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

Marie Curie

We welcome the opportunity to respond to the call for written views on the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill.

Marie Curie believes in a better life for people and their families living with a terminal illness. We are here to help people and their families living with a terminal illness make the most of the time they have together by delivering expert care, emotional support, research and guidance. We are the UK’s biggest provider of high quality care for people living with a terminal illness. In Scotland we treat close to 7,500 people each year through our community nursing services, hospices and other services.

While we support provisions relating to all three parts of the Bill, our response is focused on the proposed duty of candour and proposals to make wilful neglect or ill-treatment of patients a criminal offence.

Duty of Candour

We support the proposed duty of candour that creates a legal requirement for health and social care organisations to inform people (or their carers/families) when they have been harmed as a result of the care or treatment they have received. A statutory duty of candour will support the principles of openness, honesty and transparency that are fundamental to providing safe, consistent care across the country and what people can expect from that care.

While we have no specific additions to the primary legislation, we believe that this legislation should help to ensure an organisational shift towards a supportive culture of learning and improvement. We would like to see a commitment to this reflected in the associated guidance.

We recognise the commitment in the accompanying financial memorandum to impose a requirement for training, and provide information on and facilitate access to support for those affected by the incident. This will sit alongside training, supervision and support for those involved in carrying out the duty of candour procedure. We would like training to ensure that staff are also initially supported to disclose instances of harm without the fear of any associated blame. We welcome the assurance that the Scottish Government will work with stakeholders, including independent organisations, to develop a suite of resources and guidance to support the establishment of processes of disclosure, apology and review of events that have resulted in harm.

The proposed Bill sets out systems of reporting, regulation and improvement following an incident that activates the duty of candour procedure. We would welcome further guidance to ensure that improvements are driven forward, particularly in regards to consistency between public, third and independent sectors which may be subject to different regulatory functions. Further guidance could include clarification on how the legislation will apply to integrated health and social care services and those areas delegated to
integrated joint boards under the Public Bodies (Joint Working) (Scotland) Act 2014 and ensure consistent approaches to programmes of improvement activity between Healthcare Improvement Scotland, the Care Inspectorate and Scottish Ministers.

**Wilful Neglect**

We support the proposed establishment of a new criminal offence of ill-treatment or wilful neglect to apply to individual health and social care workers (paid and voluntary), managers and supervisors, and organisations. This legislation should offer a consistent level of protection for all individuals receiving health and social care.

However, we would also welcome associated guidance to ensure mechanisms are in place to ensure openness, transparency and candour are upheld in regards to reporting incidents, without fear of negative sanction where no ill-treatment of wilful neglect has occurred. Systems should be in place to ensure improvements are driven forward when genuine mistakes occur and that staff are comfortable raising concerns. We would also support mechanisms in the associated guidance and regulations to ensure that people are not discouraged from volunteering as carers due to the proposed legislation.

*Marie Curie*