Lincolnshire COUNTY COUNCIL *Working for a better future*	**THE HEALTH SCRUTINY COMMITTEE FOR LINCOLNSHIRE**		
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 Richard Wills, the Director Responsible for Democratic Services

Report to	**Health Scrutiny Committee for Lincolnshire**
Date:	**23 July 2014**
Subject:	**Local Authority Health Scrutiny – *Guidance to Support Local Authorities and Their Partners to Deliver Effective Health Scrutiny***

Summary:

On 27 June 2014, the Department of Health issued guidance to local authorities on their health overview and scrutiny function. The Department of Health states that "the guidance needs to be conscientiously taken into account", but it is not a substitute for the legislation. This report highlights the key elements in the guidance.

Actions Required:

(1) To consider and comment on the content of *Local Authority Health Scrutiny – Guidance to Support Local Authorities and Their Partners to Deliver Effective Health Scrutiny*, issued by the Department of Health on 27 June 2014.

(2) To note that the Committee and the four Clinical Commissioning Groups in Lincolnshire have approved a protocol to support joint working, which covers consultations by the Clinical Commissioning Groups on substantial developments and substantial variations in local health service provision.

1. Background

Issue of Non-Statutory Guidance by the Department of Health

On 27 June 2014, the Department of Health issued guidance to local authorities on their health overview and scrutiny function, entitled *Local Authority Health Scrutiny – Guidance to Support Local Authorities and Their Partners to Deliver Effective Health Scrutiny*.

The guidance is available at the following link: -

https://www.gov.uk/government/publications/advice-to-local-authorities-on-scrutinising-health-services

The guidance is non-statutory, but the Department of Health states that the guidance 'needs to be conscientiously taken into account'.

Key Messages

The Department of Health has identified 'Key Messages' in the guidance, which are reproduced below:

- *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. The new legislation extends the scope of health scrutiny and increases the flexibility of local authorities in deciding how to exercise their scrutiny function.*

- *Health scrutiny also has a strategic role in taking an overview of how well integration of health, public health and social care is working – relevant to this might be how well health and wellbeing boards are carrying out their duty to promote integration - and in making recommendations about how it could be improved.*

- *At the same time, health scrutiny has a legitimate role in proactively seeking information about the performance of local health services and institutions; in challenging the information provided to it by commissioners and providers of services for the health service ("relevant NHS bodies and relevant health service providers") and in testing this information by drawing on different sources of intelligence.*

- *Health scrutiny is part of the accountability of the whole system and needs the involvement of all parts of the system. Engagement of relevant NHS bodies and relevant health service providers with health scrutiny is a continuous process. It should start early with a common understanding of local health needs and the shape of services across the whole health and care system.*

- *Effective health scrutiny requires clarity at a local level about respective roles between the health scrutiny function, the NHS, the local authority, health and wellbeing boards and local Healthwatch.*

- *In the light of the Francis Report, local authorities will need to satisfy themselves that they keep open effective channels by which the public can communicate concerns about the quality of NHS and public health services to health scrutiny bodies. Although health scrutiny functions are not there to deal with individual complaints, they can use information to*

get an impression of services overall and to question commissioners and providers about patterns and trends.

- *Furthermore in the light of the Francis Report, health scrutiny will need to consider ways of independently verifying information provided by relevant NHS bodies and relevant health service providers – for example, by seeking the views of local Healthwatch.*

- *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.*

- *Where there are concerns about proposals for substantial developments or variation in health services (or reconfiguration as it is also known) local authorities and the local NHS should work together to attempt to resolve these locally if at all possible. If external support is needed, informal help is freely available from the Independent Reconfiguration Panel (IRP) and/or the Centre for Public Scrutiny. If the decision is ultimately taken to formally refer the local NHS's reconfiguration proposals to the Secretary of State for Health, then this referral must be accompanied by an explanation of all steps taken locally to try to reach agreement in relation to those proposals.*

- *In considering substantial reconfiguration proposals health scrutiny needs to recognise the resource envelope within which the NHS operates and should therefore take into account the effect of the proposals on sustainability of services, as well as on their quality and safety.*

- *Local authorities should ensure that regardless of any arrangements adopted for carrying out health scrutiny functions, the functions are discharged in a transparent manner that will boost the confidence of local people in health scrutiny. Health scrutiny should be held in an open forum and local people should be allowed to attend and use any communication methods such as filming and tweeting to report the proceedings. This will be in line with the new transparency measure in the Local Audit and Accountability Act 2014 and will allow local people, particularly those who are not present at scrutiny hearing-meetings, to have the opportunity to see or hear the proceedings.*

Description of the Existing Legislation

Much of the guidance sets out the legislative position. For example, one section describes elements of the previous legislative framework (prior to the Health and Social Care Act 2012), which remain unchanged. These include:

- Health scrutiny remains the function of upper tier local authorities, but with provisions enabling the participation of district councils.
- Members of the Executive may not be members of an overview and scrutiny committee.

- NHS organisations are required to:
  - provide information about the planning, provision and operation of health services, as reasonably required by the health scrutiny function;
  - attend local authority health scrutiny meetings;
  - consult on any proposed substantial developments or variations in the provision of the local health service; and
  - respond to reports and recommendations submitted to them by the health scrutiny function, following an in-depth scrutiny review.
- NHS organisations remain under duties to consult and involve patients and the public, which are in addition to the duties to consult with the health scrutiny function.

The guidance also sets out the key changes from the previous legislation:

- Local authorities are now responsible for many aspects of the public health function and may be subject to scrutiny for this. *(Lincolnshire County Council has determined that the Community and Public Safety Scrutiny Committee undertakes this role.)*
- The health scrutiny function rests with the Council and the Council may decide how it is discharged, for example by
  - the Council meeting itself,
  - a health overview and scrutiny committee,
  - a committee of the Council (for local authorities not operating executive arrangements),
  - a joint health overview and scrutiny committee, or
  - another local authority.

  (Lincolnshire County Council has established the Health Scrutiny Committee for Lincolnshire to undertake its health scrutiny function.)
- The health scrutiny function may not be delegated to an officer.
- The scope of the health scrutiny function has been extended to cover the full range of commissioners and providers of NHS-funded services, who are referred to as "responsible persons". The responsible persons are:

  - Clinical Commissioning Groups (CCGs)
  - NHS England
  - Local authorities (insofar as they may be 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 not subject to specific duties under health scrutiny regulations as independent contractors, they are now subject to duties under the new Regulations as they are 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.

- Powers of referral from Healthwatch – Healthwatch may make referrals to the health scrutiny function.
- Changes to the consultation provisions are detailed below.

Conflicts of Interest

The guidance includes the following provisions on conflicts of interest, which are reproduced in full:

"3.1.24 Councils should take steps to avoid any conflict of interest arising from councillors' involvement in the bodies or decisions that they are scrutinising. A conflict might arise where, for example, a councillor who was a full voting member of a health and wellbeing board was also a member of the same council's health scrutiny committee or of a joint health scrutiny committee that might be scrutinising matters pertaining to the work of the health and wellbeing board.

3.1.25 Conflicts of interest may also arise if councillors carrying out health scrutiny are, for example:

- *An employee of an NHS body.*
- *A member or non-executive director of an NHS body.*
- *An executive member of another local authority.*
- *An employee or board member of an organisation commissioned by an NHS body or local authority to provide services.*

3.1.26 These councillors are not excluded from membership of overview and scrutiny committees, and, clearly, where the full council has retained the health scrutiny function, they will be involved in health scrutiny. However they will need to follow the rules and requirements governing the existence of interests in matters considered at meetings. Where such a risk is identified, they should consult their monitoring officer for advice on their involvement."

Consultation

As with the previous guidance, a key element is the section on consultation on substantial reconfiguration proposals. The guidance sets out the key elements of the consultation arrangements:

- With increasing integration of health and social care, many proposals may be joint NHS-local authority proposals, with the involvement of the health and wellbeing board at an early stage.
- "Substantial development" and "substantial variation" are not defined in the legislation, as previously. Joint protocols are recommended between the commissioners and health scrutiny committees. *(The Health Scrutiny Committee and the four Clinical Commissioning Groups in Lincolnshire have approved a protocol to support joint working, which covers elements of consultation.)*
- Commissioners (not providers) are responsible for undertaking consultation. Where providers have a development under

consideration, they will need to inform the commissioners at an early stage. Commissioning responsibilities for NHS services rest with CCGs and NHS England.

- Commissioners must advise the health scrutiny function of the date by which it requires comments on the health consultation and the date on which they intend to make a decision whether to proceed with the proposal.
- The health scrutiny function may make comments on any consultation proposal, and these comments may include a recommendation. Where a recommendation is included and the commissioner disagrees with that recommendation, the commissioner must notify the health scrutiny function of the disagreement. Steps must be taken to resolve the disagreement.
- Referrals to the Secretary of State may be made largely on the similar grounds as previously, which are:
  - It is not satisfied with the adequacy of content of the consultation.
  - It is not satisfied that sufficient time has been allowed for consultation.
  - It considers that the proposal would not be in the interests of the health service in its area.
  - It has *not* been consulted, and it is not satisfied that the reasons given for not carrying out consultation are adequate.

- Every effort must be made to resolve any disagreement between the Health Scrutiny Committee and the commissioners. Only commissioners, such as NHS England and CCGs, may be subject to referral. Where referrals are made to the Secretary of State for Health, they must be supported by evidence.

<u>Delegation of Referrals to Health Overview and Scrutiny Committees</u>

As stated above, referrals may be made to the Secretary of State in relation to proposals from CCGs and NHS England, where there is a disagreement which cannot be resolved locally. The guidance includes a statement in paragraph 4.7.6 to the effect that the power to make a referral to the Secretary of State may also be delegated to a health overview and scrutiny committees. In the light of this, the previous legal advice has been reviewed and it is now possible for such power to be delegated by the County Council to an overview and scrutiny committee.

2. Conclusion

The Committee is invited to consider and comment on the content of *Local Authority Health Scrutiny – Guidance to Support Local Authorities and Their Partners to Deliver Effective Health Scrutiny*, issued by the Department of Health on 27 June 2014.

In relation to the suggestion in the guidance that there should be a protocol between the four CCGs and the Committee, the Committee is invited to note that a protocol is already in place.

3. Consultation

This is not a consultation, although elements of *Local Authority Health Scrutiny – Guidance to Support Local Authorities and Their Partners to Deliver Effective Health Scrutiny* cover the arrangements for consultation by Clinical Commissioning Groups and NHS England with the local authority health scrutiny function.

4. Appendices – None

5. 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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