Health (Tobacco, Nicotine etc. and Care)(Scotland) Bill

Royal College of Speech and Language Therapists

This response relates to the parts to the Bill relating to Duty of Candour and Ill-treatment and willful neglect. RCSLT are particularly interested in these areas of the bill for the following reasons.

**Duty of Candour:**

a) RCSLT made an extensive submission to the consultation on “Duty of Candour” seeking substantial improvements to proposals. For example RCSLT highlight that clear communication between service user and provider underpins effective implementation of “Duty of Candour” legislation. Effective provision for people with communication support needs is therefore crucial if they are to enjoy equal benefit from it.

b) Speech and language therapists are subject to the duty as erroneous SLT treatment for communication disorder and / or eating, drinking and swallowing disorder could potentially result in;

(4) (c) harm which is not severe harm but which results in—

(i) an increase in the person’s treatment,

(iii) the shortening of the life expectancy of the person,

(v) the person experiencing pain or psychological harm which has been, or is likely to be, experienced by the person for a continuous period of at least 28 days,

**Ill-treatment and willful neglect:**

People with communication support needs are known to be at greater risk of harm then other people. This is because some communication support needs are associated with:

- Difficulty reporting things that have happened.
- Difficulty understanding things that have happened.
- Difficulty recognising harmful behaviour.
- Lack of access to information about rights and support.
- Social isolation.
- Difficulty making needs and wishes known.

This can result in increased risk of harm in a variety of ways. For example:

- Lack of access to healthcare (Baxter et al, 2006, Sudore et al, 2006)
- Health professionals failing to recognise the adult’s vulnerability (Morgan, 2009)
- Caregiver neglect and abuse (Dyer et al, 2000)
- Increased requirement for intervention for self-neglect (Schillerstrom et al, 2009)
Failure of systems to identify sexual abuse of adults (Brown and Turk, 2006)

It is essential for professionals to view a person’s Communication Support Needs as part of their vulnerability to ill treatment or wilful neglect.

RCSLT were commissioned by Scottish Government to produce the “Adult Support and Protection” toolkit. The toolkit provides communication access guidelines, advice and practical resources for those supporting adults - so that people with communication support needs who are at risk of harm or who are being harmed can more easily access protection afforded by the Adult Support and Protection Act.

RCSLT answers to questions set by Committee:

1. Do you support the proposed duty of candour?

RCSLT broadly support the provisions relating to Duty of Candour. RCSLT do however have a number of comments on the following sections of the Bill.

Section 21: (1):

Speech and language therapy may be considered an education provision. It would be helpful to ensure any “education” provision by a responsible person was also covered by legislation.

Section 22: (2) (f):

RCSLT particularly welcome the proposal to set regulation regarding the “the form and manner in which information must be provided”. If the regulation sets out the need to make information (and associated procedures) communication accessible this should meet the needs of people with communication support needs.

RCSLT also welcome Section 22: (3) (b) setting out “relevant person” means—

(b) where that person -

(ii) is, in the opinion of the responsible person, lacking in capacity or otherwise unable to make decisions about the service provided,

a person acting on behalf of that person.

RCSLT would recommend responsible person’s must apply reliable assessments to judgements of capacity – as set out in guidance associated, for example, with the Adults with Incapacity Act. Without this there is a risk a “relevant person” will be misjudged in relation to capacity because of a communication disability which could be overcome with appropriate support.
2. Do you support the proposal to make willful neglect or ill-treatment of patients a criminal offence?

RCSLT broadly support the provisions relating to willful neglect or ill treatment.

Given the vulnerability of people with communication disability to such neglect and ill treatment these protections are particularly important to the people SLTs work for. RCSLT do however have a number of comments on the following section of the Bill.

Section 28 (5):

It would be helpful for the legislation to clarify if “adult health care” means a service for or in connection with the prevention, diagnosis or treatment of illness or a long term conditions disability provided to an individual aged 18 or over”.

Without the additional words in bold and underlined rehabilitation and SLT / AHP services geared to supporting independent living for people with disability (but who are not “ill” in the medical sense) would be excluded from the legislation.

3. Is there anything you would add/remove/change in the Bill with regards to these provisions?

See above, No further comment.

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