

Royal College of Psychiatrists' briefing on the Health Bill

The Royal College of Psychiatrists welcomes the Health Bill, which was one of the 14 Bills announced in the Queen's Speech on December 3rd 2008.

This Bill will take forward proposals in Lord Darzi's 'NHS Next Stage Review', and establish an NHS constitution. The key focus for the Royal College of Psychiatrists will be on the proposed NHS Constitution.

NHS CONSTITUTION

We broadly support the principles of the NHS constitution and the opportunities it presents both to improve the lives of people with mental health problems and to promote better mental health in society as a whole.

The College is particularly pleased that the constitution places an equivalent emphasis upon both physical health and mental health and further that the grounds for discrimination specifically mention mental illness and learning disability. The explicit statement of rights and responsibilities and values is helpful and the College hopes that this constitution and the rights and pledges embodied within it will help to eliminate the discrimination that exists today.

The proposed constitution sets out a loose legal framework of mutual obligations (principals, rights and responsibilities) between the NHS, patients and NHS staff. It also provides a general 'Standards Framework' for non-NHS agencies contracted in to provide elements of NHS care in the new plural health economy. The College supports the articulation of the rights pledges and responsibilities of the NHS and the public in the one document.

Some general concerns were expressed in the College around the costs that may arise in implementing these proposals. There were also some concerns amongst members of the College around the status of the rights and pledges contained within the Constitution. For instance, women in the UK do not have uniform access to perinatal services despite many Department of Health documents recommending that all women who need perinatal services should have access to them. When does a recommendation become a right and how enforceable are the pledges?

Below is the College response to the Government's consultation on an NHS Constitution, which was produced jointly with Mind, Rethink, the Mental Health Foundation, Sainsbury Centre for Mental Health, and Together: Working for Wellbeing.

The NHS Constitution: a mental health perspective

Introduction

This response to the consultation on the NHS Constitution has been produced on behalf of six national mental health organisations: Mind, Rethink, the Mental Health Foundation, Sainsbury Centre for Mental Health, the Royal College of Psychiatrists and Together: Working for Wellbeing.

We broadly support the idea of an NHS Constitution and the opportunities it presents both to improve the lives of people with mental health problems and to promote better mental health in society as a whole.

This response looks at how the NHS Constitution could be developed to make that potential a reality in response to some of the questions for consultation.

Q4 Are the statement of purpose and the set of principles right? Are there any principles that should be added?

We warmly welcome the fact that the statement of purpose places mental and physical health together as the primary responsibilities of the NHS.

Modern mental health care is increasingly focused on promoting 'recovery'. This means that health services assist people with mental health problems to get on with their lives, with or without the symptoms of mental illness. Managing symptoms becomes secondary to helping the individual to achieve their potential and define their own goals in life.

The notion of 'recovery' would, we believe, be applicable and valuable beyond mental health care. We would suggest adding to the opening statement:

*"The NHS belongs to the people. It is there to improve our health, supporting us to keep mentally and physically well, to get better **and to recover our lives** when we are ill..."*

The implication of focusing the NHS on recovery is that the primary responsibility of health professionals is to assist the individual to live their life as they wish (including for example to keep them at work or school or to support family life), not merely to 'cure' people or manage the symptoms of their illness. Making this explicit in the Constitution would be a major step forward for the NHS.

We also welcome the seven key principles. We support principle 1, a comprehensive service available to all. We believe this should include an additional commitment to equality of access regardless of where people live.

We believe, however, that principle 4 needs to be strengthened significantly. It is not in our view sufficient for patients and families to be 'involved and consulted' in their care. Our experience would suggest that, for the NHS to achieve the principle 4, service users, carers and families need to be actively involved in all aspects of their care. Professionals should proactively seek people's views about their care and, if they lack capacity, should have recourse to advocates, advance statements and family members to speak for them.

In addition to the principles listed, we would expect that the NHS would be committed to working with other services (e.g. social services, substance use services, housing support) to meet people's needs efficiently and comprehensively. This would **support** a principle of treating the 'whole person'.

It should also be made clear in the Constitution that the rights, pledges and responsibilities apply to all services commissioned by the NHS, not just those provided by NHS organisations.

Q5 Is the list of public and patients' rights clearly explained and accessible to all sections of the population?

Access to health services

We warmly welcome the creation of a legal right to access to health services regardless of gender, race, disability and other factors. This is a major issue for people with mental health problems who regularly experience stigma and discrimination in their use of mental and physical health services. We believe **access** could be strengthened by a second statement committing the NHS to strive to ensure that all staff have the necessary skills and training to discharge this right.

We would suggest that this list should be extended to cover people with criminal convictions (**i.e.** those in prison) and people with drug and alcohol problems, who are often excluded from mainstream health care. It should also be extended to prevent discrimination on the basis of age.

Nationally approved treatments

We strongly endorse the creation of a legal right to treatments approved by NICE for use in the NHS. It needs to be clear that this extends beyond drug treatments to the full range of interventions that benefit people's health including many psychological therapies and evidence-based employment support. It must also be clear that this right applies to all NICE recommended treatments and not just those emerging from technology appraisals. It also needs to be clear what action individuals can take if they cannot access to NICE-approved treatments in a timely manner.

While doctors may decide the clinical appropriateness of a given treatment this right should reflect a model of shared decision making about care perhaps by saying “if you and your doctor decide that they are appropriate for you in the light of your clinical condition”.

Local funding of drugs and treatments

We welcome this statement but believe it could be strengthened by insisting that decisions are made transparently as well as rationally and by explicitly including NICE guidelines as one of the sources of evidence to be considered.

Respect, consent and confidentiality

We welcome the ‘*right to accept or refuse treatment*’ and the provision for consent to be sought properly for those who lack capacity. We note, however, that for people being treated under the Mental Health Act these important rights may not apply and that this statement is therefore misleading. We would suggest adding the following:

“If you are being detained or treated under the Mental Health Act, consent must be sought from your Nearest Relative or Independent Mental Health Act Advocate. Where you have made advance decisions about your care these will be **consulted** by your clinical team.”

It should also be made clear that the threat of compulsion must never be used to obtain consent for any treatment on the NHS.

We believe that as part of having their views respected people with mental health problems should have a right to a second opinion.

Q7 Do you agree with a new legal right to choice about your NHS care?

We welcome a broad-based right to ‘make choices about your NHS care’. To ensure this pledge is enacted equitably, it is vital that independent advocacy and advice are available to support people to make use of the information provided. It also requires action on the part of commissioners to ensure they offer a range of treatment options to make the exercise of choice genuine.

The right to choice should not simply be reduced to the location for elective surgery but choice of NICE-approved, evidence-based treatments suitable for each person. We would expect in a 21st-century NHS that patients should be enabled to design their own care packages and to decide what support they receive and from whom.

Q8 Is the list of pledges right?

Informed choice

We welcome the pledge to provide information about available health care services. This is an important issue for people with many mental health problems. The recent Healthcare Commission national survey of mental health service users found that many still do not receive adequate information about what services are available or what options they have for treatment and support; for example towards gaining employment.

The Handbook to the Constitution notes that patients with long-term conditions will be provided with a personalised care plan. This is a positive step. However, the recent decision to abolish the lower 'standard' level of the Care Programme Approach (CPA) will leave some people with severe and enduring mental health conditions without such a care plan. We would urge that the opportunity to benefit from CPA is restored to all people who need the support of specialist mental health services or who have co-existing long-term mental and physical health problems.

We would also suggest that the pledge to provide easily accessible information about treatments includes information about the side-effects of any medication that is proposed to be prescribed.

Involvement

We welcome the recognition of the importance of the role of carers and families. This is a crucial issue for many people with mental health problems and especially for those with severe and enduring problems. Recognising the commitment in the Government's Carers Strategy to treat carers as "partners in care" we believe that could be strengthened by including a separate point:

"The NHS recognises the importance of the contribution made by carers and families as "partners in care" and will strive to fully involve these groups in planning and delivery of services to ensure that staff are fully equipped to work with carers and families."

Complaint and redress

We believe that the pledge to ensure that *'the fact that you have complained will not affect your future treatment'* should be a legal right rather than just a pledge. For people who have used mental health services, independent advocacy should be available to support those making complaints about the treatment they received.

Q9 Are the responsibilities and expectations of patients and the public appropriate?

While we endorse the notion that citizens have a responsibility towards their own health, it should be acknowledged that some people's lives make it difficult for them to maintain good health or to use NHS services appropriately. People with severe mental health problems, with drug and alcohol problems or who lack capacity may not be able to contribute readily to their health or to keep appointments, and this should be taken into account by NHS staff.

For many people with a range of mental health conditions, poor physical health is a major concern. The NHS Constitution focuses only on individuals' responsibilities for their own health, without referring to the NHS's role in promoting good health. This is a major omission. There is a great deal the NHS can and should do to promote mental and physical wellbeing and to support people with a range of health problems and disabilities to improve and maintain their general health.

Q11 Is the list of staff pledges right?

We welcome the pledge for the NHS to strive to provide support for staff to keep themselves healthy and safe. However, we would wish to see the NHS pledge *'actively to promote good physical and mental health among its staff and to lead by example to other employers in doing this'*.

We would suggest a further pledge that the NHS would use its role as an employer to promote equality of opportunity and encourage those who use health services to bring their expertise by experience into the NHS workforce.

Q12 Is it useful for the constitution to set out staff responsibilities? Is the description right?

We believe that a core responsibility of NHS staff is to promote good health among their communities and to tackle ignorance and prejudice about stigmatised health conditions. The NHS has the potential to take the lead in promoting health and wellbeing as well as dispelling the myths and stereotypes that lead people with a range of physical and mental health problems to be excluded, harassed and discriminated against.

About us

This response to the consultation has been produced on behalf of the Mental Health Foundation, Mind, Rethink, the Royal College of Psychiatrists, Sainsbury Centre for Mental Health and Together: Working for Wellbeing.

Mental Health Foundation



For better
mental health

rethink



SAINSBURY CENTRE
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