

Care Homes Briefing

Number 50

Palliative Care

Introduction

Baroness Finlay of Llandaff introduced the Palliative Care Bill to make provision for palliative care to every person with a terminal illness to such extent as is necessary.¹ The Bill stipulates services provided must be free of charge².

Current Law

At present there is no direct obligation to provide palliative care. However, the Bill builds on recent government policies: *Planning and Funding Specialist Palliative Care Provision 2003/04-2005/06* and *The Continuing Care Policy*. The main purpose of these policies was to make palliative care more accessible.

The rationale behind the Palliative Care Bill is to open up palliative care to persons suffering from a terminal illness. Three fundamental questions arise: Who is protected? What is the extent of the duty? How far does this duty go?

The Proposals

It is important to note that the Bill is not yet law and is subject to change before an Act is passed by Parliament.

There is a wide ambit within the definition of palliative care. Palliative care is defined as “care given with the intention of improving the quality of life of persons with a terminal illness”³. Furthermore, the Bill includes

provision for “psychological, social, spiritual help and support”⁴.

A terminal illness is defined as “an illness disease or condition which is inevitably progressive and fatal and the progress of which cannot be reversed by treatment.” The Bill does not specify a precise list of fatal illnesses, thus many illnesses could be covered.

The Duty To Provide Palliative Care

General Power

The general power to provide palliative care is left to the discretion of healthcare commissioners and providers. These include Primary Care Trusts, NHS Trusts, NHS Foundation Trusts.⁵ The Bill attempts to cover all health care providers including private and public services.

The Extent of the Duty

The healthcare commissioners or providers will have authority to ensure the provision of palliative care through training health and social care professions. They will be subject to a duty to monitor, review and encourage palliative care by the Commission for Healthcare Audit and Inspection.

The Bill provides that the Secretary of State shall prepare and publish statements in relation to the provision of palliative care and specialist palliative care by and for NHS bodies in accordance with section 46 Health and Social Care (Community Health Standards)

¹ Section 1 (1)

² Section 1 (2) in so far as making and recovery of charges is expressly provided for by or under any enactment.

³ Section 7(1)

⁴ Section 7 (b)

⁵ In Wales report to the National Assembly for Wales

Act 2003.⁶ This builds on the general duty already in place to publish standards in relation to healthcare.

Conclusion

At the time of writing, the Palliative Care Bill is still in draft form. The Government makes it clear in the foreword to the Bill that it is to make provision for palliative care for persons who are suffering from a terminal illness. This follows the trend in recent government policy of making palliative care more accessible to the public.

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The full extent of the duty to provide palliative care is not defined. Broad definitions are given in the Bill which refer to a need to protect any person with a terminal illness. A terminal illness as defined is very wide and this could lead to debate as to how far the duty to provide palliative care should extend. The Bill recommends palliative care should include physiological, social and spiritual support⁷.

Despite the broad definitions given, the Bill does fulfil its objective of making provision for palliative care for persons who are suffering from a terminal illness as there will be a direct obligation on all healthcare providers to provide palliative care.

No date has been fixed as yet for a second reading to review the Palliative Care Bill.

The government has announced a consultation (until 20th February) on proposed changes to residential care charges. The changes include:

- Increasing the personal expenses allowance to £20.45
- Increasing the capital limits to £13,000 (lower limit) and £21,500 (upper limit).
- Increasing the savings disregard to £5.25 (maximum) for an individual and £7.85 (maximum) for couples.
- Creating a disregard for a maximum period of 52 weeks of lump sum payments made in consequence of any personal injury to the Claimant or their partner.

Providing a full disregard of payments of income from voluntary and charitable sources of income derived from personal injury trust funds/annuities.

⁶ Section 46 (1) The Secretary of State may prepare and publish statements of standards in relation to the provision of health care by and for English NHS bodies and cross-border SHAs.

⁷ Section 7 (b)