NHS Constitution – summary of rights and responsibilities

The Health Act 2009 which received Royal Assent in November 2009, places a legal responsibility upon all providers and commissioners of NHS care to have regard to the NHS Constitution in all their decisions and actions. This means that the Constitution, its pledges, principles, values and responsibilities need to be fully embedded and ingrained into everything the NHS does. These duties also extend to Monitor (the organisation which performance manages Foundation Trusts) and the new Care Quality Commission. The Health Act requires the Secretary of State to review the NHS Constitution every 10 years and to revise the Handbook of the Constitution every 3 years. Important points include:

- GPs are included in the target audience
- Constitution sets out rights, pledges and responsibilities/duties for patients and staff
  - Rights are legally enforceable
  - Pledges are not legally binding – they express ambitions to improve and go beyond legal rights
- Relevant legislation relating to rights is listed in the appendix to the handbook.

The list of rights and responsibilities below has been extracted from the “NHS Constitution Handbook”. The list has been updated to reflect changes relating to waiting times which have been included in the latest version published in March 2010. Links to the Constitution, the Handbook, the Health Act 2009 and Notes to the Health Act are at the foot of this document.

Full list of rights for Patients:

- To free treatment – apart from certain limited exceptions sanctioned by Parliament.
- To access NHS services and not be refused access on unreasonable grounds.
- To expect local NHS to assess health requirements of local community and commission services to meet those needs as considered necessary.
- To treatment in other EEC areas or Switzerland in certain circumstances.
- Not to be unlawfully discriminated against in the provision of NHS services including on the grounds of gender race, religion or belief, sexual orientation, disability, learning disability, mental illness or age.
- To access services within maximum waiting times, or for the NHS to take reasonable steps to offer you a range of suitable alternative providers if this is not possible.
  - To start consultant-led treatment within a maximum of 18 weeks from referral for non-urgent conditions
  - To be seen by a cancer specialist within a maximum of two weeks from GP referral for urgent referrals where cancer is suspected.
- To be treated with professional standard of care by appropriately qualified and experienced staff in a properly approved registered organisation meeting required levels of safety and quality.
- To expect NHS organisations to monitor and make efforts to improve the quality of care they commission or provide.
- To drugs and treatments recommended by NICE for use in the NHS if their doctor says they are clinically appropriate for them.
- To local rational decisions are made on other drugs and treatment following consideration of the evidence. Decisions not to fund will be explained.
To receive vaccinations and immunisations recommended by the Joint Committee on vaccination and immunisation under NHS-provided national immunisation programmes.

To be treated with dignity and respect in accordance with their human rights.

To accept or refuse treatment and not to be given any physical examination or treatment unless they have give valid consent. In cases of capacity, consent must be obtained by a person legally able to act on behalf of the patient.

To be given information about their proposed treatment in advance, including any significant risks and any alternative treatments which may be available and the risks involved in doing nothing.

To privacy and confidentiality and to expect the NHS to keep their confidential information safe and secure.

To access their own health records. These will always be used to manage their treatment in their best interests.

To choose their GP practice and to be accepted by that practice unless there are reasonable grounds to refuse, in which case they will be informed of those reasons.

To express a preference for using a particular doctor within their GP practice and for the practice to try and comply.

To make choices about their NHS care and to information to support these choices. The options available to them will develop over time and depend on their individual needs.

To be involved in discussions and decisions about their healthcare and to be given information to enable them to do this.

To be involved directly or through representatives in the planning of healthcare services, development and consideration of proposals for changes in the way those services are provided and in decisions to be made affecting the operation of those services.

To have any complaint they make about NHS services dealt with efficiently and to have it properly investigated, to know the outcome of any investigations and to take it to the Health Services Ombudsman if not satisfied with the way the complaint has been dealt with.

To make a claim for judicial review if they think they have been directly affected by an unlawful act or decision of an NHS body.

To compensation where they have been harmed by negligent treatment.

Please refer to the handbook for details of pledges.

Rights and pledges for patients relating to care by GPs

Two new Rights from April 2010

- A maximum two week wait from urgent GP referral to see a cancer specialist where cancer is suspected.
- To start consultant-led treatment within a maximum of 18 weeks from referral for non-urgent conditions.

Pledges on waiting times to ensure urgent conditions such as cancer and heart disease will be seen and receive treatment more quickly:

- Maximum 31 day wait for subsequent treatment where the treatment is surgery or an anti-cancer drug.
- Maximum 62 day wait from referral for suspected cancer to first treatment for all cancers.
- Maximum 3 month wait for patients needing revascularisation.
• Maximum 2 week wait for Rapid Access Chest Pain Clinics.
• Maximum 2 week wait to see a specialist for all patients referred for investigation of breast symptoms, even where cancer is not initially suspected.

• Access to a primary care professional within 24 hours or a primary care doctor within 48 hours.
• Quality of health care - PCTs are obliged to ensure that providers of GP services have in place clinical governance arrangements and quality assurance systems.
• Patients can choose which GP practice they would like to register with. GP practices must accept patient(s) unless there are good grounds for not doing so, for instance because they live outside the boundaries agreed with the PCT or because they have no spaces left on their list. Whatever the reason, they must explain this. If patients cannot register with their preferred GP practice, the NHS will help the patient find another.
• Within the GP practice, patients have the right to say which particular GP they would like to see. GP practices will try to give patients their choice, but there may be good reasons why they cannot see their preferred GP.
• Further progress on extended hours to ensure this matches local needs
• A GP led health centre to be operational in each PCT to provide access or patient who are away from home or if the registered practice is closed.

Responsibilities for patients

Patients should:
• recognise that they can make a significant contribution to their own, and their families, good health and well-being, and take some personal responsibility for it.
• register with a GP practice – the main point of access to NHS care.
• treat NHS staff and other patients with respect and recognise that causing a nuisance or disturbance on NHS premises could result in prosecution.
• provide accurate information about their health, condition and status.
• keep appointments, or cancel within reasonable time. Receiving treatment within the maximum waiting times may be compromised unless they do.
• follow the course of treatment which they have agreed, and talk to their clinician if finding this difficult.
• participate in important public health programmes such as vaccination.
• ensure that those closest to them are aware of their wishes about organ donation.
• give feedback – both positive and negative – about the treatment and care they have received, including any adverse reactions they may have had.

Rights for staff

• To fair treatment regarding leave, rights and flexible working and other statutory leave requests relating to work and family, including caring for adults that they live with.
• To request other ‘reasonable’ time off for emergencies (paid and unpaid) and other statutory leave (subject to exceptions).
• To expect reasonable steps are taken by the employer to ensure protection from less favourable treatment by fellow employees, patients and others (e.g. bullying or harassment).
• To pay consistent with the National Minimum Wage or alternative contractual agreement.
• To fair treatment regarding pay.
• To be accompanied by either a Trade Union official or a work colleague at disciplinary or grievance hearings in line with legislation, the employer’s policies or their contractual rights.
• To consultation and representation either through the Trade Union or other staff representatives (for example where there is no Trade Union in place) in line with legislation, and any collective agreements that may be in force.
• To work within a healthy and safe workplace and an environment in which the employer has taken all practical steps to ensure the workplace is free from verbal or physical violence from patients, the public or staff, to work the contractual hours, take annual leave and to take regular breaks from work.
• To a working environment (including practices on recruitment and promotion) free from unlawful discrimination on the grounds of race, gender, sexual orientation, disability, age or religion or belief.
• To have disciplinary and grievance procedures conducted appropriately and within internal and legal requirements.
• To appeal against wrongful dismissal.
• If internal processes fail to overturn a dismissal, they have the right to pursue a claim in the employment tribunal, if required criteria are met.
• To protection from detriment in employment and the right not to be unfairly dismissed for ‘whistle blowing’ or reporting wrong doing in the workplace.
• To employment protection in terms of continuity of service for redundancy purposes if moving between NHS employers.
• To the ability to join the NHS Pension Scheme.

Responsibilities of staff

• To accept professional accountability and maintain the standards of professional practice as set by the appropriate regulatory body applicable to their profession or role.
• To take reasonable care of health and safety at work for them, their team and others, and to co-operate with employers to ensure compliance with health and safety requirements.
• To act in accordance with the express and implied terms of their contract of employment, e.g. the express terms regarding hours, place and duties of work, annual and sickness absence provisions, equality and diversity policies, etc. and also the implied duty of mutual trust and confidence, the duty to serve and work for the employer, exercise reasonable skill and competence when undertaking their duties, to obey reasonable and lawful orders, to adhere to the duty of fidelity towards the employer.
• Not to discriminate against patients or staff and to adhere to equal opportunities and equality and human rights legislation.
• To protect the confidentiality of personal information that they hold unless to do so would put anyone at risk of significant harm.
• To be honest and truthful in applying for a job and in carrying out that job.

Please refer to the handbook for details of expectations relating to staff.

Useful links
The NHS Constitution (revised March 2010)

NHS Constitution Handbook (revised March 2010)

The Health Act, 2009
http://www.opsi.gov.uk/acts/acts2009/ukpga_20090021_en_2#pt1-ch2-l1g8

Notes to the Act

GP Support
Londonwide LMCs
Original dated 22 February 2010 and updated March 2010