

Young Carers' Legal Rights and the NHS

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As a result of campaigning by members of the Young Carers Alliance and others, the Health and Care Act 2022 strengthened the rights of carers of all ages, including those for young carers. This built upon existing rights, including duties for NHS bodies to cooperate with local authorities in the identification, assessment and support carers of all ages. A paper highlighting how this impacts on personalisation for the NHS has been previously produced by the Young Carers Alliance

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To comply with their legal obligations NHS organisations should identify children in the household, determine whether they are young carers and promote the provision of information and make referrals for assessment and support as necessary. This is particularly relevant when undertaking assessments for ongoing support such as; for health personal budgets, NHS Continuing Care, community mental health assessments, wheelchair assessments and in hospital discharge situations. These requirements, of course, also apply to the NHS's social prescribing services. Where these services are outsourced, these requirements need to be written into funding agreements.

The basis for this is explained in more detail below:

Care Act 2014

The Care Act 2014 provides the framework for local authority social care for adults and for carers. The act was, amongst other things, designed to promote whole family approaches and equality of esteem for carers. Its provisions include:

- Duties to identify and provide information to carers of adults, undertake carers assessments and provide preventative support.
- A well-being principle where councils have a duty to promote the health and well-being of people with support needs and carers
- Statutory eligibility criteria require councils to take account of the parenting responsibilities of adults being assessed.

- The accompanying Care and Support Statutory Guidance (in para 2.50) makes clear that young carers must not be left with inappropriate tasks or excessive levels of caring responsibilities.
- Provision for assessments for young carers in transition to adulthood (sections 63 & 64); where possible including a carers contingency plan for when they reach adulthood (NHS Long Term Plan)
- requirements for NHS bodies to cooperate with local authorities, including in relation to their responsibilities to carers and young carers

Children Act 1989 (as amended by the Children and Families Act 2014)

Section 17 of the Children Act 1989 was amended by section 96 of the Children and Families Act 2014; So as to enhance young carers' rights and its provisions include:

- duties to identify and provide information to young carers and parent carers
- undertaking young carers needs assessments (and parent carers assessments)
- a requirement to be proactive in identifying young carers and to provide preventative support.
- requirements for NHS bodies to cooperate with local authorities, including in relation to their responsibilities to carers and young carers

The requirements for local authorities in assessing the needs of young carers are set out in the Young Carers Needs Assessments Regulations 2015. These make clear that there is a duty to undertake an assessment for the child or young person with caring responsibilities on the appearance of need. This is appearance of need to the local authority and applies equally to both adult and children's services. It is helpful for local authorities to therefore give advice to social work and care management staff about, who does what and so a template memorandum of understanding "No Wrong Doors" is available to help facilitate this. [CLICK HERE TO LEARN MORE](#)

Statutory Guidance "[Working Together to Safeguard Children](#)" requires that an Early Help system is operated to provide preventive support and this is clear that the system must include young carers within its operation.

Carers (Recognition and Services) Act 1995

the provisions of identification, providing information and undertaking carers assessments also still apply to other carers of disabled children including grandparents, aunts, uncles, and adult siblings. The duty to cooperate under the Health Care Act 2006 applies here also.

Duties to Cooperate

Both the Care Act 2014 and Children Act 1989 include requirements for NHS bodies to cooperate with local authorities, including in relation to their responsibilities to carers and young carers. There are similar provisions in the NHS Act 2006 where section 72 requires NHS bodies to co-operate with each other and section 82 requires that this also extend to working with local authorities 'in order to secure and advance the health and welfare of the people of England and Wales'. Taken together with the duties to cooperate in the Care Act and Children Act, there can be no doubt that NHS bodies have a duty to cooperate in relation to carers of all ages.

The Health and Care Act 2022

The provisions of the Health and Care Act that relate to young carers have built on these duties to cooperate and are:

- A duty on Integrated Care Boards to consult carers (including young carers); both around service planning and commissioning
- A duty on Integrated Care Boards to consult carers (including young carers) about individual services relating to the patient for prevention, treatment and diagnosis
- A duty on NHS England to consult carers (including young carers)
- New powers for the Care Quality Commission to assess the performance of local authorities which includes for their duties to carers and ensuring a whole family approach is taken
- A duty on NHS hospital trusts to ensure that unpaid carers of all ages are involved as soon as feasible when plans for the patient's discharge are being made.
- Provision for statutory Hospital Discharge and Community Support Guidance which is mandatory and so is more directive than most other NHS guidance
- Clarity that the term carer applies to carers of all ages and therefore includes young carers

The statutory guidance for the act Working in Partnership with People and Communities indicates that carers (including young carers) should be involved in planning, codesign, decision making, delivery and evaluation at all levels. There is also a duty of transparency.

The Community Mental Health Framework (formerly Care Programme Approach)

The NHS England position statement (1 March 2022) reaffirmed that the Care Programme Approach (CPA) has been replaced by the national Community Mental Health Framework. One of the 5 core principles for implementing new arrangements is “meaningful engagement with families and carers.” The document also confirms that the new arrangements must be “Care Act compliant”. This means that when introducing new systems to replace the Care Programme Approach, it must not be assumed that carers are willing or able to provide any part of the persons care plan. Carers must be engaged in the assessment process as required by the Care Act and have access to carers assessments.

The requirement to be Care Act compliant also means that young carers must be identified and protected from having to undertake inappropriate caring tasks or excessive levels of caring. There is also an obligation to respond to the needs of young carers in transition to adulthood.

Where a young carer appears to need information or support they should be referred to a local young carers service for support or where appropriate referred to children’s services for a young carer needs assessment.

NHS Continuing Care

The “National framework for NHS continuing healthcare and NHS-funded nursing care” specifies that:

- NHS bodies have a responsibility to work in partnership with carers and young carers so that they can be better supported with their caring role. Healthcare professionals should be proactive in identifying carers and be sensitive to the level of support they need and desire.

- This approach should be reflected in any checklist and/or full assessment of eligibility for NHS Continuing Healthcare with carers and family members involved where appropriate.
- Carers and young carers must be told of their right to carers assessments and young carers needs assessments and referrals for these made as appropriate.
- The ICB may need to provide additional support to care for the individual whilst the carer(s) has a break from his or her caring responsibilities.

NHS Constitution

The NHS Constitution to which every NHS body in England must have regard - (National Health Services Act 2006 section 14P) commits the NHS to 'work in partnership with patients and carers and to ensure that its services are 'coordinated around and tailored to, the needs and preferences of patients, their families, and their carers'. The NHS is an all-age service and therefore the term carer applies to carers of all ages and so includes young carers.

The constitution lists seven key principles to 'guide the NHS in all it does', of which Principle Four recognises that: "Patients, with their families and carers, where appropriate, will be involved in and consulted on all decisions about their care and treatment"

Carers and Employment

In 2024, two pieces of legislation will come into force. These are the Carers' Leave Act 2023 and the Employment Relations (Flexible Working) Act 2023. Between them, these strengthen the rights of working carers and introduce requirements for carers leave and a right to request flexible working will be from day one of employment. These will be of interest both to young carers in transition to adulthood and to young adult carers when they are considering entering the employment market. Where possible, NHS staff should assist local authorities in making carers of all ages aware of these rights. For example, social prescribing services should be proactive in making carers aware of these rights. (These important new rights also apply to the NHS's own staff).

A Whole Family Approach

Behind all of this lies the importance of taking a whole family approach to the provision of support to promote the health and well-being of people. A valuable guide to whole family approaches to assessments that was written to support the introduction of the Care Act is still available online: [CLICK HERE TO SEE MORE](#)

Acknowledgment

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