

Health & Wellbeing Scrutiny Commission – 16 December 2014

TOPIC - HEALTH SCRUTINY GUIDANCE, THE KEY MESSAGES

Development session led by the Chair of Health & Wellbeing Scrutiny Commission

1. Purpose

- 1.1 To introduce discussion of the new Health Scrutiny Guidance.

2. Report

- 2.1 The People, Communities and Local Government Division of the Department of Health issued guidance on Local Authority Health Scrutiny in June 2014. This report reflects on the key messages of the guidance and invites Members to consider the implications of the guidance.
- 2.2 The guidance states that the primary aim of Health Scrutiny is to strengthen the voice of local people, ensuring that their needs and experiences are considered as an integral part of the commissioning and delivery of health services, and that services are effective and safe.

- ***How can Health Scrutiny be better attuned to the concerns of local people?***
- ***How can Health Scrutiny ensure that health services are effective and safe?***

- 2.3 The guidance states that Health Scrutiny has a strategic role in taking an overview of how well integration of health, public health and social care is working – relevant to this might be how health and wellbeing boards are carrying out their duty to promote integration – and in making recommendations about how it could be improved.

- ***How should Health Scrutiny engage with health and wellbeing boards?***
- ***What information/evidence might Health Scrutiny need to enable it to make recommendations about how integration could be improved?***

- 2.4 The guidance states that Health Scrutiny has a legitimate role in proactively seeking information about the performance of local health services and institutions; in challenging the information provided to it by commissioners and providers of services for the health service and in testing this information by drawing on different sources of intelligence.

- ***Is Health Scrutiny sufficiently proactive in seeking information and challenging the information it receives?***
- ***How might Health Scrutiny best 'reality check' the information that it is provided with?***

2.5 The guidance states that Health Scrutiny is part of the accountability of the whole system and needs the involvement of all parts of the system. Engagement with relevant NHS bodies and relevant health service providers is a continuous process. It should start early with a common understanding of local health needs and the shape of services across the whole health and care system.

- ***Is Health Scrutiny sufficiently engaged with all parts of the health and care system (especially when substantial variations are taking place)?***
- ***Does Health Scrutiny share a common understanding with health service providers of the shape of services across the whole system?***

2.6 The guidance states that Health Scrutiny requires a clarity at a local level about respective roles between the health scrutiny function, the NHS, the local authority, health, health and wellbeing boards and local Healthwatch.

- ***Does Health Scrutiny currently have sufficient clarity around the roles of other bodies and organisations, and if not, how might this be obtained?***

2.7 The guidance indicates that in the light of the Francis Report, local authorities will need to satisfy themselves that they keep open effective channels by which the public can communicate concerns about the quality of NHS and public health services to health scrutiny bodies. Although Health Scrutiny bodies are not there to deal with individual complaints, they can use information to get an impression of services overall and to question commissioners and providers about patterns and trends.

- ***Do the public have sufficient lines of communication to Health Scrutiny?***

2.8 Furthermore, in the light of the Francis Report, Health Scrutiny will need to consider ways of independently verifying information provided by relevant NHS bodies and relevant health service providers – for example, by seeking the views of local Healthwatch.

- ***How else might Health Scrutiny seek to verify information?***
- ***Would seeking to use Healthwatch to verify information have the potential to tie up too much of Healthwatch's resources?***

2.9 The guidance also indicates that Health Scrutiny should become outcome focused, looking at crosscutting issues including general health improvement, wellbeing and how well health inequalities are being addressed.

- ***Is Health Scrutiny sufficiently outcomes focused?***
- ***How should health inequalities be addressed?***

2.10 The guidance states that when there are concerns about substantial developments and variations in health services local authorities (i.e. Health Scrutiny) will need to work together with the NHS to resolve issues locally if at all possible. If external support is required for this purpose, informal help is available from the Independent Reconfiguration Panel and/or the

Centre for Public Scrutiny. If the decision is ultimately taken to formally refer the NHS's reconfiguration proposals to the Secretary of State for Health, then referral must be accompanied by an explanation of all steps taken locally to try to reach agreement.

- ***How will Health Scrutiny ensure that all possible efforts are made to resolve issues***

locally?

• How will Health Scrutiny Members judge when it is appropriate to refer to the Secretary of State?

- 2.11 The guidance also mentions that in considering substantial reconfiguration proposals that Health Scrutiny needs to take into consideration the resource envelope within which the NHS operates and therefore take into account the effect of the proposals on the sustainability of services, as well as quality and safety.

• How will Health Scrutiny obtain sufficient information about the financial constraints across the NHS to properly inform its thinking?

- 2.12 The guidance indicates that Health Scrutiny functions should be carried out in a transparent manner which boosts the confidence of local people in Health Scrutiny. Health Scrutiny should be held in an open forum with local people allowed to attend meetings, with filming and tweeting allowed.

• How will Health Scrutiny ensure that local people, particularly those who are not present at scrutiny meetings, have the opportunity to see or hear the proceedings?

- 2.13 The guidance also encourages the health and social care system as a whole to think about how the Health Scrutiny function is supported nationally, regionally and locally to enable the powers and duties associated with the function to be exercised appropriately.

3. RECOMMENDATION

3.1 That the Health & Wellbeing Scrutiny Commission to:

- 3.1.1 Consider and comment on the new Health Scrutiny guidance, taking into account the legal advice provided at Section 4, below.**
- 3.1.2 Align the new guidance with the Health Scrutiny Arrangements ‘Fit for Purpose Review Implementation Plan’**
- 3.1.3 Schedule further consideration of the guidance, as necessary.**

4. Legal Advice to consider the impact on the LA and Health Scrutiny

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- 4.1 The document entitled ‘Guidance to support LA’s and their partners to deliver health scrutiny’ is published by the Department of Health and intended to provide an up-to-date explanation and guide to the legislation and implementation of the same under the National Health Service Act 2006, which governs LA health scrutiny functions.

The guidance should be read in its entirety alongside the legislation in order to obtain a full understanding of the same. The key legislation/Regulations are the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, which replace the 2002 Regulations found within the Health and Social Care Act 2001.

- 4.2 The new legislation extends the scope of the health scrutiny and increases the flexibility of local authorities (LA's) in deciding how to exercise their scrutiny function.
- 4.3 Following the Francis report, LA's will need to satisfy themselves that they have open channels by which the public can communicate concerns about the NHS and public health services to health scrutiny bodies.
- 4.4 LA's should now ensure that regardless of arrangements adopted for carrying out health scrutiny functions, the functions are carried out in a transparent manner in order to boost the confidence of local people. Section 40 of the new Local Audit and Accountability Act 2014 provides for transparency and access to local government meetings and documents, therefore access to health scrutiny would be in line with this.
- 4.5 The duties set out in the new Regulations support LA's to discharge their scrutiny functions effectively and LA's must comply with the duties or find themselves in breach of a statutory duty thus risk facing legal challenge.
- 4.6 The Regulations cover matters relating to the health service, to include services provided by the NHS and public health commissioned by LA's.
- 4.7 **Section 2** of the guidance document details what remains the same following the new legislation for each key body. **Section 2.1** is relevant for LA's (2.1.1 – 2.1.4).
- 4.8 Turning to the changes arising from the new legislation, **Section 3** of the guidance sets out, in sub-headings, the specific changes relevant to each of the key bodies.
- 4.9 **Section 3.1** outlines the powers and duties in respect of the LA and should be considered in its entirety alongside the legislation.
- 4.10 **Section 3.1.1 to 3.1.4** details the changes to councils as commissioners and providers of health services, and confirms that as the scope of the Regulations cover services commissioned by the LA, the LA may be bodies which are scrutinised, as well as bodies which carry out the health scrutiny. The duties that apply to scrutinised bodies (such as duty to provide info) will therefore apply to LA's as they may well fall into the category of 'relevant health service providers' as defined in Section 244 of NHS Act and Regulation 20 of the new 2013 Regulations. In light of this, it will be important to bear in mind conflicts of interest and take necessary steps to deal with such a conflict should it arise, and steps where possible to avoid the same.
- 4.11 **Sections 3.1.5 to 3.1.8** details changes for Councils as scrutineers of health services. The Regulations provide certain requirements for health scrutiny functions, and **Section 3.1.8** sets this out, with further detail provided in Section 21 of the 2013 regulations.
- 4.12 **Sections 3.1.9 to 3.1.12** of the guidance provides for conferral of health scrutiny function on full council. The National Health Service Act 2006, amended by the Health and

Social Care Act 2012 confers health scrutiny functions on the LA as distinct from any overview and scrutiny committee or panel within the LA. The new provision is designed to give LA's a greater degree of flexibility as to how they discharge their health scrutiny functions, and the full council of each LA will determine which arrangement is adopted. **Section 3.1.9** provides examples of this.

- 4.13 **Sections 3.1.13 to 3.1.15** provides for delegation of health scrutiny function by full council; 3.1.15 states that if a council decides to delegate to a health scrutiny committee, it need not delegate all of its health scrutiny functions to that committee (i.e. the it could retain some functions itself). For example, it might choose to retain the power to refer issues to the Secretary of State for Health. Equally, it might choose to delegate that power to the scrutiny committee. **section 3.1.13** sets out those to whom the legislation enables health scrutiny functions can be delegated to; LA's may not delegate health scrutiny functions to an officer, this is disallowed by Regulation 29.
- 4.14 **Section 3.1.16 to 3.1.20** of the guidance provides for joint health scrutiny and Regulation 30 sets out certain requirements as listed in **Section 3.1.17**.
- 4.15 **Section 3.1.21** covers reporting and making recommendations, and sets out that Regulation 22 enables LA's and committees to make reports and recommendations to NHS bodies and health service providers, and if a response is requested, Regulation 22 provides it should be received within 28 days of request.
- 4.16 I flagged up and mentioned above the need to be alert to the risk of conflicts of interest, and paragraphs **3.1.24 to 3.1.26** addresses this issue specifically.

5. Background Papers

- 5.1 *Local Authority Health Scrutiny: Guidance to support Local Authorities and their partners to deliver effective health scrutiny (Department of Health – June 2014).*

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324965/Local_authority_health_scrutiny.pdf

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