Response to the proposals on Local Authority Health Scrutiny

September 2012

Introduction

Following the passing into law of the Health and Social Care Act 2012, the Department of Health is finalising the supporting regulations and guidance. As part of this process the Department has sought feedback from local authorities regarding the role of health scrutiny.

This document sets out responses from the Plymouth City Council's Health and Adult Social Care Overview and Scrutiny Panel to the Department of Health's consultation relating to Local Authority Health Scrutiny. It has been produced following liaison with the Members of the Health and Adults Overview and Scrutiny Committee and the Cabinet Member for Public Health and Adult Social Care.

The final response has been signed off by the Chair and Vice-Chair of the Health and Adult Social Care Overview and Scrutiny Panel.

The eleven consultation questions have been set out below, along with the panel's responses. The response was forwarded to the department of Health on the 7th September 2012.

Q1 Do you consider that it would be helpful for regulations to place a requirement on the NHS and local authorities to publish clear timescales? [when substantial variation proposals are made]

Yes. The publication of timescales with relation to reconfiguration proposals would allow local health scrutiny committees to adequately plan for the consideration of such proposals. This would involve the scrutiny of development proposals prior to, as well as during and subsequent to the consultation process which would allow for a view of how proposals may / may not have changed following consultation with key stakeholders. Timescales would allow adequate time for joint committees to be formed, particularly when reconfiguration will affect large Acute Trusts delivering services across local authority boundaries.

Q2 Would you welcome indicative timescales being provided in guidance? What would be the likely benefits and disadvantages in this?

Yes. Guidance around indicative timescales, to be locally interpreted, would be useful. This would allow for negotiation with service providers on the development of proposals. Committee cycles differ across local government and non-statutory guidance would be useful in this area, particularly when large geographical areas and non-coterminous local government boundaries are considered.

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Q3 Do you consider it appropriate that financial considerations should form part of local authority referrals? Please give reasons for your views.

Yes. Tough financial decisions will be made across the statutory sector in coming years and it is essential that there potential impact on city priorities is considered as part of this process.

Financial considerations often form part of the Scrutiny Panel considerations when scrutinising a possible reconfiguration of services. However, financial information provided to the panel is often opaque and the panel cannot be assured how funding will stay within the health system.

Regulations enabling health scrutiny to require financial information to be provided by NHS Bodies and relevant service providers would be welcomed, health scrutiny should be able to consider this information in an open and transparent way and the department, when making regulations, must consider how commercially sensitive information, particularly from 'any qualified providers' should be considered by health scrutiny.

Whilst health scrutiny should be able to provide suggested alternatives within the same financial envelope to a provider proposing reconfiguration, this should not be a pre-requisite to support any subsequent referral.

Q4 Given the new system landscape and the proposed role of the NHS commissioning board, do you consider it helpful that there should be a first referral stage to the NHS Commissioning Board?

No. Health scrutiny would initially engage with the Health and Wellbeing Board to resolve disputes locally. The NHS Commissioning Board is an unelected independent body which sits at arm's length from government. The Board will authorise, support and develop the network of clinical commissioning groups across the country. It will also contribute to the setting of national tariffs and directly commission not only local primary care services but also regional specialist services.

It is not appropriate that a democratically elected body should refer any reconfiguration to the NHS Commissioning Board, not only does this damage the potency of any such approach, but the NHS CB would also not be seen to retain its independence and could have a conflict of interest.

Additional stages in the referral process will significantly slow the process and whether or not a referral was successful more resource would be required in dealing with any such referral.

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Q5 Would there be any additional benefits or drawbacks in establishing this intermediate referral?

Yes. Informal engagement with the NHS CB would be of benefit to the local authority if local disputes were to occur over reconfiguration proposals, however health scrutiny would initially engage with the health and wellbeing board to resolve disputes locally.

Q6 In what other ways might the referral process be made to more accurately reflect the autonomy in the new commissioning system and emphasise the local resolution of disputes?

The risk of referrals would be mitigated by the publication of timetables regarding service reconfiguration proposals as suggested in the consultation document. This panel feels that the current referral process works well and further changes are not required.

Q7 Do you consider it would be helpful for referrals to have to be made by the full council? Please give reasons for your view.

No. Full Council does not provide a forum for complex health issues to be fully explored. Health scrutiny in Plymouth is politically proportional and as such the collective voice of full council is represented in its membership. Lodging this power with the full council would slow the referral process.

Q8 Do you agree that the formation of Joint Overview and Scrutiny arrangements should be incorporated into regulations for substantial service developments or variations where more than one local authority is consulted? If not why not?

No. Guidance issued by the Department of Health in relation to statutory instrument No. 3048 (2002) provides sufficient local flexibility for authorities to establish Joint Committees. The guidance and current regulations allow authorities who have non-conterminous boundaries with Clinical Commissioning Groups, Acute Trusts and other providers to adequately establish Joint Committees with specific objectives.

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Q9 Are there additional equalities issues with these proposals that we have not identified? Will any groups be at a disadvantage?

No. The panel agrees with the equalities analysis accompanying this consultation which states proposals are largely technical changes required to implement secondary legislation in line with the Health and Social Care Act 2012. The panel is not aware of any evidence which shows any direct impact on particular equality groups.

Q10 For each of the proposals can you provide any additional reasons that support the proposed approach or reasons that support the current position? Have you suggestions for an alternative approach, with reasons?

The proposals in the 2010 white paper with respect to scrutiny sought to strengthen democratic legitimacy within health services and increase accountability. The removal of the power of referral to the secretary of state is one which has not yet been used by Health Scrutiny in Plymouth; local resolution of disputes will always be the first priority. However the removal of the ability for a democratically elected body to refer changes to a democratically elected minister in effect waters down health scrutiny's current powers and could diminish the potency of recommendations health scrutiny could make.

Q11 What other issues relevant to the proposals we have set out should we be considering as part of this consultation? Is there anything that should be included which is not?

In order to consider the wider issues of Health and Wellbeing, consideration must be given to widening the scope of those required to appear before health scrutiny (Section 244 of the Health Act 2006). Section 104 of the Local Government and Public Involvement in Health Act 2007 provides a list of partner authorities which have an impact on the Health and Wellbeing of the population, this should be extended further to include registered social landlords.