



Leicester
City Council

**WARDS AFFECTED
ALL WARDS (CORPORATE ISSUE)**

Forward Timetable of Meetings:

**Social Services & Personal Health Scrutiny Committee
Cabinet**

**8 March 2001
19 March 2001**

**THE HEALTH AND SOCIAL CARE BILL: KEY IMPLICATIONS FOR THE CITY
COUNCIL**

Report of the Director of Social Services

1. Purpose of the Report

- 1.1 To identify those aspects of the Health and Social Care Bill that will have implications for the Council, and to propose how the issues identified can be addressed when the legislation takes effect.

2. Summary

- 2.1 The Health and Social Care Bill seeks to implement the key proposals in the NHS Plan and the Government's response to the Royal Commission on Long Term Care that require changes to primary legislation.

- 2.2 The Bill is in five parts:

- Part One makes changes to the way the NHS, including family health services, is run and funded in England and Wales. This section includes arrangements to abolish Community Health Councils, new arrangements for public and patient involvement in the NHS and for a new scrutiny role of the NHS by local authorities.
- Part Two deals with pharmaceutical services.
- Part Three provides for the establishment of Care Trusts and the power for the Secretary of State to intervene and impose joint arrangements.
- Part Four makes changes to the way long term care is funded and provided in England and Wales, and extends arrangements for direct payments.
- Part Five deals with the control of patient information and the extension of prescribing rights for medicines to more health professionals.

- 2.3 This report concentrates on the four issues of most direct interest to the City Council, namely scrutiny and patient involvement, care trusts, direct payments,

and the package of proposals on long term care, including the provision of free nursing care.

- 2.4 This report is intended primarily to brief Cabinet and Scrutiny Committee members on this important piece of legislation. Members, however, may wish to support the concerns expressed by the Local Government Association and the Association of Directors of Social Services that care trusts, if NHS bodies as proposed in the Bill, may marginalise social care services in an NHS dominated by acute care. The LGA has established a set of principles for care trusts, including joint governance arrangements (involving both the NHS and local government) to ensure service users and carers benefit from the experience of both partners.
- 2.5 The Cabinet will also be aware of the debate surrounding the funding of long term care and, in particular, whether personal care (as well as nursing care) should be free in England and Wales as it is planned to be in Scotland. A number of the options take effect in 2001/2 and could have, as yet unquantifiable, adverse effects on the Social Services Department's budget.

3. Recommendations

3.1 Cabinet is recommended to:

- (a) note the provisions of the Health and Social Care Bill and the implications for the Council;
- (b) receive a further report on proposals for how the new scrutiny powers for the Council in relation to the NHS might best be exercised;
- (c) make suitable representations to Government in support on the LGA and ADSS proposal that care trusts should have joint governance arrangements and not be wholly NHS bodies; and
- (d) commission a further report on the anticipated budget implications of the Long Term Care Funding changes for 2001/2 and 2002/3.

4. Financial and Legal Implications

- 4.1 The costs to the Council of the new powers and responsibilities in the Bill are unclear at this stage. There will be a loss of income from the changes to the funding of long term care but the extent to which this will be adequately compensated for by grants remains unknown. There will be additional costs linked to the new scrutiny of NHS bodies working in the City.
- 4.2 The Bill received its 3rd reading in the House of Commons on 14 February 2001. It has been introduced to the House of Lords where it will have its 2nd reading on 20th February (Guy Goodman, Assistant Head of Legal Services – ext. 7054).

Report Author: Andrew Cozens, Director of Social Services

SUPPORTING PAPERS

REPORT

1. Background to the Health and Social Care Bill

- 1.1 In my report to Cabinet in December 2000, I described the significance of the Health Act 1999 and The NHS Plan (published in July last year) in delivering the Government's objective of closer integration between the NHS and social care. The Cabinet endorsed the direction of travel proposed by the Leicestershire health and social care community for achieving this in Leicester, Leicestershire and Rutland.
- 1.2 This Bill will deliver the aspects of the NHS Plan and the Government's response to the Royal Commission on Long Term Care that require changes to primary legislation. Its stated purpose is as follows:
- To improve the performance of the NHS.
 - To provide better protection for patients through a faster, more effective and fair system for regulating GPs.
 - Better protection around the use of patient information.
 - Create a new system of patient involvement in the way the NHS works.
 - Modernise pharmacy and prescribing services.
 - Extend direct payments for social services users.
 - Provide a fairer system of funding for long term care, including measures to reduce the need to sell one's home on entering residential care.
- 1.3 The Bill is in five parts:
- Part One makes changes to the way the NHS, including family health services, is run and funded in England and Wales. This section includes arrangements to abolish Community Health Councils, new arrangements for public and patient involvement in the NHS and for a new scrutiny role of the NHS for local authorities.
 - Part Two deals with pharmaceutical services.
 - Part Three provides for the establishment of Care Trusts.
 - Part Four makes changes to the way long term care is funded and provided in England and Wales, and extends arrangements for direct payments to parents of disabled children and to young disabled people aged 16 and 17.
 - Part Five deals with the control of patient information and the extension of prescribing rights for medicines to more health professionals.
- 1.4 This report outlines the issues for the Council arising from Parts One, Three and Four only.

2. Scrutiny and the new NHS

- 2.1 The Bill proposes the extension of existing local authority scrutiny powers specifically to include NHS services. This was originally limited to those councils with social services responsibilities but an amendment in the Commons stages has apparently confirmed that this extends to District Councils in those areas with County and District Councils.
- 2.2 Regulations under the Bill will outline how these arrangements will operate, including what information NHS bodies will have to provide to local councils and what requirements there may be for certain officers of an NHS body to attend before the proposed Overview and Scrutiny Committee. NHS bodies referred to mean a Health Authority, Primary Care Trust or NHS Trust. It is not clear if the Scrutiny arrangements parallel those for local authorities or should involve Cabinet and Scrutiny members.

3. Replacing Community Health Councils

- 3.1 The Bill will establish a Patients' Forum in every NHS Trust and for each Primary Care Trust. A Patients' Forum membership will include representatives from the voluntary sector, patients, a member from the PCT and a Trust non-executive director. The duties of these new bodies will be:
- To monitor and review the operations of services provided by the Trust.
 - To obtain patients' views about those services and report on those views to the Trust (or in the case of PCTs to the Health Authority).
 - To provide advice, and make reports and recommendations, about matters relating to services of the Trust.
 - To make available to patients advice and information about the Trust's services.
 - To have access to inspect NHS premises on an agreed basis.
- 3.2 This combination of arrangements is linked to the proposed abolition of community health councils (CHCs). Their role in investigating complaints will be replaced with Patient Advocacy and Liaison Services (PALS) based in Trusts.

Comment

- 3.3 The Local Government Association (LGA) has warmly welcomed the new scrutiny role as strengthening councils' community leadership and existing powers to promote the well-being of local people. It will also be essential that the new scrutiny role is properly resourced.
- 3.4 The proposal to abolish CHCs has proved contentious. The LGA supports the principle of an independent and robust advisory and complaints service for patients and believes this is best achieved by a refocused and reformed network of CHCs.

4. Care Trusts

- 4.1 The Bill establishes the legal framework for care trusts. These will be NHS bodies (alongside Health Authorities, PCTs and NHS Trusts) able to commission and deliver not only primary and community services but also social care and other local authority 'health related services'. They will be based on an existing NHS Trust or Primary Care Trust with social care "added on". The governance arrangements would be based on the NHS Trust model, with councillor and professional representation but details are not yet clear and will be determined by regulations.
- 4.2 Financial responsibility for social care and any other local authority services within the care trust will remain with the Council and the Trust can take on *some* or *all* of the local authority's health related functions.
- 4.3 Care trusts will be established on a voluntary basis by a joint application to the Secretary of State by the local partner organisations involved.
- 4.4 The geographic areas to which a care trust provides health and social care do not have to be completely coterminous. Social care can be provided outside of the boundaries where health care is delivered. More than one adjacent local authority can be part of the care trust.
- 4.5 The Bill introduces new powers to enable the Secretary of State to impose specified Health Act flexibilities when one side in a health/social care partnership is seen to be failing. One option would be to impose a care trust. Where this is imposed the Council or NHS bodies involved will be required to provide the necessary finance. When this step is taken only personal social services functions can be transferred into the trust (not any other local authority health related function).

Comment

- 4.6 The Cabinet has, in endorsing my paper in December 2000, made a commitment to integrated care at the frontline with patients and service users. The proposed model for a care trust (as NHS bodies) could lead to social care services being marginalised in an NHS dominated by acute care, with the social model of disability and the wider community role of social services losing out.
- 4.7 Further, there are a number of practical problems with this model. The Council would retain financial responsibility for social care. This means a separate process for deciding the level of funding for the social care and health components. This degree of negotiation requires an overarching joint commissioning approach involved the Health Authority and the Council, in addition to the integrated commissioning for different service elements *within* the care trust. This argues for the *joint governance arrangements* as separate legal entities or with local choice about governance advocated by the Local Government Association and ADSS.

- 4.8 Councils have substantial experience of balancing demand and resources through the application of eligibility criteria. The NHS has a different approach based on clinical judgement. Any departure from this rigour could easily lead to substantial overspends within the care trust.
- 4.9 While the ability for the care trust to have different boundaries to those of the Council, complexities of different accountabilities and funding could add to the difficulties of integration rather than reduce them. I recommend the Cabinet should continue to push for coterminous primary care trust and care trust boundaries based on the City of Leicester.
- 4.10 Care trusts are just one possible model for achieving greater integration of health and social care. The paper endorsed by the Cabinet in December proposed a range of approaches each fitting the particular needs of the service and service users.

5. Funding of Long Term Care

- 5.1 Part Four of the Bill is designed to improve the system of funding long term care set out in The NHS Plan: The Government's Response to the Royal Commission on Long Term Care. It also allows local authorities to place people in residential or nursing homes outside England and Wales and extends the availability of direct payments.
- 5.2 The Government has proposed that in England all nursing care should be provided free, a different approach to Scotland where nursing and personal care in residential care and nursing homes looks likely to be free. In both cases definitions will be all important. Detailed regulations and guidance are awaited. In order to ensure it is free, the bill will remove the power of local authorities to purchase nursing care by a registered nurse.
- 5.3 The Bill will amend the law to allow those moving into residential care to retain their property rights for a period of three months without a charge taking its value into account being levied. It will also extend the powers of local authorities to place a legal charge on land as an alternative method of a person financing their long-term care.
- 5.4 The Bill will transfer to local authorities the responsibilities for funding the long term care of those with *preserved rights* to a special rate of income support gained before the 1993 Community Care Act reforms. A sum of some £600 million has been identified to transfer from the Department of Social Security to local authorities to fund this new responsibility. This will mean an increased workload for local authority assessment and care management staff.
- 5.5 The timetable for these changes are as follows:

Changes to Charging in Residential Care: April 2001
(Capital limits to be raised from £10,000 and £16,000 to £11,500 and £18,500 and value of home disregarded for 3 months): this will reduce income from charges and has apparently been built into the SSA)

Free Nursing Care by a registered nurse in a nursing home: October 2001
(This will reduce income from charges. Special Grant expected to cover costs).

Power to put legal charge on property and not force sale: October 2001
(Discretionary scheme to be funded via Special Grant)

Preserved Rights cases transferred to local authorities for assessment, care management and funding April 2002
(Transfer of resources from DSS but impact likely to mean additional costs).

- 5.6 The commitment to free nursing care for older people and greater flexibility offered by the proposals on charging for residential care have been welcomed. There is a continuing and strong lobby for personal care also to be free. This would be very much more expensive and the Government believes that level of resources is best directed to improving services for all older people with community care needs and not just using it to assist those who are comparatively well off.
- 5.7 There are a number of practical issues which need further consideration as the implementation guidance on the Bill is developed.
- 5.8 I propose to bring a further report to Cabinet once the implications for the Department's budget in 2001/02 and 2002/03 are clearer.

6. Direct Payments

- 6.1 Under the current system, local authorities are permitted but not required to offer direct payments to people who meet their eligibility criteria. The Bill will lead to a *requirement* that direct payments be made to all individuals who request them, and who meet specified conditions. Those individuals will include parents of disabled children, young disabled people aged 16 and 17, and carers' services all as defined by the Carers and Disabled Children Act 2000 (about which I am planning to report later this year).

7. Details of Research and Consultation

- 7.1 This report is based on the draft Bill and associated Explanatory Notes, the LGA Rough Guide to the Health and Social Care Bill, and briefings from the Association of Directors of Social Services. I have consulted with the Chief Financial Officer, Legal Services and Leicestershire Health Authority.

8. Legal and Other Financial Implications

- 8.1 The costs to the Council of the new powers and responsibilities in the Bill are unclear at this stage. There will be a loss of income from the changes to the funding of long term care but the extent to which this will be adequately compensated for by grants remains unknown. There will be additional costs linked to the new scrutiny of NHS bodies working in the City.

9. Other Implications

Other Implications	Yes/No	Paragraph Referred
Equal Opportunities	No	-
Policy	Yes	Set out in this report
Sustainable & Environmental	No	-
Crime & Disorder	No	-
Human Rights Act	No	-

10. Background Papers

- 10.1 Health and Social Care Bill
LGA Rough Guide to the Bill
Cabinet Report on the Health Act 1999 and NHS Plan, December 2000.

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