



Coronavirus Act 2020 & other Key Changes:

What do they mean for Providers?

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WHAT DO THEY MEAN FOR PROVIDERS?

Over the last 2 weeks, life within the UK has changed for everyone as a result of COVID-19 (Coronavirus) and the resulting measures which have been implemented. However, it is the health and social care sector which is on the front line, facing unprecedented challenges.

During the course of this week, we have seen a range of new guidance produced by government, NHS and CQC, and on the evening of 25 March 2020, the Coronavirus Act 2020 was passed by parliament, despite numerous concerns having been raised over the potential implications of parts of the Act. The Act is effective immediately, however there is the power to suspend and revive any of the provision(s) within the Act by regulation at any time within the 2 year period the Act is effective for. It is expected that there will be reviews at 6 month intervals.

Here we set out some of the key points of relevance to providers:

Coronavirus Act 2020

Emergency registration of nurses

Section 2 of the Act enables the Registrar of the NMC to temporarily register nurses, midwives and nursing associates during an emergency. The purpose of this is help deal with the increase in those needing medical care and to deal with staff shortages.

Emergency volunteers

Sections 8/9 of the Act enable workers to be absent from leave for a period (consecutive period of 2, 3 or 4 weeks) specified in the emergency volunteering certificate (issued by the appropriate authority). The volunteer period runs for 16 weeks from the date the schedule comes into force. This may be extended. A number of people are excluded from emergency volunteer leave, including those employed by the Crown, those employed by business with less than 10 members of staff.

The purpose of introducing measures to protect individuals willing to volunteer during the crisis is to maximise those numbers to fill the gaps in capacity and help safeguard the essential services that could be at risk during the pandemic. It is understood that these volunteers will be able to provide extra support for care homes.

Indemnity

Section 11 of the Act enables the Health Secretary to provide indemnity for clinical negligence liabilities arising from NHS activities as a direct consequence of the efforts to combat the Coronavirus outbreak.

The purpose of providing this indemnity coverage is to ensure that those who provide care, treatment or diagnostic services are appropriately covered whilst responding to the COVID-19 pandemic. The indemnity will act as a safety net where clinical negligence arising from the provision of such services is not already covered under a pre-existing indemnity or insurance arrangement.

In practice, if a resident in a nursing home requires hospital admission, you may be asked to provide nursing care to the resident, if the hospitals do not have capacity. This situation may not be covered by your insurance, but it may be covered under the legislation as you will be providing care and treatment, which would usually be covered by the hospital.

If you are facing legal action and you are unclear if you are covered, you should seek legal advice. Our expert healthcare team are able to assist.

The Impact on NHS & Local Authority Funded Care

In the last edition of this newsletter, we reported on the unprecedented changes the Coronavirus Act 2020 was set to make to accessing Local Authority & NHS Funded care.

[Click here](#) to access the full article, which provides a comprehensive explanation of the changes.

We now have the Coronavirus (Commencement No 2) Regulations 2020 (the Regulations) and Care Act Easements Guidance for Local Authorities (the Guidance), which we had been anxiously awaiting. It is these Regulations and Guidance which give effect to the Coronavirus Act 2020 changes in relation to the Care Act obligations of Local Authorities.

These provisions will remain in force until such time as the Secretary of State decides they are no longer necessary.

The Regulations

The Regulations are brief. Much of the relevant detail is contained within the Coronavirus Act 2020 itself, the new Guidance, and the Hospital Discharge Guidance published previously.

Regulation 2 provides that Section 15 of the Coronavirus Act 2020 (relating to Local Authority care and support) and Part 1, Schedule 12 (which details the changes to the duties and powers of Local Authorities in England) come into force with effect on 31 March 2020.

All this means is that the changes we explained in our [recent article](#) are legally effective (i.e. they are law) with effect from 31 March 2020.

Are all the pre-amendment Care Act 2014 duties suspended with immediate effect?

No. Local Authorities cannot simply decide that with effect from 31 March 2020 they will no longer comply with the Care Act 2014 statutory duties we are all so familiar with.

The Guidance makes it explicitly clear that the expectation is for Local Authorities to continue operating on the basis of business as usual (including the usual Care Act obligations) until such time as the criteria or threshold for initiating the process to operate under the so-called ‘easement’ provisions is met.

The Guidance

The Guidance answers some of the questions we have flagged previously, but, unfortunately, many still remain unanswered.

What is clear at first glance is that the Guidance is very much designed to afford Local Authorities discretion. It is very much the case that Local Authorities are expected to follow the process set out in the Guidance for initiating operation of the easement provisions in response to changes in local resources to ensure they can meet local needs.

This is, of course, a significant departure from what we all know and love because the Care Act 2014 very much provides a national set of duties and processes for all adult social care teams to implement. It will undoubtedly lead to variations of approach by Local Authorities around the country.

For a full, detailed analysis of the new Regulations and Guidance, click here to access our [recent article](#).

We recently collaborated with the Brain Injury Group to provide a series of freely accessible webinars explaining in detail the simplified Hospital Discharge process, and changes to accessing NHS and Local Authority funded care. These webinars include an explanation of the Regulations and Guidance and are [available here](#).

Inquests

Under existing legislation, COVID-19 is classed as a ‘notifiable disease’ and thus any person who dies from COVID-19 must have an inquest with a jury. However, the Coronavirus Act removes the requirement for an inquest to be heard with a jury, given the significant resources that would be required and the inevitable delay that families would have to suffer.

The Chief Coroner has also now issued some helpful guidance, which clarifies that COVID-19 is a naturally occurring disease, thus if COVID-19 can be confirmed as the cause of death an inquest will not need to take

place. However, issues arise where COVID-19 cannot be confirmed as the cause or where there are other relevant factors, which are not considered to be natural. It is therefore likely that a large number of deaths related to COVID-19 will still require an inquest and this will likely cause significant delays in circumstances where most coroners services already have an existing backlog.

If you have any questions arising from this blog, please get in touch with our experienced healthcare solicitors.

Advice

Our team of specialist health and social care solicitors are on hand to help you. If you require any advice or assistance in relation to any of the topics covered in this alert, or any other matters, please contact us on laura.guntrip@la-law.com or **01202 786187**.

For all of our advice and guidance in relation to COVID-19 and how it affects businesses and individuals, please see our [**COVID-19 News Hub**](#) which is updated regularly.

Details of our services within the health and social care sectors can be found on [**our website**](#) or contact us for more information.



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