

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – The Health Service in England

The health service: overview

Section 1 - Secretary of State's duty to promote comprehensive health service¹

65. This section amends section 1 of the NHS Act, which contains the Secretary of State's duty to promote a comprehensive health service designed to secure improvement in the physical and mental health of the people of England, and in the prevention, diagnosis and treatment of mental and physical illness.
66. Section 1 of the NHS Act now has four subsections. The Act introduces a new *subsection (3)* and makes changes to *subsections (1)* and *(2)*. The Act also makes a technical drafting change to subsection (4) which does not affect its meaning.
67. *Subsection (1)* retains the duty on the Secretary of State to promote a comprehensive health service. This is the core duty, dating back to the founding NHS Act of 1946, which makes the Secretary of State accountable for the health service. The Secretary of State must bear the duty in mind whenever he exercises any of his functions.
68. The Act inserts the words “physical and mental” in front of “illness” in section 1(1)(b). This change serves to emphasise that a comprehensive health service is one which addresses mental as well as physical illness.
69. This section replaces *subsection (2)* of the existing section 1 of the NHS Act (which imposes a duty on the Secretary of State, for the purposes of promoting a comprehensive health service (as set out at subsection (1)), to “provide or secure the provision of services in accordance with this Act”, with a duty to “exercise the functions conferred by this Act so as to secure that services are provided in accordance with this Act”. This reflects the fact that the functions of commissioning services and the provision of services will no longer be delegated by the Secretary of State, but will be directly conferred on the organisations responsible for performing them. The Secretary of State's role is to ensure that these functions are being carried out effectively; he or she retains ultimate responsibility for securing the provision of services through the exercise of his functions, such as his powers to set objectives for the NHS Commissioning Board (through the mandate to the NHS Commissioning Board under new section 13A), to oversee the effective operation of the health service and to intervene in the event of significant failure (see new section 13Z2).
70. Prior to the amendments made by this Act, the Secretary of State's duty to provide services under section 3 of the NHS Act was for the most part not fulfilled by the direct provision of services by the Secretary of State or by bodies to which he delegated

¹ Further information about the interpretation of these sections can be found on the Department of Health website at: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_129415.

*These notes refer to the Health and Social Care Act 2012
(c.7) which received Royal Assent on 27 March 2012*

that function. This duty was instead almost entirely discharged by using the power (in section 12 of the NHS Act) to enter into arrangements with other persons or bodies to provide services - in other words by commissioning a service and not by direct provision of a service. The majority of service provision is carried out by NHS trusts and foundation trusts, which have their own statutory functions of providing services under existing legislation, or by independent providers under contract. The only services that were directly provided under the Secretary of State's duty were those that PCTs provided prior to their abolition, where the Secretary of State's function of providing services was delegated to the PCT.

71. The change made by the Act to subsection (2) of section 1 of the NHS Act largely reflects changes in the delivery of health services which have been implemented by successive governments over a period of approximately 20 years. In the past, the Secretary of State, or the health authorities to which he delegated his functions, have provided hospital or other services directly (the Secretary of State and SHAs are not providers of NHS services). However, in recent years there has been a move towards securing a commissioner/provider split in NHS services. This separation is almost complete. Once PCTs stop providing services, the Secretary of State's section 1(2) duty to provide services (which he delegates to SHAs and PCTs) would no longer be necessary. Under the new arrangements, which seek to complete the implementation of the commissioner/provider split, the Secretary of State, the NHS Commissioning Board and CCGs would not have the function of providing NHS services. The NHS Commissioning Board and CCGs would be responsible for arranging services (that is for their commissioning and not for their provision).
72. The Secretary of State and local authorities will have powers to both commission and provide public health services, under their new functions in relation to the protection of public health and health improvement.
73. New subsection (3) of the amended section 1 clarifies that the Secretary of State retains ministerial responsibility to Parliament for the provision of the health service.
74. Subsection (4) of the amended section 1 maintains the principle that health services must be free of charge, unless charges are specifically provided for in legislation. Subsection (4) is slightly amended from the NHS Act; this is a drafting change, consequential on subsection (2). The only difference in the wording is to refer to services which are "part of the health service" rather than to the services which the Secretary of State provides or secures. 'Services which are part of the health service' cover all services commissioned by the NHS Commissioning Board, CCGs, and, in relation to public health, local authorities.