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

Carers Trust Scotland

Carers Trust Scotland is the largest provider of comprehensive carers support services in Scotland, reaching around 40,000 adult carers and more than 3,500 young carers from all groups and communities, through a unique network of independent carers centres and young carers services (Network Partners) throughout Scotland.

1. Do you support the Bill’s provisions in relation to NVPs?
2. Do you support the proposal to ban smoking in hospital grounds?
3. Is there anything you would add/remove/change in the Bill with regards to NVPs or smoking in hospital grounds?

Although the regulation of NVPs and smoking in hospital grounds is not directly related to our area of work, we acknowledge that there are health risks directly linked to smoking tobacco, that many carers will be caring for someone with a health condition caused by or linked to smoking, and that the long-term impact of using NVPs is currently unknown. We further acknowledge that, as an organisation providing support services to young people and having a duty of care towards them, we must equip them to make positive and healthy choices regarding the use of tobacco and NVPs. Therefore we support the intention of the Bill to restrict the sale and promotion of NVPs and to prohibit smoking in hospital grounds.

4. Do you support the proposed duty of candour?
5. Do you support the proposal to make wilful neglect or ill-treatment of patients a criminal offence?
6. Is there anything you would add/remove/change in the Bill with regards to these provisions?

We support both these proposals and are pleased that the Scottish Government is introducing them. However, we believe the Bill could be clearer and more inclusive in its references to unpaid carers.

Duty of candour

It is not only in situations where the cared for person “is, in the opinion of the responsible person, lacking in capacity or otherwise unable to make decisions about the service provided” (page 16 lines 18-19) that the carer should be involved. It is important that carers are always involved (if the person being cared for wants them to be) – therefore, we believe Section 22(3) should be altered to reflect this.

Carers should be treated as equal partners in care, as recognised by the Scottish Government in Caring Together: The Carers Strategy for Scotland 2010-2015, meaning they should be regarded as having equal status as members of the paid care workforce. Even if carers are not acting on behalf of the person they are looking after, an unintended or unexpected incident may
affect the person’s care needs and the carer will need to be aware of this. They may also have much to contribute in relation to service development and ensuring future incidents are avoided. As the Bill makes reference to potential psychological harm of a person, this is another area where the carer may also play an invaluable role in identifying the emotional and psychological impact of incidents. The carer may also require timely support following an incident and reassurances that it will not happen again, as it may affect their caring role or their own health and wellbeing.

In all cases the person should be asked if they would like their carer or family members to be involved at all stages of the procedure outlined in Section 22 of the Bill that are to be provided to the relevant person. Only when the person says they do not want their involvement should the carer be left out of the process.

**Offence of wilful neglect or ill treatment**

In our response to the consultation, we recommended further clarity around the definition of volunteers in case there was the possibility of unpaid carers to be unintentionally included in this group, and we pleased to see this has been handled suitably in the Bill. Section 28 (2) (b) is very clear and ensures that volunteers will not be confused with unpaid carers.

Section 28 (3) (b) is potentially confusing – these lines of the Bill seem to be aimed at categorising personal assistants and other workers employed directly by the service user, but it is unclear whether this might also apply to unpaid carers. In reality, many people who employ personal assistants also have unpaid carers, and the tasks that these different people undertake between them will be arranged in advance. In cases where the cared-for person lacks capacity, the personal assistant may be employed by the carer on behalf of the cared-for person and all coordination of tasks etc. will be decided between the carer and the PA. These situations may therefore count as “an individual who provides that care and employs, or has otherwise made arrangements with, other persons to assist with the provision of that care.”

The Carers (Scotland) Bill defines unpaid carers clearly:

**1 Meaning of “carer”**

(1) In this Act “carer” means an individual who provides or intends to provide care for another individual (the “cared-for person”).

(2) But subsection (1) does not apply—

(a) in the case of a cared-for person under 18 years old, to the extent that the care is or would be provided by virtue of the person’s age, or

(b) in any case, to the extent that the care is or would be provided—

(i) under or by virtue of a contract, or
(ii) as voluntary work.¹

As the policy memorandum is clear that the offence will not apply to unpaid carers, we would suggest that further clarity is needed in this section of the Health (Tobacco, Nicotine, etc. and Care) (Scotland) Bill to ensure there are no unintended consequences for unpaid carers.

As several of our Network Partners provide respite services to carers and their families, some of which are staffed by volunteers, we also recommended the need to ensure organisations must be made aware of these legislative changes and provided with access to education, training and awareness materials to support staff and volunteer development and ensure that volunteers are aware of the legislation. We look forward to working with the Scottish Government in the future to develop guidance for carers’ services on the implementation and scope of this Bill.

Carers Trust Scotland

¹ Carers (Scotland) Bill [as introduced]
http://www.scottish.parliament.uk/S4_Bills/Carers%20(Scotland)%20Bill/b61s4-introd.pdf