

Wiltshire Council

Health Select Committee

23 September 2014

Local Authority Health Scrutiny - Guidance to Support Local Authorities and their Partners to Deliver Effective Health Scrutiny

Purpose of report

- 1 To highlight the key elements of the new Local Authority Health Scrutiny Guidance including the consultative responsibilities of the main bodies involved in governing health services.

Background

- 2 In June 2014 the Department of Health (DH) published guidance that explains local authorities' responsibilities as set out in the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, and the policy background for the scrutiny of local health services. Local authorities are responsible for scrutinising local health organisations to ensure they are providing effective, efficient services and encourage improvement.
- 3 The guidance entitled *Local Authority Health Scrutiny – Guidance to Support Local Authorities and Their Partners to deliver Effective Health Scrutiny* is non-statutory but the DH states that the guidance 'needs to be conscientiously taken into account'.
- 4 The guidance includes a number of key messages which are reproduced in Appendix 1. The full guidance was circulated to all select committee members on receipt and is also available [here.](#))

Main considerations

- 5 Many of the powers of health scrutiny described in previous legislation remain unchanged for local authorities. These include the power to:
 - Review and scrutinise matters relating to the planning, provision and operation of the health service in the area. This may well include scrutinising the finances of local health services;
 - Require information to be provided by certain NHS bodies about the planning, provision and operation of health services;

- Require employees including non-executive directors of certain NHS bodies to attend before them to answer questions.
 - Make reports and recommendations to certain NHS bodies and expect a response within 28 days.
 - Set up joint health scrutiny committees;
 - Refer NHS substantial reconfiguration proposals to the Secretary of State.
- 6 Duties on the NHS that are carried forward into the new legislation require the NHS to:
- Provide information about the planning, provision and operation of health services as reasonably required by the health scrutiny function;
 - Attend local authority health scrutiny meetings;
 - Consult on any proposed substantial developments or variations in the provision of the local health service;
 - Respond to health scrutiny reports and recommendations submitted to them by the health scrutiny function. Where requested by health scrutiny a written response should be produced within 28 days (now a statutory requirement);
 - Consult and involve patients and the public, which are in addition to the duties to consult with health scrutiny.

Key changes from the previous legislation

- 7 As commissioners or providers of public health services and as providers of health services to the NHS, services commissioned or provided by local authorities are themselves within the scope of the health scrutiny legislation.
- 8 The health scrutiny function rests with the Council and the Council may decide how it is discharged. In Wiltshire it has been agreed that this will be through the Health Select Committee.
- 9 Healthwatch or contractors may make referrals to the health scrutiny function, which should have a mechanism for dealing with them. The Select Committee assumes this responsibility.
- 10 The scope of the health scrutiny function has been extended to cover the full range of commissioners and providers of NHS-funded services, who are referred to as "responsible persons". The responsible persons are:
- Clinical Commissioning Groups (CCG);
 - NHS England;
 - Local authorities (insofar as they may be providing health services to CCGs, NHS England or other local authorities);
 - NHS trusts and NHS foundation trusts;

- GP practices and other providers of primary care services (previously not subject to specific duties under health scrutiny regulations as independent contractors, they are now subject to duties under the new Regulations as they are providers of NHS services);
- Other providers of primary care services to the NHS, such as pharmacists, opticians and dentists;
- Private and voluntary sector bodies commissioned to provide NHS or public health services by NHS England, CCGs or local authorities.

Members and employees of a relevant NHS body or relevant health service provider have a duty to attend before a local authority when required by it (provided reasonable notice has been given) to answer questions the local authority believes are necessary to carry out its health scrutiny functions. This duty now applies to all those bodies listed above.

- 11 The type of information requested and provided will depend on the subject under scrutiny. It may include:
- Financial information about the operation of a trust or CCG, for example budget allocations for the care of certain groups of patients or certain conditions, or capital allocations for infrastructure projects, such as community facilities;
 - Management information such as commissioning plans for a particular type of service;
 - Operational information such as information about performance against targets or quality standards, waiting times;
 - Patient information such as patient flows, patient satisfaction surveys, numbers and types of complaints and action taken to address them;
 - Any other information relating to the topic of a health scrutiny review which can reasonably be requested.

Conflicts of Interest

- 12 The guidance includes the following provisions on conflicts of interest, which are reproduced in full:

3.1.24 Councils should take steps to avoid any conflict of interest arising from councillors' involvement in the bodies or decisions that they are scrutinising. A conflict might arise where, for example, a councillor who was a full voting member of a health and wellbeing board was also a member of the same council's health scrutiny committee or of a joint health scrutiny committee that might be scrutinising matters pertaining to the work of the health and wellbeing board.

3.1.25 Conflicts of interest may also arise if councillors carrying out health scrutiny are, for example:

- An employee of an NHS body.
- A member or non-executive director of an NHS body.
- An executive member of another local authority.
- An employee or board member of an organisation commissioned by an NHS body or local authority to provide services.

3.1.26 These councillors are not excluded from membership of overview and scrutiny committees, and, clearly, where the full council has retained the health scrutiny function, they will be involved in health scrutiny. However they will need to follow the rules and requirements governing the existence of interests in matters considered at meetings. Where such a risk is identified, they should consult their monitoring officer for advice on their involvement.'

Consultation on substantial reconfiguration proposals

- 13 Relevant NHS bodies and health service providers are required to consult a local authority about any proposal which they have "under consideration" for a substantial development of or variation in the provision of health services in the local authority's area. With increasing integration of health and social care, many proposals may be joint NHS-local authority proposals, with the involvement of the Health and Wellbeing Board at an early stage; health scrutiny should be party to such discussions.
- 14 As before, 'substantial development' and 'substantial variation' are not defined in the legislation. Joint protocols are recommended between the commissioners and health scrutiny committees. There has previously been some discussion in the South West about the benefits of agreeing a joint protocol for this purpose. Wiltshire decided to continue with a more flexible approach relying on good communication between all bodies on a case by case basis. This seems to have worked successfully to date but the publication of the guidance provides the opportunity to revisit the matter should the Committee so wish. Commissioners, not providers, are responsible for undertaking consultation. Where providers have a development under consideration, they will need to inform the commissioners at an early stage.
- 15 Commissioners must advise the health scrutiny function of the date by which it requires comments on the health consultation and the date on which they intend to make a decision whether to proceed with the proposal.
- 16 The health scrutiny function may make comments on any consultation proposal, and these comments may include a recommendation. Where a recommendation is included and the commissioner disagrees with that

recommendation, the commissioner must notify the health scrutiny function of the disagreement. Steps must be taken to resolve the disagreement.

- 17 Referrals to the Secretary of State may be made largely on the similar grounds as previously, which are:
- It is not satisfied with the adequacy of content of the consultation.
 - It is not satisfied that sufficient time has been allowed for consultation.
 - It considers that the proposal would not be in the interests of the health service in its area.
 - It has not been consulted, and it is not satisfied that the reasons given for not carrying out consultation are adequate.
- 18 Every effort must be made to resolve any disagreement between the Health Scrutiny Committee and the commissioners. Only commissioners, such as NHS England and CCGs, may be subject to referral. Where referrals are made to the Secretary of State for Health, they must be supported by evidence.

Recommendations

- 19 To acknowledge publication of the long-awaited Local Authority Health Scrutiny Guidance.
- 20 The Committee may wish to invite the CCG to consider developing a joint protocol on how they will reach a view as to whether or not a proposal constitutes a 'substantial development' or 'substantial variation' including best practice by others. Alternatively the Committee may favour a continuation of the current arrangements (Paragraphs 14 of the report and 4.2.2 of the guidance).
- 21 To note that the Council already has a mechanism to respond to consultations from relevant NHS bodies and health service providers on substantial reconfiguration proposals by delegating responsibility to the Select Committee (Paragraphs 8 of the report and 3.1.8 of the guidance)
- 22 To recognise the Select Committee's responsibilities to respond to referrals made to it by Healthwatch or contractors under Regulation 21. (Paragraphs 9 of the report and 3.1.8 and 3.3.3 of the guidance)
- 23 To forward the report to the Health and Wellbeing Board, the CCG and Healthwatch for acknowledgement of the joint responsibilities that exist within the guidance and the need for effective communication with the statutory health scrutiny function in the best interests of credible and transparent governance of Wiltshire's health services.

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Appendices

Appendix 1

Local Authority Health Scrutiny Guidance - Key Messages