (a) contains regulations or an order under this Part, other than regulations which fall to be approved in draft by virtue of subsection (3); and
  - (b) is made by the Secretary of State (or by the Secretary of State and the Assembly acting jointly),
- is subject to annulment in pursuance of a resolution of either House of Parliament.

## 12 Interpretation

In this Part –

“carer”, in relation to a qualifying hospital patient, means a person who –

- (a) provides or intends to provide a substantial amount of care on a regular basis for the patient; and
- (b) is entitled to ask for an assessment under section 1 of the Carers and Disabled Children Act 2000 (c. 16);

“community care service” has the meaning given by section 46(3) of the National Health Service and Community Care Act 1990;

“health service hospital” has the same meaning as in the National Health Service Act 1977;

“independent hospital” has the same meaning as in the Care Standards Act 2000;

“mental health care” means any health services relating to mental health which are of a description prescribed by order;

“NHS body” has the meaning given by section 1;

“qualifying hospital patient” has the meaning given by section 1;

“the relevant day” has the meaning given in section 5(6);

“the responsible authority” has the meaning given by section 2(6);

“the responsible NHS body” has the meaning given by section 2(5);

“social services authority” means a local authority for the purposes of the Local Authority Social Services Act 1970.

## 13 Application of Local Authority Social Services Act 1970

In Schedule 1 to the Local Authority Social Services Act 1970 (social services functions to which that Act applies) at the appropriate place there is inserted –

“Community Care (Delayed Discharges etc.) Act 2003

Part 1 ..... Functions relating to hospital patients likely to need community care services to be made available in order to be discharged safely.”

#### **14 Power to apply Part 1 to NHS patients in care homes**

- (1) The appropriate Minister may by order provide for this Part to apply in relation to qualifying care home patients as it applies to qualifying hospital patients.
- (2) An order under this section may –
  - (a) specify such modifications of this Part as appear to the appropriate Minister to be necessary for it to apply satisfactorily in relation to qualifying care home patients; and
  - (b) make supplementary, consequential, incidental, transitional or saving provision.
- (3) In this section –
 

“care home” has the same meaning as in the Care Standards Act 2000 (c. 14); and

“qualifying care home patient” means a person being accommodated at a care home, in pursuance of arrangements made by an NHS body, who is receiving (or who has received or is expecting to receive) care of a description prescribed in regulations.
- (4) The care prescribed under subsection (3) must be care which is prescribed under section 1 for the purposes of the definition of “qualifying hospital patient” (or which as nearly as possible corresponds to care that is so prescribed).

### **PART 2**

#### LOCAL AUTHORITY COMMUNITY CARE SERVICES AND SERVICES FOR CARERS

#### **15 Free provision of services in England**

- (1) The Secretary of State may by regulations require that the provision of any qualifying service of a description prescribed in the regulations is to be free of charge to the person to whom it is provided.
- (2) The regulations may (without prejudice to the generality of subsection (1)) –
  - (a) prescribe circumstances in which a qualifying service is to be provided free of charge; and
  - (b) limit the period for which a qualifying service is to be so provided.
- (3) In this section “qualifying service” means –
  - (a) the provision of accommodation under Part 3 of the National Assistance Act 1948 (c. 29) in pursuance of arrangements made by a local authority in England; or
  - (b) any service which is provided to a person by, or in pursuance of arrangements made by, a local authority in England under any enactment mentioned in section 17(2)(a) to (c) and (f) of the Health and

Social Services and Social Security Adjudications Act 1983 (c. 41)  
(charges for local authority services).

- (4) The regulations may not require any of the following services to be provided free of charge for a period of more than six weeks –
  - (a) the provision of accommodation under Part 3 of the National Assistance Act 1948;
  - (b) the provision of personal care to a person in any place where that person is living, other than accommodation provided under that Part of that Act;
  - (c) a service provided to a carer under section 2 of the Carers and Disabled Children Act 2000 which consists of the provision of personal care delivered to the person cared for (in accordance with subsection (3) of that section).
- (5) The regulations may –
  - (a) make different provision for different descriptions of qualifying service; and
  - (b) make supplementary, consequential, incidental, transitional or saving provision.
- (6) The power of the Secretary of State to make regulations under this section is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## **16 Free provision of services in Wales**

The Assembly may by regulations made by statutory instrument make in relation to local authorities in Wales any provision which may be made by the Secretary of State under section 15 in relation to local authorities in England.

## **17 Consequential amendments**

- (1) In section 22 of the National Assistance Act 1948 (c. 29) (charges for accommodation provided or arranged by local authority), after subsection (8) there is inserted –

“(8A) This section shall have effect subject to any regulations under section 15 of the Community Care (Delayed Discharges etc.) Act 2003 (power to require certain community care services and services for carers to be provided free of charge).”
- (2) In section 26 of that Act (provision of accommodation in premises maintained by voluntary organisations), after subsection (4) there is inserted –

“(4AA) Subsections (2) to (4) shall have effect subject to any regulations under section 15 of the Community Care (Delayed Discharges etc.) Act 2003 (power to require certain community care services and services for carers to be free of charge).”
- (3) In section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) (power to charge for certain local authority services), after subsection (4) there is inserted –

“(5) This section has effect subject to any regulations under section 15 of the Community Care (Delayed Discharges etc.) Act 2003 (power to require