

Mental Capacity (Amendment) Bill [HL]

AMENDMENTS

TO BE MOVED

IN COMMITTEE OF THE WHOLE HOUSE

[Supplementary to the Marshalled List]

Amendment
No.

Schedule 1

LORD MACKAY OF CLASHFERN
BARONESS HOLLINS

50A★ Page 13, line 36, at end insert –

“Clinical ethics committees

- 20A(1) The Secretary of State must by regulations made by statutory instrument make provision for all NHS bodies to have access to a clinical ethics committee.
- (2) The main objective of a clinical ethics committee is to provide advice on clinical ethics to professionals on matters relating to Schedule AA1.
 - (3) The regulations in sub-paragraph (1) must make provision for the membership, funding and constitution of the clinical ethics committee.
 - (4) The regulations in sub-paragraph (1) may make provision to require certain cases to be referred to a clinical ethics committee, such as in cases where a dispute has arisen.
 - (5) The Secretary of State must review the operation of clinical ethics committees and prepare and publish a report on the outcome of the review before the end of the period of three years beginning with the day on which this paragraph comes into force.
 - (6) A subsequent report must be published before the end of each period of three years beginning with the day on which the previous report was published.
 - (7) The Secretary of State may arrange for some other person to carry out the whole or part of a review under this section on the Secretary of State’s behalf.
 - (8) The Secretary of State must lay before both Houses of Parliament the reports published under this paragraph.
 - (9) A statutory instrument containing regulations under this paragraph may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

Clause 3

LORD MACKAY OF CLASHFERN
BARONESS HOLLINS

83A★ Page 3, line 33, at end insert –

“21ZB Medical mediation

- (1) The Secretary of State must by regulations made by statutory instrument make provision for medical mediation to be offered where arrangements are authorised under Schedule AA1, or are being proposed or carried out, and are not yet authorised, for the provision of serious medical treatment and a dispute has arisen.
- (2) For the purposes of subsection (1) a dispute means a disagreement between an NHS body and P, or anyone interested in his or her welfare, about the arrangements or any aspect of the care or treatment which is being enabled or would be enabled by the arrangements.
- (3) The regulations referred to in subsection (1) must provide for –
 - (a) formal notification to be issued to P, and anyone interested in his or her welfare, by an NHS body within 24 hours of reaching a determination to pursue a course of treatment with which it is reasonable to believe that P disagrees, or has not the mental capacity to consent;
 - (b) following formal notification, the right to engage a trained medical mediator within 48 hours;
 - (c) the establishment of a panel of experienced NHS professionals and ethicists who are available and willing to provide impartial second opinions about the medical and ethical considerations relevant to the care of P;
 - (d) the disclosure of all relevant medical materials, including raw data, together with any software necessary to access this data, to the mediator as soon as possible, and no later than 72 hours after issuing a formal notification;
 - (e) the confidentiality of the mediation process, which must be conducted and concluded without prejudice to prospective court proceedings; and
 - (f) the burden of the cost for both the mediator and expert assessments to be borne by the disputing NHS body, except where those opinions are sought from overseas.
- (4) No steps towards legal proceedings may be taken by either party until –
 - (a) the 48 hour period has expired and neither party has invoked the mediation process;
 - (b) the mediation process has proved unsuccessful; or
 - (c) the mediator forms the opinion, in good faith, that the dispute cannot be resolved through mediation.
- (5) Regarding subsection (3)(b) –
 - (a) the mediator may, at the request of the person or any other person with an interest in P’s welfare, solicit from the panel isolated interpretations of scans or other raw data;
 - (b) members of the expert panel must present their findings within seven days of being instructed by the mediator;

Clause 3 - continued

- (c) the mediator must be independent of the NHS body;
 - (d) a choice of independent medical mediators should be offered together with their full employment history and register of interests;
 - (e) the mediator must be approved by both parties to the dispute; and
 - (f) the mediation period must not exceed 28 days except at the request of the mediator, and by the written permission of representatives of the disputing parties.
- (6) Nothing in subsection (4) above prevents the NHS body providing or seeking court permission to provide life-saving treatment in an emergency.
 - (7) For the purposes of subsection (5) the mediator must be presumed to be independent unless a formal or informal connection to the NHS body is evident in their employment history or register of interests.
 - (8) The Secretary of State must review the operation of the medical mediation scheme and prepare and publish a report on the outcome of the review before the end of the period of three years beginning with the day on which this section comes into force.
 - (9) A subsequent report must be published before the end of each period of three years beginning with the day on which the previous report was published.
 - (10) The Secretary of State may arrange for some other person to carry out the whole or part of a review under this section on the Secretary of State's behalf.
 - (11) The Secretary of State must lay before both Houses of Parliament the reports published under this section.
 - (12) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

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4 September 2018
