LGiU POLICY BRIEFING

Update on Healthwatch

Author: Fiona Campbell, LGiU associate

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The briefing below can also be downloaded as a PDF Update on Healthwatch

Summary

This briefing provides an update on:

- the final form of the Health and Social Care Act 2012 in respect of Healthwatch
- national policy and practical aspects of Healthwatch not covered in the legislation
- latest information on funding of Healthwatch
- provisions for healthcare complaints and advocacy services

It will be of interest to elected Members and officers with a health and social care brief, particularly those involved in supporting the set-up of Local Healthwatch; members of Health and Wellbeing Boards; members of health scrutiny panels/committees and officers supporting them; and those with an interest in community engagement.

Overview

The legislation provides for the creation of a new national body, Healthwatch England, as a committee of the Care Quality Commission. Local Healthwatch organisations, for which Healthwatch England will set standards, will not be statutory bodies, but will have statutory duties and powers similar to those of Local Involvement Networks (including responsibilities for social care as well as health. They are to be set up by April 2013 (a change from previous requirements). In addition, they will have a duty to provide information about health and social care services and will be able to employ staff. Upper tier and unitary local authorities have significant statutory responsibilities for setting up Local Healthwatch bodies and monitoring their work. They will also be responsible for contracting with organisations to support Local Healthwatch and for setting a local health complaints advocacy service, which need not be their Local Healthwatch.

Briefing in full

Introduction

The Health and Social Care Act 2012 (the Act) establishes Healthwatch England, a national body which will be part of the Care Quality Commission and Local Healthwatch, to replace Local Involvement Networks (LINks) and to be "the local consumer champion for patients, service users and the public". In the paragraphs on the legislation below, the section numbers in brackets refer to the relevant sections of the Act, unless otherwise stated.

Healthwatch England

The legislation

The Health and Social Care Act provides for the creation of a new national body, Healthwatch England (HWE), to be established as a statutory committee within the Care Quality Commission (CQC), representing the view of users of health and social care services, other members of the public and Local Healthwatch organisations (Section 161). HWE is empowered to provide Local Healthwatch organisations with advice and assistance on patient and public involvement and to make recommendations to local authorities on this subject. HWE may also give written notice to a local authority where HWE is of the view that patient and public involvement activities (ie those activities mentioned in section 221(2) of the Public Involvement in Health and Local Government Act 2007) are not being properly carried on in its area. Meetings of HWE must be held in public (Section 181). The duties of the Secretary of State for Health include the duty to ensure that the Care Quality Commission, including the Healthwatch England Committee, is performing its functions effectively (Section 52).

The practicalities

The CQC has indicated that HWE will be set up in October 2012. It is intended that the Chair of HWE will be a member of the CQC Board. The CQC has consulted on the membership of HWE and is currently developing proposals on membership. HWE will be expected to provide local Healthwatch organisations with operating and outcomes standards. It will be required to present an annual report to Parliament on the way it has exercised its functions during the year.

The recent Department of Health policy document on Healthwatch (see links) says that HWE "will be key to enabling the collective views and experiences of people who use services to influence national policy, advice and guidance and as a statutory committee of CQC will help strengthen links between patient/public views and regulation."

Local Healthwatch

The legislation

The Act imposes a duty on upper tier and unitary local authorities to contract with a Local Healthwatch organisation for the involvement of local people in the commissioning, provision and scrutiny of health and social services. These arrangements should include reporting arrangements to HWE (Section 182). Local Healthwatch organisations will not themselves be statutory bodies (ie they are not created by the Act).

The Act also makes provision for contractual arrangements between local authorities and Local Healthwatch, which must be a social enterprise. It also enables local authorities to authorise Local Healthwatch

organisations to contract with other organisations or individuals (known in the Act as Local Healthwatch contractors) to assist them to carry out their activities. Local authorities are given a number of duties in relation to monitoring and reporting on the work of Local Healthwatch (Section 183). The Secretary of State has powers to regulate the contractual relationships between local authorities, Local Healthwatch organisations and Local Healthwatch contractors (Section 184).

Under the Act, the Secretary of State can make regulations to require commissioners and providers of health or social care to respond to requests for information or reports or recommendations of Local Healthwatch organisations and to allow members of Local Healthwatch entry to premises (Section 186). The Secretary of State can also regulate for local authority overview and scrutiny committees to acknowledge referrals to them from Local Healthwatch. It is intended that service-providers, such as local authorities and NHS bodies, will be under a duty to respond to Local Healthwatch recommendations. Commissioners and providers will also have to have regard to the reports and recommendations and will have to be able to justify their decision if they do not intend to follow through on them.

Local Healthwatch organisations must produce an annual report on their activities and finance and have regard to any guidance from the Secretary of State in preparing these reports. Copies of the annual reports must be sent to the NHS Commissioning Board, relevant Clinical Commissioning Groups and HWE among others specified in previous legislation (Section 187).

The legislation permits the Secretary of State to transfer property, rights, liabilities and staff from Local Involvement Networks (LINks) to Local Healthwatch, to assist local authorities to transfer arrangements from LINks to Local Healthwatch, A transfer scheme may require a local authority to pay compensation to a transferring organisation/LINk (Section 188).

Local authorities must have regard and must require Local Healthwatch to have regard to guidance from the Secretary of State on managing potential conflicts of interests between being funded by local authorities and being able to challenge them effectively when required (Sections 183 and 187)

The Health and Wellbeing Boards being set up by each second-tier and unitary local authority are required to have a representative of Local Healthwatch among their members (Section 194).

The practicalities

Following representations from local authorities and LINks, the start date for Local Healthwatch was put back in January 2012 from April 2012 to April 2013. The Department of Health has produced a document,Local Healthwatch: A strong voice for people – the policy explained, which clarifies and restates the Government's vision for Local Healthwatch. This also gives more detail on the relationship between Local Healthwatch and local authorities. It says that local authorities will have "some freedom and flexibility about what organisational form [Local Healthwatch] will take", although there is little explanation of what this will mean in practice.

As non-statutory corporate bodies carrying out statutory functions, Local Healthwatch will be able to employ staff in addition to involving volunteers in their work. Part of their role will be to provide information to service users on local health and care services and to signpost service users to other sources of support.

The DH has indicated that Local Healthwatch will be subject to the public sector equality duty under the Equality Act 2010 and that the Freedom of Information Act will apply to them.

Despite their name, Local Healthwatch cover social care as well as health services. This means that, like

LINks, they will need to have members with an interest in and/or expertise in social care as well as NHS services. Amendments to the legislation at a late stage and policy guidance from the DH (PDF document) have made it clear that Local Healthwatch will be corporate, i.e. non-statutory, bodies carrying out statutory functions. Local Healthwatch will have similar rights and duties in relation to information provision and to visit health and social care premises as the rights currently held by Local Involvement Networks.

The Department of Health's explanatory notes on the Health and Social Care Act 2012 indicate that the kind of issue covered in regulations could include requiring Local Healthwatch to obtain a licence from the CQC or requiring a Healthwatch contractor to be representative of local residents and service users or potential service users.

Funding

The government currently allocates £27 million each year to local authorities for LINks through the local government Formula Grant. In 2012/13 an additional £3.2 million will be made available to support start-up costs for local Healthwatch (through the DH Learning Disability and NHS Reform Grant). In 2013/14, the current £27 million funding for LINks will become funding for local Healthwatch organisations, each year. Additional funding will be made available to local authorities from 2013/14 to support both the information function that local Healthwatch will have and also for commissioning NHS complaints advocacy.

Information about funding allocations will be made available in the routine notifications to local authorities later this year.

The Department of Health provided a small amount of funding for 75 local "Healthwatch pathfinders" in 2011-12 to test how a Local Healthwatch might work in practice. The pathfinders' work concluded in March 2012. No national report of their activities has yet been produced.

Support for Local Healthwatch preparations

Initiatives currently under way to prepare for the transition from LINks to Healthwatch include learning sets for LINks members covering topics such as leadership, representation, equality and diversity and the use of "enter and view" powers; and a learning set on hardwiring public engagement into the work of Health and Wellbeing Boards, as part of the National Learning Network for early implementer Boards.

The DH Healthwatch Programme Advisory Group has produced a checklist of how Local Healthwatch will work on a day to day basis. In brief, this checklist covers:

- Gathering views and understanding the experiences of people who use services, carers and the wider community
- Making people's views known
- Promoting and supporting the involvement of people in the commissioning and provision of local care services and how they are scrutinized
- Recommending investigation or special review of services via Healthwatch England or directly to the Care Quality Commission (CQC)
- Providing advice and information about access to services and support for making informed choices
- Making the views and experiences of people known to Healthwatch England and providing a steer to help it carry out its role as national champion
- NHS Complaints Advocacy – if not provided in-house by a Local Healthwatch, it will maintain a

relationship with the commissioned service, to share information where appropriate.

Complaints and advocacy services

Under the Health and Social Care Act 2012, local authorities have a new duty to commission independent advocacy services for complaints relating to health services. Local authorities may commission Local Healthwatch to provide these services, but they need not do so (Section 185). For example, a local Citizen's Advice Bureau could be asked to provide the service. The Secretary of State may issue directions about how such services are commissioned and run

Local authorities will continue to have responsibility for managing complaints relating to adult social care and to commission advocacy services to support service users including those who may wish to complain.

Comment

The Health and Social Care Act has been the subject of considerable criticism, not only for its content, but also for involving the NHS and local government in major reorganisation at a time of severe financial pressures. It is perhaps even more puzzling that the patient and public involvement system is being reformed just three years after the setting up of LINks, particularly when emerging details about how Healthwatch will operate, suggest it will not be hugely different from LINks. The one potentially significant difference is in the creation of a national body, Healthwatch England. This is to be welcomed, as it has potential to co-ordinate and publicise the findings of Local Healthwatch, using them to influence policy, to discern and draw attention to patterns of problems discovered by Local Healthwatch, and to support the local organisations. Such support is badly needed, as the failure of many LINks to make an impression indicates. However, Healthwatch England's position as both a committee of a regulatory body, the CQC, and also an "independent" body makes it a somewhat strange creature. A national body to bring together, guide and support LINks could easily have been set up without the disruption and expense caused by the creation of Healthwatch.

The DH's recent policy document, Local Healthwatch, a strong voice for people, claims that one reason for the creation of Healthwatch is that "the tripartite structure of local authority, host organisation and LINk has – in some cases – led to lack of visible accountability for LINks and confusion about […] roles, relationships and responsibilities". It is difficult to see how the new structures will help to dispel this confusion, as it appears that there will still be a tripartite relationship between local authorities, Local Healthwatch and Local Healthwatch contractors. Moreover, it is not yet clear how the relationship between any staff employed by Local Healthwatch and any Healthwatch contractor commissioned by a local authority is intended to work. The confusion about roles could be further compounded in areas in which the health complaints advocacy service is commissioned from yet another organisation. And, while a seat on Health and Wellbeing Boards may give a voice to patients and the public, the more powerful these Boards are, the more danger there will be that Healthwatch representatives who are members of them will be unable to retain their independence from executive decisions about health and social care services.

Nor is there any greater clarity than was the case with LINks about the respective roles of local authority health scrutiny and Local Healthwatch. Indeed A strong voice for people says that "The government's aim is for local Healthwatch to hold commissioners and providers of services to account, acting as a critical friend to help bring about improvements". This aim is indistinguishable from most people's understanding of the role of health scrutiny committees. A considerable amount of work will have to be done locally to reach an understanding of respective roles.

A strong voice for people also claims that the creation of Healthwatch is, in part, a response to "the need for a strong visual identity, making Healthwatch at both national and local levels recognisable for users of health and social care services, and members of local communities". It is unfortunate, therefore that the name of Healthwatch does not reflect its responsibilities locally and nationally in relation to social care. It is clear from a number of reports on LINks that these organisations have struggled to maintain an interest among members in social care issues, despite the fact that many such members are among the older section of the population whose social care needs are most in need of an urgent response and who would most benefit from prioritisation, locally and nationally, of social care issues. It is hard to believe that people not already familiar with the system would turn to an organisation called "Healthwatch" for information on social care. Local authorities will have their work cut out to support Local Healthwatch in giving weight to the social care aspects of their work, particularly in light of the potential conflict of interests in this area. It may be that the ongoing cuts to social services will galvanise the newly-formed Local Healthwatch organisations, but it is unfortunately more likely that, like their predecessors, they will focus on more visible NHS services.

A strong voice for people says that the litmus test for Healthwatch, over time, will be whether people "know it is there, understand what it does, know how to use it and know that it makes sure that their voices are heard and represented". This is quite a demanding test which most LINks and their predecessors, Patient and Public Involvement Forums, would certainly fail. To this test should surely be added the requirement that Healthwatch be able to show how it has made a difference to health and social care services, particularly for those in the most deprived communities. If a body that is representative of and represents the interests of service users cannot show this, it is questionable whether it is worth the effort, cost and time that local authorities and community volunteers will undoubtedly be required to put into Healthwatch.

For more information about this, or any other LGiU member briefing, please contact Janet Sillett, Briefings Manager, on janet.sillett@lgiu.org.uk

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