Continuation of care (including aftercare)

Current law

Section 117 of the Mental Health Act 1983 places duties on both health and local social services to provide (free) aftercare services to people detained under Sections 3, 37, 47 or 48 of the Act until they are satisfied that the person is no longer in need of them. Recent court rulings have confirmed that there is no power to charge people for services under Section.117. In the Mental Health Act 1983 *"aftercare services"* are not defined but it tends to be those provided by health and social services for the purposes of the NHS and Community Care Act 1990.

The Draft Mental Health Bill 2004

The draft Bill limits authorities' duties to provide care to:

i) the provision of the compulsory components of the care while under a treatment order; and
ii) a period of six weeks following the date of discharge (Clause 68).

Alliance position

A duty to provide care set out in care plans

The Alliance believes there is a strong case for imposing a statutory duty of continuation of care on authorities. This should include a duty to provide the care and treatment set out in care plans and a right to ongoing care after discharge – both recommended by the Expert Committee. This is necessary to ensure vulnerable people continue to receive necessary services to avoid relapse.

We know from experience that currently care plans very often fail to be effectively implemented, with many patients not even knowing that they have one.[1] In her 2003 study, Diana Rose found that, on average, awareness of the Care Programme Approach and its elements was less than 50 per cent among service users and could be as low as five per cent.[2] The Government's view appears to be that current general duties of care on local authorities will suffice to ensure care plans are implemented. However this by no means guarantees the provision of services set out in care plans.

The draft Bill offers a significantly different, and considerably less satisfactory, position to that of the general duties set out in the new Mental Health (Care and Treatment) (Scotland) Act 2003. The Scottish Act places a general duty on local authorities to provide both "care and support services" (S.25) and "services designed to promote well-being and social development" to "persons who are not in hospital and who have or have had a

[1] *Just 1 Per cent* Rethink, 2003. A survey of 3033 people with severe mental illness of whom 1427 answered questions about care plans. 52% do not know their level of care, 48% do not have or do not know if they have a care plan.
[2] Rose, D., 2003. *Partnership, co-ordination of care and the place of user involvement* Journal of Mental Health, Volume 12 (1) 59-70

mental disorder". There is also a duty to co-operate with Health Boards and other services (S.30). Such a general duty means anyone discharged from a compulsory Order in Scotland should by law automatically receive those services they need.

The proposed disparity between England/Wales and Scotland also means that there will be inequalities between people who live in the different countries. This is likely to cause particular confusion to both patients and service providers when people move to and fro across the border.

Care after discharge from a compulsory order

The current Section 117 duty on authorities to provide aftercare to people who have been detained in hospital is crucial in ensuring people remain engaged with services on discharge, receive continuing support and do not relapse. The Bill's removal of this duty places the burden for continuation of care on a patient's care plan, which authorities will have no statutory obligation to implement.

The six-week period for free continuation of care appears randomly selected and takes no account of individuals' needs, nor of local gaps in service provision. Many people fail to get in place the services they need for recovery for several weeks or even months because of chronic shortages of accommodation, resources and staff in the community. Discharge from a compulsory order on the grounds that the criteria for continued compulsion are no longer met is not the same as saying a person will be fully recovered. In fact, people are often likely to need quite intensive continuing support. The fact that they have been subject to an order necessarily should indicate that they have been seriously ill and may not be good at engaging with services.

Making people pay for their care after six weeks will act as a deterrent to many from continuing to engage with services and could seriously endanger these people's recovery. Treatment regimes that involve psychotherapy or other psychological interventions rather than drugs are not able to be completed in a six-week time span and usually require at least a year.

The right to aftercare flows from the principle of reciprocity. If a person has his/her liberty taken away there is a corresponding duty to provide care for them. As the Richardson Committee stated in 1999:

"… The obligations flowing from reciprocity do not end immediately on discharge from compulsion. A person who has been subject to a period of compulsion would have a right to ongoing care for a specified period after compulsion, although there would be no obligation in the patient to accept that care… [the rights] would impose duties on health and social services authorities in addition to any general duties they might possess." [3]

Accordingly, we propose that the six week limit on free aftercare services should be dropped from the Bill.

[3] *Review of the Mental Health Act 1983: Report of the Expert Committee*, November 1999, para.3.9, p.28

Duration of aftercare

The Alliance believes that continuation of care should be provided until such time as the patient no longer needs it

The Alliance's believes that the new Bill should seek to replicate the duties set out in the 1983 Act - i.e. care should be provided *"until such time as [both authorities] are satisfied that the person concerned is no longer in need of such services."*

As the Department of Health has made clear, this duty does not require free aftercare indefinitely but only so long as the need persists.[4] The Government argues that this provision favours detained over voluntary patients - they may even be in adjacent beds at some point. The House of Lords rejected this argument as "too simplistic", holding that compulsorily admitted patients may pose greater risks upon discharge to themselves and others than compliant patients.[5]

As we have noted, it would be potentially damaging to patients' recovery to remove this current duty, and may lead to people disengaging from services. This argument has been accepted by the Joint Scrutiny Committee in Recommendation 70 of its report:
"*We recommend that there be a duty on health and local authorities in each case to draw up a discharge plan and provide the care in the plan, and that the provisions of Section 117 of the Mental Health Act 1983, relating to free aftercare based on need, be included in the Bill proper when introduced.*"[6]

The Expert Committee suggested that the Tribunal, rather than the clinical team, might determine how long free care following discharge from an order might last, with the clinical team given the power to seek an extension if appropriate or to request a formal early termination if the patient indicates a consistent desire to distance him or herself from care. Although the Alliance considers this proposal has some merit, it would add further to Tribunals' and clinical teams' tasks. On balance, the Alliance prefers to support maintaining the present position by a replication of Section117 of the present Act in the draft Bill, leaving the judgment to local decision.

Any decision to cease 'continuation of care' services to a patient who has previously been discharged from an Order needs to be taken by the care coordinator, since the clinical supervisor may have ceased involvement. There should be a duty on the care coordinator to consult the patient, any significant carer, the nominated person and relevant professional care staff prior to a determination to end the 'continuation of care' requirements.

Continuation of care should be free

Section 117 of the current Act gives no powers to charge for aftercare services provided. This helps to prevent the withdrawal of services in the event of an individual being unable to pay for care. It also recognises that 'continuation of care' services in the community (which may include residential accommodation) are preferable to more expensive residential / hospital alternatives. In addition, the removal of free care after discharge will establish a perverse incentive to maintain people on compulsory orders (where care is free) even if they no longer technically meet the criteria.

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[4] Department of Health Circular 2000 (3)
[5] *R v. Manchester City Council exp Stennet* (2002) UKHL 34
[6] Joint Scrutiny Committee 2003 *Report of the Joint Scrutiny Committee on the Draft Mental Health* Bill, Volume I, p.156.

Further issues

The following issues are also important to ensure full and effective delivery to people under compulsion:

- A right to ‘continuation of care’ from the decision to begin assessment and initial treatment, covering all periods (including leave of absence from hospital) where the patient is subject to compulsory treatment under a resident or non-resident Order, and a duty on authorities to provide all care set out in patients’ Care Plans.

- A duty on health and local authorities to assess local needs arising from the implementation of new non-residential community orders.