



## Health and Social Care Bill

### A New Regulatory Regime and Measures to Boost Social Enterprise

The draft Health and Social Care Bill was published on 20 November 2007. It will make its way through Parliament and is expected to become law in Spring 2008. There are some important provisions in the Bill which will impact on healthcare providers and some measures which should boost social enterprises. Here is a summary of the main provisions which we hope you will find useful.

#### New Regulatory Framework

A new super regulator will be established known as the "Care Quality Commission". This will replace the existing Health Commission, CSCI and Mental Health Act Commission. The Commission will perform functions of regulation, review and investigation of health and social care providers.

In carrying out its functions the Commission must have regard to views and level of satisfaction among the public, and ensure that regulatory action is proportionate to the risks involved and must have regard to Government policy from time to time.

A new duty of registration is placed on those providing "healthcare" or "social care" or "activities connected with" the same. "Healthcare" means all forms of health care provided for individuals, whether relating to physical or mental health, and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.

"Social care" includes all forms of personal care and other practical assistance provided for individuals who by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance.

"Connected activities" means the supply of staff to provide such care, the provision of transport or accommodation for those who receive such care, or the provision of advice in respect of such care. On the face of it, this might catch an employment agency which specializes in providing bank staff, as well as community transport providers or a housing association which provides supported accommodation.

The activities caught by these new definitions of regulated activity are thus wider than the existing activities which would currently require registration with either the Healthcare Commission (e.g. running an independent hospital or clinic facility) or CSCI (e.g. residential care and domiciliary care). Providers who provide drop-in clinics or traditional primary care services in a day surgery will be caught by the definition and will most likely have to register. For the first time, NHS providers will now be required to register.

Detailed regulations will be made in due course about the registration requirements, but if a person carries on a regulated activity without registration, they will be committing an offence punishable by a fine of up to £50,000 and or a 12 month prison

sentence, or in some cases a “fixed penalty” notice may be an alternative to avoid prosecution.

Detailed regulations will set out quality standards and minimum requirements to protect the health, safety and welfare of persons receiving health and social care services. They will also provide for minimum competency levels for employees, training requirements, minimum standards for fitness of premises and record-keeping requirements. The Commission will have various powers of entry, inspection and the right to call for documents.

## Measures to Boost Social Enterprise

Part 5 of the Bill contains some interesting new provisions:

- PCTs have a new duty to make arrangements to secure continuous improvement in the quality of health care provided by them and by other persons pursuant to arrangements made by it.
- The Secretary of State will have new power to extend membership of the Clinical Negligence Scheme for Trusts (CNST) to non-NHS bodies in appropriate circumstances. This is a mutual insurance fund run by the NHS Litigation Authority that has been operating since 1996 to compensate NHS patients for injury caused by clinical negligence. Contributions are assessed by the level of risk associated with the provider and its activities and in the event of claim the defence is handled by NHSLA. For some providers, this may be a less expensive route than taking out private insurance cover against medical malpractice.
- There is a new power for the Secretary of State to give financial assistance to social enterprises through the Social Enterprise Investment Fund. This power clarifies the legal basis for the £73 million fund set up by the Department. They may choose to run this fund through a newly formed company. However, financial assistance can only be given to “qualifying bodies” engaged in the provision of health and social care. Qualifying bodies will generally only cover bodies carrying on services “for the benefit of the community” and which satisfy certain conditions as to distribution of profits. The assistance can be by way of grant, loans, guarantee or subscribing for share capital. The Secretary of State will have broad powers to specify the terms of such assistance and any records or accounts to be published.
- The Secretary of State can delegate his power to provide financial assistance to PCTs, SHAs or NHS Trusts. This could provide a useful addition to the existing Section 64 grant-making powers and pave the way for some interesting new delivery vehicles in which PCT could take a stake.

The Bill has some way to go before these proposals become law. This is intended to be a snapshot of the key provisions at this stage.

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