

**SCOTTISH HEALTH COUNCIL SUBMISSION
TO THE HEALTH AND SPORT COMMITTEE
OF THE SCOTTISH PARLIAMENT
ON THE PATIENT RIGHTS (SCOTLAND) BILL**



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THE SCOTTISH HEALTH COUNCIL

The Scottish Health Council was established in April 2005 to promote improvements in the quality and extent of patient focus and public involvement in the NHS in Scotland. It supports and monitors work carried out by NHS Boards to involve patients and the public in the planning and development of health services, and in decisions that affect the operation of those services.

GENERAL COMMENTS

The Scottish Health Council welcomes the introduction of the Patient Rights (Scotland) Bill which is designed to support and strengthen patient participation. We firmly believe that there is merit in consolidating and adding to existing rights as this Bill sets out to do. Including these rights in primary legislation serves to underline their importance.

The Scottish Government's commitment to raising awareness of these rights with NHS staff and with patients and the public is particularly welcomed by the Scottish Health Council. In order for people to exercise their rights, they must be informed about what these rights are and have access to any support necessary to exercise them. We therefore welcome the Scottish Government's commitment to make additional investment in support services (independent advocacy and Translation, Interpreting and Communications Support).

NHS staff have a crucial role to play in respecting and promoting patient rights and they must be provided with appropriate training and support to enable them to carry out this role. It is encouraging that this is recognised in the Financial Memorandum with plans for relevant work to be undertaken by NHS Education Scotland.

We are aware that there have been questions raised previously on the need for the Bill and it is possible that some patient and voluntary organisations may feel that the provisions do not go far enough. We hope that these organisations and others representing patient and public interests will take the opportunity to have

their say to the Committee. Some issues that have been raised during the earlier consultation may require further consideration such as:

- How some rights will apply to particular services, for example NHS dentistry services
- Rights of access to services for people in remote and rural communities
- Whether there should be rights to particular treatments.

Given the importance of patient rights for the people of Scotland and all those working within the NHS, it is essential that the Bill's impact is monitored and evaluated. We note that it is intended that "...the effects of the Bill will be monitored through the Participation Standard" (Financial Memorandum, paragraph 136). As the Scottish Health Council has lead responsibility for developing the standard and overseeing its use in NHSScotland, we look forward to further discussions with the Scottish Government, NHS Boards and other stakeholders as to how this might be best achieved.

DETAILED COMMENTS

This section of our submission addresses the points highlighted in the Committee's call for evidence.

Patient rights, health care principles, criteria

The Scottish Health Council believes that the rights and principles outlined in the Bill are sound and reflect matters which are of obvious importance to patients. We are conscious however, that the language of 'rights' can be powerful and may create expectations about entitlement and enforceability that will not be met in practice. It is clear in the Bill that these rights are subject to significant qualifications and limitations. Section 2 specifies that the rights of individuals must: be balanced against those of other patients; be subject to the exercise of clinical judgement; and take account of resources available. Section 18 restricts the potential for legal action relating to the Bill, although it does not affect existing legal remedies such as judicial review or negligence actions.

We fully understand the need for such qualifications and limitations to exist, particularly in the current financial climate. However, it is crucial that in any activity to promote patient rights, these qualifications and limitations are made explicit.

Treatment time guarantee

The importance of treatment being provided to patients within a reasonable time is self-evident. On that basis, we expect that the provisions within the Bill will be very well-received by patients across Scotland.

The use of the term 'guarantee' may create expectations that treatment will definitely be provided within the 12 week timescale. However, as acknowledged in the Bill, there will inevitably be occasions when the timescale is not met, and whilst patients will be entitled to an explanation and certain information, they will not be entitled to any compensation. This is understandable, but in order to manage expectations, it is vital that patients are fully informed about this in any communication or promotional activity about the guarantee.

Complaints and feedback system

Effective systems for complaints and feedback are vital for improving the quality of services and patient experience within the NHS. In 2009, the Scottish Health Council published: *Making it better: Complaints and feedback from patients and carers about NHS services in Scotland*. This research has helped to inform the development of the Bill. We have been working with key stakeholders (including NHS and Independent Advice and Support Service staff, voluntary and community groups and patients) to consider how the recommendations from this research can be implemented across the NHS and will be publishing our findings later this year.

One of the main themes from the *Making it better* research was that it should be easier for patients to give feedback, as many people wish to give their views but do not wish to make a formal complaint. On that basis, the Scottish Health Council welcomes the provisions in the Bill relating to feedback. It is essential that people are provided with a range of methods and opportunities to provide feedback in recognition of the fact that they may have different preferences regarding how and when they may wish to do this.

Patient advice system and the role of Patient Rights Officers

The Bill provides for the establishment of a patient advice and support service which will replace the Independent Advice and Support Service currently delivered by Citizens Advice Bureaux across Scotland. There is no doubt that a free and accessible service promoting and supporting patients to exercise their rights has, at least in theory, the potential to be of significant benefit both to the people of Scotland and to the NHS. However, we note that an evaluation¹ of the existing service identified a number of challenges regarding its delivery, including: developing a national brand; balancing expectations of stakeholders; promoting organisational and service learning; and agreeing suitable reporting arrangements with NHS Boards. It also noted a low level of awareness of the service generally within the NHS.

¹ Myers, F. 2009. The independent advice and support service: an analysis of patterns of activity, usage, and client profiles for Citizens Advice Scotland: final report.
www.cas.org.uk/newsandupdates.aspx

In order for the new service to deliver on the expectations within the Bill and be supported within the NHS, it is essential that the challenges mentioned above and any other learning points from the existing service are addressed.

Many patient and voluntary organisations already play an invaluable role in providing advice and support to patients about their rights. It is important that there are effective mechanisms by which the NHS can obtain patient feedback via these organisations.

FURTHER INFORMATION

Further information about the Scottish Health Council can be found on our website www.scottishhealthcouncil.org

Any queries regarding this submission should be directed in the first instance to Sandra McDougall, Head of Policy, Scottish Health Council, tel: 0141 225 5560 or email: sandra.mcdougall@scottishhealthcouncil.org

12th May 2010