

Board Meeting 29th August

NHS LANARKSHIRE

ADULTS WITH INCAPACITY ACT (SCOTLAND) 2001

1 Purpose of Report

This report has been prepared to inform the NHS Lanarkshire Board of their responsibilities under the Adults with Incapacity Act (Scotland) 2001 and to seek approval to proceed with the recommendation to establish a Supervisory Body to meet the obligations set out in Part 1V of the Act.

2 Background

Part 4 of The Adults with Incapacity Act (Scotland) 2001 places responsibilities on NHS Boards in respect of the management of the financial affairs of adults with impaired capacity. The NHS Board as a Supervisory Body is required to formally authorise each hospital within NHS Lanarkshire where managers are required to manage the financial affairs of residents with impaired capacity. The hospitals arrangements for handling residents financial affairs must be assessed and deemed satisfactory before authorisation can be given. This assessment will include consideration of the extent to which decisions flow from the consideration of salient issues by a multidisciplinary team that is engaged in planning and reviewing the residents overall care plan. The assessment and ongoing monitoring arrangements will not therefore be based on financial processes alone but will consider the qualitative aspects of the residents care plan. In normal circumstances the expectation is that the resident will have a duly authorised parent/relative/guardian or carer acting on their behalf. When this is not the case NHS hospitals with residents who are covered by the Act ie, deemed incapable of managing their own affairs must seek authorisation on an individual basis to manage that resident's affairs. The authority to act must be granted by a Supervisory Body and for NHS hospitals this will be the NHS Board.

A paper outlining these new responsibilities was presented to NHS Lanarkshire Board at its meeting on 1st October 2003 and these responsibilities were duly noted. NHS Lanarkshire was at the time working toward the introduction of new divisional structures and for this reason interim arrangements were put in place with the former Primary Care Trust assuming the responsibility through its existing procedures ie INCAPAX.

These interim arrangements were continued after the introduction of the CHPs. The Act does allow for existing arrangements to be maintained until such times as the Supervisory Body is established and notes of authority are issued to the hospitals. However the Mental Welfare Commission, whilst generally content

with the existing arrangements, is now keen to see the Supervisory Body formally established.

3. Proposals

Under the terms of the Act the NHS Board is designated as the Supervisory Body. It is proposed that the NHS Board delegate this responsibility to North CHP. If this is approved, North CHP will proceed to form a Supervisory Body and develop the required procedures to meet the Board's obligations under the Act. It is proposed that the membership of the Supervisory Body should include:

Colin Sloey, Director of North CHP, Dr Memo Langa, Interim Associate Medical Director for Mental Health and Learning Disabilities, David Hume, General Manager – Acute Division, Paul Wilson, Executive Director for AHP's, Midwives and Nurses and John York, Deputy Director of Finance.

The inaugural meeting will set out the terms of reference and the scope of responsibilities of the Supervisory Body, confirm the membership and initiate the formal authorisation process. Thereafter, the Supervisory Body will carry out the reviews and report to the Mental Welfare Commission as required within the Act.

4. Recommendations

The NHS Lanarkshire Board is asked to approve:

1. The Supervisory Body be established as set out above and that North CHP proceed with implementation as soon as possible.
2. If agreed, that formal notice of this approach be issued to Mr Jamie Malcolm at the Mental Welfare Commission for Scotland.