



Health Act 2006

2006 CHAPTER 28

PART 4

THE NATIONAL HEALTH SERVICE

CHAPTER 3

PROTECTION OF NHS FROM FRAUD AND OTHER UNLAWFUL ACTIVITIES

Preliminary

44 Compulsory disclosure of documents for purposes of counter fraud or security management functions

- (1) This Chapter confers power to require the production of documents in connection with the exercise of—
 - (a) the appropriate national authority's counter fraud functions in relation to the health service in England or (as the case may be) Wales, or
 - (b) the Secretary of State's security management functions in relation to the health service in England.
- (2) The appropriate national authority's "counter fraud functions" in relation to the health service in England or Wales means that authority's power (by virtue of section 2(b) of the 1977 Act) to take action for the purpose of preventing, detecting or investigating fraud, corruption or other unlawful activities carried out against or otherwise affecting—
 - (a) the health service in England or (as the case may be) Wales, or
 - (b) that authority in relation to the authority's responsibilities for the health service in England or (as the case may be) Wales.
- (3) The Secretary of State's "security management functions" in relation to the health service in England means the Secretary of State's power (by virtue of section 2(b) of

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the 1977 Act) to take action for the purpose of protecting and improving the security of—

- (a) persons employed by the Secretary of State or an NHS body in the provision of services for the purposes of the health service in England (“English NHS services”);
- (b) health service providers and persons employed by them so far as they or (as the case may be) persons so employed are engaged in any activity directly related to the provision of English NHS services;
- (c) NHS contractors and persons employed by them so far as they or (as the case may be) persons so employed are engaged in any activity directly related to the provision of English NHS services;
- (d) persons not within paragraphs (a) to (c) who work in any capacity on premises used by the Secretary of State, an NHS body, a health service provider, or an NHS contractor, in connection with the provision of English NHS services;
- (e) persons on such premises—
 - (i) who are there for the purpose of receiving, or are receiving or have received, treatment or other services as patients, or
 - (ii) who are accompanying persons within sub-paragraph (i);
- (f) property and information used or held by the Secretary of State, an NHS body, a health service provider, or an NHS contractor, in connection with the provision of English NHS services.

(4) In this Chapter—

- (a) the appropriate national authority’s counter fraud functions in relation to the health service in England or (as the case may be) Wales, and
- (b) the Secretary of State’s security management functions in relation to the health service in England,

are collectively referred to as functions to which this Chapter applies.

(5) In this section “investigating” means investigating in relation to civil or criminal proceedings.

45 Meaning of “NHS body” etc.

(1) This section applies for the purposes of this Chapter.

(2) Subject to subsection (3), an “NHS body” means—

- (a) a Strategic Health Authority,
- (b) a Local Health Board,
- (c) a Special Health Authority,
- (d) a Primary Care Trust,
- (e) an NHS trust, or
- (f) an NHS foundation trust.

(3) In section 44(3), and in section 46(1) so far as having effect in relation to the Secretary of State’s security management functions referred to in section 44(3), an “NHS body” means—

- (a) a Strategic Health Authority,
- (b) a Special Health Authority so far as performing functions in respect of England,
- (c) a Primary Care Trust,

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- (d) an NHS trust all or most of whose hospitals, establishments and facilities are situated in England, or
 - (e) an NHS foundation trust.
- (4) A “health service provider” means any person (other than a body within subsection (2)) providing primary medical services, primary dental services, primary or general ophthalmic services, or pharmaceutical services.
- (5) An “NHS contractor” means any person (other than a body or person within subsection (2) or (4)) providing services of any description under arrangements made with an NHS body.
- (6) A “statutory health body” means any body (other than a body within subsection (2), (4) or (5)) established by or under an enactment and—
- (a) providing services in connection with the provision of, or
 - (b) exercising functions in relation to,
- the health service in either England or Wales or both.
- (7) The appropriate national authority may by order—
- (a) make such amendments of any of subsections (2) to (6) as the authority considers appropriate;
 - (b) make such consequential amendments of this Chapter as the authority considers appropriate.

Disclosure notices

46 Notice requiring production of documents

- (1) This section applies if it appears to the appropriate national authority that there are reasonable grounds for suspecting—
- (a) that any documents containing information relevant to the exercise of any of the authority’s functions to which this Chapter applies are in the possession or under the control of any NHS body, statutory health body, health service provider or NHS contractor (“the relevant organisation”), and
 - (b) that a person within subsection (3) is accountable for the documents.
- (2) The appropriate national authority may serve on that person a notice requiring him to produce the documents to an authorised officer.
- (3) The persons within this subsection are—
- (a) any member, officer or director of the relevant organisation;
 - (b) any other person who takes part in the management of the affairs of that organisation;
 - (c) any person employed by that organisation; and
 - (d) (in the case of a health service provider or NHS contractor who is an individual) that individual.
- (4) A notice under this section must specify or describe the documents to which it relates.
- (5) Subject to subsections (6) and (7), the notice may require those documents to be produced—
- (a) at or by such time as is specified in the notice, or at once, and

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- (b) at such place, and in such manner, as is so specified.
- (6) When specifying a time at or by which the documents are to be produced, the notice must not require them to be produced otherwise than at a reasonable hour.
- (7) If the notice requires documents to be produced at once, it may only be served at a reasonable hour.
- (8) An authorised officer may, by agreement with the person served with a notice within subsection (6) or (7), vary the notice so as to extend the time for compliance with it.
- (9) Any notice under this section, and any variation of such a notice under subsection (8), must be in writing.
- (10) For the purposes of this section an individual is “accountable” for any documents if he has either day-to-day, or an overall, responsibility for the custody or control of the documents.

47 Production of documents

- (1) This section applies where a notice has been served under section 46.
- (2) An authorised officer may—
 - (a) take away any documents produced in compliance with the notice;
 - (b) take copies of or extracts from any documents so produced;
 - (c) require the person producing any such documents to provide an explanation of any of them.
- (3) If—
 - (a) the officer takes away any such document, and
 - (b) the person producing it requests the officer to provide him with a copy of it, and
 - (c) the request appears to the officer to be reasonable in the circumstances,
 the officer must, as soon as is reasonably practicable, provide that person with a copy of the document (in such form as the officer considers appropriate).
- (4) Documents produced in compliance with a notice under section 46 may be retained for so long as the appropriate national authority considers that it is necessary to retain them (rather than copies of them) in connection with the exercise of any function of the authority to which this Chapter applies.
- (5) If the appropriate national authority has reasonable grounds for believing—
 - (a) that any such documents may have to be produced for the purposes of any legal proceedings, and
 - (b) that they might otherwise be unavailable for those purposes,
 they may be retained until the proceedings are concluded.
- (6) If a person who is required by a notice under section 46 to produce any documents does not produce the documents in compliance with the notice, an authorised officer may require that person to state, to the best of his knowledge and belief, where they are.
- (7) A person is not bound to comply with any requirement imposed by a notice under section 46 or any requirement under subsection (6) unless evidence of authority is given—

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- (a) at the time when the notice is served, or
 - (b) at the time when the requirement is imposed under subsection (6),
- as the case may be.

(8) In addition, a person may not be required under section 46 or subsection (6) to produce any document or disclose any information which he would be entitled to refuse to produce or disclose in proceedings in the High Court on grounds of legal professional privilege.

48 Delegation of functions

- (1) The appropriate national authority may direct a Special Health Authority to exercise so much of the appropriate national authority's functions under sections 46 and 47 as is specified in the directions ("the delegated functions").
- (2) The appropriate national authority may give directions providing for senior officers of the Authority to exercise the delegated functions on behalf of the Authority.
"Senior officer" means an officer of or above a level specified in the directions.
- (3) Any directions under subsection (1) or (2) must be given in regulations made by the appropriate national authority.
- (4) The appropriate national authority may by regulations make such provision as the authority considers appropriate in connection with the exercise of the delegated functions.
- (5) The regulations may, in particular, make provision—
 - (a) specifying conditions as to training that must be satisfied in relation to officers of the Authority involved in the exercise of the delegated functions;
 - (b) for requiring officers to obtain specific authorisation before the delegated functions are exercised in relation to personal records;
 - (c) providing for the designation of officers for the purpose of giving such authorisations;
 - (d) otherwise prescribing the manner in which the delegated functions may be exercised.
- (6) If the appropriate national authority gives a direction under subsection (1), the 1977 Act has effect as if—
 - (a) the direction is a direction of the authority under section 16D of that Act; and
 - (b) the delegated functions are exercisable by the Special Health Authority under section 16D.

49 Code of practice relating to delegated functions

- (1) The appropriate national authority may issue a code of practice relating to—
 - (a) the exercise of functions by or on behalf of a Special Health Authority by virtue of directions under section 48;
 - (b) procedures to be followed in relation to the disclosure (in accordance with sections 50 and 51) of information obtained by or on behalf of a Special Health Authority in the exercise of such functions.

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- (2) The appropriate national authority must keep the code under review and may from time to time—
 - (a) revise the whole or any part of the code, and
 - (b) issue a revised code.
- (3) Where the appropriate national authority proposes to issue a code of practice under this section, the authority must—
 - (a) prepare a draft of the code, and
 - (b) consult such persons as the authority considers appropriate about the draft.
- (4) Where the appropriate national authority proposes to issue a revised code under this section which in the opinion of the authority would result in a substantial change in the code, the authority must—
 - (a) prepare a draft of the revised code, and
 - (b) consult such persons as the authority considers appropriate about the change.
- (5) Where, following consultation under subsection (3) or (4), the appropriate national authority issues the code or revised code (whether in the form of the draft or with such modifications as the authority thinks fit), it comes into force at the time when it is issued by the authority.
- (6) A failure to observe any provision of a code or revised code issued under this section does not of itself make a person liable to any criminal or civil proceedings.
- (7) A code or revised code issued under this section is admissible in evidence in any criminal or civil proceedings.
- (8) Consultation undertaken by the appropriate national authority before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.

50 Disclosure of information

- (1) This section applies to information which—
 - (a) is held by or on behalf of the appropriate national authority, and
 - (b) was obtained by virtue of section 46 or 47.
- (2) The information must not be disclosed except in accordance with subsection (3).
- (3) A disclosure is made in accordance with this subsection if it is made—
 - (a) for the purposes of the exercise of any of the appropriate national authority's functions in relation to the health service in England or (as the case may be) Wales,
 - (b) for the purposes of any civil proceedings brought in the exercise of any of those functions,
 - (c) for the purposes of any criminal investigation or proceedings,
 - (d) for the purposes of any relevant disciplinary proceedings, or
 - (e) in accordance with an enactment or order of a court or tribunal.
- (4) In subsection (3)—
 - (a) paragraphs (a) and (b) apply whether or not the appropriate national authority concerned is the one mentioned in subsection (1), and

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- (b) “relevant disciplinary proceedings” means disciplinary proceedings conducted in relation to an individual by—
 - (i) an NHS body, statutory health body or health service provider, or
 - (ii) any of the regulatory bodies mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17) (bodies within remit of Council for the Regulation of Health Care Professionals).
- (5) Where information to which this section applies is disclosed to any person in accordance with subsection (3), the information must not be used or further disclosed except—
 - (a) for a purpose connected with the functions, investigation or proceedings for the purposes of which it was so disclosed, or
 - (b) in accordance with an enactment or order of a court or tribunal.
- (6) Information to which this section applies may be disclosed in accordance with subsection (3) despite any obligation of confidence that would otherwise prohibit or restrict the disclosure.
- (7) This section does not prohibit any disclosure or use of information relating to a particular person if it is made with the consent of that person.

51 Protection of personal information disclosed for purposes of proceedings

- (1) Information obtained from personal records produced in compliance with a notice under section 46 is “protected information” for the purposes of this section if—
 - (a) a person (“the discloser”), in accordance with section 50(3), discloses the information for the purposes of any proceedings, and
 - (b) either—
 - (i) the identity of the individual in question can be ascertained from the information itself, or
 - (ii) the discloser has reasonable cause to believe that it will be possible for a person who obtains the information as a direct or indirect consequence of the disclosure to ascertain the individual’s identity from that information taken with other information obtained by virtue of section 46 or 47 and disclosed by or on behalf of the appropriate national authority.
- (2) The discloser must take all reasonable steps to ensure that, once disclosed by him in accordance with section 50(3), the protected information is not further disclosed to any person who is not someone to whom it is necessary to disclose the information for any purpose connected with the proceedings mentioned in subsection (1)(a).
- (3) In subsection (2) the reference to further disclosure of the information does not include any such disclosure—
 - (a) by way of evidence in any proceedings, or
 - (b) in accordance with an enactment or order of a court or tribunal.
- (4) The appropriate national authority must make provision, whether in a code of practice issued under section 49 or otherwise, for requiring any person disclosing protected information in accordance with section 50(3) to ensure, by the use of a distinguishing mark or in some other way, that the information is clearly identified as protected information for the purposes of this section.

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- (5) Information that appears to be protected information must not be disclosed by way of evidence in any proceedings unless—
- (a) the whole of the proceedings are held in private, or
 - (b) in any other case, the information is disclosed in accordance with permission given by the court or tribunal on an application under subsection (6).
- (6) If, on an application by a party to—
- (a) proceedings before a court, or
 - (b) proceedings of any description before a tribunal that sits, or may sit, in public during the whole or part of proceedings of that description,
- the court or tribunal is satisfied that it is in the interests of justice for any information that appears to be protected information to be disclosed by way of evidence in the proceedings, it may give permission for the information to be so disclosed, on such terms as it thinks fit.
- (7) When determining such an application, the court or tribunal must consider whether, in the interests of protecting the identity of the individual to whom the information relates, the whole or part of the proceedings should be held in private.
- (8) If the court or tribunal is satisfied that the whole or part of the proceedings should be held in private, it must give such directions, or take such other steps, as appear to it to be appropriate.
- (9) In this section “proceedings” means—
- (a) criminal or civil proceedings, or
 - (b) relevant disciplinary proceedings (as defined by section 50(4)).

Offences

52 Offences in connection with production of documents

- (1) A person commits an offence if, without reasonable excuse, he fails to comply with any requirement imposed on him under section 46 or 47.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction—
- (a) to imprisonment for a term not exceeding 51 weeks, or
 - (b) to a fine not exceeding level 3 on the standard scale,
- or to both.
- (3) If a person is convicted of an offence under subsection (1) in respect of a failure to produce a document and the failure continues after the date of his conviction, the person—
- (a) commits a further offence, and
 - (b) is liable on summary conviction to a fine not exceeding 2% of level 3 on the standard scale for each day on which the failure so continues.
- (4) A person commits an offence if, in purported compliance with any requirement imposed on him under section 47—
- (a) he makes a statement which is false or misleading, and
 - (b) he either knows that it is false or misleading or is reckless as to whether it is false or misleading.

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“False or misleading” means false or misleading in a material particular.

- (5) A person guilty of an offence under subsection (4) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.

53 Offences relating to disclosure or use of information

- (1) A person commits an offence if he fails to comply with section 50(2) or (5) or section 51(2).
- (2) A person guilty of an offence under subsection (1) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;
 - (b) on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding the statutory maximum, or to both.
- (3) It is a defence for a person charged with an offence under subsection (1) in respect of a disclosure of information to prove that at the time of the alleged offence—
- (a) any of the circumstances in subsection (4) applied, or
 - (b) he reasonably believed that they applied.
- (4) The circumstances referred to in subsection (3) are—
- (a) that the disclosure was lawful,
 - (b) that the information had already been lawfully made available to the public,
 - (c) that the disclosure was necessary or expedient for the purpose of protecting the welfare of any individual,
 - (d) that the disclosure was made in a form in which no person to whom the information relates is identified.
- (5) Subsection (4)(d) is not satisfied if the identity of any such person can be ascertained either—
- (a) from the information itself, or
 - (b) from that information taken with other information obtained by virtue of section 46 or 47 and disclosed by or on behalf of the appropriate national authority.

Supplementary

54 Manner in which disclosure notice may be served

- (1) This section provides for the manner in which a notice may be served under section 46.
- (2) The notice may be served on a person by—
- (a) delivering it to him;
 - (b) leaving it at his proper address;
 - (c) sending it by post to him at that address.
- (3) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of

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a person is his usual or last-known address (whether residential or otherwise), except that—

- (a) in the case of a notice to be served on the secretary, clerk or similar officer of a body corporate, it is the address of the registered office of that body or its principal office in the United Kingdom,
- (b) in the case of a notice to be served on a partner or a person having the control or management of a partnership business, it is the address of the principal office of the partnership in the United Kingdom, and
- (c) in the case of a notice to be served on an officer of an unincorporated association (other than a partnership), it is the address of the principal office of the association in the United Kingdom.

55 Interpretation

(1) In this Chapter—

“authorised officer”, in relation to any function, means (subject to subsection (5)) an officer of the appropriate national authority authorised by the authority to act in exercise of the function;

“document” means anything in which information of any description is recorded;

“employed” means employed whether under a contract of service or a contract for services or otherwise, and whether for remuneration or not;

“functions to which this Chapter applies” has the meaning given by section 44(4);

“health service provider”, “NHS body” and “NHS contractor” have the meanings given by section 45;

“personal records” has the meaning given by section 12 of the Police and Criminal Evidence Act 1984 (c. 60);

“statutory health body” has the meaning given by section 45.

(2) Other expressions used in this Chapter which are also used in the 1977 Act have the same meanings as in that Act.

(3) References in this Chapter to the provision of services—

- (a) in relation to statutory health bodies, health service providers or NHS contractors, include references to the provision of goods or facilities, and
- (b) include references to the provision of services (or goods or facilities) wherever that takes place.

(4) In relation to information recorded otherwise than in legible form, any reference in this Chapter to the production of documents is a reference to the production of a copy of the information in legible form.

(5) Where functions of the appropriate national authority are exercisable by a Special Health Authority by virtue of directions under section 48—

- (a) references in this Chapter to authorised officers include officers of the Special Health Authority authorised by or on behalf of the Authority to act in exercise of the functions, and
- (b) references in this Chapter to information held or disclosed by or on behalf of the appropriate national authority include information held or disclosed by or on behalf of the Special Health Authority.