



# ***CARERS FACT SHEET 1***

## **Legislation important for Carers**

**The Carers (Recognition and Services) Act 1995** states that carers are:

- Adults (people age 18 or over) who provide, or intend to provide, a substantial amount of care on a regular basis and
- Children and young people (under 18) who provide, or intend to provide, a substantial amount of care on a regular basis

'Substantial' is usually defined as those carers who provide care to the extent that they are unable to choose to stop, without the cared for person being at significant risk. Regular means a significant number of hours to suit that person.

A carer is someone who is not paid for giving someone the support and help he or she needs. The amount of care that different carers give varies enormously. They may call in on a neighbour at regular intervals to make sure they are OK and do one or two tasks that the neighbour can't manage themselves, or they may be providing complete physical and emotional care for someone who lives with them and is completely unable to help themselves. People may feel that they have to become a carer, or they may do it because they want to (or for a combination of reasons). Whatever it is that makes someone a carer, they are entitled to help and support.

The 1995 Act required that a 'Carers Assessment Document' be completed, under the Act, whenever a carer requests an assessment.

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### **The Carers and Disabled Children Act 2000 came into force 01 04 2001.**

The Act states that a carer is entitled to an assessment of their own needs. They may also be offered caring services in their own right.

A carer has the right to request Social Services to carry out an interview, or a series of interviews, with the carer to see what help he/she may need.

- It gives carers the right to their own assessment even when the person they care for refuses any outside assistance
- It gives carers the right to receive direct services themselves
- It provides for payments to be made to carers so they can buy their own support (see Direct Payments) and this provides greater choice and flexibility for carers
- It provides for vouchers to be given to carers so they can arrange their care at a time of their choosing – but these are not available in every area.
- It provides for parents of children with 'special needs' to receive Direct Payments throughout that child's upbringing until they are 18 years old (subject to the child meeting the current assessment of need criteria)
- It provides for payments to be made in lieu of services to disabled children aged 16-17

However, the Act also gives local authorities the power to charge carers for services that are delivered directly to them. The carer should ask at their local social services office about any charges before committing themselves to receive any service.

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### **Health and Social Care Act 2001**

This placed a duty on Local Authorities to assess carers needs.

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### **Community Care (Delayed Discharges) Act 2003**

- Part 1 gives a carer who requests and assessment a right to be assessed and have any necessary services provided, before a patient leaves hospital.
- Part 2 dictates that that certain community care and carers services provided through intermediate care, must be provided free of charge to the disabled older person and carer for up to six weeks

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### **The Carers (Equal Opportunities) Act received Royal Assent 22 07 2004.**

The Act came into force in April 2005 to ensure that carers are able to take up opportunities which those without caring responsibilities take for granted.

The Act builds on existing carers legislation and Government support for carers. It will:

- Ensure all carers know they are entitled to an assessment of their needs;
- Place a duty on councils to consider a carers outside interests (work, study or leisure) when carrying out an assessment; and
- Promote better joint working between councils and the health service to ensure support for carers is delivered in a coherent manner.

The Health Minister said: "Support for carers must revolve around ensuring they are able to make choices as individuals. The Carers (Equal Opportunities) Act provides a firm foundation for better practice by councils and the health service. It provides councils with the appropriate levers to promote better joint working and cooperation. This will mean less duplication of work by social services and more focus on the needs of individual carers. It will deliver real changes for carers by placing a duty on councils to inform carers of their existing rights and extend those rights to consider the carers wish to combine normal everyday activities e.g. work/hobbies with caring.'

### **Main clauses within the Carers (Equal Opportunities) Act 2004:**

#### **Clause 1 (Duty to inform carers of right to an assessment)**

Clause 1 introduces new provisions into the Carers (Recognition and Services) Act 1995 and the Carers and Disabled Children Act 2000.

It will ensure that carers are made aware of their right to an assessment. Assessments are often the first step to support and services for carers. Knowing about the assessment process is key to ensuring that carers are getting information in a more consistent way and at an appropriate time. In addition, despite the wealth of best practice information and guidance some carers remain unaware of their rights.

#### **Clause 2 (Assessment of carers)**

This expands assessments under the 1995 and 2000 Acts by requiring councils to consider the carers wishes - to work, undertake any education, training or leisure activities. Carers will have the opportunity to discuss alternative care services and highlight the importance of equality of opportunity for all aspects of life. Councils should then take into account the outcome of such holistic assessments when providing services.

#### **Clause 3 (Co-operation between authorities)**

Makes provision for consideration of carers in the planning process, as well as providing a specific duty to consider assistance in relation to individual carers. It will promote joint working by requiring bodies, including councils and the NHS, to give due consideration to requests for help from a local authority in relation to planning and the provision of services that might assist individual carers to care and to continue to care.



## **Mental Capacity Act 2005**

- The Act intends to protect people who lose the capacity to make their own decisions. It:
  - allows the person, while they are still able, to appoint someone (e.g. a trusted relative or friend) to make decisions on their behalf once they lose the ability to do so. **This will mean they can make decisions on the person's health and personal welfare.** Previously, the law only covered financial matters
  - ensures that decisions that are made on the person's behalf are in their best interests. The Act provides a checklist of things that decision makers must work through
  - introduces a Code of Practice for people such as healthcare workers who support people who have lost the capacity to make their own decisions
- People with no one to act for them will also be able to leave instructions for their care under the new provisions.
- A new court - the 'Court of Protection' - will be set up to consider financial or serious healthcare cases. The court will look at cases where the person's carer and healthcare worker / social worker, disagree on what are the person's best interests.

## **IMCA**

Vulnerable people who lack capacity to make their own decisions may be supported and represented by an Independent Mental Capacity Advocate (IMCA) service.

The IMCA service means that certain people who lack capacity - this may include people with dementia, Alzheimer's disease, brain injury or a very severe learning disability - will be helped to make difficult decisions such as medical treatment choices or where they live. It is aimed at people who do not have relatives or friends to speak for them.

## **Living Will or Advance Decision or Directive**

- You can use an advance decision (also called advance directive) to indicate your wish to refuse all or some forms of medical treatment if you lose mental capacity in the future.
- You can't use it to request treatment.
- A valid advance decision has the same effect as a refusal of treatment by a person with capacity: the treatment cannot lawfully be given - if it were the doctor might face civil liability or criminal prosecution.

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## **The Work and Families Act 2006**

This Act extends the right to request flexible working to carers of adults and parents of older children.

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## **White Papers**

### **Valuing People: A New Strategy for Learning Disability for the 21st Century 2001 (DOH) (Cm 5086) and**

This sets out a programme of action for improving services to people with learning disabilities and their carers. "A toolkit" was produced in 2003, to help Partnership Boards carry out the valuing people objectives aimed at providing family carers of people with learning disabilities with better and more support.

### **Our health, our care, our say: a new direction for community services 2006 (Cm 6737)**

This white paper proposed further support for carers e.g. information services, helplines, short term home based respite support for carers in crisis or emergency situations and funding to provide training for carers.