



# Community Care (Delayed Discharges etc.) Act 2003

## 2003 CHAPTER 5

### PART 1

#### DELAYED DISCHARGE PAYMENTS

##### *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.
- (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).