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

Health and Social Care Alliance Scotland (the ALLIANCE)

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. It brings together just under 1,200 members, including a large network of national and local third sector organisations, associates in the statutory and private sectors and individuals.

The ALLIANCE’s vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

The ALLIANCE welcomes the opportunity to comment on the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill. We have chosen to focus our consideration on the duty of candour and wilful neglect sections of the Bill.

Duty of candour and wilful neglect

4. Do you support the proposed duty of candour?

Yes. The ALLIANCE strongly welcomes the proposed statutory duty on organisations which would be an important step forward in supporting the open, transparent culture which is central to the delivery of safe, effective care and learning and improvement in health and social care services.

Creating a culture of openness is not be achieved by legislation alone, however, and must form part of the wider commitment to person centeredness, co-production and asset-based approaches embedded within the 2020 Vision for Health and Social Care¹. People who use support and services and carers should be empowered and informed to play an active role in all elements of their care and treatment through quality communication with health and social care staff.

Implementing the duty of candour successfully will require:

- Quality training, resources and support for staff as well as effective and accessible communication with people who use support and services.

- Public reporting as a means of supporting learning and service improvement following disclosable events. However, we believe that the Committee should consider the formats in which disclosures will be reported and how people who use support and services and the general public would access this information.

- Information to be communicated to people who use support and services when they have been subject to an adverse event in a sensitive and

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professional way. We agree with the proposal in the Scottish Government's consultation paper on this issue that “reasonable support” should be provided to people and their relatives. The definition of “reasonable support” should follow in accompanying guidance related to this Bill. This should include reference to advocacy and communications support.

The Scottish Government’s original consultation in relation to the duty of candour asked for views on the definition that should be used for disclosable events in the context of children's social care and subsequently reference to this has been removed from the Bill. It is our view that social care services should also have a duty of candour related to children in their duty of care, and their families, when an action has been taken, or not taken, that results in that child being put at harm or disadvantage. Any disclosure to a child, or their family, must then be communicated in a way that is understandable and meaningful to them.

We are supportive of proposals to ensure that the duty of candour is monitored by existing regulatory bodies (Healthcare Improvement Scotland and the Care Inspectorate) for services they have inspection and regulatory responsibility for, as well as the Scottish Government. Health and social care integration requires greater joint working between such bodies and there would be value in developing a consistent approach to monitoring the duty of candour and ensuring it supports learning and service improvement across the country.

5. Do you support the proposal to make wilful neglect or ill-treatment of patients a criminal offence?

Yes. In our response to the recent consultation on the review of the National Care Standards, we called for the adoption of a human rights based approach to design, delivery and redress throughout health and social care support and services.

Adopting a Human Rights Based Approach is a practical way of ensuring that the rights of people who use support and services are respected. Rights based approaches to health and social care can help to clarify expectations of fair, consistent and respectful experiences and of redress when standards fall below this. They offer a coherent values based system by which we can “empower citizens and unlock them from the failings of past systems, rather than locking them into a new system that lacks a clear vision”.

Additionally, a human rights based approach to health and social care “provides an ethical framework for person centred decision-making by ensuring that rights are only restricted when proportionate and necessary” and

“can provide guidance on how to balance competing rights and duties in situations where they conflict.”

Work with health and social care practitioners has shown that a Human Rights Based Approach can help services and individual practice to be more person-centred. It has also proved a robust, helpful framework to support decision making with people with complex needs where issues of personal autonomy and risk need to be balanced.

People have the right to the highest attainable standard of health, and to freedom from torture. Both of these fundamental rights should be better supported by the proposed new offence.

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

In our view, all organisations should be encouraged to develop and implement proactive, human rights based policies for preventing ill-treatment or wilful neglect and creating a culture in which it is clear that such behaviour will not be tolerated, along with mechanisms for staff, people receiving support and families/carers to whistle blow where such behaviour occurs.

the ALLIANCE

The ALLIANCE has three core aims; we seek to:

- Ensure people are at the centre, that their voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.
- Support transformational change, towards approaches that work with individual and community assets, helping people to stay well, supporting human rights, self-management, co-production and independent living.
- Champion and support the third sector as a vital strategic and delivery partner and foster better cross-sector understanding and partnership.

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