Hospice UK response to Health and Care (Staffing) (Scotland) Act 2019 - draft statutory guidance: consultation

September 2023

Question 1(b)

Please detail any specific areas of the guidance that you found unclear or hard to understand.

Section 4

Section 5

Hospice UK is the national charity for hospice and end of life care. All charitable hospices in Scotland are our members. There are two areas of the statutory guidance that we felt could be clearer, which relate to Chapter 4 and Chapter 5 of the draft guidance.

The first area is around the expectations on third party providers of health care services, such as charitable hospices, when their services are being secured by health boards/integration authorities. Our hospice members have raised concerns that they are unsure what the implications of the Health and Care (Staffing) (Scotland) Act are for them and how they might be expected to demonstrate they are meeting the guiding principles, in order for health boards/integration authorities to meet their duties under the Act.

We understand that the duty is on the health board/integration authority not the third party provider, however there is little detail on how health boards/integration authorities might seek assurance from third party providers that the general principals are being met, or the role of external scrutiny/inspections of independent healthcare providers from Healthcare Improvement Scotland in providing this assurance.

Secondly, we are unclear from the draft guidance what the duties are on integration authorities in relation to health care services that have been delegated to them under the Public Bodies (Joint Working) (Scotland) Act 2014. Section 4 of the guidance states it applies to Health Boards but does not list integration authorities, and makes only a passing reference to the Public Bodies Act. Do integration authorities have a duty to comply with the guiding principles for health and care staffing in relation to health care services they have delegated responsibility for? If so, they should be clearly listed in Chapter 4 of the guidance.

This also applies when integration authorities secure health care services from third party providers. Currently Chapter 5 ‘Planning or securing the provision of health care from others’ states that it applies to health boards, but not integration authorities. There is a passing reference in Chapter 5 about integration authorities having a similar requirements when planning or securing the provision of care services, but it does not specifically talk about when integration authorities secure health care services.

For example the responsibility for palliative care services (outwith of a hospital) is delegated to integration authorities. In some areas of Scotland, integration authorities secure palliative care services from charitable hospices via Service Level Agreements (SLAs). Therefore do integration authorities have a duty, when they are planning or securing health care services from a third party provider such as a charitable hospice, to have regard to the guiding principles for health and care staffing and to ensure that the third party has appropriate staffing arrangements in place? If so, Chapter 5 should be explicit that it also applies to integration authorities where this relates to
securing health care services from third party providers which have been delegated under the Public Bodies Act.

**Question 2(a)**

**Do you think the guidance is comprehensive, in that it contains sufficient detail to be able to support organisations in meeting obligations placed on them by the Act?**

No

**Question 2(b)**

**Please detail any specific areas where you felt information was missing or incomplete.**

In Section 5.5 it would be helpful if this could specifically mention arrangements with a charitable organisation, such as a hospice, to show that this also applies to areas where third sector services are being commissioned. It would also be helpful to include an example or specifically mention that this applies to an integration authority who secures the provision of a health care service.

There are a few areas to unpick in relation to how the Act will impact on third sector providers of health and care services, such as charitable hospices. The areas of concern that Hospice UK is hearing from our hospice members, that it would be helpful for the statutory guidance to provide more detail around include:

- How are health boards/integration authorities expected to carry out due diligence when planning or securing a service from a third party to consider the guiding principles and the need for appropriate staffing arrangements in place?

- What the expectations on hospices to demonstrate assurance with the guiding principles and appropriate staffing arrangements? Hospices are keen to know whether their current approaches are sufficient to meet the requirements of the Act. We are keen that charitable hospices have the support they need to do this and are also aware of the approach that NHS specialist palliative care services will need to follow, so that charitable hospices are not taking a very different approach to NHS colleagues.

- How will Healthcare Improvement Scotland be looking at this as part of their independent healthcare inspections of hospices?

- How there will be co-ordination between Healthcare Improvement Scotland and the Care Inspectorate for hospices who also have care at home services registered by the Care Inspectorate and are regulated by both bodies?

- Are there any considerations needed in situations where clinical staff may be employed by the NHS but are also working in a hospice or vice versa?

- What happens in situations where there is no agreed SLA in place between a hospice and integration authority/health board or where there are disagreements between them e.g. if statutory funding provided to a hospice is insufficient for hospices to ensure appropriate staffing levels?

- Is there any mechanism for concerns around staffing in third sector health and care providers to be fed up to influence wider workforce planning and pay negotiations?
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