InsurewithCare

in collaboration with

Bevan Brittan

Legal Services for Independent Healthcare Providers and Insurers

SPRING 2019 EDITION

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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Children

Publications and Guidance

Mental health services for children and young people: Seventy-Second Report of Session 2017-19 A Committee of Public Accounts report states that although there is a welcome focus on improving NHS mental health services for children and young people, there are still significant gaps in the data to monitor progress. It warns that most young people with a mental health condition do not get the treatment they need, and under current NHS plans this will still be true for years to come, while many face unacceptably long waits for treatment. It also notes that tackling mental health issues among children and young people requires significant cross-departmental cooperation, but current approaches do not ensure that this happens in practice.

Safeguarding children and protecting professionals in early years settings: online safety considerations for managers. This document is to help managers of early years settings (including wrap around care for the early years age group) ensure their online safeguarding practice is in line with statutory requirements and best practice.

Consultation

Survey of the Mental Health of Children Looked After by Local Authorities in England NHS Digital. An NHS Digital consultation seeks views as part of its survey of the mental health of children and young people who are looked-after by the local authority such as in foster care, residential care, unaccompanied asylum seekers and youth offenders. The survey also covers those children that have recently ceased to be looked after. Comments by 24 May 2019.

Bevan Brittan Updates

Criminal Prosecutions in Health and Social Care. Criminal prosecutions in the patient safety arena continue to rise, such as this recent case by the Health and Safety Executive against The Priory following the very sad death of **14-year old Amy El-Keria** whilst in the care of one of its hospitals in 2012.

How should local authorities capture new local safeguarding arrangements? There have been significant changes to safeguarding legislation recently, but it's fair to say that the impact of the changes has probably not yet been felt. However, the deadline for publishing the new arrangements – 29 June 2019 - is now only two months away.

News

Surrey boy with special needs spent too long in inappropriate school. Surrey County Council took 15 months too long to issue a disabled boy's Education, Health and Care (EHC) plan, and unfairly limited his father's ability to chase for updates, a Local Government and Social Care Ombudsman investigation has found.

Families officially launch legal challenge over SEN funding policy
Local Government Lawyer | Three families have applied to the High Court to ask for permission to challenge the government over how it provides funding to local authorities. The belief is that current government grants are leaving councils without sufficient money to fulfil their legal obligation of providing care for disabled pupils.

Social Care

Publications and Guidance

LGA responds to NHS Long Term Plan
The Local Government Association (LGA) are pleased the NHS Long Term Plan sets out an ambition to build a new service model for the 21st century with health bodies working in partnership with local government. However they believe that the ambition set out can only be fully realised if adult social care and public health services in councils are also properly funded.

Care home performance across England 2019.
A briefing from an older people's charity assesses the state of care home performance across England and looks at what is being done to tackle poor performance. The report uses publicly available inspection data from the Care Quality Commission to work out a total figure for the percentage of care homes in each local authority that are rated either "inadequate" or "requires improvement". It sets out how Independent Age wants to see care home quality develop and the factors likely to prove most important.

Reading care workers late getting medical attention for vulnerable woman
Local Government and Social Care Ombudsman. Care workers in Reading did not follow emergency procedures to ensure a vulnerable woman received the correct medical attention, the Local Government and Social Care Ombudsman has found. The woman was being cared for by Reading Borough Council's care provider, the Radis Group. The Ombudsman's investigation found faults with the care provider's actions, and also found the council's safeguarding investigation was not robust enough in identifying the faults.

Mental Health

Publications and Guidance

Discharge conditions that amount to a deprivation of liberty. An HM Prison and Probation Service publication sets out the Secretary of State's position on the discharge of restricted patients on conditions that involve a deprivation of liberty, following the Supreme Court decision in Secretary of State for Justice v MM.

Ordinary residence: anonymised determinations 2018. How the department resolves disputes in the health and social care sector when 2 or more local authorities cannot agree responsibility for meeting a person's eligible needs.

Mental Capacity (Amendment) Bill. This Commons Library briefing provides an overview of the Mental Capacity (Amendment) Bill, and the debates and amendments made during the Bills Lords stages, ahead of its Second Reading in the Commons on 18 December 2018.

Service model for people with learning disabilities and behaviour that challenges. NICE has published a draft quality standard for services for children, young people and adults with a learning disability (or a learning disability and autism) who also exhibit challenging behavior.

Cases

Welsh Ministers v PJ [2018] UKSC 66. This appeal considered whether a statutory power to impose conditions amounting to a deprivation of liberty can ever lawfully be 'implied' and whether the framework for Community Treatment Orders provides practical and effective protection for patients' rights under the ECHR rights. It also considered what the scope is of a tribunal's power to take into account ECHR rights. The Supreme Court unanimously allowed the appeal. The Court declared that there is no power to impose conditions in a Community Treatment Order which have the effect of depriving a patient of his liberty. The Court considered that there is no express power in the Mental Health Act 1983, s 17B(2) to impose conditions which have the effect of depriving a community patient of his liberty. It is a fundamental principle of statutory construction that a power expressed in general words should not be construed to interfere with fundamental rights such as the right to liberty of the person. The Court considered that there is no reason to suppose that Parliament would have included such a power in the Mental Health Act had it been thought of, and argued that a strong indication to the contrary is the fact that Community Treatment Order conditions cannot compel a patient to take his medication. **Court's Press Summary** and also **see commentary**.

VS v St Andrew's Healthcare [2018] UKUT 250 (AAC). The capacity that a patient had to have in order to make a valid application to the First-tier Tribunal in its mental-health jurisdiction should be put as follows: the patient had to understand that they were being detained against their wishes and that the tribunal was a body that would be able to decide whether they should be released.

R. (on the application of CXF) v Central Bedfordshire Council Court of Appeal (Civil Division), 20 December 2018. [2018] EWCA Civ 2852 The Mental Health Act 1983 s.117, concerning the provision of after-care services for patients who were detained for treatment but then ceased to be detained and left hospital, did not apply to a patient on escorted leave of absence from hospital. On the facts, the patient had remained detained for treatment even while on leave of absence, and he could not be said to be in need of after-care services while still being treated.

High Court sets June date for judicial review hearing over SEND funding policy
Local Government Lawyer.
A High Court judge has granted permission to bring a judicial review challenge over the Government's special education needs ("SEND") funding policy. The three claimants argue that councils are being left without enough money to fulfil their legal obligation of providing education for SEND pupils. The case will be heard in the High Court on 26 and 27 June.

News

Vulnerable patients at great risk under new laws Law Society As the Government prepares to push the Mental Capacity (Amendment) Bill 2018 through its final parliamentary stages, the Law Society said that 300,000 people vulnerable people will see their rights, specifically their right to liberty, removed by royal assent of the Bill. It highlights again that fewer cared for people will qualify for the protection of safeguards under the new scheme and their access to advocacy and independent professional support will be more limited.

Bevan Brittan Updates

Duty of Candour News Bulletin

Provision of mental health care to patients presenting at the emergency department. In November the Healthcare Safety Investigation Branch published its full report following its investigation into the provision of care to patients who present at emergency departments with mental health problems. **Toby de Mellow** reviews the report findings and the HSIB's Safety Recommendations, Observations and Actions.

Court of Protection Case Summary. Secretary of State for Justice v MM [2018] UKSC 60, Welsh Ministers v PJ [2018] UKSC 66 and Hertfordshire County Council v AB [2018] EWHC 3103 (Fam)

Regulation

Publications and Guidance

Telling patients the truth when something goes wrong - Evaluating the progress of professional regulators in embedding professionals' duty to be candid to patients A report by the Professional Standards Authority explores how UK professional regulators have attempted to encourage healthcare professionals to be open and transparent when something has gone wrong in the care they or someone else have provided. It finds: regulators have made progress with initiatives to encourage candour; many of the barriers to professionals being candid remain the same as in 2014; and regulators could create more case studies of candour scenarios to better explain to professionals when to be candid and the regulatory consequences of not being candid.

News

CQC to review the use of restraint, prolonged seclusion and segregation for people with mental health problems, a learning disability and/or autism.

Bevan Brittan Updates

Guidance for Care Homes on Terms and Conditions

Information Sharing and Data

Publications and Guidance

GP premises: the patient perspective Poor confidentiality at reception desks, issues with access for disabled people and dated waiting rooms are some of the biggest problems highlighted by patients in a new report published by the Patients Association.

Outsourcing Oversight? The case for reforming access to information law. An Information Commissioner's Office publication argues that freedom of information laws should be extended to all bodies including those in the private sector that provide public services. It claims that present laws, particularly the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, are too restrictive as members of the public may request information only from public authorities and publicly owned bodies, such as central and local government, the police, local authority schools and hospitals.

News

ICO begins action against care homes for failure to pay new data protection fee.

Insurance

https://www.bevanbrittan.com/insights/articles/2019/financial-services-providers-should-brace-themselves-for-some-significant-ombudsman-changes/

Employment and HR

Publications and Guidance

Guidance for sharing staff in integrated care organisations NHS Employers has developed guidance for organisations delivering integrated care to share workforce.

Update on payments for sleep-in shifts in social care: February 2019
LGA. The purpose of this briefing is to update councils on latest developments regarding payment of overnight sleep-in shifts in adult social care. Although this briefing focuses on adults, the issue is also relevant to children's services.

Bevan Brittan Updates

Mencap / 'sleep-ins' decision being appealed

Inquests

Publications and Guidance

Final report: Review of legal aid for inquests
A Ministry of Justice (MoJ) final report of an evidence based review of the provision of legal aid for inquests. It examines the evidence submitted as part of the review, considers the key concerns identified by respondents, and identifies potential areas for improvement to the inquest process as a whole. In addition, the MoJ has also completed a separate post-implementation review (PIR) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) Pt 1, which made changes to the provision of legal aid, and Pt 2, which focuses on civil litigation costs.

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.

The **Legal 500** 2018, Insurance Individual (London) award has been won by our Senior Partner, Joanne Easterbrook.