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

British Healthcare Trades Association

BHTA welcomes the Bill and supports the proposed duty of candour and the proposal to make wilful neglect or ill-treatment of patients a criminal offence.

BHTA members are committed to the delivery of the highest quality of products, service and support in a variety of health and social care settings. This commitment is covered by the mandatory BHTA Code of Practice and the Code of Conduct of the Healthcare & Assistive Technology Society which relevant personnel within BHTA member companies are encouraged to join.

We believe that these proposals will apply to our members given their growing role as part of multi-disciplinary teams. We would appreciate if members of the Health & Sport Committee might pursue clarity on this matter from the Minister for Public Health and the Bill Team during Stage 1.

We welcome the Bill's proposals in Parts 2 and 3 and would suggest that for the sake of clarity relevant commissioning authorities, eg Health Boards, local authorities should make explicit mention of the Bill’s provisions within relevant tender and contract documentation. This would make it clear to our members and others tendering for relevant contracts that their personnel would be expected to act in accordance with Part 2 and 3 of this legislation.

BHTA - Background

The British Healthcare Trades Association (BHTA) is the UK's oldest and largest healthcare association, founded in 1917. BHTA represents 500 member companies across the UK in the Healthcare and Assistive Technology sector. Members make or sell products that help people live more independently – everything from wheelchairs and scooters to stairlifts, aids to daily living, stoma and continence products, prosthetics, orthotics, tele-health systems and augmentative communication devices.

Patients, clients and consumers who benefit from timely provision of healthcare and assistive technology products include:

• Children and adults with long-term conditions
• Children and adults with complex to simple short-term needs
• Frail elderly people

Assistive Technology

There is a widely accepted definition of assistive technology: Assistive Technology (AT) is any product or service designed to enable independence for disabled and older people. The majority of the equipment falls within the category of “medical devices”, with some items being regarded primarily as electrical or mechanical. There is a growing body of international standards and EU directives or regulations for the products, intended to ensure that they are fit for purpose and safe to use.
All the products relate to keeping people safe, and many are used in people’s own homes, enabling and enhancing independence. They are important in preventing falls, pressure sores, or stabilising, improving and preventing deterioration in condition. Such devices include powered wheelchairs, specialist beds and mattresses, grab rails and simple aids for daily living.

**BHTA – Working in Partnership**

BHTA member companies provide products and services to the NHS, local authority Social Work departments, the voluntary sector, care homes and directly to consumers.

Much of the workforce in the AT sector work alongside (or as part of) a multi-disciplinary team, involving state registered professionals, such as occupational therapists, speech & language therapists, hearing aid audiologists, physiotherapists, orthotists, prosthetists, and nurse prescribers. Staff work alongside health and social care professionals in private homes, care homes and other healthcare settings.

Our members also play an important role in providing training to healthcare professionals about the equipment provided, to improve their capability and understanding. This is largely unrecognised and is increasingly vital as the need for assistive technology increases.

**Code of Practice**

All BHTA members must sign up to our Code of Practice which is now overseen by the Chartered Trading Standards Institute. CTSI audits BHTA's Code of Practice as part of its quality assurance process for the Consumer Codes Approval Scheme. The BHTA Code is intended to “reflect a philosophy of care and support for customers”.

Individual persons working in the industry may be registered as competent individuals with a relevant body, such as the Health and Care Professions Council (for qualified occupational therapists, physiotherapists, orthotists, prosthetists), or the Healthcare & Assistive Technology Society. Such registrants will be required to follow a personal Code of Conduct, which will be available on application to the relevant organisation. As a minimum, the BHTA Code expects that individuals will adhere to the Code of Conduct of the Healthcare & Assistive Technology Society.

The BHTA Code of Practice makes it clear that staff must as a minimum, be expected to adhere to the provisions of the Healthcare & Assistive Technology Society Code of Conduct, which (as at February 2015) states that they will:

i) act at all times in such a manner as to justify public trust and confidence, to uphold and enhance the good standing and reputation of the healthcare industry, to serve the best interests of society and, above all, to safeguard the interests of individual customers
ii) be accountable for their own working practices and, in the exercise of such accountability, to:

iii) act, at all times, within the law of the land and in a manner befitting a professional worker in the assistive technology and healthcare sector.

iv) act, at all times, in such a way as to promote and safeguard the well-being and interests of customers

v) ensure that no action or omission under their control is detrimental to the condition or general safety of a customer

vi) take every reasonable opportunity to maintain and enhance knowledge and competence within their field of work

vii) acknowledge any limitations of competence and refuse in such cases to accept delegated functions without first having received instruction in regard to those functions and having been assessed as competent.

Healthcare & Assistive Technology Society

There has been historically a lack of formal qualifications within the sector. BHTA is now heavily involved in a programme to try and address the question of individual competence and evidence thereof via the Healthcare & Assistive Technology Society. The aim is for practitioners to attain Voluntary Register Accreditation via the Professional Standards Authority. This is a long-term project. Formal, ongoing training of staff is not yet the norm throughout the sector. With a large number of small businesses, this is something BHTA is seeking to address.

BHTA Views on Parts 2 & 3

Part 2 Duty of Candour

Given the interpretations in Section 25 we think it’s reasonable to assume that BHTA members fall within the definition of “a responsible person” by virtue of providing services which might fall within the definitions of health, care and social work services as set out.

This will mean that members must follow the duty of candour procedure if an unintended or unexpected incident occurs which appears to have resulted in a) death, b) a permanent lessening of bodily, sensory, motor, physiologic or intellectual functions or c) harm which isn’t severe harm but which, for example, results in an increase to the person’s treatment and d) the person requiring treatment in order to prevent death or an injury which must be treated to avoid shortening of life expectancy etc.

The definition of an incident to be reported is sufficiently broad to cover everything from death to “an increase in the person’s treatment”. While it would be an unusual occurrence there might be occasions on which an accident involving equipment might fall within these very broad parameters.
It would be useful to BHTA members contracted to undertake such health, care and social work services if it was made clear by commissioning bodies (Health Boards, Local Authorities) that a particular public contract was to be covered by the terms of this legislation.

**Part 3 Ill-Treatment and Wilful Neglect**

Given the interpretations of adult health and social care in Section 28(5) we believe it's reasonable to assume that BHTA members might provide care which falls within the definition of ‘adult health care’ and ‘adult social care’. Therefore employees, supervisors, managers and directors of members which provide such services are covered by the definition of ‘care worker’ or ‘care provider’ in relation to ill-treatment or wilful neglect.

BHTA welcomes the proposal to make wilful neglect or ill-treatment of patients a criminal offence. We would again ask for clarity in the shaping of public contracts.

**British Healthcare Trades Association**