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

Coalition of Care and Support Providers (CCPS) and the Workforce Development Network (WDN)

About CCPS and WDN: our membership comprises over 70 of the most substantial care and support providers in Scotland’s third sector, providing high quality support in the areas of community care for adults with disabilities and for older people, youth and criminal justice, addictions, homelessness, and children’s services and family support. CCPS hosts the WDN which works across the voluntary sector social services workforce to promote its skills, commitment and development.

We welcome this opportunity to contribute to the Committee’s Stage 1 scrutiny of the Health (Tobacco, Nicotine etc and Care) Scotland Bill. Our comments relate to the Duty of Candour and the Offence of wilful neglect or ill treatment. We support the introduction of both a duty of candour and an offence of wilful neglect and ill treatment. In our view the Bill supports a culture of openness and honesty across health and social care services and will further strengthen the commitment already evident across social care organisations to provide safe and effective high quality care and support.

1. Duty of Candour: Part 2, sections 21 -25

We believe that the definitions are generally clear and we agree that the duty of candour should apply to all ages including children. We wish to make the following comments and suggestions relating to the Duty of Candour:

- definition of ‘harm’ at 21 (4) (c) - the definition of harm is significantly less than the range of incidents and accidents reported to the Care Inspectorate already and lead us to question whether the Bill’s intention is that some issues reported to the Care Inspectorate should not be reported to the individual or their representatives

- definition of ‘relevant person’ at 22 (3) – the definition could be strengthened by setting out a wider range of situations where a person acting on a person’s behalf should be informed. There are situations where a person may need support to understand what is being revealed to them about their condition and what has happened to them whilst at the same time being considered by a health professional to have capacity. In such cases we suggest recognising ‘relevant people’ rather than one ‘relevant person’.

- The ‘registered person’ covers a wide range of health professionals which we welcome given the requirement that the health professional should not have been involved in the incident otherwise.

- In order for the exercise of the Duty of Candour to commence from a clear starting point it would be helpful if the health professional’s opinion about an incident and resulting or possible harm be made in writing as well as verbally; this could be set out in regulation.
• We note that the Bill does not envisage situations where the provider organisation and the ‘registered health person’ might disagree. We would suggest that this is something which the regulations could deal with as we believe that provider organisations should be able to challenge an account of an incident and/or actual or possible outcomes should they feel it appropriate to do so.

• We agree that it would be appropriate for a provider organisation to identify a ‘responsible person’ for the purposes of exercising the Duty of Candour and reporting on it. It is our view that each organisation should be able to decide who should take on this role eg a Service manager, a Chief Executive Officer or Board Director. We would welcome this being spelt out in accompanying regulations.

• We would appreciate further clarity about who should assume the ‘responsible person’ role for a care provider and in particular whether those on a Board of Directors would be deemed appropriate.

• The procedure at section 22 looks reasonable and clear and should achieve a good fit with existing practice amongst care providers. Further guidance could be set out in regulation about the format of the ‘apology’ or ‘statement of sorry and regret’ which avoids admitting negligence or a breach of a statutory duty.

• The Bill sets out a requirement that care provider organisations produce a report on an annual basis for the Care Inspectorate setting out details about each time the Duty of Candour applied. It is noted that this report is required to be produced around the end of the financial year. We are also aware that the Care Inspectorate requires care providers to produce an annual return in Jan/Feb. The timing and format of the two reports could be considered further in the interests of simplifying the production of information associated with the Care Inspectorate’s inspection process.

• Care providers are required to notify other regulators of serious incidents in addition to Care Inspectorate eg the Scottish Social Services Council, and may also be under contractual obligations to notify local authority commissioners. It would be helpful if the regulations could set out the order of priority for undertaking the notification, and in particular, whether the Duty of Candour should assume priority.

2. Offence of ill-treatment and wilful neglect: Part 3, sections 26-31

We welcome the fact that the Bill mirrors existing offences of wilful neglect/ill-treatment of mental health patients and adults with incapacity. We note that this new offence does not extend to children on the basis that other legislation is already in place. Some organisations provide care services to adults and to children and guidance may be needed to set out the implications for such services and organisations.

We consider the definitions of care worker and care provider to be quite clear but we suggest further clarification would assist with regard to:
- care provider liability in situations where an agency has supplied a care worker
- the extent to which this new offence applies to care workers employed by an individual exercising the right to self-directed support;
- the extent to which this new offence applies to an individual employing their own personal assistant; presumably there is no intention to consider a person employing their own personal assistant to be a ‘care provider’ for the purposes of this Bill
- section 28 (1) (d) relates to ‘care worker’ but more readily appears to relate to a ‘care provider’ while 28 (3) (b) relates to ‘care provider’ but appears to more readily relate to ‘care worker’.

Coalition of Care and Support Providers (CCPS) and the Workforce Development Network (WDN)