English Community Care Association

Local Authority Health Scrutiny – DH Proposals for consultation

Response from the English Community Care Association (ECCA)

1. Introduction

1.1 The English Community Care Association (ECCA) is the leading representative body for community care in England. Our members provide a wide range of services for adults with care and support needs including residential and nursing settings, homecare, housing and community-based support. Our members also deliver specialist care home services such as rehabilitation, respite, palliative care and mental health services.

1.2 ECCA welcomes the opportunity to comment on the government proposals to strengthen and streamline regulations on local authority health scrutiny. This is especially important as the scope of health scrutiny is to be extended to include independent sector providers.

2. Initial comments

Before looking at the specific questions set and answering those relevant to our association we would want to make the following general points.

2.1 Whilst we support the principles of increasing accountability and enhancing public voice in health we would want to be assured that the proposals are proportionate in terms of care home providers in particular. It is likely that most care homes would have only one or two residents commissioned by the NHS living there. This will be primarily care for those funded under NHS continuing healthcare rules.

2.2 However, as the NHS develops more plural approaches to provision and understands the support the care home sector can give, there will be an increasing number of intermediate and admission avoidance schemes commissioned by the NHS from care home providers. It is important therefore that care providers are fully aware of what extending the powers of local authority health scrutiny means for them and their residents, both in terms of improving quality for people and also the business and administrative implications and obligations that may be imposed through this scrutiny.

2.3 The provision of health care commissioned by the NHS is only one part of the picture. Care provider decisions around quality and value for money are a reflection of the commissioning relationships between themselves and the NHS. We would expect therefore that health scrutiny by local authorities takes account of both provider and commissioner actions and the interplay between the two.

2.4 Health scrutiny by local authorities could be seen as just yet another layer of monitoring imposed on independent providers without the benefit being clearly obvious to providers themselves or individual residents. As a result, it is important that local authorities understand the context in which independent care homes and homecare providers work. These services are regulated by the Care Quality Commission (CQC) and possibly some may also be licensed by Monitor in the future. In addition to this, providers may contract with a range of NHS and local authorities and be subject to their individual approaches to contract monitoring. All of these different systems rarely align and indeed often duplicate each other to the detriment of good care and efficiency. Local HealthWatch, alongside local health and care professionals will also be visiting the home, along with relatives and families.

2.5 We believe that in a care home for example where there is only a small percentage of health commissioned residents living there, some of the demands of health scrutiny may be inappropriate. However we are unclear at present as to what all these demands may entail. Local authorities should remember nevertheless that information about services may be accessible from other bodies and that the recently proposed Quality Surveillance Groups (National Quality Board, 'Quality in the New Health System: Improving and maintaining quality from April 2013), may be able to give an overview of the services provided in the case where there is some concern.

2.6 We are unclear the extent to which individual business decisions by commercial and charitable operators will be called into question by local health scrutiny. Operators must be able to make decisions in the best interests of customers and the business itself in order to ensure that it remains viable and able to deliver good quality care. As such an operator may decide that the provision of the service to the NHS is no longer viable to continue.

2.7 We would welcome the opportunity to comment on the strategy guidance proposed to accompany the new regulations.

2.8 We believe that current NHS commissioning practices do not always enhance individual choice with respect to continuing healthcare. In particular, people are being denied choice of care home based simply on price the PCT is willing to pay. This is especially relevant where an existing resident is eligible to move across to NHS funding. We further believe the current NHS commissioning practices are driving down quality and preventing people from accessing the

care home providing the quality they feel meets their needs. These are the wider issues that we believe local government health scrutiny should focus upon, as they are clearly related to health improvement and reducing health inequalities. We would support scrutiny of the commissioning system and commissioner/provider relationships that set the framework for ensuring people receive appropriate continuing healthcare.

2.9 In this period of transition it is difficult to see how the overall system will work and how providers can both contribute and benefit from new ways of working. In particular, there is concern as to how the new Health and Well-being Boards will involve local providers. Providers have a wealth of knowledge and understanding of local communities and can focus on what solutions are necessary to meet the identified need in any particular area. Yet there seems to be no systematic way to access and work with providers of all types. Providers are a key part of the local community, as are their residents, and the views of both should not be ignored. It is vital that health scrutiny takes this into account in terms of its criteria for making judgements on Health and Well-being Board decisions.

2.10 Independent providers take regular feedback from residents and families and others using their services. It is important that local authority health overview and scrutiny can work with providers to take account of the knowledge gained through these feedback mechanisms.

2.11 It will be helpful to be clear on how the local authority scrutiny function will align with or overlap other bodies' functions in terms of commissioning independent sector providers and in monitoring those providers. Providers will need to be absolutely clear on the context in which they are being asked to respond to health scrutiny investigations and how, if at all, information gleaned in health scrutiny is shared or impacts on the local authorities other functions around commissioning and contract monitoring. Likewise what information from health scrutiny will be shared with local HealthWatch?

2.12 What mechanisms will be in place to allow providers to comment and examine health scrutiny reports before they are made public? Will there be the right of reply and will confidentiality be assured if necessary. Finally are there to be exemptions to the definition of relevant health service providers, such as are proposed to be made in terms of Monitor licensing for example, where there will be de minimis criteria for the need for a Monitor licence for the provision of health care.

2.13 There are currently guidelines for local LINks in terms of their relationships with independent services around such issues as, the right to visit and the need to provide information. We hope that there will equally be proper consideration given to the type and nature of information that local authority health scrutiny can require from independent providers, the timescales involved, the responses

necessary and the need to attend committee meetings. Such requirements could be daunting and disproportionate on local small care services in particular and guidance and support will be necessary, so that providers understand their obligations and the purpose and nature what is being asked of them.

2.14 We support the exemption from the need to consult local authority health scrutiny on continuity of service provision to people receiving NHS care from corporate providers in the event one such provider becomes insolvent. The need for urgent and prompt action in such cases, in accordance with future proposals still to be made, should be the priority in such circumstances.

2.15 In proposing the extension of health scrutiny functions to independent providers such as those providing continuing healthcare, there should be a better understanding of the types and nature of services being received. The constant reference, for example, in this consultation document to ‘patients’ is not appropriate for those people living in a care home or in their own home receiving care and support from independent providers. For the most part, people living in these settings will do so for some time and outcomes should reflect both clinical and social and other well-being considerations. Outcomes should reflect that this is a person's home and their life, not an episode of treatment. Choice and control, strong trusting relationships with staff, the ability to take risks, quality systems and a safe environment, all play their part in ensuring good outcomes for people.

2.16 Currently NHS bodies must consult the health scrutiny function of the local authority should they be proposing a substantial variation in the provision of a health service or a substantial development of the health service. We understand that the term ‘substantial’ is not defined and will not be defined under these proposals. It would be helpful for those providers who have not been party to health scrutiny systems in the past to be able to understand what may be deemed ‘substantial’. So, for example, the establishment of regional and local frameworks to commission continuing healthcare based on criteria around quality and price, would seem in our view to be the possible subject of local authority health scrutiny. However guidance around the nature of substantial would be helpful. Indeed, we believe some of the criteria used in such frameworks are financially unrealistic and threaten making independent services unsustainable. As such, it seems appropriate that such commissioning proposals from the NHS be examined by local authority health scrutiny.

2.17 Opportunities to save money should not be looked at in isolation from the ongoing sustainability of providers and the quality of care they are able to offer in such circumstances. Health scrutiny must look to receive information directly from providers involved and residents and families affected by NHS commissioning decisions.

3. Consultation Questions

Question 1 Do you consider that it would be helpful for regulations to place a requirement on the NHS and local authorities to publish clear timescales?

This would seem sensible but it should be remembered that not all providers are the same and some may not have the capacity to meet tight timescales.

Question 2 Would you welcome indicative timescales being provided in guidance?

This would be helpful and should stress the need for proportionality based on size and type of provider as to what can be expected in terms of timescales**.**

Question 3 Do you consider it appropriate that financial considerations should form part of the local authority referrals?

Effectiveness alongside efficiency is important. We would be concerned that, based on the past behaviour of some councils as commissioners, too much emphasis will be placed on reducing cost whilst ignoring individual need and quality of care.

Question 4 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?

We would want reassurance that the independent provider voice is heard in a fair way in any dispute and we are unclear as to whether this would be facilitated by the NHS CB. We hope any new system is clear and does not delay the implementation of health driven changes. If the new proposals regarding scrutiny tip the balance away from providing high quality secondary (and tertiary) health services for NHS patients, in favour of local services which could not provide the same level of quality, we would be concerned.

Question 5 Would there be any additional benefits and drawbacks of establishing this intermediate referral?

As above

Question 6 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?

By ensuring the provider voice is heard and treated fairly.

Question 7 Do you consider it will be helpful for referrals to have to be made by the full council?

Yes it would ensure the issues have been properly considered across the whole council.

Question 8 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?

Yes

Question 9 Are there additional equalities issues with these proposals that we have not identified? Will any groups be at a disadvantage?

We have previously mentioned our concern as to the involvement of independent providers and the people they care for.

ECCA

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For more information contact

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