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AGENDA ITEM:

HEALTH SCRUTINY PANEL

7 JANUARY 2011

RECENT POLICY PUBLICATIONS FROM THE DEPARTMENT OF HEALTH – A BRIEFING

PURPOSE OF THE REPORT

1. To ensure that the Panel is aware of policy documents recently published by the Department of Health, covering Public Health and the implementation of the *Equity & Excellence* White Paper.

RECOMMENDATIONS

2. That the Panel notes the content of the recently published papers.

3. That the Panel considers whether it would like to submit a formal response to the Public Health White Paper *Healthy Lives, Healthy People.*

CONSIDERATION OF REPORT

4. Members of the Health Scrutiny Panel may be aware that the Department of Health has published a number of documents recently, setting out the new Government's intentions for health and social care.

5. In the weeks before Christmas 2010, the Department of Health published two documents that have a material impact upon the workings and subject matter of Health Overview & Scrutiny. It is the intention of this briefing paper to ensure that the Health Scrutiny Panel is well appraised of the contents of the recently published papers and can respond to the agenda they set out.

Healthy Lives, Healthy People

6. *Healthy Lives, Health People* is a Public health White Paper released by the Department of Health on 30 November 2010. According to the Secretary of State for health, the White Paper 'outlines a radical shift in the way we tackle public health challenges'. The White Paper describes how it marks the start of a new era for public health, with a higher priority and dedicated resources. It

goes on to say that the ultimate goal of the White Paper is the development of a public health service that achieves excellent results by “unleashing innovation and liberating professional leadership”.

7. The White Paper certainly represents a significant development in the history of the public health movement. The White Paper proposes the transferral of public health duties (which currently sit with PCTs) to local authorities and the creation of a Director of Public Health post within the local authority. It also proposes the creation of a new, national public health service, which will sit within the Department of Health.

8. As such, local government and the local communities it represents will be placed in a more powerful position to effect change in tackling health inequalities in communities. In partnership with new Public Health Service, it is estimated that there will be ring-fenced funding of around £4billion for public health.

9. The White Paper proposes that the new public health system will be:

   Responsive – owned by communities and shaped by their needs

   Resourced – with ring-fenced funding and incentives to improve

   Rigorous – Professionally-led, focused on evidence, efficient and effective and

   Resilient – strengthening protection against current and future threats to health

10. As such, it is clear that local government will have a much greater role to play in the assessing of local public health need, developing strategies to meet those needs and commissioning appropriate services. A copy of the White Paper’s Executive Summary has been attached to this briefing paper and is marked as Appendix 1.

Liberating the NHS: Legislative Framework and Next Steps

11. The Health Scrutiny Panel will recall that in September and October 2010, detailed consideration was given to the *Equity & Excellence* White Paper and the Panel submitted a detailed response to the consultation process. On 14 December 2010, the Government published its response to the Consultation process and outlined its reform intentions in a document called *Liberating the NHS: Legislative Framework and next Steps* (hereafter referred to as Next Steps).

12. *Next Steps* is a substantial document of some 170 pages, which outlines the Government’s reform intentions across a wide range of NHS and health service related fields. *Next Steps* outlines how the consultation process has developed government proposals and making up the following list, are the most substantial changes to those proposals.

- *allow a longer and more phased transition period for completing our reforms to providers: for example, retaining some of Monitor's current controls over some foundation trusts while the new system of economic regulation is introduced;*

- *significantly strengthen the role of health and wellbeing boards in local authorities, and enhance joint working arrangements through a new responsibility to develop a "joint health and wellbeing strategy" spanning the NHS, social care, public health and potentially other local services. Local authority and NHS commissioners will be required to have regard to this;*

- *create a clearer, more phased approach to the introduction of GP commissioning, by setting up a programme of GP consortia pathfinders. This will allow those groups of GP practices that are ready, to start exploring the issues and will enable learning to be spread more rapidly;*

- *accelerate the introduction of health and wellbeing boards through a new programme of early implementers;*

- *create a more distinct identity for HealthWatch England, led by a statutory committee within the Care Quality Commission (CQC);*

- *increase transparency in commissioning by requiring all GP consortia to have a published constitution;*

- *change our proposal that maternity services should be commissioned by the NHS Commissioning Board. This reflects the weight of consultation responses arguing that, in order to focus on local needs, maternity services should be the responsibility of GP Consortia, backed by national support to secure improvements in quality and choice.*

- *Recognise that our original proposals to merge local authorities scrutiny functions into the health and wellbeing board was flawed. Instead we will extend council's formal scrutiny powers to cover all NHS funded services, and will give local authorities' greater freedoms in how these are exercised.*

- *Phase the timetable for giving local authorities responsibility for commissioning NHS complaints advocacy services, and allow flexibility to commission from other organisations as well as from local HealthWatch.*

- *Give GP Consortia a stronger role in supporting the NHS Commissioning Board to drive up quality in primary care*

- *Create an explicit duty, for the first time, for all arms lengths bodies to co-operate in carrying out their functions, backed by a new mechanism for resolving disputes without the Secretary of State having to act as arbiter. In particular, Monitor and the NHS Commissioning Board will have to work jointly in setting process rather than have Monitor decide and the Board able to appeal.*

13. As is clear from the above list, Health Overview & Scrutiny will actually be given a strengthened role, with increased powers to hold to account any agency in receipt of NHS funds for the provision of NHS services. It will also

be of interest to the Panel that *Next Steps* stipulates that Health & Wellbeing boards will become statutory features of local governance.

14. In addition, the upcoming health and social care bill "will provide flexibility for health and wellbeing boards both between and within local authority areas". *Next Steps* proposes that a 'whatever makes sense locally' approach should govern the creation of health and wellbeing boards.

15. There will be a duty on GP Consortia to participate in the work of local health and wellbeing boards by requiring them to be members.

16. A key aspect of the work of the Health and Wellbeing Boards will be the creation and publication of the Joint Strategic Needs Assessment. This document will "provide an objective analysis of local current and future needs for adults and children, assembling a wide range of quantitative and qualitative data, including user views." At present, the production of this document is a joint responsibility between PCTs and local authorities. In the future it will be a joint responsibility between health and wellbeing boards and GP Consortia.

17. In addition to the JSNA, local health and wellbeing boards will be required to develop a high level 'joint health and wellbeing strategy' that spans the NHS, social care and public health and could potentially consider wider health determinants such as housing or education. There will be a list of powers and duties for the 'explicit council and consortium commitment' to the Joint Health and Wellbeing Strategy' These are:

- *Just as GP consortia and local authorities will be required to have regard to the joint strategic needs assessment, they will also be under a new statutory duty to have regard to the JHWS*

- *Health and wellbeing boards will be able to consider whether the commissioning arrangements for social care, public health and the NHS, developed by the local authority and GP consortia respectively, are in line with the JHWS*

- *The health and wellbeing board will be able to write formally to the NHS Commissioning Board and the GP consortia if, in its opinion, the local NHS commissioning plans have not had adequate regard to the JHWS. Equally, it will be able to write to the local authority leadership if the same is true of public health or social care commissioning plans; and*

- *When GP consortia send their commissioning plans to the NHS Commissioning Board, they will be under an obligation to state whether the health and wellbeing board agrees that their plans have held due regard to the JHWS and send a copy of their plans to the health and wellbeing board at the same time.*

18. *Next Steps* has a section dedicated to health scrutiny, which is entitled *Referral and Enhanced Scrutiny*.

19. As mentioned above, Liberating the NHS originally proposed that Health & Wellbeing Boards would take on the responsibility for the statutory scrutiny

function, from health scrutiny. From the responses received, the Government is of the view that the original proposal was flawed and statutory health scrutiny will remain with Overview & Scrutiny. It goes on to say that it has been presented with many examples of very effective health Overview & Scrutiny undertaking excellent work and it remains the intention of the Government to maintain the important role of local councillors in considering topics of local importance.

20. The Government has also stated that is proposes to give local authorities a new freedom and flexibility to discharge their health scrutiny powers in the way they deem to be most suitable, whether through a specific health Overview & Scrutiny Committee, or through an alternative arrangement. To enable this flexibility, the Bill will confer the health Overview & Scrutiny functions directly on the local authority itself.

21. *Next Steps* confirms that the Power of Referral will be retained, relating to significant changes to NHS services, where contested proposals can be referred to the NHS Commissioning Board, then by exception to the Secretary of State for Health.

22. Relating to referrals, *Next Steps* proposes that a referral is endorsed by a meeting of the full council before it is able to be submitted and that it should only be in exceptional circumstances. If a Joint Scrutiny Committee is formed, there will not be a need for a referral to endorsed by full council.

23. In developing the power and influence of Health Scrutiny, *Next Steps* describes how powers relating to health scrutiny will be significantly extended. Presently, Health Scrutiny has powers to require the attendance of managerial representatives of NHS Trusts, Foundation Trusts and Primary Care trusts. That power, to require attendance, will be extended to any provide of health and social care paid for by public funds. As such, the Bill will enable the Government to extend the powers of local authorities to enable effective scrutiny of any provider of any NHS funded service, including, for example, primary medical, dental or pharmacy services and independent sector treatment centres, as well as any NHS Commissioner. A particularly interesting element of this would be the power to scrutinise the commissioning decisions and functions of GP led Consortia, providing an important element of local accountability for Consortia.

24. Possibly the highest profile element of Liberating the NHS is the creation of GP Commissioning Consortia. *Next Steps* confirms that GP Commissioning Consortia will be statutory organisations, thereby making them distinct bodies to their constituent practices. They will be required to have a constitution to govern their operation and they will also be required to have an accountable officer. There are many national debates about the optimum population size for a Consortia, as it will need to be large enough to withstand financial risk, as well as small enough to reflect local needs and concerns.

25. Aside from a requirement to attend Health Scrutiny when asked to do so, GP Consortia will also be required to make public their remuneration scheme, to

hold an annual (and public) general meeting and make their commissioning plans available to the public. They will also be required to publish annual reports detailing how well the working relationships with local authorities have been discharged.

26. The Health Scrutiny Panel is asked to note the contents of the recently published policy papers.

BACKGROUND PAPERS

Please see:

Appendix 1 – *Healthy Lives, Healthy People: Our Strategy for public health in England*. Executive Summary.

Appendix 2 – Introduction to *Liberating the NHS: Legislative Framework and Next Steps*.

Contact Officer:

Jon Ord **-** Scrutiny Support Officer
Telephone: 01642 729706 (direct line)
Email: jon_ord@middlesbrough.gov.uk