

New Health Scrutiny Arrangements

Purpose of report

- 1 To set out the changes to the legislation relating to health scrutiny, which came into effect on 1 April 2013.

Background

- 2 In July 2012 the Department of Health published a consultation paper setting out how the Government intended to change the regulations on local authority health scrutiny. It ran from 12 July 2012 to 7 September 2012, and responses to the consultation were published in December 2012.
- 3 Changes to the arrangements for local authority scrutiny of health came into effect on 1 April 2013 under the Health and Social Care Act 2012 and The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013. The Secretary of State is expected to issue new guidance to support local authorities and relevant NHS bodies and health service providers in complying with the new regulations.

New health scrutiny arrangements

- 4 The Health and Social Care Act 2012 confers the health scrutiny functions on a local authority directly, rather than on a health overview and scrutiny committee (HOSC). Suitable alternative arrangements can be established to discharge the health scrutiny functions, such as by a committee set up under sections 101 or 102 of the Local Government Act 1972. However, a local authority may still choose to operate its existing HOSC. At its meeting on 14 May 2013, Wiltshire Council made no change to the current arrangements.
- 5 The 2012 Act also extends the scope of health scrutiny to include “relevant NHS bodies” and “relevant health service providers”. This includes providers of NHS and public health services commissioned by the NHS Commissioning Board, CCGs and local authorities, including providers in the independent and third sectors providing services under contract to the NHS.
- 6 Under the new arrangements, the following provisions are retained which:
 - a) enable health scrutiny functions to review and scrutinise any matter relating to the planning, provision and operation of health services in the local authority’s area
 - b) require officers of relevant NHS bodies and members of health service providers to provide information to, and attend before, meetings of the

Committee to answer questions necessary for the discharge of health scrutiny functions

c) enable health scrutiny functions to make reports and recommendations to relevant NHS bodies and local health providers and to the local authority on any health matters that they scrutinise

d) require relevant NHS bodies and health service providers to respond within a fixed timescale to reports or recommendations from the local authority

e) require relevant NHS bodies and health service providers to consult local authorities on proposals for substantial developments or variations to the local health service.

7 In respect of e) above, the regulations now also require clear timescales to be published by the proposer of any substantial NHS service change, and in response, the local authority, is required to publish clear timescales for their decision-making, ie as to whether to support the proposal, exercise its powers to make a report on the matter or refer it to the Secretary of State.

8 There is flexibility to amend these timescales and guidance is expected to include advice on indicative timescales. The duty to consult does not apply where the responsible person is satisfied that a decision has to be taken without consulting because of a risk to safety or welfare of patients or staff.

9 The regulations do not define 'substantial' and NHS bodies and relevant health service providers should reach a local understanding with the local authority. Further guidance is expected on this but it is unlikely a clear definition will be provided.

10 The regulations place a requirement on the consulting organisation and health scrutiny to try to reach agreement over the proposals. This may be trying to resolve any outstanding concerns health scrutiny may have about the proposed service change, or any recommendations made by health scrutiny that the consulting body has felt unable to accept. The NHS Commissioning Board may be called upon to help facilitate this local resolution. No referral may be made to the Secretary of State until all reasonable attempts at local resolution have been exhausted and this will need to be evidenced in the referral documentation.

11 The power of referral to the Secretary of State is now a function of full Council but, where the local authority has chosen to retain a HOSC, it may delegate any or all of its powers to that HOSC, including the power to refer proposals for service change to the Secretary of State. Under the current Constitution (Part 2 Article 6) the Health Select Committee has the power of referral to the Secretary of State regarding the reconfiguration of services and the Council agreed to this continuing at their meeting on 14 May 2013.

12 The power of health scrutiny to refer matters relating to foundation trusts to Monitor, the independent regulator for NHS foundation trusts, has been removed, as Monitor moves from an authorising to a licensing regime.

- 13 Regulations require the formation of a joint scrutiny arrangement where an NHS body or relevant health service provider consults more than one local authority on proposals to make substantial variations or developments to the service. The facility for an individual local authority to refer a matter to the Secretary of State is preserved in cases where consultation has taken place via joint scrutiny arrangements.
- 14 If, having considered the information provided to the joint committee, a local authority determines that the proposal is not 'substantial' for its residents, it can opt-out. In doing so, it relinquishes the power to refer the proposed change to the Secretary of State.
- 15 Two or more local authorities have the discretion to appoint a joint scrutiny committee. In such cases it is important that its roles, responsibilities and terms of reference are clear.
- 16 Advice is expected about the formation of joint scrutiny arrangements in relation to nationally or regionally commissioned services.
- 17 Healthwatch Wiltshire has the power to refer issues of concern to health scrutiny for consideration.

Next steps

- 18 The Secretary of State is expected to issue new guidance shortly to support local authorities in complying with the new regulations. It is understood that the guidance will provide statutory guidance that local authorities must have regard to, and advice and guidance on how local authorities carry out scrutiny, and the roles of NHS bodies and relevant health providers; this is expected to be a statement of what is held to be good practice.
- 19 Once published a review of the guidance will be undertaken, informing the Committee and enabling it to incorporate best practice as it develops its work programme and relationships with bodies that will be key in improving services.

Recommendations

- 20 To note the changes to health scrutiny arrangements under the Health and Social Care Act 2012 and The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.
- 21 To report further once the formal guidance is published.

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