

*These notes refer to the Health and Social Care (Community Health and Standards) Act 2003 (c.43) which received Royal Assent on 20 November 2003*

# HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 –Standards**

#### *Chapter 3 - Nhs Health Care: Functions of Chai*

#### **Healthcare provided by and for NHS bodies**

##### *Section 48: Introductory*

153. *Section 48* gives the CHAI the function of encouraging improvement in NHS health care by or for all NHS bodies. Under this section, the CHAI will be able to give information or advice to NHS bodies or others who provide NHS health care. It states that the CHAI, in exercising its functions under *sections 49 to 56*, shall be concerned in particular with the availability of and access to, the quality and effectiveness, and the economy and efficiency of health care provided by or for NHS bodies, and with the need to safeguard and promote the rights and welfare of children. CHAI shall also be concerned with the availability and quality of information provided to the public about the health care, such as generic information that is not specific to individual patients or service users, such as leaflets, hospital signage and other patient and service user information, such as information about medical conditions generally.

##### *Section 49: National Performance Data*

154. This section enables the CHAI to publish data on the performance of NHS bodies and other persons who provide health care, across NHS bodies in England and Wales.

##### *Section 50: Annual Reviews*

155. *Section 50* gives the CHAI the function of undertaking annual reviews, taking the statement of standards (as provided for in *section 46*) into account, of the provision of health care by and for each English NHS body and each cross-border Special Health Authority. Following each annual review of a body, the CHAI will award a performance rating. *Subsections (2) and (3)* provide for the CHAI to devise and publish criteria against which these reviews will be carried out. The Secretary of State will approve such criteria.

##### *Section 51: Reviews: England and Wales*

156. This section gives the CHAI a function of conducting reviews across England and Wales of health care generally or of particular kinds of health care, for example, national cancer services. CHAI may undertake such reviews under its own initiative or at the request of the Secretary of State, who must first consult the Assembly before making a request.

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157. *Sections 51(6), 52(7), 53(9), 54(9) and 57(5)* enable the Secretary of State, after consulting the CHAI, to issue regulations making provision as to any procedure that must be followed before the award of any performance rating under section 50 or publication of any report under *sections 52 to 54* in order to give the reviewed body time to comment and for any comments to be considered by CHAI. Such regulations could specify, for example, the numbers of days that NHS bodies would have to respond to draft reports issued by CHAI under differing circumstances, and could in particular require the CHAI to take into account any material observations made by NHS bodies about apparent factual errors in draft reports.

### ***Section 52: Reviews and Investigations: England***

158. *Section 52* provides for the CHAI to review or investigate health care provided by or for English NHS bodies and cross-border Special Health Authorities with a view to making a report. The CHAI may also review the arrangements made by such bodies under section 45 to monitor and improve the health care they provide or commission. English NHS bodies may provide health services on behalf of Welsh NHS bodies, and where this occurs the Assembly may review and investigate such services under *section 68*. This also applies in respect of cross-border Special Health Authorities.
159. The CHAI may undertake reviews either under its own initiative or at the request of the Secretary of State.

### ***Section 53: Failings***

160. Where the CHAI considers that there are significant failings in the health care provided by or for NHS bodies, *subsections (2), (4) and (6)* oblige the CHAI to make a report to the Secretary of State, the Assembly or the Regulator as appropriate. *Subsections (3), (5) and (7)* enable the CHAI to recommend that the appropriate authority take special measures to improve the health care provided. Such measures could include calling on the CHAI to undertake a re-inspection of the body concerned or other practical assistance or organisational support.

### ***Section 54: Functions relating to the Secretary of State and Assembly***

161. *Section 54* places a duty on the CHAI to keep the Secretary of State, in relation to English or cross-border NHS bodies, and the Assembly in relation to Welsh NHS bodies, informed about health care provided by or for NHS bodies.
162. *Subsection (2)* allows for the CHAI, where it considers it timely or appropriate, to give advice to the Secretary of State or the Assembly on any particular changes which it thinks should be made in order to secure improvements in the quality of NHS health care including in relation to the statement of standards referred to in *sections 46 and 47*.

### ***Section 55: Reviews of data***

163. This section enables the CHAI to review the quality of any data collected by others on health care provided by and for NHS bodies and to make a report of its findings.

### ***Section 56: Co-ordination of reviews***

164. *Section 56* gives the CHAI the function of promoting the effective co-ordination of reviews or assessments by public bodies or other persons which undertakes reviews of the provision of health care by or for English NHS bodies and cross border Special Health Authorities. It is envisaged that the Assembly will perform this function in relation to Welsh NHS bodies under its powers in the 1977 Act.

## **Other functions**

### ***Section 57: Studies as to economy, efficiency etc***

165. This section enables the CHAI to carry out comparative or other studies for improving economy, efficiency and effectiveness in the exercise of any of the functions of English NHS bodies with the exception of Special Health Authorities (which are to be reviewed in this respect by the National Audit Office).
166. The Audit Commission, under section 33(1) of the Audit Commission Act 1998 previously carried out such studies in relation to these bodies. *Paragraphs 12(6) and (8) of Schedule 9* of the Act removes all of these bodies - apart from NHS foundation trusts, which are not currently within the scope of those provisions - from the scope of section 33(1) and (4) and 35 of the 1998 Act.
167. Within Wales, the function of carrying out these studies remains with the Audit Commission. However, in carrying out reviews and investigations generally, the Assembly is required under *section 70* to be concerned with the economy and efficiency of the provision of health care. It is envisaged that the Audit Commission will continue to work with the Assembly in relation to reviews and investigations of health care by or for Welsh NHS bodies.

### ***Section 58: Additional functions***

168. It is envisaged that the CHAI may need to be given additional functions with respect to the provision of health care by or for NHS bodies or for the improvement of economy, efficiency and effectiveness in the exercise of the functions of English NHS bodies, in the future. This section therefore makes provision for such functions to be given by regulations.

## **Supplementary**

### ***Section 59: Criteria***

169. This section provides for the Secretary of State or the Assembly as appropriate to make regulations requiring the CHAI to devise and publish statements of criteria to be used by it in exercising its functions under *sections 48(1), 49, 51 or 52*, in relation to health care provided by and for NHS bodies.
170. The Secretary of State may also make such regulations with respect to the exercise of the CHAI's functions under *sections 52, 56, 57 and 58(1)*.
171. The regulations may require the CHAI to obtain the consent of the appropriate authority before publishing any such statement. Before making any such regulations the appropriate authority must first consult the CHAI.

### ***Section 62: Fees and section 63: Fees: Wales***

172. *Section 62(1)* provides a power for the CHAI to be able to make and publish provision requiring persons to pay fees in relation to the exercise of prescribed functions under this Chapter. *Section 62(1)(a)* provides for it to be able to charge fees to NHS bodies and cross border Special Health Authorities, and *section 62(1)(b)* provides for it to be able to charge fees to any person of a prescribed description who provides health care for an English NHS body or cross border Special Health Authority.
173. Similar powers in relation to the exercise of the CHAI's functions in relation to Welsh NHS bodies are provided under *section 63*. Therefore, the CHAI may not charge a Welsh NHS body under the provisions of *section 62(1)(b)* and may not charge an English NHS body or cross border Special Health Authority under *section 63(1)(b)*. By *subsection (5)* of both sections, CHAI is under a duty to consult appropriate persons before specifying any provisions.

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174. *Subsection (6)* of both sections confers a regulation making power on the appropriate authority to prescribe the manner in which CHAI's fees are to be made and published and to enable the appropriate authority to specify the matters that CHAI must take into account before it determines any fee.
175. *Subsection (7)* of both sections will allow the appropriate authority to make provisions for an independent person or panel to review the charge levied by CHAI in a particular case, and to substitute a lesser one if they deem it appropriate.

### ***Section 66: Right of entry***

176. This section provides that individuals authorised by the CHAI may enter and inspect premises that are owned or controlled by an NHS body or which are used or proposed to be used for any purpose connected with the provision of health care by or for NHS bodies, or the discharge of functions of those bodies.

### ***Section 67: Right of entry: supplementary***

177. *Subsection (1)* allows a person (authorised to enter and inspect premises by virtue of *section 66*) to inspect and copy relevant documents or records. It also allows inspectors to interview any person working at the premises or any patients or persons receiving health care that consent to be interviewed. Inspectors may also require relevant records or other documents on the premises to be produced for inspection, and where they are stored on computer, for them to be produced in a legible, not encrypted, form. *Subsection (4)* imposes a requirement to assist an inspector and permits the inspector to take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise his powers under *section 66*.

### ***Section 68: Power to require documents and information***

178. *Section 68* confers on the CHAI a general power to require information and documents from the bodies or persons listed in *subsection (2)* irrespective of whether or not the CHAI is conducting an inspection, where such information relates to the provision of health care by or for an NHS body or the discharge of functions of an NHS body and where the CHAI considers it necessary or expedient to have the information or documents for its purposes under this Chapter.
179. *Subsection (2)(c)* gives the CHAI the right to require information or documents from a local authority. This will enable the CHAI to obtain information or documents kept by a local authority for its own purposes, where that information is relevant to the exercise of the CHAI's functions under this Chapter. For example, the CHAI might request information as to how quickly the local authority responds to requests by an NHS trust to assess the social services needs of persons ready to be discharged from hospital.

### ***Section 69: Power to require explanation***

180. Under this section, regulations may make provision for the CHAI to require a prescribed person to provide it with an explanation of any documents or information it obtains under *sections 66* to *68* or any matters which are the subject of the CHAI's functions under this Chapter. *Subsection (2)* enables these regulations to set the requirement that individuals must be present at a specified place to give an explanation. The CHAI will use this power to enable it to discuss with those responsible any matters of concern that its inspections have brought to light.
181. *Sections 67(5)*, *68(4)* and *69(3)* make it an offence for a person to obstruct the exercise of any of the CHAI's powers under these sections or to fail to comply with any requirement. The penalty on summary conviction is a fine not exceeding level 4 (£2500) on the standard scale.