



Health and Social Care (Quality and Engagement) (Wales) Act 2020

2020 asc 1

PART 3

DUTY OF CANDOUR

Application of the duty

3 When the duty of candour applies

- (1) The duty of candour comes into effect in relation to an NHS body if it appears to the body that both of the following conditions are met.
- (2) The first condition is that a person (the “service user”) to whom health care is being or has been provided by the body has suffered an adverse outcome.
- (3) The second condition is that the provision of the health care was or may have been a factor in the service user suffering that outcome.
- (4) For the purpose of the first condition a service user is to be treated as having suffered an adverse outcome if the user experiences, or if the circumstances are such that the user could experience, any unexpected or unintended harm that is more than minimal.

Procedural and other requirements

4 Duty of candour procedure

- (1) Regulations must provide for a procedure (the “candour procedure”) to be followed by an NHS body in relation to which the duty of candour has come into effect.
- (2) The regulations must require an NHS body, as part of the candour procedure—

- (a) on first becoming aware that the duty of candour has come into effect, to give notification of this in accordance with the regulations to the service user concerned or someone acting on the service user's behalf;
- (b) to notify a person mentioned in paragraph (a), in accordance with the regulations, of—
 - (i) the identity of a person who has been nominated by the body as a point of contact for the service user in respect of the candour procedure;
 - (ii) any further enquiries carried out by the body in respect of the circumstances in which the duty of candour came into effect.
- (3) The regulations must also make provision—
 - (a) for an apology to be offered by the body;
 - (b) in connection with the provision of support to a service user given notification under subsection (2)(a);
 - (c) about record-keeping.
- (4) The regulations may make any other provision in respect of the candour procedure that the Welsh Ministers consider appropriate.

5 Primary care providers: duty to prepare report

- (1) As soon as practicable after the end of each financial year, a primary care provider must prepare a report under this section.
- (2) The report must state whether, during the reporting year, the duty of candour has come into effect in respect of the provision of health care by the primary care provider.
- (3) If the duty of candour has come into effect during the reporting year, the report must—
 - (a) specify how often this has happened during the reporting year,
 - (b) give a brief description of the circumstances in which the duty came into effect, and
 - (c) describe any steps taken by the provider with a view to preventing similar circumstances from arising in future.
- (4) If during the same financial year the primary care provider has provided health care on behalf of two or more Local Health Boards, a separate report is to be prepared under this section in respect of each of those bodies.
- (5) In this section and sections 6 to 8—
 - (a) references to a financial year are to each period of 12 months ending on 31 March;
 - (b) references to a reporting year, in relation to a report, are to the financial year to which the report relates.

6 Supply and summary of report under section 5

- (1) A primary care provider that has prepared a report under section 5 in respect of the provision of health care on behalf of a Local Health Board must, as soon as practicable after the end of the reporting year, supply the report to that Local Health Board.
- (2) A Local Health Board to which reports have been supplied under subsection (1) must, as soon as practicable after the end of the reporting year prepare a summary of those reports.

- (3) The summary must—
- (a) specify how often, during the reporting year, the duty of candour has come into effect in respect of health care provided on behalf of the Local Health Board by a primary care provider,
 - (b) give a brief description of the circumstances in which the duty came into effect, and
 - (c) describe any steps taken by the primary care provider with a view to preventing similar circumstances from arising in future.

7 Local Health Board, NHS trust and Special Health Authority: reporting requirements

- (1) As soon as practicable after the end of each financial year, a Local Health Board, NHS trust or Special Health Authority must prepare a report under this section.
- (2) The report must state whether, during the reporting year, the duty of candour has come into effect in respect of the provision of health care by the body.
- (3) If the duty of candour has come into effect during the reporting year, the report must—
 - (a) specify how often this has happened during the reporting year,
 - (b) give a brief description of the circumstances in which the duty came into effect, and
 - (c) describe any steps taken by the body with a view to preventing similar circumstances from arising in future.

8 Publication of section 6 summary and section 7 report

- (1) An NHS body to which section 7 applies must publish the report prepared by it under that section as soon as practicable after the end of the reporting year.
- (2) In the case of an NHS body that is a Local Health Board, the report must include the summary prepared by it under section 6.

9 Confidentiality

- (1) A report published by an NHS body under section 8 must not name—
 - (a) anyone to whom health care is being or has been provided by or on behalf of the NHS body;
 - (b) anyone acting on behalf of a person within paragraph (a).
- (2) In determining what information to include in a report under section 8, an NHS body must have regard to the need to avoid providing information that, while not naming an individual, is in the circumstances likely to enable the identification of that individual.

10 Guidance given by the Welsh Ministers

In exercising functions under or by virtue of this Part, an NHS body must have regard to any guidance issued by the Welsh Ministers.

11 Interpretation of “health care” and other terms

- (1) A reference in this Part to health care is to services provided in Wales under or by virtue of the 2006 Act for or in connection with—
 - (a) the prevention, diagnosis or treatment of illness;
 - (b) the promotion and protection of public health.
- (2) In subsection (1), “illness” has the meaning given in section 206 of the 2006 Act.
- (3) A reference in this Part to an NHS body is to—
 - (a) a Local Health Board;
 - (b) an NHS trust;
 - (c) a Special Health Authority;
 - (d) a primary care provider.
- (4) A person is a primary care provider, for the purposes of this Part, in so far as (and only in so far as) the person provides health care on behalf of a Local Health Board by virtue of a contract, agreement or arrangement under Part 4, 5, 6 or 7 of the 2006 Act between the person and the Local Health Board.
- (5) Health care provided by one NHS body (the “providing body”) on behalf of another NHS body (“the arranging NHS body”), by virtue of a contract, agreement or arrangement made under the 2006 Act between the providing body and the arranging body, is to be treated for the purposes of this Part as being provided by the providing body, not the arranging body.
- (6) Health care provided by a person other than an NHS body (the “provider”), on behalf of an NHS body, whether by virtue of a contract, agreement or arrangement made under the 2006 Act or otherwise, is to be treated for the purposes of this Part as being provided by the NHS body, not the provider.
- (7) In this Part—
 - “candour procedure” (“*gweithdrefn gonestrwydd*”) has the meaning given by section 4(1);
 - “harm” (“*niwed*”) includes psychological harm, and in the case of a service user who is pregnant, loss of or harm to the unborn child;
 - “service user” (“*defnyddiwr gwasanaeth*”) has the meaning given by section 3(2);
 - “Special Health Authority” (“*Awdurdod Iechyd Arbennig*”) means a body established under section 22 of the 2006 Act; but does not include any cross-border Special Health Authority (within the meaning of section 8A(5) of the 2006 Act) other than NHS Blood and Transplant.