Local Government Group

LG Group Executive
15 September 2011

Item 4

The future of health and social care: Update on progress of the Health and Social Care Bill, the return of public health to local government and on the Dilnot Commission on the Funding of Long Term Care

Purpose of report

To inform the LG Group Executive on the progress of the Health and Social Care Bill, the recommendations of the Dilnot Commission and the LG Group activity on the wider health and social care reforms. Taken together, this represents a significant opportunity for local government to ensure better health is rooted in a dignified, locally based context.

Summary

This report:

1. updates the LG Group Executive on the progress of the Health and Social Care Bill following the consultation phase introduced after Second Reading in the Commons;
2. summarises the LG Group parliamentary activity on the Health Bill;
3. summarises other current and planned LG Group activity related to the health reforms;
4. outlines the findings of the Dilnot Commission; and
5. summarises current LG Group activity to maintain the momentum for reform of social care funding.

Recommendation

The LG Group Executive confirms that the LG Group's position, as set out in this report, reflects the priorities of councils and endorses the current and proposed LG Group activity in relation to the Health and Social Care Bill, the Dilnot Commission and the wider action on health and social care reforms.

Action

LG Group officers to action as necessary.

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Health and Social Care Bill: update on progress of health reforms

Update on passage of the Bill

1. The LG Group Executive last discussed the Health Bill on 16 June after the publication of the Future Forum report, on which Cllr David Rogers was the only councillor representative, and the Government's response to the report.

2. Following this, Simon Burns MP, the Health Minister, announced that 63 clauses would be re-committed, 35 of which would require amendments whilst the others will be considered to give context to the alterations. There would also be five new clauses introduced by Government. The Government's 160 amendments were tabled on 23 June. The amendments focused on subjects including the role of the Secretary of State, clinical commissioning, the role of Monitor, and Health and Wellbeing Boards.

3. On 28 June, Cllr Gareth Barnard, Vice Chair of the Community Wellbeing Programme Board, and Andrew Cozens gave evidence to the Public Bill Committee on the LG Group's views of the Government amendments to the Health and Social Care Bill. The key messages from the evidence session formed the basis of our lobbying and briefing on further stages of the Bill, as agreed by the Community Wellbeing Programme Board at its meeting on 20 July. The LG Group also submitted written evidence to the Public Bill Committee on 8 July 2011.

4. The Local Government Group has lobbied hard for a much greater role for Health and Wellbeing Boards and for a higher focus on a place-based approach and on integration of health and care services to improve health and wellbeing outcomes. As such we were pleased to see progress in relation to the powers for Health and Wellbeing Boards (HWBs), a greater focus on place-based and whole population approaches, and stronger requirements to integration. But there is still more we can do to ensure the Bill is fit for purpose. We believe that many of the revisions (suggested by the Future Forum and agreed in principle to by the Government) to the Bill have the potential to strengthen the role of local authorities and put far greater emphasis on local health and wellbeing needs but we are worried that the amendments do not always reflect the rhetoric accurately.

5. We welcome the following three changes:

   5.1 **The renewed focus on a place-based approach to health and wellbeing** commissioning, as suggested by the Future Forum and supported by the Government in its initial response, through the alignment of boundaries between first-tier councils and clinical commissioning groups; and the requirement that clinical commissioning groups will have to plan for the whole population of an area, rather than just their patient

list. The Government response to the Future Forum recommendations states: "*We accept the recommendation in the Forum's report that the boundaries of clinical commissioning groups should not normally cross those of local authorities. Any departure from this will need to be clearly justified".* We do not see this commitment expressed clearly in the Bill amendments however and we continue to urge that this is displayed on the face of the Bill.

5.2 **The strengthened emphasis on patient and public involvement** which is now embedded in the governance structure of all local bodies, including foundation trusts, clinical commissioning groups and health and wellbeing boards.

5.3 **The commitment to greater transparency** and standards of good governance for all NHS commissioners and providers. This includes the requirement that commissioning groups and foundation trusts have public meetings. We will seek to ensure that all health commissioners and providers are subject to the same standards of good governance to which all local authorities comply.

6. We recognise however that not all of the changes that the Government highlighted in its response to the Future Forum have made their way into the Bill at this stage. It is interesting to note Lord Crisp (former NHS Chief Executive) has intervened in the debate by saying that the Bill does not concentrate on what really needs to be done, which is building a different sort of NHS that is less hospital and consultant focused and more geared to community services and an ageing population. We want to see improvement in three areas:

6.1 **Health and Wellbeing Boards** – We welcome the Government's recognition that the powers of HWBs need to be strengthened in order to ensure coordination and joining up of commissioning plans with the health and wellbeing needs of the area but we feel that proposals need to go further. The Future Forum recommended that HWBs 'agree' clinical commissioning group plans. The Government amendments require consortia to involve HWBs 'at all stages' and to be able to refer back to the commissioning consortia or upwards to the NHS Commissioning Board. However we feel this falls short of the power of sign-off and in the LG Group's opinion, this is not sufficient to ensure that commissioning plans are firmly based on the health and wellbeing needs and priorities of the local community.

6.2 **Clinical Commissioning Groups** – We have a number of concerns regarding the Clinical Commissioning Groups (CCGs), formally known as GP commissioning consortia. First, the name sends the wrong message with a focus on clinical issues rather than health and wellbeing. We suggest they are renamed Local Health Commissioning Groups to underline the fact that services will need to go further and wider than NHS

treatment and include social care, public health and prevention. Second, we support the Government's view that GP-led commissioning is the way to re-engage commissioning plans to addressing local health needs and improving health outcomes. Adding clinical experts from providers weakens the focus on commissioning for health improvement and is more likely to concentrate on NHS provider interests. Also, we understand that the clinical representatives will be drawn from outside the local area in order to avoid conflicts of interest. But this means the representatives will lack the local expertise and knowledge, which is one of the main aims of this reform. On a broader point, we feel that GP-led commissioning will need to take advice from a wide range of health, social care and other professionals but their role should be to give advice, not to make commissioning decisions. As such it is inappropriate for them to be members of CCGs.

6.3 **Integration** – We welcome the renewed focus on integration but we feel that most of the changes simply reinforce the benefits of integration to the NHS rather than taking a whole-systems and person-centred approach, which looks at integration from the perspective of service users. The Ministerial announcement regarding revisions to the Health and Social Care Bill acknowledged the Future Forum's recommendations regarding the need for greater integration but we feel that this is not reflected in the revisions to the Bill. The revisions also do nothing to address our concerns regarding safeguarding issues, and ensuring the particularly vulnerable groups do not fall through the cracks between services – such as homeless people and people in need of emergency mental health services.

7. The Government amendments were debated in the Public Bill Committee (recommitted) in the Commons prior to the recess. The report stage and third reading in the Commons are likely to take place when the House returns in the week beginning 5 September. The Government published a further 363 amendments to the Bill on 31 August for consideration at the Report stage. None of these address the core concerns set out above. An update on progress in the Commons after this report was prepared will be provided at the meeting.

8. The second reading in the Lords will be in the second week of October. Peers have requested 12 Committee days for this Bill but are likely to get ten. Then there will be four to six days of Report Stage debates and third reading at the earliest two weeks after that. That means the Bill is unlikely to be completed and receive Royal Assent before February 2012.

Current and future parliamentary activity

9. On 6 July Cllr Linda Thomas met key members of the Labour Bill Team (Baroness Thornton, Baroness Margaret Williams and Richard Bourne) to discuss the Health and Social Care Bill. A similar meeting has been organised with the Liberal Democrat leads in the Lords for 14 September.

10. The Chairman is due to meet with the Secretary of State for Health, Andrew Lansley MP, this month. We have organised a briefing session for all peers on 26 October, after second reading and before the committee stage, to explain the LG Group's concerns and proposed key amendments.

Progress on other health reform activity

Public Health Policy Update

11. The Secretary of State for Health has published a policy statement setting out the progress on public health and identifying issues that require further developments required, along with a clear timeline. Given the White Paper was published eight months ago, we had been expecting a fuller Government Command Paper, setting out the response and way forward on all aspects of public health reform. It is disappointing that we still only have a partial picture of the change programme. That said we welcome further clarity on some aspects of public health reform. The key proposals are summarised below.

12. The policy document reiterates the Government's commitment to focusing on outcomes rather than process through the development of a national outcomes framework for public heath. This has not been published to accompany the policy update but the document makes clear that the Government still intend to have three separate but overlapping frameworks. They make a commitment to reducing the data collection and analysis burden on local authorities but we will comment further on this when the framework is published in autumn 2011. We have consistently argued for a single outcomes framework to encompass the NHS, public health and social care. However, we welcome the further work proposed on interdependencies and will support any further focus on how they can be integrated at HWB level.

Local government

13. The updated document maintains the emphasis of *Healthy Lives, Healthy People* on the pivotal role of local government in driving forward improved health outcomes through tackling the wider determinants of health. It gives further details on local government responsibilities and states that: "We plan to give local authorities new functions through regulations for taking steps to protect the local population's health, and for providing clinical commissioning groups with population health advice".

14. The update gives further details of the ring-fenced public health grant. To maximise flexibility, the conditions will be minimal: to ensure it is spent on the public health functions for which it has been given, and ensuring a transparent accounting process. It is expected that the public health budget will fund the NHS to commission some public health services such as immunisation programmes, contraception programmes in the GP contract, screening programmes, public health care for prisoners and those in custody, and children's public health services from pregnancy to age five, including health visiting.

Role of the Director of Public Health (DPH)

15. The update document clarifies the role of the DPH as the principal adviser on health to elected members and officials, responsible for delivering the new public health functions and a statutory member of the health and wellbeing board. The DPH will also be required to produce an annual report on the health of the population. The DPH will retain responsibility for the three domains of public health: health improvement, health protection and healthcare public health. Directors of Public Health (DsPH) will also be represented on clinical senates – a new proposal made by the Government in their response to the NHS Future Forum recommendations.

16. DsPH will be employed by local authorities and recruited through a joint appointment process with Public Health England, and professional standards will be maintained. Though the update recognises it is up to individual local authorities to determine their corporate management arrangements, there is an expectation that they will form part of the senior management team with chief officer status and direct accountability to the chief executive. The Group welcomed the commitment for DsPH to retain all three domains of responsibility and within local government. We argued strongly that DsPH should be directly employed by local authorities and that their accountability and place within the management structure is an issue for local decision. It is important that these responsibilities reflect the organisational imperatives of individual local authorities.

Health and Wellbeing Boards

17. The update emphasises the central role of HWBs in holding together the new public health system and maximising the opportunities for integration to improve health and wellbeing outcomes. They will have a new duty to promote patient and public involvement in developing the joint strategic needs assessment and the health and wellbeing strategy.

Public Health England (PHE)

18. The major change is that PHE will be established as an Executive Agency, outside the Department of Health (DH). It will bring together the functions of the Health Protection Agency, the National Treatment Agency, Regional Directors of Public Health and their teams that are currently located in the DH and Strategic Health Authorities, Public Health Observatories, Cancer Registries and the National Cancer Intelligence Network, the National Screening Committee and the Cancer Screening Programmes.

19. PHE's role in relation to local authorities is to:

    19.1 provide information on the state of public health in England to support local information in Joint Strategic Needs Assessments;
    19.2 building an evidence base of effective public health interventions;
    19.3 provide intelligence on how best to tackle public health challenges and support the development of Joint Health and Wellbeing Strategies (JHWS);
    19.4 report on local government contribution to improving health outcomes as part of the public health outcomes framework;
    19.5 provide resilience and local response capabilities to respond to public health threats;
    19.6 provide professional support for DsPH.

20. PHE will have a major role in health protection, including infectious diseases, biohazards and emergencies. It will work with the National Institute for Clinical and Health Excellence (NICE) to develop a robust evidence base for innovative and efficient public health interventions. PHE will have a close relationship with the NHS Commissioning Board to ensure the NHS plays an active role in health improvement. It will also commission national campaigns such as Change4Life.

Issues not covered by the update

21. **Workforce issues** - The policy update does not include any detail on the future development of the public health workforce, which is still in development. It does, however, give a commitment to developing a high level concordat with NHS and local government employers on the transition of public health staff between the NHS and local authorities. The document estimates that around 5000 public health staff will transfer from PCTs to local government. This will clearly have major implications for councils and must be fully funded from the public health grant.

22. **Public health funding** – There is still no detail on funding for public health. A further policy document on funding is promised, which will outline the overall public health budget and the distribution between the NHS Commissioning Board, PHE and local authorities. It is also still working on the allocation

formula to local authorities and the details of the Health Premium. The document states: "We are committed to ensuring that local authorities are adequately funded for their new responsibilities and that any additional net burdens will be funded in line with the Government's New Burdens Doctrine".

23. During the autumn, further proposals for implementing the new public health system will follow.

Meeting with Public Health stakeholders – 7 July

24. Cllr Richard Kemp chaired the third meeting of the Public Health Stakeholders Roundtable, which also included representatives of all major GP stakeholders. The meeting focused on the following issues: the Government announcement on public health and the commitment to agreeing a joint response between the LG Group and the participating stakeholders; the need for greater communication to local authorities and health partners in order to aid mutual understanding and promote positive behaviours; the development of joint support to promote joint working; and a progress update on discussions regarding the transfer of the public health workforce to local government, with the intention of signing a joint concordat. The Roundtable agreed to meet again in September 2011.

Joint LG Group, DH and NHS Confederation meeting – 28 July

25. John Wilderspin, DH Lead for Health and Wellbeing Boards, chaired a meeting of senior stakeholders to discuss operating principles for Health and Wellbeing Boards and to agree a common approach to supporting local authorities and their key partners in putting these principles into practice. Community Well Being Programme Board Lead Members were invited to participate in this meeting. It is the intention that the operating principles will promote positive and collaborative behaviour between HWBs, Clinical Commissioning Groups (CCGs), the NHS Commissioning Board, local Health Watch and Public Health England. The operating principles are currently being amended and the final version will be considered and cleared by the Lead Members of the Community Wellbeing Programme Board.

Development of implementation support for Health and Wellbeing Boards

26. The Secretary of State for Health announced at the LG Group Annual Conference that £1 million will be available to support the development of HWBs. LG Group senior officers are currently in discussion with DH on developing sector-led support for HWBs.

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The Commission on Funding of Care and Support

Background

27. The Commission on Funding of Care and Support (CFCS) was announced by Secretary of State for Health, Andrew Lansley, on 20 July 2010. It was charged with making recommendations on how to achieve an "affordable and sustainable funding system for care and support, for all adults in England, both in the home and other settings". This included:

    27.1 The best way to meet care and support costs *as a partnership between individuals and the state.*
    27.2 How *an individual's assets are protected* against the cost of care.
    27.3 How public funding for care and support *can be best used to meet needs*.
    27.4 How to *deliver the preferred option* including implementation timescales and impact on local government.

28. The final report of the Commission, 'Fairer Care Funding', was published on 4 July.

LG Group engagement

29. There has been very good engagement with the CFCS over the last twelve months and Andrew Dilnot has been very clear in thanking the LG Group for its contribution.

LG Group initial activity on Dilnot

30. The main recommendations of the report were:

    30.1 To protect people from the potentially catastrophic costs of care there should be a cap on an individual's lifetime contribution between £25,000 and £50,000 (the Commission asserts that £35,000 is an appropriate figure, which is used throughout the report for example purposes). Any costs incurred above the cap should be fully met by the state.
    30.2 Means-tested support should continue for those with lower means who may not be able to cover £35,000.
    30.3 The asset threshold above which individuals are expected to fully-fund their residential care should increase from the current £23,250 to £100,000.
    30.4 Those entering adulthood with a care and support need would not be expected to make a contribution.
    30.5 Universal disability benefits should continue for people of all ages but Government should consider how to better align benefits with a reformed social care funding system, including a re-branding of Attendance Allowance to clarify its purpose.

30.6 Personal contributions would be standardised to between £7,000 and £10,000 to cover the 'hotel costs' associated with residential care.
30.7 Standardised national eligibility criteria to improve consistency and fairness alongside portable assessments.
30.8 In the short term a minimum eligibility threshold should be set nationally at 'substantial' under the current Fair Access to Care system.
30.9 Government investment in an awareness raising campaign to help inform the public about the proposed changes and the importance of planning ahead.
30.10 A Government-led information and advice strategy produced in partnership with local government, charities and others to ensure people have the information they need when care needs arise.
30.11 Carers assessments should take place alongside the assessment of the person being cared for.
30.12 A Government review of the scope for improving the integration of adult social care with other services in the wider care and support system

31. Our response agreed that the Dilnot report provides a good set of answers to the questions originally posed by the Government; namely how to make the care and support system fairer and simpler. The report must not be seen as an end in itself and should instead be viewed as part of a wider reform movement, which includes: the Law Commission's recommendations for developing a simpler legal framework for care and support; a political vision for reform; and developing cross-party consensus on the best way forward.

32. We have long said that our care and support system is underfunded so are pleased to see that the report clearly highlights the urgent need to bring more money into the system. In today's financial environment, and recognising the demographic shifts we are seeing, we believe a shared responsibility between the individual and the state for increasing available funding is appropriate. We are pleased to see the Commission recommend that a safety net should continue to exist for those who would not be able to afford the individual contribution; reform must work for everyone. We will want to conduct a thorough analysis of the financial implications for councils before commenting further.

33. It is essential that these proposals are portrayed accurately in the media and we must work hard to ensure that common misconceptions are not perpetuated. Adult social care is not free for everyone at the point of need so ideas around individual contributions must not be portrayed as something radically new. Such an approach risks alienating the public who we know already find the system confusing.

34. The LG Group also developed a declaration on adult social care reform (included at the end of this report as **Appendix A**). Entitled 'Time to Act', the statement sets out a clear message that reform cannot be delayed any further

and acknowledges the current optimum alignment of conditions for meaningful change: an outlook of consolidated legislation through the work of the Law Commission; realistic options for increased funding through the work of the Dilnot Commission; and political vision as set out in the Government's publication 'Capable Communities and Active Citizens'. The declaration calls on the Government to develop cross-party consensus to deliver reform and set out a clear programme for action.

35. Through various communications the support of top-tier Leaders was sought for the declaration. Very encouragingly, when the declaration was submitted to the three national party Leaders on 19 July more than 80 top-tier Leaders had added their name as a signatory. One response, from Rt Hon Ed Miliband, has been received thus far. This welcomed the LG Group's approach and made a clear offer to work with us, and across the three parties, to tackle the issue of adult social care with the urgency required.

Next Steps

36. The coming twelve months look set to be an incredibly busy period as the adult social care reform agenda is taken forward and culminates in a care and support Bill. We anticipate this being an issue of significant interest to member authorities and we therefore want to ensure that the LG Group is actively involved in contributing to, and shaping, the debate.

37. Initial ideas for future activity (including provisional timings) include:

    37.1 A 'Frequently Asked Questions' online publication exploring the Dilnot proposals in greater depth. This is now complete and has been developed in collaboration with the Dilnot Commission.
    37.2 Following on from the successful session held in March, a further roundtable with Leaders and Chief Executives to consider the implications of the Commission's recommendations for local government. [September]
    37.3 A series of roundtable events in Parliament, and in partnership with relevant organisations, to explore different elements of the Commission's reform proposals. [Three events between September and December]
    37.4 Emanating from the roundtable events, and ahead of the Government's White Paper, a more detailed discussion paper setting out local government's views on reform. [January-February]
    37.5 Written (and hopefully oral) evidence to the Health Select Committee's recently announced inquiry on Dilnot's proposals. [Autumn]
    37.6 Briefing papers and meetings for Parliamentarians, particularly in advance of a Lords' debate on Dilnot's recommendations that we expect after summer recess. [Autumn]
    37.7 A one-day event on Dilnot/reform. [December]
    37.8 Session/s at this year's National Children and Adult Services Conference. [November]

37.9 Input to the proposed Government Working Groups – particularly those that will focus on: designing a national eligibility framework; and designing a national/local framework for information and advice. [TBC]

37.10 A response to the Government's White Paper. [TBC]

37.11 Influencing and lobbying on the Government's Bill. [TBC]

Financial Implications

38. The health reforms will have major financial implications for first-tier councils. The Department of Health is currently determining the base line spend on public health in order to determine the overall level of the Public Health Grant, to be allocated to local authorities from 2013. A figure of £4 billion was given in the public health White Paper, Healthy Lives, Healthy People, but the BMA has suggested that the real cost of adequately funded public health services is closer to £5 billion. The Command Paper for the public health proposals is expected to be published in June and will provide details on the overall level of the grant, the basis for allocation and details of the ring-fence.

39. The LG Group has repeatedly raised its concerns regarding the overall level of the Public Health Grant, the basis on which it will be allocated, the division of resources between Public Health England and local authorities, and which services local authorities will be expected to commission. We will continue to make strong representations that all new public health responsibilities should be adequately financed and that councils should have maximum flexibility to use the grant to address local priorities.

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