Health & Social Care Bill Briefing
February 2011

Overview

This briefing has been produce by eight national health charities, including the Alzheimer's Society, Asthma UK, Breakthrough Breast Cancer, British Heart Foundation, Diabetes UK, National Voices (and through them over 100 charities), Rethink mental illness and the Stroke Association.

We would like to take this opportunity to welcome the Government's aim for a health service that puts patients at its heart. However, we have noted several areas where we feel the Bill needs to be amended to make their aims a reality. Below outlines our specific amendments, broadly listed under patient and public involvement in commissioning; strengthening local scrutiny; and integrated care.

1 Strengthening Patient and Public Involvement in commissioning

The involvement of the local population in commissioning and service design is fundamental to making the Government's promise of 'no decision about me without me' a reality. The Bill sets out involvement in terms of local HealthWatch and HealthWatch England. However, HealthWatch should be just one aspect of a much wider range of involvement opportunities. This is particularly important for those more vulnerable or disabled people who may be less likely to be represented by either their local HealthWatch or on the National Commissioning Board.

Also, whilst the new Health and Wellbeing Boards will involve a representative from HealthWatch, the role of these Boards is to: encourage integration between health and social care; provide advice, assistance or other support for the arrangements for service provision; and encourage persons working in health services to work with the Health and Wellbeing Board. As such, Health and Wellbeing Boards are not the central decision making bodies in health and social care. Below outlines our specific recommendations to improve patient and public involvement in commissioning:

A) General Duties of the Board

Currently the Bill states that the National Commissioning Board *"must make arrangements with a view to securing that it obtains advice appropriate for enabling it effectively to discharge its functions from personal with professional expertise relating to the physical or mental health of individuals".*

We propose the following amendments:

Amendment 1
Section 19, Clause 13G (Page 17, line 19)
We propose deleting 'obtains advice' and inserting 'involve'**.**

Explanation:
To 'involve' is is a much stronger duty which will lead to greater involvement of professional and patient groups, which the Government has stated as an aim of the Bill.

Amendment 2:
Section 19, Clause 13G (Page 17, line 20)
Delete 'professional expertise relating to the physical or mental health of individuals.'
After 'from', insert:
'(a) persons with professional expertise relating to the physical or mental health of individuals
(b) Groups representing patients and carers.

Explanation:
We consider it essential that this duty be extended to 'involving patients and carers' in addition to expert professionals.

Alongside wanting to ensure that the new NHS offers patients and their representative groups an opportunity to be heard, our organisations are concerned about the lack of emphasis on input into local service design and commissioning from a range of expert health and social care professionals.

The commissioning of whole pathways of care for some conditions will fall under the remits of public health, the NHS Commissioning Board and GP consortia, which risks the fragmentation of service provision. Multi-disciplinary involvement of specialists, Allied Health Professionals, education, social care and patients is required to enhance continuity of care and improve quality standards for patients. As such we would like reassurances that "persons with professional expertise" will apply to the full range of health and social care professionals.

B) Public Involvement and consultation by the Board

Amendment 3
Section 19 Clause 13L (page 18, line 22):
Delete 'or by providing information'

Explanation:
The Bill currently suggests that: *"The Board must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information in other ways)".*

We feel strongly that "*providing information"* is not meaningful involvement and therefore this text must be significantly strengthened. However, regulations must provide for exceptional circumstances in which normal consultation cannot occur for reasons of safety or similar (i.e. an outbreak of swine flu would require information to be quickly disseminated and full consultation would not be possible).

Amendment 4
Section 19 Clause 13L (page 18, line 20): delete (a) and add additional sub-clauses
(a) in decisions about the priorities and strategy for commissioning by the Board in relation to its mandate
(b) in identifying and assessing the needs and demands for services of relevant populations and groups of conditions
(c) in the preparation of plans for commissioning health services
(d) in decisions about which services to commission
(e) in the preparation and publication of guidance as to how these services should be designed to meet people's needs
(f) in monitoring the quality and effectiveness of the commissioned services"

Explanation:
The amendment above proposes a stronger clarification of expected involvement activities to help ensure that such involvement is meaningful.

C) Duty on GP consortia to reduce inequalities, promote patient involvement

Amendment 5
Section 22 Clause 14N (Page 30, line 29)
Add (e) to sub-clause 1:
(e) promote the enablement of patients to make, or to participate in making, decisions relating to their care or treatment.

Explanation
This sub-clause sets out areas for focus with regards to patient involvement, but does not refer to their individual treatment decisions. Through the addition of (e) it requires the commissioning consortia to ensure patient involvement at this level.

D) Duty to obtain appropriate advice (Commissioning Consortia)

Amendment 6
Section 22, Clause 13G (Page 30, line 34)
Delete 'obtains advice' to and insert 'involve'.

Explanation:
The above repeats Amendment 1 of this briefing which refers to the duties of the National Commissioning Board, but calls for the same duties to be required of the Commissioning Consortia. To 'involve' is stronger than obtaining advice, which will lead to greater involvement of professional and patient groups, which the Government has stated as an aim of the Bill.

Amendment 7
Section 22, Clause 13G (Page 17, line 35)
Delete 'professional expertise relating to the physical or mental health of individuals.'
After 'from', insert:
'(a) persons with professional expertise relating to the physical or mental health of individuals
(b) Groups representing patients and carers'

Explanation:
As noted in Amendment 1, through adding 'groups representing patients and carers' in the duty for GP Consortia the Bill would help to make its commitment to "put patients at its heart" a reality.

E) Public involvement and consultation by commissioning consortia

Amendment 8
Section 22 Clause 14P (page 30, line 44)
Delete 'or by providing information or in other ways'.

Explanation:
As noted in Amendment 3 of this briefing we feel strongly that "*providing information*" is not meaningful involvement and therefore this text must therefore be significantly strengthened.

However, regulations must provide for exceptional circumstances in which normal consultation cannot occur for reasons of safety or similar (i.e. an outbreak of swine flu would require information to be quickly disseminated and full consultation would not be possible).

Amendment 9
Section 22 Clause 14P (page 30, line 44) delete (a) and add additional sub-clauses
(g) in decisions about the priorities and strategy for commissioning by the Board in relation to its mandate
(h) in identifying and assessing the needs and demands for services of relevant populations and groups of conditions
(i) in the preparation of plans for commissioning health services
(j) in decisions about which services to commission

Explanation:
The amendment above proposes a stronger clarification of expected consultation activities to help ensure that such involvement is meaningful.

F.) Constitution of commissioning consortia and lay representation

Amendment 10
Schedule 2, Part 1, page 227 line 12
Insert new Section (3)(1) and (2):
(1) The Constitution must specify the arrangements made by the commissioning consortium to establish a governing Board.
(2) The governing Board of each commissioning consortium must comprise of equal numbers of consortium member representatives and lay representatives of the population served by the consortium.
(3) The lay representatives on the governing Board must have the sole function of representing the interests of the population and must have no professional or pecuniary interest in the matters for which the consortium is responsible.
(4) The governing Board should meet in public, make relevant documents publicly available, and report its decisions publicly.

Explanation:
Given the Government's commitment to strengthening the role of the public and patients in the NHS, it is essential that they can play a meaningful role in governing their local GP Consortia through its governing Board. Public governance and scrutiny of these operations is especially important given that the bulk of the NHS' finances will be managed by GP Commissioning Consortia. This will ensure that members of the public can play a role in their decision making processes.

We would expect lay representatives to be at least as numerous as consortium representatives. Precedent for this is well established given that all other NHS bodies have lay involvement on their Boards, e.g. through non-executives or elected members of Primary Care Trusts / Foundation Trusts; all health professional regulatory bodies must have a lay majority by law and the Coalition Government Agreement promised that local health boards would be democratically elected.

***G.)* Annual reporting of the Commissioning Board re: patient involvement**

Amendment 11
Section 19, Clause 13P (page 20, line 10)
Delete current wording for (c) and insert:
"how effectively it discharged its duties 13C-13N"

Explanation:
The Bill sets out the content of the annual report of the Board in the discharge of their duties. The current draft requires only for them to report on duties relating to quality of services (13D) and public involvement (13L).

We argue that the increased devolution of responsibility calls for greater accountability and transparency, and therefore the Board should report in the discharge of all their legal duties.

This would cover the Board's duties to be effective and efficient (13C); its duty to promote autonomy (13E); its duty to reduce inequalities and promote patient involvement (13F); its duty to obtain appropriate advice (or as this briefing's Amendment 1 requests 'involve'); its duty to promote innovation (13H); its duty in respect of research (13I); its duty to encourage integrated working (13J) and its duty to have regard to impact on services in certain areas (13K); its information on safety of services provided by the health service (13M0 and guidance in relation to the processing of information (13N). 13F and 13J are considered particularly important for this group.

H.) Consortia commissioning plans

Amendment 12
Section 21, Clause 14Y (Page 34, line 10)
After '14L,' insert new sub-clause
"(b): 14P"

Explanation:
Similar to the above amendment for the National Commissioning Board, the Bill currently requires that commissioning consortia must set out proposed discharge of certain duties, relating only to improvement to services (14L) and financial efficiency (223I – 223K).

We argue that consortia must be transparent about their plans for the discharge of their duty on public involvement, hence our addition of (14P – Public involvement and consultation by commissioning consortia).

Amendment 13
Section 21, Clause 14Y (page 34, line 12)
After '223K' insert new sub-clause (3):
(3) "In preparing the plan, and in pursuit of its duties 14L and 14P, each commissioning consortium must consult with the persons mentioned with reference to duties 14K to 14P inclusive and with HealthWatch."

Explanation:
This amendment will ensure that local HealthWatch bodies will have an opportunity to feed into the plans of GP Commissioning Consortia. Given that these plans will outline the detail of local NHS provision for the year ahead (including the budget allocated to set areas), it is essential that HealthWatch has a timely opportunity to feed into this.

I.) Assessing the performance of consortia

Amendment 14
Section 21, Clause 14Z1 (Page 35, line 17)
Delete "(a) section 14L, and" and insert
"(a) sections 14K to 14P inclusive

Explanation:
Similar to Amendment 11, the Bill sets out the arrangements for the assessment of GP Commissioning Consortia by the Board. Currently, the Bill only requires that the Board should be assessed on areas relating to service improvement and financial efficiency. To ensure transparency, we argue that consortia should be assessed on all of their duties, including public involvement.

J.) Procedural requirements in connection with certain powers (the National Commissioning Board)

Amendment 15
Section 21, Clause 14Z7 (page 38, line 5)
Add new sub-clause (c):
"relevant local Healthwatch organisations"

Explanation:
The National Commissioning Board has certain powers set out, such as powers to give directions and dissolve consortia. The Board must consult with the Commissioning Consortia, relevant authorities and 'any other persons' currently. We argue that plans to carry out these powers should also be shared with local Healthwatch and that they must be consulted.

K.) Joint Strategic Needs Assessments

Amendment 16
Section 176, Clause 6 (page 149, line 24)
*After 'appropriate', add '*and must consult Healthwatch organisations in that area'

Explanation:
The Joint Strategic Needs Assessment represents a key opportunity for public involvement in local strategy and provision. The authority or commissioning consortia are currently only permitted to consult 'any person it thinks is appropriate'. We consider that a duty to involve local Healthwatch would be more appropriate.

2 Strengthening local scrutiny and accountability

The Bill provides greater flexibility for local authorities to carry out scrutiny of the local health service as they see fit. There may be provision for local overview and scrutiny committees, but these will not be mandatory.

This element of the Bill runs counter to the emphasis placed on independent scrutiny of health decisions in the Government's Coalition agreement, published in May 2010. This document stated:

> *'We will ensure that there is stronger voice for patients locally through directly elected individuals on the board of their local PCT. The remainder of the PCT's board will be appointed by the relevant local authority or authorities… this will ensure the right balance between locally accountable individuals and technical expertise.'*[1]

Here, the Government acknowledges the importance of directly elected individuals being involved in the scrutiny of PCT boards. Whilst the policy landscape has shifted in terms of commissioning responsibility, there is no reason why the principle of local accountability should not remain the same. Provision must be made to remedy this on the face of the Bill through ensuring that the proposed approach to scrutiny will be adequately independent, elected representative-led and accessible to the public.

Health and Wellbeing Boards offer strategic direction rather than scrutiny; HealthWatch has limited powers and its funding is not ringfenced and therefore vulnerable; and local authorities have a great deal of freedom to decide how their decisions will be scrutinised. Through this Bill huge power is being devolved locally with potentially less scrutiny than in the existing system. As such, we urge the Government to consider the amendments below to ensure that the new system has an effective scrutiny function.

L.) Local authority scrutiny function

Amendment 17

Section 175 (page 148, line 11) – After 2ZD, insert:
Regulations must require scrutiny function arrangements made by the local authority to be independent and led by elected representatives'.

Explanation:
As noted, the Bill is not strong enough with regard to the way in which local authorities' decisions will be scrutinised. Independent scrutiny, led by elected representatives, is essential.

[1] The Coalition Government Agreement, formalised May 2010

M.) Local HealthWatch organisations

Amendment 18
Section 168 Clause (3) (page 141, line 14)
Insert new sub-clause (i) (outlined below)
(i) making views known to relevant Health and Wellbeing Board and relevant local authority scrutiny function, which must respond within 21 working days.

Explanation:
Local HealthWatch organisations should play a more significant role in local scrutiny. The current Bill is focused only of the role of local HealthWatch in reporting issues to Healthwatch England and the Care Quality Commission. However, they will be in a position to monitor local issues relating to health and social care, which may be of concern and in need of attention from the local authority's scrutiny function and the local Health & Wellbeing Boards.

This amendment would ensure that all agencies are kept updated of local concerns, and also puts an onus on these agencies to update the Local HealthWatch on action it plans to take.

Amendment 19
Section 168 Clause (3) (page 141, line 8)
At end sub-clause (g) – before 'and', insert 'and inform relevant local authority scrutiny function on these recommendations'.

Explanation:
As highlighted above, the local authority's scrutiny function needs to maintain good levels of communication with HealthWatch to scrutinise effectively. As such, this amendment will ensure that if Local HealthWatch is passing recommendations to HealthWatch England and the Care Quality Commission about areas where Local HealthWatch feel they should undertake special investigations, the scrutiny function of the local authority will be informed of this.

N.) Advice given by Healthwatch England

Amendment 20
Section 45B, Clause 5 (page 139, line 35)
Delete 'may' and insert 'must'

Explanation:
It is essential that HealthWatch England must be accountable in terms of the discharge of its functions. The current draft states that the Secretary of State may give direction, but this should be strengthened so that the patients across the country can be assured that there will be an intervention, should Healthwatch England fail to function adequately.

3) Integrated care

As referenced under Amendment 2, we have concerns around how the Bill will ensure multi-agency commissioning and integrated working, which are essential if patients are to get the care they need. The Commissioning Board and the Health and Well Being Boards are 'encouraged' to work together, and GP Commissioning Consortia and local authorities required to 'work closely together'. Neither of these fully guarantee an integrated approach, and we urge the Government to greatly strengthened this area throughout the Bill.

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