Thousands of patients may be being detained illegally

Clare Dyer, legal correspondent, *BMJ*

The Department of Health is financing an appeal to the House of Lords against a Court of Appeal ruling last December which means that tens of thousands of mentally incapacitated patients are being detained illegally in hospitals and nursing homes.

The department is also briefing lawyers to intervene in the case on its behalf to outline to the law lords the implications of the appeal court's judgment for the NHS. It is asking for an expedited appeal, but a judgment is not expected before late spring at the earliest.

Three appeal court judges, headed by the Master of the Rolls, Lord Woolf, held that Bournwood Community and

Mental Health Trust in Surrey acted unlawfully in holding an unnamed 48 year old autistic man at Bournwood Hospital in Chertsey without sectioning him under the Mental Health Act. The judges ruled that patients who lack capacity to consent cannot be held informally simply because they do not dissent.

The ruling means that existing patients with dementia and severe learning disabilities in NHS hospitals and nursing homes that are registered to take detained patients cannot have "treatment for a mental disorder" unless they are sectioned. The number is thought to run into the tens of thousands, although a spokesman said that the department had no reliable figures.

The NHS Executive has sent a letter to all trust chief executives, with copies to the Royal College of General Practitioners and the Royal College of Psychiatrists, among others.

This states that, pending the appeal to the Lords, "clinical teams should ensure that they comply with the ruling."

The guidance confirms that "the ruling applies both to new admissions and to patients who are already in hospital." It goes on: "Steps should be taken to review the position of existing in-patients who lack capacity as soon as practically possible."

The letter has confused some trusts because it fails to state baldly that all existing patients who lack capacity must be sectioned. But guidance to be issued this month by the Mental Health Act Commission is expected to make this clear.

The judgment, unless reversed on appeal, will have substantial resource implications

for the NHS and for the commission, which oversees the treatment of detained patients. Thousands of patients will have to be interviewed, forms filled in, and treatment plans notified to the commission. Patients will also have to have their cases referred regularly to mental health review tribunals for a decision on whether continued detention is justified.

Robert Kendell, president of the Royal College of Psychiatrists, said that the college was being inundated with letters, phone calls, and faxes. It had sent out a briefing note to members saying it was "deeply concerned but relatively powerless."

He added: "The workload implications are massive for a very large number of people. If the Lords do say this is the law, I think we would be trying to persuade the Department of Health that the law needs changing." □

Cuba shows health gains despite embargo

Cesar Chelala, *New York*

Recent official statistics from Cuba's ministry of public health show significant gains in some important health status indicators despite the trade embargo imposed by the United States.

Infant mortality in Cuba by the end of 1997 had reached an all time low of 7.2 per 1000 live births, compared with 7.9 in 1996. Cuba now ranks among the 25 countries in the world with the lowest infant mortality.

A reduction has also been observed in maternal mortality, which fell from 23.5 per 100 000 live births in 1996 to 22.0 in 1997. In addition, in 1997 several diseases, such as congenital syphilis, meningitis, tetanus, and typhoid fever, reached their lowest rates ever.

These significant advances happen at a time of continuing restrictions in food and medicines as a consequence of the embargo imposed by the United States. In 1989 Cuba entered into a "special period" of limited spending on health and social services after the collapse of the

socialist bloc. These restrictions became even more stringent after the US blockade expanded in 1996.

To cope with this situation the Cuban government implemented a series of reforms, keeping health and education as priority areas. A 1997 report from the American Association for World Health, which conducted a study of the effects of the embargo on the health of Cubans, stated: "A humanitarian catastrophe has been averted only because the Cuban government has maintained a high level of budgetary support for a health care system designed to deliver primary and preventive health care to all of its citizens. Cuba still has an infant mortality rate half that of the city of Washington, DC. Even so, the US embargo of food and the de facto embargo on medical supplies has wreaked havoc with the island's model primary health care system."

As a result of the blockade, more than 300 medicines and basic medical supplies are currently lacking in Cuba, as well as some laboratory, surgical, and radiography materials. The number of laboratory tests carried out in the 273 hospitals throughout the country declined by 45% from 1990 to 1993, while the number of x ray examina-

Infant mortality in Cuba has reached an all time low

tions also fell by 70% during the same period. Surgery is currently carried out only in selected cases, and there are severe limitations on ambulance services and biomedical research.

Lack of soap is associated with epidemics of pediculosis and scabies, which reached their

peak in 1994. For most of the population only the most basic foodstuffs are available and these are in short supply. Nutritional deficits were responsible for an epidemic of optical neuropathy that by 1993 had temporarily blinded over 50 000 Cubans. □