New legal powers to act for ‘incapacitated’ patients

By Nick Lipley

THE MANAGEMENT of patients or clients who are mentally incapacitated will be made easier under new directions issued by the Lord Chancellor last week.

The plans, set out in a ‘charter for carers’, say friends, relatives or even nurses can be given legal powers to decide on healthcare and personal welfare issues.

They will affect the care of an estimated 100,000 people who are mentally incapacitated, for example through stroke, dementia or injury.

The RCN has welcomed the plans as it says they will clarify who has the final say over treatments for mentally incapacitated patients or clients.

Solicitor and policy adviser Helen Caulfield said: ‘There will be a much stronger legal framework within which healthcare decisions can be made. This will give nurses a clearer framework in which to carry out their advocacy.’

However, the Lord Chancellor has rejected calls to legislate on the issue of advanced directives, or ‘living wills’.

The policy document, Making Decisions, points out that living wills are already considered binding.

It says patients may transfer responsibility for decisions about their treatment to a third party, and says a new Court of Protection should be set up to tackle areas of dispute that still arise before they are taken to the High Court.

This may involve appointing ‘managers’, if patients or clients have not appointed attorneys themselves.

Ms Caulfield said: ‘For the first time, people who have a mental incapacity have a legal system that provides them with protection.’

She said nurses may be asked to take on the roles of patient-appointed attorneys or court-appointed managers.

For example, if someone with learning difficulties had a variety of health needs and had been working with a nurse for some time, the court might decide that that nurse would be in the best position to be manager, she explained.

There is no indication when the proposals will be implemented.

All nurses’ care to be scrutinised

THE PERFORMANCE of every nurse in England and Wales is to come under scrutiny in the next four years under the newly launched watchdog body the Commission for Health Improvement (CHI).

Starting this week, teams of nurses, doctors and other health professionals will inspect every hospital, primary care group and local health group in a government drive to boost the public’s confidence in the NHS.

Poor practice will be ‘weeded out’ of the health service according to health secretary Alan Milburn, who will be given the power to remove the chair and the board of under-performing NHS bodies.

Mr Milburn said that serious incidents and unacceptable standards of care in the health service have dented the confidence of patients in health professionals and organisations.

CHI will monitor how patients’ complaints are dealt with, review key priority areas such as cancer care, ensure that hospitals meet national guidelines in providing treatment, and require healthcare staff to take part in external audits of their work.

The RCN welcomed the ‘concept’ of CHI as a means of improving patient care. However, Pippa Gough, director of policy, said: ‘It must provide health professionals with positive support to improve patient care such as privacy in treatment, and appropriate nutrition. Above all, it must avoid the temptation to confuse poor performance with inadequate resources.’

Unison professional officer Paul Chapman said: ‘We are very much in favour of this as a means of ensuring standards are maintained and improved.’

In brief

A new competition has been launched for workers employed in the healthcare sector who discover a practical solution to a health and safety problem. The ‘working well together in health care’ competition has been launched by the Health and Safety Commission’s Health Services Advisory Committee (HSAC) and Health at Work in the NHS. The competition is designed to acknowledge good work and innovative thinking.

A committee offering expert advice on all matters relating to health and nutrition has been formed. The Scientific Advisory Committee on Nutrition (SACN) will offer support to the four health departments and the new Food Standards Agency (FSA) by giving advice on the scientific aspects of health and nutrition. SACN will succeed the current Committee on Medical Aspects of Food and Nutrition Policy (COMA) which has run for the past 36 years.

The British Medical Association is calling for the regulation of complementary and alternative medicines, saying that virtually anyone is free to practice irrespective of his or her training. The association is calling for each therapy to have its own regulatory body, which would keep a register of competent practitioners and operate an enforceable ethical code linked to an effective disciplinary mechanism.

Rural, deprived and remote communities in Scotland are set to receive a fairer share of the health budget. The Scottish Executive is expected to accept a change in the formula for budget allocation proposed in the Fair Shares for All report. The RCN in Scotland welcomed the proposals. Acting RCN Scottish secretary Margaret Pullin said: ‘We need to spread the money more equitably so that health resources really are directed at those areas of greatest health need.’

Community nurses are being urged to alert patients living in sub-standard accommodation to seek help from a hotline this winter. The hotline, co-ordinated by the RCN and managers of the home energy efficiency scheme EAGA, was set up a year ago to raise awareness of support available for people living in cold, damp housing. The number for the hotline is 0800 072 9001

‘Charter for carers’ will improve management of mentally incapable patients

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