



Health and Care Act 2022

2022 CHAPTER 31

PART 1

HEALTH SERVICE IN ENGLAND: INTEGRATION, COLLABORATION AND OTHER CHANGES

Patient choice and procurement

78 Regulations as to patient choice

(1) The National Health Service Act 2006 is amended as follows.

(2) In section 6E (standing rules)—

(a) in subsection (1)—

(i) for “may” substitute “must”;

(ii) for “or” substitute “and”;

(b) after subsection (1) insert—

“(1A) The regulations must make provision as to the arrangements that NHS England and integrated care boards must make, in exercising their commissioning functions, for enabling persons to whom specified treatments or other specified services are to be provided to make choices with respect to specified aspects of them.

(1B) The regulations may make other provision for the purpose of securing that, in exercising their commissioning functions, NHS England and integrated care boards protect and promote the rights of persons to make choices in relation to treatments or other services, where those rights—

(a) arise by virtue of regulations under subsection (1A), or

(b) are described in the NHS Constitution.”;

(c) omit subsection (2)(c).

(3) After section 6E insert—

Changes to legislation: There are currently no known outstanding effects for the Health and Care Act 2022, Section 78. (See end of Document for details)

“6F Enforcement of section 6E regulations relating to patient choice

- (1) NHS England may investigate whether an integrated care board has failed or is likely to fail to comply with a requirement imposed by regulations under section 6E(1A) or (1B) (a “patient choice requirement”).
- (2) NHS England may direct an integrated care board—
 - (a) to put in place measures for the purpose of preventing failures to comply with patient choice requirements or mitigating the effect of such failures, or
 - (b) where an investigation under subsection (1) has been carried out, to remedy a failure to comply with patient choice requirements.
- (3) Where an investigation under subsection (1) is being or has been carried out, NHS England may accept from the integrated care board an undertaking that it will take any action falling within subsection (2)(a) or (b) that is specified in the undertaking, within a period that is so specified.
- (4) Where NHS England accepts an undertaking under subsection (3), NHS England may not—
 - (a) continue to carry out any ongoing investigation under subsection (1) so far as relating to matters to which the undertaking relates, or
 - (b) give a direction under subsection (2) in relation to those matters, unless the integrated care board fails to comply with the undertaking.
- (5) If an integrated care board from which NHS England has accepted an undertaking under subsection (3) complies partially with the undertaking, NHS England must take the partial compliance into account in deciding whether to do something mentioned in subsection (4)(a) or (b).
- (6) Schedule 1ZA makes further provision about undertakings.

6G Guidance relating to patient choice

- (1) NHS England must publish guidance about how it intends to exercise powers conferred on it by section 6F and Schedule 1ZA.
- (2) Before publishing guidance under this section, NHS England must obtain the approval of the Secretary of State.”
- (4) In section 13U (annual report), in subsection (2)(c), for the words from “sections” to the end substitute “or by virtue of—
 - section 6E(1A) and (1B);
 - section 13E;
 - section 13G;
 - section 13I;
 - section 13Q.”
- (5) Schedule 11 inserts into the National Health Service Act 2006 a new Schedule 1ZA (undertakings by integrated care boards).

Changes to legislation: There are currently no known outstanding effects for the Health and Care Act 2022, Section 78. (See end of Document for details)

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Commencement Information

- I1** S. 78 not in force at Royal Assent, see **s. 186(6)**
- I2** S. 78 in force at 1.1.2024 by S.I. 2023/1431, **reg. 3(a)** (with reg. 5(1))

Changes to legislation:

There are currently no known outstanding effects for the Health and Care Act 2022, Section 78.