

Cabinet

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NHS/Social Care Reforms



Report of Corporate Management Team

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Purpose

1. The purpose of this report is to inform Cabinet of the duties and responsibilities in the Care Act 2014 and outline how the adult social care reforms will be implemented in Durham.

Background

2. The coalition's Programme for Government highlighted in May 2010 the "urgency of reforming the system of social care to provide much more control to individuals and their carers and to ease the cost burden that they and their families face".
3. The Government recognised the need for reform of the way in which care and support is funded and established the Commission on Funding of Care and Support, chaired by Andrew Dilnot.
4. The Commission published its recommendations on how to share costs between the state and individuals in July 2011. The Commission made two key proposals for reforming the way in which people pay for their care and support:
 - The Government should put a cap on the lifetime care costs that people face; and raise the threshold at which people lose means tested support
 - There should be universal access to deferred payments for people in residential care.
5. The Law Commission conducted a 3 year review into adult social care and in 2011 made recommendations for a single, clear, modern statute and code of practice that would pave the way for a coherent social care system. Under their proposals older people, disabled people, those with mental health problems and carers would be clear about their legal rights to care and support services.

6. In September 2012 Cabinet was presented with a report detailing the following documents which were published by the Department of Health in July 2012:
 - Reforming Care and Support White Paper
 - Draft Care and Support Bill
 - Progress Report on Social Care Funding
7. The Reforming Care and Support White Paper introduced a new system that promoted wellbeing and independence at all stages to reduce the risk of people reaching a crisis point, and to improve their lives.
8. The draft Care and Support Bill proposed a single, modern law for adult care and support that replaces existing, outdated and complex legislation.
9. The Care Bill was presented to Parliament in May 2013 and took forward the key recommendations from the above documents.
10. The Care Act received royal assent on 14 May 2014.
11. Care and Support Minister Norman Lamb has stated that the Care Act represents the most significant reform of care and support in more than 60 years.
12. The aim of the Act is to put people's wellbeing at the heart of the care and support system, provide protection and support to people who need it most and give people peace of mind that they will be treated with compassion in hospital, care homes or their own home.
13. The Care Act introduces a number of reforms to the adult social care system and introduces new duties including providing support to carers and prisoners and limiting the amount that over 65's will be required to pay towards their social care costs.
14. The Care Act is in four parts:
 - Part 1** – Reform of Care and Support
 - Part 2** – Care Standards (Response to the Francis Inquiry on failings at Mid-Staffordshire Hospital)
 - Part 3** – Established non departmental public bodies (Health Education England and the Health Research Authority)
 - Part 4** – Establishes a fund for the integration of care and support with health services, known as the Better Care Fund

Part 1 – Reform of Care and Support

15. The Care Act will have significant implications for local authorities in the coming years. New duties will be placed on local authorities from April 2015 (care and support duties) and April 2016 (new financial duties).
16. The government has placed the concept of an individual's wellbeing at the centre of the Care Act. From April 2015 the local authority will have a statutory duty to consider the physical, mental and emotional wellbeing of the individual needing

social care. The local authority will also have a new duty to ensure the adequate provision of preventative services to maintain people's health and to prevent, delay or reduce the need for care and support.

17. The Care Act will create a care system that is built around each person, to ensure consideration is given to what they need, how they can best be cared for, and what they want. By providing and legislating for Personal Budgets in the Care Act people will have the power to spend money on tailored care that suits their individual needs as part of their care and support plan.
18. The government will introduce a national minimum eligibility threshold that will set out the criteria that people will have to meet in order for local authorities to provide support. This change will mean that the local authority cannot legally tighten the thresholds beyond this minimum threshold.
19. The Care Act states that the local authority will have a duty to provide information and advice to help everyone, not just those with eligible social care needs in order to understand what support they will need to help them better plan for their future care needs. The local authority will also have a duty to help people benefit from independent financial advice to assist with their financial planning.
20. To prevent people having to sell their home to pay for care costs, the government have introduced a duty for local authorities to offer a deferred payment scheme, which they say will mean that no one will be forced to sell their home during their lifetime in order to pay for their residential care.
21. The government has made a commitment to make joined up health and social care the norm by 2018. The Care Act sets out a duty on local authorities to promote the integration of services. Through the Better Care Fund some elements of health and social care budgets will be pooled to promote the integration of services.
22. From April 2016, a new system will limit the amount people of state pension age and above have to spend on the social care services they need, regardless of how much they have in savings or assets. Once the cap on care of £72,000 is reached the state will pay those costs.
23. Currently, only people with less than £23,250 in assets (such as savings or property) and those people on low incomes receive help from the state with their residential care costs. The government have changed the means testing level so that people with £118,000 worth of assets or less, will start to receive financial support if they need to go into a care home.
24. The local authority will be responsible for recording the progress of individuals towards the cap by administering a Care Account for those assessed as having eligible needs. The amount of money that counts towards the Care Account is the amount of money the local authority decides will meet the social care needs of the individual.

25. Once the cap is reached the local authority must pay for any further social care costs regardless of the financial means of the individual. The government are clear that the cap covers social care costs only. The cap will not cover "living costs" such as utility bills and food and only the cost of eligible needs counts towards the cap.

26. A table of key national milestones has been attached at Appendix 2.

Part 2: Care Standards

27. Part 2 of the Care Act deals with a number of the aspects of the findings of the Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry, led by Robert Francis QC.

28. The government laid out a commitment to greater openness and candour, to developing a culture dedicated to learning and improvement that continually strives to reduce avoidable harm.

29. The introduction of a statutory Duty of Candour places a requirement on providers of health and adult social care to be open with patients when things go wrong. Providers should establish the duty throughout their organisations, ensuring that honesty and transparency are the norm in every organisation registered by the Care Quality Commission. The Duty of Candour will be part of the new set of registration requirements that together will set out the clear outcomes that providers must meet, which will be core to good service provision.

Part 3: Established non-departmental bodies

30. Part 3 of the Care Act makes changes to the Trust Special Administration regime and has limited impact on the local authority. It takes forward the necessary legislative measures for the proposals outlined in *Liberating the NHS: Developing the Healthcare workforce - From Design to Delivery*, the establishment of Health Education England as a non-departmental public body; and those in relation to health research that were set out in the Government's *Plan for Growth*, the establishment of the Health Research Authority as a non-departmental public body.

Part 4 - Better Care Fund

31. Part 4 of the Care Act establishes a fund for the integration of care and support with health services, known as the Better Care Fund and makes provision for additional safeguards around the general dissemination of health and care information.

Better Care Fund Update

32. Cabinet have been kept informed of developments relating to the Better Care Fund through quarterly reports in relation to NHS and Public Health Reforms, up to, and including, May 2014.

33. The £3.8bn Better Care Fund was announced by the Government in the June 2013 spending review, to ensure a transformation in integrated health and social care. The government state that the Better Care Fund (BCF) is one of the most ambitious ever programmes across the NHS and Local Government. It creates a local single pooled budget to incentivise the NHS and local government to work more closely together around people, placing their well-being as the focus of health and care services.
34. The Better Care Fund is not new money as has been drawn from existing budgets already allocated to local authorities and Clinical Commissioning Groups.
35. The Better Care Fund plan will support the aim of providing people with the right care, in the right place, at the right time.
36. The Department of Health has identified £135 million of other costs associated with the Care Act which will sit within the Better Care Fund.
37. There has been a substantial change in policy of the £1.9bn NHS contribution to the BCF, £1bn will remain within the BCF but will now be either commissioned by the NHS on out-of-hospital services or be linked to a reduction in total emergency admissions. The intention of this policy change is to ensure that the risk of failure for the NHS in reducing emergency admissions is mitigated.
38. If the locally set target to reduce total emergency admissions is achieved then all of the funding linked to performance will be released to the BCF pool. If the target is not achieved, then the CCG's will retain the money proportional to performance, to be spent by the CCG's in consultation with the Health and Wellbeing Board.
39. Supplementary guidance published on 20 August 2014 on the expectation of a 3.5% reduction in emergency admissions, states that every Health and Wellbeing Board Area should set a target for a reduction in emergency admissions that is ambitious and stretching but not unrealistic.
40. If a plan sets a target lower than 3.5% in 2015/16 then specific requirements must be met.

National Guidance and Regulations

41. The Department of Health has developed draft regulations and guidance, for those duties that come in to force in April 2015, which were released for public consultation from June to August 2014. The purpose of the regulations and guidance is to help support councils deliver the provisions in the Care Act.
42. The Department of Health intend to publish the final guidance documents in October 2014 to allow local authorities six months to finalise preparations before the Act comes into force in April 2015. The regulations will be laid before Parliament at the same time.

43. A further consultation on the reforms that come into effect from April 2016, which include the cap on care costs, will be subject to a separate consultation to be published later this year.

Challenges with Implementing the Care Act 2014

Local Government Association/ Association of Directors of Adult Social Services

44. Nationally and locally, concerns have been raised in terms of the timescales and financial challenges the Care Act presents. The Local Government Association (LGA) and the Association of Directors of Adult Social Services (ADASS) have raised concerns with the government in relation to the reforms. The LGA has written to Health Minister Norman Lamb on behalf of councils across England and Wales to outline the growing concerns and urge the Government to commit to addressing any funding shortfall.

45. In their joint response to the Department of Health on the draft guidance and regulations consultation the LGA state that *'The financial context in which local government is operating is unquestionably impacting on adult social care budgets. This heightens the need for the reforms to be fully costed and fairly funded. The timetable for implementation is also a challenge, particularly with important information still to be published.'*

Public Accounts Select Committee

46. On 10 July 2014 the Public Accounts Select Committee (PAC) published their report on Adult Social Care in England. . The PAC reported that the Care Act introduces new burdens on local authorities and requires unprecedented levels of coordinated working between central and local government and across local authorities and health bodies. The Commission also stated the importance of the need for oversight arrangements to reflect the overriding importance of quality of care and the need to understand how the system can cope with increasing demand . The Committee recommended that the Government should ***'quantify the new burdens the Care Act will introduce for local authorities, establish a realistic timetable given the financial constraints, and acknowledge the limits on the sector's capacity to absorb the growing need for care with falling public funding'***.

Funding for the Care Act

47. The Care Act places a number of new duties on local authorities, which potentially have wide-ranging financial implications.

48. As part of the June 2013 Spending Review the Government announced that they would make £335 million of national funding available to local authorities in 2015-16 so that they can prepare for reforms being implemented as part of the Care Act 2014. £50 million of this relates to capital monies already included in the Better Care Fund, leaving £285 million 'new burdens' funding.

49. Since the announcement of the above funding the Department of Health issued a further consultation (from 30th July to 9th October 2014) on two options for

distributing the Care Act funding to local authorities , both of which result in a reduction in the proportion of the £285million that Durham will receive. Option 1 would result in an allocation of £2,786,645 which is a reduction of £565,355 or 16.87% and option 2 would result in an allocation of £2,639,594 which is a reduction of £712,406 or 21.25%. Durham submitted a response to this consultation.

50. As outlined in paragraph 36 the Department of Health has identified £135 million of other costs associated with the Care Act which will sit within the Better Care Fund.

Implementing the Care Act in Durham

51. A project management approach has been adopted to meet the requirements in relation to the Care Act.
52. The Social Care Reform Project Board is chaired by the Director of Children and Adults Services. The Board have the responsibility of overseeing the implementation and managing the risks associated with the Care Act reforms.
53. The reforms set out in the Care Act present a number of challenges to Durham County Council as well as other areas of the country.
54. The reforms are expected to create an increased demand for adult social care services. It is expected that there will be an increased demand for financial and care and support assessments from self-funders (people who currently fund their own care), carers, young people who will have social care needs after they reach 18 and prisoners, including people in approved premises and on bail.
55. The local authority will have a duty to keep care and support plans and carers' support plans under review, and to carry out an assessment where they are satisfied that the person's circumstances have changed. The adult can also make a reasonable request to have a review. Where the local authority is not required to meet needs there will be a duty to give the person written explanation for taking this decision which includes information and advice on how the person can reduce or delay their needs in future. These new duties will also place additional demand on resources.
56. Due to the number of prisons in County Durham the introduction of the duty to meet the social care needs of prisoners will have an impact on resources. The short timescales for the introduction of this duty also presents a challenge to the authority.
57. Work has already started to scope the potential demand in prisons and colleagues in Children and Adults Services are part of a regional group that is exploring how social care in prisons can be delivered.
58. Work is taking place with the voluntary and community sector to help build capacity in the sector to provide services that help prevent or delay people requiring social care.

59. Durham County Durham currently maintains the Durham Information Guide, an electronic directory of services available. Information and advice services will be transformed including the introduction of an e-marketplace that is intended to provide greater information, self-service and transactional functionality to help empower customers to take greater control of their own care, support and wellbeing provision.
60. Over the past year Adult Care services in Durham have undergone a transformation in the way services are delivered to provide a flexible, innovative and outward facing service with the primary aim of helping people to help themselves. There has been a focus on prevention and building resilience by working to ensure that there are local voluntary and community services available for the public to access.
61. The Care Act implementation is taking place at the same time as unprecedented financial reductions in local government which places additional pressures on Durham County Council, whilst meeting the requirements of the Medium Term Financial Plan.

Better Care Fund

62. Work has been ongoing in Durham since the Better Care Fund plan was submitted to NHS England Area Teams in April 2014.
63. The Better Care Fund plan has been aligned to the objectives in the County Durham Joint Health and Wellbeing Strategy.
64. The five priorities for transformation are:
- Intermediate Care
 - Support for care homes
 - Non Fair Access to Care Services (FACS) reablement
 - Combating social isolation
 - Seven day services
65. County Durham's Better Care Fund plan has been developed under the following seven work programmes:
- **Short term intervention services** which includes intermediate care community services, reablement, falls and occupational therapy services (**£13,428,000**)
 - **Equipment and adaptations for independence** which includes telecare, disability adaptations and the Home Equipment Loans Service (**£8,562,000**)
 - **Supporting independent living** which includes mental health prevention services, floating support and supported living and community alarms and wardens (**£5,005,000**)
 - **Supporting Carers** which includes carers breaks, carer's emergency support and support for young carers (**£1,361,000**)

- **Social inclusion** which includes local coordination of an asset based approach to increase community capacity and resilience to provide low level services (**£1,121,000**)
- **Care home support** which includes care home and acute and dementia liaison services (**£1,774,000**)
- **Transforming care** which includes the development of IT systems to support joint working and implementing the Care Act (**£12,484,000**)

66. County Durham's Better Care Fund plan was presented to the Health and Wellbeing Board on 3rd September and submitted to the NHS England Area Team by the deadline of 19th September 2014.

67. Ministerial sign off of BCF plans is expected in mid-October.

Next Steps

68. The County Durham Health and Wellbeing Board will receive a report on the Care Act 2014 at their meeting on 5th November 2014.

69. The Adults Wellbeing and Health Overview and Scrutiny Committee will receive a report and a presentation on the Care Act 2014 at their meeting on 8th December 2014.

Recommendations

Cabinet is recommended to:

- Note the content of this report and the timetable of key national milestones in Appendix 2.
- Agree that the regulations relevant to the Care Act will be implemented in accordance with the Council's Constitution and scheme of delegation in consultation with portfolio holders, where appropriate.
- Agree to receive a further update in relation to the implementation of the Care Act.

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Background papers:

Care Act 2014
 Draft Regulations and Guidance
 Better Care Fund Guidance

Appendix 1 - Implications

Finance – There are concerns about the level of funding available to implement the Care Act.

Staffing – There will be implications for staffing arising from the Care Act and Better Care Fund which will be considered throughout implementation.

Risk – It is essential that DCC take a planned approach to address the requirement of the Care Act. Risks are managed through the Care Act Project Board.

Equality and Diversity / Public Sector Equality Duty – The Care Act proposals seek to promote equality and improve the quality of services and the provision of information people receive.

Accommodation – N/A

Crime and Disorder – New duties for local authorities in prisons are outlined in the Care Act.

Human Rights – N/A

Consultation – The Government will continue to consult with stakeholders and service users on provisions in the Care Act.

Procurement – A duty will be placed upon local authorities to promote diversity and quality in the provision of services.

Disability Issues – Considered as part of the Care Act implementation plans.

Legal Implications – The Care Act which received Royal Assent on 19th May, 2014 introduces a number of new statutory duties on the local authority and there will be implications if these are not implemented and managed effectively.

Appendix 2- Care Act: Key National Milestones

Date	Milestone
October 2014	<p>Publication of final guidance and regulations (care and support)</p> <p>National public awareness campaign begins (aimed at people with existing care needs/carers)</p>
November/December 2014	<p>Consultation on regulations and guidance for care cap, extended means test, daily living costs and financial assessment</p>
April 2015	<p>General public awareness campaign begins</p> <p>Care and support reforms come into force -including:</p> <ul style="list-style-type: none"> • Duty to ensure provision of preventative services • Statutory duty to establish Safeguarding Adults Boards • Responsibility to ensure enquiries into cases of abuse and neglect • Information sharing duties (safeguarding) • Duty to provide universal information and advice (including access to independent financial advice) • Universal deferred payment agreements and loans will be available • Power for local authorities to charge for care and support comes into force • Duty to provide a care and support plan • Duty to determine eligible needs • Duty to conduct a needs assessment • National eligibility criteria comes into force • Duty to provide continuity of care (people moving between local authority areas) • Legal duty on transitions assessments • Duty to assess and meet carers needs

	<ul style="list-style-type: none"> • Duties on market shaping in force • Statutory wellbeing principle • Duty to meet care and support needs of prisoners and people in bail accommodation
May 2015	General election
April 2016	<p>Finance reforms come into force - including:</p> <ul style="list-style-type: none"> • Cap on care costs • Duty to provide care accounts • Duty to provide independent personal budgets