

## **CONTINUING HEALTHCARE FUNDING and HOSPITAL DISCHARGE**

- do practice and the law always coincide?**

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# **CONTINUING HEALTHCARE FUNDING AND HOSPITAL DISCHARGE**

## **A Schism between law and practice?**

1. Why are we here?
2. What is CHC?
3. What is the claim process?
4. What is wanted to be achieved on discharge?
5. P's best interests v P's rights

# 1. Why are we here?

- Problems experienced
- Attitude/approach
  - Advocates
  - Solicitors
- Context that counts

## 2. What is CHC?

- Why is a claim necessary for what is a right?

### 3. What is the claim process?

- The National Framework/where you are.
- At what stage of the process do you come in?
- Who conducts the process?
- Is the process the same in different PCT's/other Trusts you work with?
- Is the process the same from time to time in the same PCT?

# 4. Discharge and CHC funding claims

- What are we trying to achieve on discharge?
- Do we always want to expedite discharge?
- Best interests

## 5. Best interests

- ss1(5) and 4 MCA 2005
- S1(5) – “An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.”
- “Best interests” meetings

# On discharge:

- What are we trying to achieve?
- Do we always want to expedite discharge?
- Best interests
  
- What does the Trust want to achieve?
  - P's best interests?
  - Free up bed?
  - Avoid funding?
  - Community Care (Delayed Discharges) Act 2003

# Assessment Process

- Assessment? What assessment?  
Grogan v Bexley NHS Care Trust 2006
- Information and explanations to P\*
- Engagement and involvement of P\*
- Trigger process
- Process
- Documentation and information required
- Presence of representation at
  - MDT meetings
  - Local panels
  - IRP
- Full rationale for decision

\* and/or family/representative

# Rationale

- 1a) Has there been a full and robust domain examination
- b) Have the domain levels been agreed/evidenced?
- 2a) Domain 12?
  - b) Nature
  - Intensity
  - Complexity
  - Unpredictability
- c) cf. Pamela Coughlin
- 3. Full and transparent

# Rationale

## 4. National Framework

- Overall care needs more than LA can legally provide? (Para 28)
- Deterioration expected? (Para 29)
- Information to P (family/representative) (Para 35)
- Diagnosis – shouldn't rule in **OR RULE OUT** eligibility (Para 46)
- NB – Managed needs (Para 47)
- Eligibility not to be based on certain factors (Para 49)
- Decision must be “in the round” and examine interaction of factors (Para 51)
- P to play “central role” in assessment (Para 51)
- All information regarding failed trigger assessment (Paras 66 & 149)
- DST not to be viewed prescriptively; professional judgement needed (and see also para 51 above) (Para 77)
- Periodic review – have needs changed? (Para 141)
- Consultation on review (Para 143)
- NB – DST not an assessment itself (DST document summary para iii)
- NB – Domain levels (DST document para 32)

# BUT

- Para 66 and 149 – watered down from previous para 51
- Previous para 41 removed
- Para 157 – no legal representation
- Annex E, para 12 – cf. previous para 8
- Inappropriate behaviour
  - by hospital/ward/care-home staff?
  - by Social Services?
  - by PCT personnel?
- Documentation – prepared by persons with pre-existing adverse views?
- Panel/MDT composition and members
  - Weighting, numbers & depth/breadth
  - Financial personnel?
  - Pre-existing views

## And even if CHC funding awarded .....

- Choice of care home
  - On discharge
  - If already in care home privately funded and condition deteriorates
  - Must meet all needs
- Top up fees
- Hotel fees
- P's rights v P's best interests

# Robust and transparent decisions

To have best chance of robust, transparent, compliant decisions -

- Make sure the Trust knows that you expect them to comply with everything – set out your expectations robustly
- Challenge robustly every element of process not complied with
- Challenge robustly every factor of decision you disagree with
- Robustly require revert to beginning of process because process/decision fatally flawed
- Be robust!