

Agenda Item 7

 <p style="font-size: small;">Lincolnshire COUNTY COUNCIL <i>Working for a better future</i></p>		<p>THE HEALTH SCRUTINY COMMITTEE FOR LINCOLNSHIRE</p>	
Boston Borough Council	East Lindsey District Council	City of Lincoln Council	Lincolnshire County Council
North Kesteven District Council	South Holland District Council	South Kesteven District Council	West Lindsey District Council

Open Report on behalf of David Coleman, Chief Legal Officer

Report to	Health Scrutiny Committee for Lincolnshire
Date:	17 April 2019
Subject:	Implementing the NHS Long Term Plan - Proposals for Possible Changes to Legislation

Summary

On 7 January 2019, NHS England launched the *NHS Long Term Plan*, with the support of the Secretary of State for Health and Social Care. Following this, on 28 February 2019 NHS England launched an engagement exercise on detailed proposals for possible changes to legislation. The launch of this engagement exercise was reported to the Health Scrutiny Committee for Lincolnshire on 20 March 2019, and the Committee agreed to make a response to the questions in the engagement exercise.

The full engagement document is attached to this report. An outline draft response is being prepared and will be circulated to members of the Committee.

The closing date for the submission of responses is 25 April 2019.

Actions Required:

- (1) To consider a completed draft response to the questions in NHS England's engagement document entitled: *Implementing the NHS Long Term Plan - Proposals for Possible Changes to Legislation*.
- (2) Subject to any amendments proposed at the meeting, to approve a response to the questions in NHS England's engagement document entitled: *Implementing the NHS Long Term Plan - Proposals for Possible Changes to Legislation*.

(Note: The completed draft response is being prepared.)

1. Background

NHS Long Term Plan

As reported to the Health Scrutiny Committee for Lincolnshire on 23 January 2019, the *NHS Long Term Plan* was launched by NHS England on 7 January 2019. The *Plan* contains extensive proposals for developing the NHS in England over the next ten years.

Chapter 7 of the *NHS Long Term Plan* focuses on the next steps, which includes the potential for changes to legislation. The *Plan* states that Parliament and the Government have both asked the NHS to make consensus proposals for how primary legislation might be adjusted to better support the delivery of the agreed changes set out in this *NHS Long Term Plan*. NHS England states that the *Plan* does not require changes to the law in order to be implemented. However, it is NHS England's view that amendments to the primary legislation would significantly accelerate progress on service integration; administrative efficiency; and public accountability. NHS England also recommends "changes:

- to create publicly-accountable integrated care locally;
- to streamline the national administrative structures of the NHS; and
- to remove the overly rigid competition and procurement regime applied to the NHS."

The launch of the *NHS Long Term* on 7 January 2019 was supported by the Secretary of State for Health and Social Care, whose statement in Parliament referred to organisations across the NHS (as well as local authorities) working more closely together so that they can focus on what patients need.

Relevant Extracts on Legislation Changes in the *NHS Long Term Plan*

Paragraphs 7.13 – 7.14 of the *NHS Long Term Plan* (published on 7 January 2019) refer to proposed changes to legislation and are reproduced below:

- 7.13. ***The changes set out in this Long Term Plan can generally be achieved within the current statutory framework, but legislative change would support more rapid progress.*** *The Acts of Parliament that currently govern the NHS give considerable weight to individual institutions working autonomously, when the success of our Plan depends mainly on collective endeavour. Local NHS bodies need to be able to work together to redesign care around patients, not services or institutions, and the same is also true for the national bodies. And the rules and processes for procurement, pricing and mergers are skewed more towards fostering competition than to enabling rapid integration of care planning and delivery.*

7.14. *In response to the formal request earlier in the year from the cross-party House of Commons Health and Social Care Committee and from the Prime Minister, we have in discussion with NHS colleagues, therefore developed a provisional list of potential legislative changes for Parliament's consideration. These proposals are based on what we've heard from clinicians and NHS leaders, as well as national professional and representative bodies. These proposals would:*

- ***Give CCGs and NHS providers shared new duties to promote the 'triple aim' of better health for everyone, better care for all patients, and sustainability, both for their local NHS system and for the wider NHS.*** *These statutory duties on CCGs and trusts would further support them to work in tandem with their neighbours for the benefit of their local population and wider NHS. These new reciprocal duties would also contribute to supporting our wider goal of securing a stronger chain of accountability for managing public money within and between local NHS organisations;*
- ***Remove specific impediments to 'place-based' NHS commissioning.*** *The 2012 Act creates some barriers to ICSs being able to consider the best way of spending the total 'NHS pound'. Lifting a number of restrictions on how CCGs can collaborate with NHS England would help, as would NHS England being able to integrate Section 7A public health functions with its core Mandate functions where beneficial;*
- ***Support the more effective running of ICSs*** *by letting trusts and CCGs exercise functions, and make decisions, jointly. This is simpler and less expensive than creating an additional statutory tier of bureaucracy. It would mean giving NHS foundation trusts the power to create joint committees with others. It would allow – and encourage – the creation of a joint commissioner/provider committee in every ICS, which could operate as a transparent and publicly accountable Partnership Board. To manage conflicts of interest, any procurement decisions – including whether to procure – would be reserved to the commissioner only;*
- ***Support the creation of NHS integrated care trusts.*** *Since the repeal of NHS trust legislation in 2012, the NHS has limited options if it wants to create a new NHS integrated care provider (ICP), for example to deliver primary care and community services for the first time under a single, streamlined ICP contract. Remedying this would both reduce administration costs and help with clinical sustainability. It should also be easier for proposed organisational mergers to progress, without diluting any of the current safeguards on frontline service changes;*
- ***Remove the counterproductive effect that general competition rules and powers can have on the integration of NHS care.*** *We propose to remove the Competition and Markets Authority's (CMA) duties, introduced by the 2012 Act, to intervene in NHS provider mergers, and its powers in relation to NHS pricing and NHS provider licence condition decisions. This would not affect the CMA's critical investigations work in tackling abuses and anti-competitive behaviour in health-related markets such as the supply of drugs to the NHS. We propose similarly dispensing with Monitor's 2012 Act competition roles, so that it could focus fully on NHS provider development and oversight;*

- **Cut delays and costs of the NHS automatically having to go through procurement processes.** We propose to free up NHS commissioners to decide the circumstances in which they should use procurement, subject to a 'best value' test to secure the best outcomes for patients and the taxpayer. The current rules lead to wasted procurement costs and fragmented provision, particularly across the GP/urgent care/community health service workforce. This would mean repealing the specific procurement requirements in the Health and Social Care 2012 Act. We also propose to free the NHS from wholesale inclusion in the Public Contract Regulations. We would instead set out our own statutory guidance for the NHS to follow. At the same time, we propose to protect and strengthen patient choice and control, including through our wider programme to deliver personalised care;
- **Increase flexibility in the NHS pricing regime.** This would provide further flexibility in the setting of national prices, support the move away from activity-based tariffs where that makes sense, facilitate better integration of care and make it easier to commission Section 7A public health services as part of a bundle with other related services, on a nationally consistent basis;
- **Make it easier for NHS England and NHS Improvement to work more closely together.** We propose that as a minimum, NHS England and NHS Improvement should be free to establish a joint committee and subcommittees to exercise their functions, with corresponding streamlining of non-executive and executive functions.

Proposals for Changes to Legislation

On 28 February 2019, NHS England followed up the *NHS Long Term Plan* with 'a call for views' on proposed amendments to the law, which are detailed in: *Implementing the NHS Long Term Plan - Proposals for Possible Changes to Legislation*. This is attached as Appendix A to this report.

NHS England re-stated that it was possible to implement the *NHS Long Term Plan* without primary legislation, but legislative change could make implementation easier and faster. Local NHS bodies need to be better able to work together to redesign care around patients, and the same is also true for the national bodies. NHS England states that the rules and processes for procurement, pricing and mergers create unnecessary bureaucracy that gets in the way of enabling the integration of care.

Role of Health Overview and Scrutiny Committees

In relation to health overview and scrutiny committees, paragraph 69 of *Implementing the NHS Long Term Plan - Proposals for Possible Changes to Legislation* makes reference to local authorities continuing to have the right to review and scrutinise the health service in their area and, where there is a substantial development or variation, there would continue to be an obligation on NHS bodies or health service providers to consult with the local authority. This means none of the proposals would affect the role of this Committee.

2. Responding to the Questions in *Implementing the NHS Long Term Plan - Proposals for Possible Changes to Legislation*

There are nine questions in NHS England's engagement document, which range from seeking views on the introduction of a general best value duty (question 2) to detailed changes to the 'double-delegation' of commissioning functions (question 8). The closing date for the submission of responses is 25 April 2019.

An outline draft response is being prepared and will be circulated to members of the Committee.

Response of the Health and Wellbeing Board

On 26 March 2019, the Health and Wellbeing Board considered *implementing the NHS Long Term Plan - Proposals for Possible Changes to Legislation* and agreed to make its own arrangements for making a response.

3. Conclusion

The Committee is being invited to consider a completed draft response to the questions in NHS England's engagement document entitled: *Implementing the NHS Long Term Plan - Proposals for Possible Changes to Legislation*. Subject to any amendments proposed at the meeting, the Committee is also invited to approve its response to these questions.

4. Consultation

The Committee is being invited to consider and approve its response to the questions in NHS England's engagement document, entitled *Implementing the NHS Long Term Plan - Proposals for Possible Changes to Legislation*.

5. Appendices – These are listed below

Appendix A	NHS England's engagement document entitled: <i>Implementing the NHS Long Term Plan - Proposals for Possible Changes to Legislation (published 28 February 2019)</i>
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6. Background Papers - No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

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