

HEALTH SCRUTINY CONSULTATIONS

Report By: Director of Social Care and Strategic Housing

Wards Affected

County-wide

Purpose

1. To consider arrangements for responding to proposals for service development and variation by local NHS bodies.

Financial implications

2. None.

Background

3. The Department of Health's (DH) guidance on the overview and scrutiny of Health states that, as provided for in the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002, "Each local NHS body has a duty to consult the local overview and scrutiny committee(s) on any proposals it may have under consideration for any substantial development of the health service in the area of the committees' local authorities or any proposal to make any substantial variation in the provision of such service(s)." There are some exemptions, but in general terms where a substantial variation is proposed the Scrutiny Committee must be consulted.

4. The Regulations do not define how the word "substantial" is to be interpreted. The guidance states that

"Local NHS bodies should aim to reach a local understanding or definition with their overview and scrutiny committee(s). This should be informed by discussions with other key stakeholders including patients' forums.

In considering whether the proposal is substantial, NHS bodies, committees and stakeholders should consider generally the impact of the change upon patients, carers and the public who use or have the potential to use the service.

More specifically they should take into account...changes in accessibility of services.... impact of the proposal on the wider community...., patients affected...., and methods of service delivery...".

5. Guidance on joint health scrutiny committees issued by the Centre for Public Scrutiny notes that, "most local agreements appear to be based on the general issues in the Department of Health guidance but tend to stop short of a rigid definition, since judging a proposed change as substantial is dependent on context and the need to balance a wide range of factors."

Issues

6. To date only one proposal has come forward which has been considered a substantial variation in service provision: the provision of ear, nose and throat services. This matter came to the Committee's attention at its meeting in October 2003 and the Committee expressly agreed that that proposal was a substantial variation upon which they therefore had a statutory right to be consulted. The response to the consultation exercise was subsequently approved by this Committee in April 2004.
7. As mentioned in paragraph 5 above, judging whether a proposed change is substantial is dependent on context and the need to balance a wide range of factors. There will be cases where it is immediately apparent and agreed by all that a matter is substantial and a formal consultation exercise is required to be undertaken. There will, however, be other circumstances where it is not clear-cut whether a proposal is substantial and discussions need to take place to enable a judgment to be formed, or where a view is sought as to how a proposal if it were to be put forward would be likely to be viewed by this Committee.
8. Officers and the Chairman have, as part of the process of maintaining a good working relationship with NHS partners, been kept informed of work being progressed by NHS bodies, in particular the Primary Care Trust. This has at times involved discussion of whether certain matters, if progressed, would be considered to constitute a substantial variation upon which the Committee would wish to be consulted. No proposal which it is considered would constitute a substantial variation has been progressed. Members of the Committee have been kept informed of relevant matters either formally or informally.
9. The arrangement of officers and Chairman acting on behalf of the Committee in this way is considered to be a practical one, permitting a prompt and timely response and representing an effective use of resources in that it avoids unnecessary meetings of the whole Committee. It is in keeping with the general way in which Council business is conducted.
10. It was, however, considered important to review the position and confirm that the Committee is happy for this arrangement to continue and accept that responses made by officers following consultation with the Chairman in this context are being made on the Committee's behalf.
11. It is proposed to strengthen the arrangement by circulating any such draft response on the Committee's behalf to Members of the Committee allowing one week for Members to alert the Chairman if they have any disagreement with the proposed response. If that disagreement can not be resolved the matter will then be referred to the Committee for consideration.
12. Other options would be to require officers to consult with a wider group of Members of the Committee; to appoint a formal Sub-Committee, meetings of which would have to comply, like meetings of the Committee as a whole, with the requirements of the Local Government Act 1972 regarding notice of meetings, and access to meetings and documents, or to require all matters to come before the Committee.
13. It also important to bring to the Committee's attention that some authorities have agreed impact assessments and frameworks to help determine what constitutes a substantial variation and development based on the DH guidance. There are

currently no proposals to bring to this Committee on this aspect. Discussions to date have taken account of the general issues identified in the DH guidance. It is suggested that this is kept under review and given further consideration.

RECOMMENDATION

- THAT (a) the Director of Social Care and Strategic Housing be authorised, following consultation with the Chairman, to confirm on the Committee's behalf whether proposals by local NHS bodies are considered to be substantial developments or variations to services, subject to the proposed response having been circulated to Members of the Committee and no objection having been received within one week of the response being circulated;**
- (b) in the event of an objection being received from a Member of the Committee to a proposed response and that objection proving incapable of resolution the matter be referred to the Committee for consideration;**
- and**
- (c) the need to develop a detailed framework for determining whether or not a matter represents a substantial variation or development should be kept under review.**

BACKGROUND PAPERS

- None