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Review of the maternity facility access agreement

Thank you for the opportunity to comment on the recommendations proposed in relation to the maternity facility access agreement (the Access Agreement) and the section 88 maternity notice (the Draft Notice).

Role of Health and Disability Commissioner

As you will be aware the Health and Disability Commissioner's role is to promote and protect the rights of health and disability consumers as set out in the Code of Health and Disability Services Consumers' Rights (the Code). Under section 14(1)(d) of the Health and Disability Commissioner's Act (the Act) one of the Commissioner's functions is to make public statements in relation to any matter affecting the rights of Health and Disability Services consumers. It is in this capacity that I make the comments set out below.

Before making any specific comments on the proposed recommendations I wish to commend the Ministry for undertaking the current reviews of the framework in the maternity services area. As acknowledged in the consultation document, an HDC case earlier this year (04HDC04652) highlighted a number of important issues regarding the Access Agreement. It is pleasing to see that proposed recommendations reflect these issues and the maternity complaints information made available to the Ministry by this Office.

I have already participated in the initial consultation undertaken by the Ministry and I now set out my specific responses to the questions posed in the consultation document.

Recommendation 1

I agree with the recommendation that clause 2.1 of the Access Agreement should be amended to include a duty upon the lead maternity carer (LMC) to ensure clinical safety of the woman and baby. This amendment is an important part of ensuring that patient safety is given more prominence in the Access Agreement. Placing an emphasis on patient safety rather than practitioner autonomy is consistent with the need to provide consumer focused maternity services.

I also agree that it is appropriate to retain the provision relating to the cultural safety of services.

Recommendation 2

I agree that it is appropriate to update clause 3.3 to refer to the correct registration authority.

Recommendation 3

I agree that clinical policies and procedures developed by LMCs and hospital staff should form the basis of maternity care offered at that facility. This change should assist in improving co-ordination and co-operation between LMCs and secondary services. Where possible professional bodies should be involved in developing these policies and procedures so as to provide a national perspective and promote a consistent approach nationally.

Recommendation 4

I agree that following an adverse event/outcome stemming from care provided by the LMC and/or the hospital facility, all practitioners involved in the care should be required to participate in any quality assurance or review activities that may follow. Such participation would assist in providing a complete picture of the care provided. It would also afford all practitioners (including the LMC) the opportunity to learn from the adverse event and make any changes in their practice necessary to prevent a recurrence.

Recommendation 5

I agree that LMCs offering secondary care services should obtain appropriate endorsement to offer such services. It is clearly in the interests of consumers that midwives who wish to provide such services have the necessary skill to do so safely. It would be helpful to clarify the role of the Midwifery Council (in ensuring a midwife's competence) and of individual DHBs (in specifying any secondary care skills a midwife needs to work in their facilities).

Recommendation 6

I agree that commentary on the specified clauses would be helpful. Alternatively the Ministry may wish to consider re-drafting the relevant clauses so that their intended application is clearer. The fact that these clauses are interpreted differently by different providers certainly indicates that some amendment or clarification is warranted.

Other comments

I suggest that clause 2.5.1 should also specify that a woman wishing to make a complaint will be advised that she can make a complaint to a health and disability advocate or to the Health and Disability Commissioner.

Mediation could be included in clause 2.6 as a further step for resolving disputes between LMCs and maternity facilities.

Referral guidelines

I note that the referral guidelines are also to be the subject of a review by the Ministry. Clause 2.2 of Access Agreement currently requires that "both parties will take into account the referral guidelines". My understanding is that the referral guidelines should be followed unless there is good reason not to. Therefore, I recommend that clause 2.2 should be amended to convey this expectation.

Co-operation between providers

The proposed changes to the Access Agreement are positive and should go some way towards addressing the issues identified in the review and in the HDC case mentioned above. However, as stated in the executive summary of the consultation document, improvements also depend on maternity providers working together effectively to ensure quality and continuity of service to consumers. Consumers have a legitimate expectation, and indeed a right, to such co-operation between providers.

I trust that these comments have been of some assistance.

Yours sincerely



Ron Paterson
Health and Disability Commissioner