

Health Scrutiny Briefing

This briefing provides Members of the Health Select Commission with an overview of the recent guidance for health scrutiny issued by the Department of Health in June 2014. The purpose of the guidance is to support local authorities, relevant NHS bodies and relevant health service providers (public, private or voluntary sector) in discharging their duties and responsibilities under the relevant regulations, thus supporting effective health scrutiny. The guidance emphasises the holistic, wide ranging role that health scrutiny has beyond focusing on specific health services and holding commissioners and providers to account.

- 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 those services are effective and safe.
- Health scrutiny should be outcome focused, looking at cross-cutting issues, including general health improvement, wellbeing and how well health inequalities are being addressed, as well as specific treatment services.
- Health scrutiny also has a strategic role in taking an overview of how well integration of health, public health and social care is working.

1 Health and Social Care Act 2012

The Act established health and wellbeing boards to promote partnerships across the health and social care sector and local Healthwatch organisations to represent the voice of patients, service users and the public. Health scrutiny functions are conferred on a Local Authority through the 2012 Act, allowing it to discharge its health scrutiny function through various mechanisms.

2 Local Authority (Public Health, Health and Wellbeing Board and Health Scrutiny) Regulations 2013

In RMBC, as stated in the Council Constitution, the Health Select Commission performs “the role of the Council’s designated scrutiny body for any issue relating to health and the public health agenda, including those functions contained within the Local Authority (Public Health, Health and Wellbeing Board and Health Scrutiny) Regulations 2013.”

The regulations relate to matters with regard to the health service and include:

- services commissioned by the NHS
- services provided by the NHS
- services provided to the NHS by external non-NHS providers, including local authorities
- public health services commissioned by local authorities

The regulations set up formal relationships between local Healthwatch organisations and local authority health scrutiny, to ensure that the new system reflects the outcomes of involvement and engagement with patients and the public.

3 Powers and duties

a Local authority powers

- Review and scrutinise matters relating to the planning, provision and operation of the health service in the area, which may also include scrutinising finances.
- Require information to be provided by certain NHS bodies about the planning, provision and operation of health services that is reasonably needed to carry out health scrutiny.

- Require employees, including non-executive directors, of certain NHS bodies to attend before them to answer questions.
- Make reports and recommendations to certain NHS bodies and responsible persons and request a written response within 28 days.
- Set up joint health scrutiny committees with other local authorities and delegate health scrutiny functions to an overview and scrutiny committee of another local authority.
- Refer NHS substantial reconfiguration proposals to the Secretary of State if it considers:
 - The consultation has been inadequate in relation to the content or the amount of time allowed.
 - The NHS body has given inadequate reasons where it has not consulted for reasons of urgency relating to the safety or welfare of patients or staff.
 - A proposal would not be in the interests of the health service in its area.

b Local authority requirements

Mechanisms need to be in place to:

- deal with referrals made by Local Healthwatch.
- respond to consultations by relevant NHS bodies/health service providers on substantial reconfiguration proposals.
- determine how their members of a joint health scrutiny committee would be appointed to respond to substantial reconfiguration proposals covering more than one council area.

c Reporting and making recommendations

Regulation 22 enables local authorities and committees to make reports and recommendations to relevant NHS bodies and health service providers. The following information must be included in a report or recommendation:

- An explanation of the matter reviewed or scrutinised.
- A summary of the evidence considered.
- A list of the participants involved in the review or scrutiny.
- An explanation of any recommendations on the matter reviewed or scrutinised.

d Powers and duties for the NHS

A major change for the NHS is the extension of certain duties to providers of health services (commissioned by NHS England, Clinical Commissioning Groups (CCGs) or local authorities) who are not themselves NHS bodies. Together with relevant NHS bodies these providers are known as 'responsible persons' and they include:

- CCGs and NHS England
- Local authorities (if providing health services to CCGs, NHS England or other local authorities)
- NHS trusts and NHS foundation trusts
- GP practices and other providers of primary care services (previously they were not subject to specific duties as independent contractors but now subject to them as providers of NHS services)
- Other providers of primary care services to the NHS, such as pharmacists, opticians and dentists
- Private and voluntary sector bodies commissioned to provide NHS or public health services by NHS England, CCGs or local authorities

In line with the local authority powers mentioned above in 3a the corresponding duties are: providing information; attending to answer questions; and responding to reports and recommendations. Consultation and involvement is covered below in paragraph 5.

e Providing information

Information requested and provided will depend on the subject under scrutiny, such as:

- Financial information about the operation of a trust or CCG, for example budget allocations for the care of certain groups of patients or certain conditions, or capital allocations for infrastructure projects, such as community facilities.
- Management information such as commissioning plans for a particular type of service.
- Operational information such as information about performance against targets or quality standards, waiting times.
- Patient information such as patient flows, patient satisfaction surveys, numbers and types of complaints and action taken to address them.
- Any other information relating to the topic of a health scrutiny review which can reasonably be requested.

f Local Healthwatch

Local Healthwatch organisations and contractors have specific roles which complement those of health scrutiny bodies, for example “enter and view” powers for certain premises where health and social care services are provided. Information from the local Healthwatch will supplement and triangulate information provided by service providers to health scrutiny, such as additional information on the quality of services, safety and any issues of concern around specific services and providers.

Statutory activities include making reports and recommendations regarding service improvements to scrutiny bodies, relating to the planning, provision and operation of health services in their area. This could potentially include concerns about local health services or commissioners and providers to local authority health scrutiny bodies.

Regulation 21 sets out duties that apply when an issue is referred to a local authority by a local Healthwatch organisation or contractor. Receipt of referrals must be acknowledged within 20 working days and the local Healthwatch must be kept informed of any action taken in relation to the matter referred.

4 Consultation and involvement on service reconfiguration

a Duty to consult

Under existing legislation the NHS is already required to consult current and potential service users in planning services, on proposals to change how services are provided and on decisions affecting the operation of those services. Similarly there is a duty on relevant NHS bodies and health service providers (now extended to the ‘responsible persons’ outlined above) to consult local health scrutiny bodies on any proposal they have “under consideration for a substantial development of or substantial variation in” the provision of health services in the local authority’s area. However the terms “substantial development” and “substantial variation” are not defined in the legislation. There are also a small number of specific exceptions when consultation with health scrutiny is not required.

Good practice guidance published by NHS England is intended to support commissioners, working with local authorities and providers, to carry out effective service reconfiguration in

a way that puts quality of care first, is clinically evidence-based and which involves patients and the public throughout.

If the substantial development or variation is to services commissioned by the CCG or NHS England then the NHS commissioners are responsible for the consultation not the providers. If providers have a development or variation “under consideration” they need to inform commissioners at a very early stage so that the latter can comply with the requirement to consult as soon as proposals are under consideration.

Regulation 23 requires the proposer of a substantial development or variation to publish clear timescales for consultation in order to inform the public. Health scrutiny bodies should be provided with the timescales, plus a deadline for their comments regarding the consultation and the date when the proposer intends to make a decision on whether or not to proceed with the proposal. Any changes to these dates must be notified to the health scrutiny body and published.

The guidance suggests health scrutiny should be able to receive details of the outcome of the public consultation before making its response, so that the response can be informed by patient and public opinion.

b Responding to consultation

When a health scrutiny body has been consulted on a substantial development or variation it should normally respond in writing to the relevant NHS body or health service provider within the timescale specified after considering the proposals and local evidence. The Health Select Commission acts as the consultee in respect of such matters.

If the health scrutiny body’s comments include a recommendation which the consulting organisation disagrees with, that organisation must notify health scrutiny of the disagreement. Both bodies “must take such steps as are reasonably practicable to try to reach agreement”. If NHS England or a CCG is acting on behalf of a provider then the health scrutiny body and NHS England/CCG (as the case may be) must involve the provider in the steps they are taking to try to reach agreement.

c Referrals to the Secretary of State

The general circumstances when referrals may be made are covered in 3a. In making a referral certain evidence and information must be included (detailed in the guidance) and health scrutiny will be expected to provide clear evidence based reasons for any referral.

There are also certain limits on when referrals may be made:

- To be able to make a referral in a situation where a health scrutiny body has not commented on a proposal or has commented without making a recommendation, it must notify the consulting organisation of:
 - its decision on whether to refer the matter to the Secretary of State and the date by which it proposes to make the referral; or
 - the date by which it will decide whether to refer the matter to the Secretary of State.
- In circumstances where agreement has not been reached over a scrutiny recommendation a referral cannot be made unless the health scrutiny body is satisfied that:
 - reasonably practicable steps have been taken to try and reach agreement but this has not been achieved within a reasonable time;
 - the relevant NHS body or health provider has failed to take reasonably practicable steps to try and reach agreement within a reasonable time.