



# Health Act 2006

## 2006 CHAPTER 28

### PART 2 **E+W**

#### PREVENTION AND CONTROL OF HEALTH CARE ASSOCIATED INFECTIONS

#### 14 **Code of practice relating to health care associated infections** **E+W**

After section 47 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (referred to in this Act as “the 2003 Act”) insert—

##### **“47A Code of practice relating to health care associated infections**

- (1) The Secretary of State may issue a code of practice—
  - (a) applying to bodies within subsection (2), and
  - (b) relating to the prevention and control of health care associated infections in connection with health care provided by or for those bodies.
- (2) The bodies within this subsection are—
  - (a) English NHS bodies other than Strategic Health Authorities; and
  - (b) cross-border SHAs.
- (3) The code may provide for provisions of the code to apply to—
  - (a) such description or descriptions of bodies within subsection (2) as may be specified in the code;
  - (b) such body or bodies within that subsection as may be so specified.
- (4) The code may in particular—
  - (a) make such provision as the Secretary of State considers appropriate for the purpose of safeguarding individuals (whether receiving health care or otherwise) from the risk, or any increased risk, of being exposed to health care associated infections or of being made susceptible, or more susceptible, to them;

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- (b) contain provisions imposing on bodies to which the provisions apply requirements in relation to health care provided for such bodies by other persons as well as in relation to health care provided by such bodies.
- (5) The code may—
  - (a) operate by reference to provisions of other documents specified in it (whether published by the Secretary of State or otherwise);
  - (b) provide for any reference in it to such a document to take effect as a reference to that document as revised from time to time;
  - (c) make different provision for different cases or circumstances.
- (6) Nothing in subsections (3) to (5) is to be read as prejudicing the generality of subsection (1).
- (7) The Secretary of State must keep the code under review and may from time to time—
  - (a) revise the whole or any part of the code, and
  - (b) issue a revised code.
- (8) In this section “health care associated infection” means any infection to which an individual may be exposed or made susceptible (or more susceptible) in circumstances where—
  - (a) health care is being, or has been, provided to that or any other individual, and
  - (b) the risk of exposure to the infection, or of susceptibility (or increased susceptibility) to it, is directly or indirectly attributable to the provision of the health care.
- (9) But subsection (8) does not include an infection to which the individual is deliberately exposed as part of any health care.
- (10) Any reference in this Part to a code of practice issued under this section includes a revised code issued under it.

#### **47B Consultation etc.**

- (1) Where the Secretary of State proposes to issue a code of practice under section 47A, he must—
  - (a) prepare a draft of the code, and
  - (b) consult such persons as he considers appropriate about the draft.
- (2) Where the Secretary of State proposes to issue a revised code under section 47A which in his opinion would result in a substantial change in the code, he must—
  - (a) prepare a draft of the revised code, and
  - (b) consult such persons as he considers appropriate about the change.
- (3) Where, following consultation under subsection (1) or (2), the Secretary of State issues the code or revised code (whether in the form of the draft or with such modifications as he thinks fit), it comes into force at the time when it is issued by the Secretary of State.
- (4) Where—

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- (a) any document by reference to whose provisions the code operates as mentioned in section 47A(5)(a) and (b) is a document published by the Secretary of State in connection with his functions relating to health,
- (b) the Secretary of State proposes to revise the document, and
- (c) in the opinion of the Secretary of State, the revision would result in a substantial change in the code,

the Secretary of State must, before revising the document, consult such persons as he considers appropriate about the change.

(5) Where—

- (a) any document by reference to whose provisions the code operates as mentioned in section 47A(5)(a) and (b) is not one to which subsection (4)(a) above applies,
- (b) the document is revised, and
- (c) in the opinion of the Secretary of State, the revision results in a substantial change in the code,

the Secretary of State must consult such persons as he considers appropriate about whether the code should be revised in connection with the change.

(6) Consultation undertaken by the Secretary of State before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.

#### **47C Effect of code under section 47A**

- (1) Where any provisions of a code of practice issued under section 47A apply to an NHS body, the body must observe those provisions in discharging its duty under section 45.
- (2) A failure to observe any provision of a code of practice issued under section 47A does not of itself make a person liable to any criminal or civil proceedings.
- (3) A code of practice issued under section 47A is admissible in evidence in any criminal or civil proceedings.”

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#### **Commencement Information**

**II** S. 14 in force at 1.10.2006 by S.I. 2006/2603, art. 2

### **15 Code of practice: effects on existing functions of Commission for Healthcare Audit and Inspection E+W**

(1) Sections 50 to 52 and 54 of the 2003 Act are amended as follows.

(2) In section 50 (annual reviews), for subsection (4) substitute—

“(4) In exercising its functions under this section in relation to any health care, the CHAI must take into account—

- (a) the standards set out in statements published under section 46, and
- (b) any code of practice issued under section 47A.

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- (4A) In conducting a review under subsection (1) in relation to a particular body to which provisions of such a code apply, the CHAI must accordingly consider (among other things) the extent, if any, to which those provisions are being observed by the body.”
- (3) In section 51 (reviews: England and Wales), in subsection (4)(a) after “section 46” insert “ and any code of practice issued under section 47A ”.
- (4) In section 52 (reviews and investigations: England), for subsection (3) substitute—
- “(3) The CHAI has the function of conducting reviews of—
- (a) the arrangements made by English NHS bodies and cross-border SHAs for the purpose of discharging their duty under section 45;
- (b) the arrangements made by particular bodies within paragraph (a) for the purpose of discharging that duty.”
- (5) For section 52(5) substitute—
- “(5) In exercising its functions under this section in relation to any health care, the CHAI must take into account—
- (a) the standards set out in statements published under section 46, and
- (b) any code of practice issued under section 47A.
- (5A) In conducting a review under subsection (3) in relation to a particular body to which provisions of such a code apply, the CHAI must accordingly consider (among other things) the extent, if any, to which those provisions are being observed by the body.”
- (6) In section 54 (functions relating to Secretary of State and Assembly), in subsection (2) after “section 46 or 47” insert “ , or any code of practice issued under section 47A, ”.

**Commencement Information**

**I2** S. 15 in force at 1.10.2006 by S.I. 2006/2603, art. 2

**16 Code of practice: improvement notices** E+W

After section 53 of the 2003 Act insert—

**“53A Failings in connection with code under section 47A: improvement notices**

- (1) This section applies where, following such a review or investigation as is mentioned in section 53(1), the CHAI—
- (a) is of the view that any provisions of a code of practice issued under section 47A and applying to an English NHS body or a cross-border SHA are not being observed in any material respect in relation to the provision of health care by or for the body, but
- (b) having regard to all the circumstances, is not of the view that it is required to make a report under section 53(2) (or, if relevant, section 53(6)).

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- (2) The CHAI may serve a notice under this section (an “improvement notice”) on the body in respect of the failure to observe the code, if it considers that serving the notice is the most appropriate course of action for it to take with a view to securing that the failure is remedied.
- (3) An improvement notice must—
  - (a) state that the CHAI has formed the view mentioned in subsection (1) (a) in relation to the provision of health care by or for the body, giving particulars of the material respect in which the CHAI considers that the provisions of the code are not being observed as mentioned in that subsection,
  - (b) state the CHAI's reasons for its view, and
  - (c) require the body to remedy the failure to observe the code, and to do so within such period as is specified in the notice.
- (4) An improvement notice may (but need not) include a recommendation by the CHAI as to the way in which the failure should be remedied.
- (5) An improvement notice may relate to more than one failure within subsection (1)(a), and in such a case—
  - (a) subsections (2) to (4) and section 53B apply separately in relation to each such failure, but
  - (b) any report required by that section may relate to more than one such failure.
- (6) Where the CHAI serves an improvement notice on a body under this section, the CHAI must notify the Secretary of State and—
  - (a) the regulator, if the body is an NHS foundation trust, and
  - (b) any relevant Strategic Health Authority, if the body is a Primary Care Trust or an NHS trust.
- (7) In this section and section 53B “relevant Strategic Health Authority” means—
  - (a) in relation to a Primary Care Trust, any Strategic Health Authority whose area includes any part of the Trust's area;
  - (b) in relation to an NHS Trust (other than one responsible for providing ambulance services), the Strategic Health Authority in whose area all or most of the Trust's hospitals, establishments or facilities are situated;
  - (c) in relation to an NHS Trust responsible for providing ambulance services, the Strategic Health Authority in whose area the headquarters establishment responsible for the control of those services is situated.
- (8) Subsection (9) applies where—
  - (a) an improvement notice is served on a body in respect of a particular failure to observe a code of practice issued under section 47A, and
  - (b) a review under section 52(3)(b) is conducted by the CHAI in pursuance of section 53B(4)(a) with a view to assessing the body's compliance with the notice.
- (9) In such a case subsection (1)—
  - (a) does not apply in relation to that review so as to enable the CHAI to serve a further improvement notice on that body in respect of that failure; but

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- (b) does apply in relation to that review so as to enable the CHAI (if the conditions in subsections (1) and (2) are satisfied) to serve an improvement notice on that body in respect of a different failure to observe the code.

**53B Code of practice: action by CHAI following service of improvement notice**

- (1) This section applies where the CHAI has served an improvement notice on a body under section 53A.
- (2) If, before the end of the specified period—
  - (a) the body requests the CHAI to extend that period, and
  - (b) the CHAI considers that there are exceptional circumstances which justify its extending that period by a further period of time,
 the CHAI may, by a notice served on the body, extend the specified period by that further period.
- (3) In this section “the specified period” means—
  - (a) the period specified under section 53A(3)(c), or
  - (b) if that period has been extended under subsection (2) above, that period as so extended.
- (4) Where the specified period has ended or the body notifies the CHAI before the end of that period that it has complied with the improvement notice, the CHAI must—
  - (a) conduct a review under section 52(3)(b) with a view to assessing the body's compliance with the notice, and
  - (b) then comply with subsection (5) or (6);
 and the making of any report in accordance with subsection (5) or (6) is to be taken as satisfying the requirement to publish a report under section 52(7) in respect of the review.
- (5) If the CHAI—
  - (a) remains of the view that the relevant provisions of the code are not being observed in any material respect in relation to the provision of health care by or for the body, and
  - (b) having regard to all the circumstances, is of the view that it is required to make a report under section 53(2) (and, if relevant, section 53(6)),
 the CHAI must accordingly make a report under that provision (or, as the case may be, under each of those provisions).
- (6) If the CHAI does not make any such report or reports, it must instead make a report—
  - (a) to the Secretary of State, and
  - (b) (if the body is an NHS foundation trust) to the regulator,
 setting out the matters mentioned in subsection (7) or (8).
- (7) If the CHAI is of the view that the relevant provisions of the code are being observed in relation to the provision of health care by or for the body, the matters are—
  - (a) that the CHAI is of that view, and

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- (b) its reasons for that view.
- (8) If the CHAI is of the view that the relevant provisions of the code are not being so observed in any respect (material or otherwise), the matters are—
- (a) that the CHAI is of that view,
  - (b) its reasons for that view,
  - (c) if its view is that those provisions are not being observed in any material respect, its reasons for not forming the view mentioned in subsection (5)(b), and
  - (d) (whether or not paragraph (c) applies) any action which it proposes to take in relation to the body in connection with the failure to observe the code.
- (9) The CHAI must send a copy of any report made by it in accordance with subsection (5) or (6) in relation to a Primary Care Trust or an NHS trust to the relevant Strategic Health Authority.
- (10) In this section “the relevant provisions of the code” means the provisions of the code in relation to which the CHAI formed the view mentioned in section 53A(1)(a).”

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**Commencement Information**

**I3** [S. 16](#) in force at 1.10.2006 by [S.I. 2006/2603](#), [art. 2](#)

**Changes to legislation:**

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