



Health Act 2006

2006 CHAPTER 28

PART 4

THE NATIONAL HEALTH SERVICE

CHAPTER 3

PROTECTION OF NHS FROM FRAUD AND OTHER UNLAWFUL ACTIVITIES

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.

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- (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
 - (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—
- (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;

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- (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.
- (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)—

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- (a) paragraphs (a) and (b) apply whether or not the appropriate national authority concerned is the one mentioned in subsection (1), and
 - (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

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mark or in some other way, that the information is clearly identified as protected information for the purposes of this section.

- (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)).