InsurewithCare

in collaboration with

Bevan Brittan

Legal Services for Independent Healthcare Providers

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CARE QUARTERLY

A quarterly update summarising recent Government publications, legislation, cases and other developments relevant to those involved in the care sector.

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Access to Information

The **General Data Protection Regulation (GDPR)** took effect on 25 May 2018 and replaced the Data Protection Act 1998. The Information Commissioner's Office (ICO) has publicised **general guidance on GDPR**. This is supplemented by **guidance for health and social care** which is produced by the Information Governance Alliance and published by NHS Digital.

Using data in the NHS: the implications of the opt-out and GDPR. The safeguards governing the use of personal data, including patient data, changed on 25 May 2018. This King's Fund briefing explains the implications of these changes for the use of patient data.

See also **Five ways patient data is saving the NHS** that looks at five case studies of patient data being used in the NHS.

New Toolkit to help keep information safe. NHS Digital has launched the new Data Security and Protection Toolkit, replacing the previous Information Governance Toolkit, to help keep patient information safe. The Data Security and Protection Toolkit is an online self-assessment tool that enables health and social care organisations to measure and publish their performance against the National Data Guardian's ten data security standards. All organisations that have access to NHS patient data and systems – including NHS Trusts, primary care and social care providers and commercial third parties – must complete the Toolkit to provide assurance that they are practising good data security and that personal information is handled correctly.

Data Protection (Charges and Information) Regulations 2018 (SI 2018/480): these regulations, which came into force on 25 May 2018, set out the circumstances in which data controllers are required to pay a charge, and provide information, to the Information Commissioner (IC), following the introduction of the General Data Protection Regulation (GDPR) regime. They replace the previous regime under the Data Protection (Notification and Notification Fees) Regulations 2000 (SI 2000/188). The regulations set out the different charge levels for different data controllers, which are based on the income required to enable the Information Commissioner's Office to adequately deliver on their expanding remit following the implementation of the GDPR. The charge levels have been increased from the current level of fees to reflect the increased responsibilities of data protection supervisory authorities such as the IC under the GDPR.
11 April 2018

Adult Social Services

Welsh Government: New requirements to ensure care workers are treated fairly come into force: announces that new requirements to ensure care staff who look after people in their own homes are treated fairly and people receiving care experience the best possible services have come into force in Wales.
2 April 2018

House of Commons Library: Changes to the Personal Independence Payment eligibility criteria: on 19 January 2018 the Government announced that it accepted a High Court ruling that controversial changes made in March 2017 to the criteria for the PIP mobility component for people experiencing psychological distress were unlawful. This Commons Library briefing gives background information to the changes that have now been overturned. It will be updated in due course to take account of subsequent developments. In the meantime, this paper gives information on what the latest announcement means for PIP claimants.
19 April 2018

Healthwatch: Six things you should expect from social care support: people have told Healthwatch that

they want to feel listened to and involved in decisions about their social care. This web page lists six things that people should expect from care services, according to new NICE guidelines.
23 April 2018

DHSC: Carers action plan 2018 to 2020 – Supporting carers today: sets out the cross-government programme of work to support carers over the next two years, ahead of the forthcoming Social Care Green Paper which will set out long-term sustainable solutions for the social care system. It is structured around five themes: Services and systems that work for carers; Employment and financial wellbeing; Supporting young carers; Recognising and supporting carers in the wider community and society; and Building research and evidence to improve outcomes for carers.The measures include:

- a new scheme to improve employment support for carers, promoting best practice for flexible working, to enable carers to continue to work alongside their caring role;
- a new £500,000 Carer Innovations Fund to promote creative and innovative ways to support carers; and
- funding for a review of best practice in identification of young carers and access to support.

The Green Paper will also address other areas of importance to carers, including improving the quality of care, increasing personalisation and ensuring a sustainable financial system for care.
5 June 2018

Children's Services

Ofsted: Memorandum of understanding between Ofsted and DfE in respect of secure children's homes: sets out the working arrangements between Ofsted and DfE to facilitate the discharge of the Secretary of State for Education's functions and the DfE's wider responsibilities regarding secure children's homes so that they offer safe, good quality care to children.
4 April 2018

Ofsted: Guidance for children's homes providers – Notifying Ofsted of a serious event: guidance to providers on their duty under reg.40 of the Children's Homes (England) Regulations 2015, to notify Ofsted about the most serious incidents. It states that the number of notifications has continued to increase and many of the notifications received do not fall into the category of 'serious'. The guidance sets out Ofsted's expectations in respect of notifications and is intended to help providers reduce the number of notifications that they send to Ofsted.
11 April 2018

Ofsted: Early years inspection handbook: describes the main activities that inspectors undertake when they conduct inspections of early years providers in England under ss.49 and 50 of the Childcare Act 2006 and the Common Inspection framework. The handbook also sets out the judgements which inspectors will make and on which they will report.
4 April 2018

Independent Inquiry into Child Sexual Abuse: interim report: this report sets out what the Chair Prof. Alexis Jay, and the Panel consider to be the key emerging themes from the Inquiry's work to date. The report identifies our reluctance as a society to discuss child sexual abuse openly and frankly and calls for this to be addressed. It also identifies the lack of transparency by some leaders on the failure of their institutions to protect children from sexual abuse. It contains clear accounts of child sexual abuse and the profound and lifelong impact it has on them. The Chair and Panel have identified steps which they consider will better protect children from sexual abuse and have made 18 new recommendations to government, the police and others.
25 April 2018

Vulnerable children and social care in England: a review of the evidence. New research from the Education Policy Institute (EPI) examines the state of the children's social care system in England. It brings together the latest data on children in need, intervention rates, staffing levels and funding provision.

Health and Social Care

NHS England: Breaking down barriers to better health and care: guidance on how NHS organisations and local councils in England are moving from fragmented services to local partnerships and integrated care systems in order to meet the health needs of the population.

7 June 2018

CMA: Care Homes for the elderly – Draft consumer law advice: seeks views on draft CMA advice for providers of residential and nursing care homes for people in the UK over 65 on their consumer law obligations. The draft advice covers a range of issues including the provision of upfront information, contract terms and business practices, providing services with reasonable care and skill, and complaints-handling. It follows the CMA's year-long market study into the residential and nursing care home sector in the UK for people over 65, which found that there is a risk of residents being treated unfairly and that some care homes may potentially be breaching consumer law. The consultation closes on 12 July 2018.

31 May 2018

OPG pilot scheme to help families at war over power of attorney. Families in dispute over power of attorney are to be assigned mediators under a pilot scheme to be run by the Office of the Public Guardian (OPG). The OPG will fund professional help for families over issues such as inheritance or control of finances.

Case Law

Calderdale & Huddersfield NHS Foundation Trust v Sandip Singh Atwal [2018] EWHC 961 (QB). Allegations of contempt of court were found proved against an individual who had fraudulently exaggerated the continuing effect of comparatively minor injuries which were negligently treated at a hospital.

Evans v Alder Hey Children's NHS Foundation Trust [2018] EWCA Civ 805. An application for habeas corpus, by the parents of a terminally ill and catastrophically brain-damaged child, so they could remove him from a hospital which the High Court had directed to withdraw artificial ventilation and provide only palliative care, was misconceived. The child had not been deprived of his liberty and the parents did not have an unfettered right to make decisions for him which the High Court had already determined were not in his best interests. Those best interests were paramount.

NHS found liable for brain damage after not telling refugee mother how to feed baby. The family of a child who was brain damaged after hospital staff did not explain the importance of feeding a newborn have won their personal injury claim at the High Court, where a baby delivered by caesarean section at King George Hospital in Goodmayes, northeast London, in July 2009 to parents who were Tamil refugees.

Mental Health

The Government's Green Paper on mental health: failing a generation. A House of Commons Education Committee and House of Commons Health and Social Care Committee publication responds to the Department for Education and the Department of Health and Social Care's Green Paper on Transforming Children and Young People's Mental Health Provision. It highlights concerns including that: the narrow scope does not take several vulnerable groups into account, and the proposals put significant pressure on the teaching workforce without guaranteeing sufficient resources; and there is little or no attention to prevention or early intervention.

Funding supported housing for all: specialised supported housing for people with a learning disability. This report estimates that the specialised supported housing (SSH) sector is more than double the size of previous estimates and that demand for SSH is rising. The research also finds that living independently with support in the community has a positive impact on wellbeing for people with a learning disability. SSH is a housing alternative for people with complex needs who might otherwise have lived in residential care, or NHS provisions such as 'secure' accommodation.

The independent review of the Mental Health Act: interim report. This independent review was set up to look at how the legislation in the Mental Health Act 1983 is used and how practice can improve. This interim report gives an update on the review's findings and the areas it will look at next. It includes service user and carer surveys; focus groups; stakeholder workshops; a call for evidence; and the findings from wider discussions with organisations and professionals. The review will examine the issues as set out in the report before making its final recommendations.

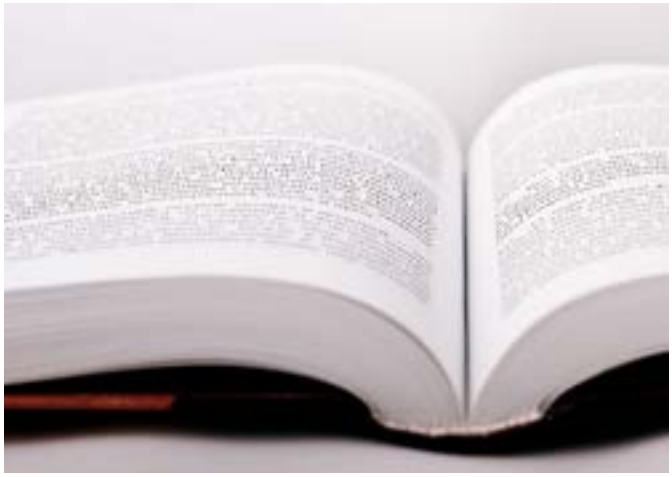
Education

DfE: New measures to support children with SEND: reports that 94% of young people with special educational needs or disabilities (SEND) have had their care reviewed prior to the April deadline, as part of the Government's introduction of new Education, Health and Care (EHC) plans. DfE has announced 14 new special free schools across the country that will create more than 1,100 school places for children with multiple learning needs, including children with autism and mental health needs. The press release also announces an additional £200,000 funding for local authority regional SEND coordinators, and the launch of a national trial to give the SEND Tribunal new powers, enabling parents and young people to appeal decisions on the social care and health parts of their EHC plan alongside their existing rights on the education element.
29 March 2018

Procurement

Crown Commercial Service: Public Sector contract: the CCS has published the Core Terms and generic schedule templates that make up the Public Sector Contract standard template for framework contracts for common goods and services. It says that when setting up a new framework contract, CCS will use: the standard core terms (used in every procurement), and relevant schedules (some schedules must be used, while others are optional). These schedules are templates. They will be customised for every procurement by CCS and will be found in the bid pack for new procurements.

1 May 2018



Bevan Brittan: Procurement Bytes on Supply Chain: we have published three new articles in our Procurement Byte series:

- **Crown Commercial Service Procurement Policy Note PPN 01/18:** comments on the new PPN Action Note 01/18 "Supply Chain Visibility" that sets out two new requirements aimed at assisting suppliers, including SMEs, in bidding for work in Government supply chains; and
- **CCS consultation on Prompt Payment by Government Suppliers:** looks at the new proposals to include the issue of whether a supplier has demonstrated a fair, effective and responsible approach towards payment of its supply chain as a selection criterion or as a ground for exclusion in major government contracts.
- **Procurement Byte on Supply Chain (3 of 3) – The Reporting on Payment Practices and Performance Regulations 2017.** In this, our third Procurement Byte on Supply Chain, we consider the requirements of a recent piece of legislation aimed at ensuring the transparency of large companies in their payment practices and performance.

Employment/HR - Publications/Guidance

1. Retention from an organisational development perspective.

Case study of how University Hospitals Bristol NHS Foundation Trust tackled the issue of staff retention from an organisational development perspective.

2. Freedom to Speak Up: guidance for NHS trust and NHS foundation trust boards.

Effective speaking up arrangements protect patients and improve the experience of NHS workers. This guidance contributes to the need, set out by Sir Robert Francis in his Freedom to Speak Up review, to develop a more open and supportive culture that encourages staff to speak up about any issues of patient care, quality or safety. The accompanying self-review tool supports the standards laid out in the guidance. It supports trusts' review around the eight key lines of enquiry set out in the well-led framework.

What you don't know might hurt you

Anne Palmer on a landmark discrimination ruling: knowledge of an employee's disability is not required.

Alert! Supreme Court: Pimlico plumber was a 'worker'

13 June 2018

Worker, employee or independent contractor? The question of where the line is drawn between these staffing categories is currently a hotly contested topic – and the Supreme Court has just published a landmark decision on this issue, finding that a purportedly self-employed plumber was, in fact, a 'worker'.

More information

This publication has been compiled by Bevan Brittan's care team. If you would like more information on any of topics contained within this publication, please contact:

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Bevan Brittan

Bevan Brittan provides support for independent sector providers across the healthcare, adult, social care and the children's social care and education sectors. For more than a decade we have been consistently ranked by Chambers UK Guide as a leading firm in Healthcare.