

From: Roger Gough, Cabinet Member for Education and Health Reform
Graham Gibbens, Cabinet Member for Adult Social Care and Public Health
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To: Health and Wellbeing Board – 19 November 2014

Subject: CARE ACT 2014 – A NEW LEGAL FRAMEWORK FOR ADULT SOCIAL CARE

Classification: Unrestricted

Summary: The Care Act 2014 establishes a new legal framework for adult care and support services. It marks the biggest change to care and support law in England since 1948 and it will replace over a dozen pieces of legislation with a single consolidated modern law. The new legal framework will come into effect from April 2015; however the key funding reforms (including the cap on care costs) are scheduled to come into effect from April 2016.

This report seeks to raise the awareness and understanding of the Health and Wellbeing Board regarding the main changes that have implications for the constituent organisations of the Board.

Recommendation: The Health and Wellbeing Board is asked to note the key issues set out in this report and discuss the main implications as they may impact on the future development of Joint Strategic Needs Assessment (JSNA) and the implementation of Health and Wellbeing Strategy.

1. Introduction

- 1.1 The Care Act 2014 received Royal Assent on 14 May 2014 and the accompanying the final regulations and statutory guidance were published on 23 October 2014. The changes to be implemented from April 2015 will overhaul and modernise the existing complex system of care and support that has evolved over the last sixty years. The changes will have significant implications for Kent residents, Kent County Council and partners.
- 1.2 The majority of changes to the legal framework will come into effect from April 2015. The main exceptions are the cap on care costs (£72,000 for people over pension age) and the increase in the capital threshold for people in residential care whose former home is taken into account (from the current £23,250 to £118,000).
- 1.3 Several key provisions of the Care Act such as, promoting individual wellbeing, preventing needs for care and support, promoting integration of care and support with health services, cooperating generally and in specific

areas, all have strong association with the both the JSNA and the implementation of the Kent Joint Health and Wellbeing Strategy.

- 1.4 The purpose of this report is to provide the Health and Wellbeing Board with the essential overview of the new law, drawing out the main implications for the Health and Wellbeing Board members so that they are better informed about the changes that will take place and by when.

2. Overview of the Care Act 2014

Changes that will take place from April 2015

- 2.1 **Wellbeing, Prevention, integration, personalisation, diversity and quality in provision of services** – Local authorities will have to address new or extension of existing statutory responsibilities in respect of the core duties listed in this paragraph. The concept of wellbeing is described in relation to nine factors (1) personal dignity, (2) physical and mental health and emotional wellbeing, (3) protection from abuse, (4) control by the individual over day-to-day life), (5) participation in work, education, training or recreation, (6) social and economic wellbeing, (7) domestic, family and personal, (8) suitability of living accommodation and (9) the individual's contribution to society. In addition, local authorities must have regard to 8 other key principles and standards. Local authorities must also promote a diverse and high quality market of care and support services (including prevention services) for people in their local areas. In addition local authorities must ensure there is adequate provision of good quality information, advice and independent advocacy.

- 2.2 **National minimum eligibility criteria** - One of the key provisions of the Care Act is the introduction from April 2015 of a new national minimum eligibility criterion which all councils must follow (section 13 of the Act). The detail of the new criteria is contained in The Care and Support (Eligibility Criteria) Regulations 2014. As a consequence of this provision a person will be deemed to have eligible needs if they meet all of the following:

- Condition 1: They have care and support needs as a result of a physical, mental condition or illness; because of the
- Condition 2: because of those needs, they are unable to achieve two or more of the outcomes specified in regulations
- Condition 3: as a result, there is a significant impact on their wellbeing.

It should be noted that councils may be able to provide services above the minimum threshold if they so wish.

- 2.3 **Carers' rights** – The Act places local authorities under a duty to assess carers' need for support, where the carer appears to have such needs. This replaces the existing law, which requires that the carers must be providing "a substantial amount of care on a regular basis" in order to qualify for an assessment. It is expected that more carers may come forward for assessment. In Kent alone, we estimate that the additional carers' assessment in 2015/16 could range from 5,000 to 8,000 and in 2016/17 it could range from 6,000 to 8,000. There is an eligibility criterion for carers comparable to the right of the people they care for.

- 2.4 **Universal Deferred Payments** – The Act extends the current Deferred Payment scheme whereby people in permanent residential care (including nursing) with property can delay payment of some of their care home fees, subject to certain conditions.
- 2.5 **Transition** - Local authorities will be under a legal duty to cooperate and to ensure that all the right services work together to ensure an effective transition for children to adult care and support. Local authorities must also consider whether children are likely to have care and support needs on turning 18 and they must continue to provide support during the assessment process until adult care and support is in place or it is decided that adult care and support is not required.
- 2.6 **Safeguarding** – The Care Act sets out provision for local authorities to make enquiries or cause others to make enquiries if they considered that an adult with care and support needs may be at risk of abuse or neglect in their area to find out what, if any, action may be needed. The Act also requires local authorities to set up a Safeguarding Adults Board (SAB) in their area. The SAB must include, but not limited to, the local authority, the NHS and the police. The Board must arrange a Safeguarding Adult Review under defined situations. The SAB can request information from an organisation or individual in relation to abuse or neglect.
- 2.7 **Prisoners and people in approved premises-** The Care Act makes it the responsibility of local authorities to assess the care and support needs of prisoners and people in approved premises and, if they meet the eligibility criteria, meet their need for care and support. Prisoners and people in approved premises will be subject to financial assessment to determine how much they will have to pay towards their care, just like people living in the community.
- 2.8 **Delegation of local authority functions** - Councils will have the power to authorise a third party to carry out specified care and support functions with the exception of promoting integration with health services, cooperating, deciding which service should be charged, and safeguarding adults at risk of abuse or neglect and delegation function itself.

Changes that will take place from April 2016

- 2.9 **Cap on care costs** - there will be a total cap on care costs for people in receipt of residential and non-residential services. The cap for people of state pension age and over will initially be £72,000. There will be a lower cap for people of working age and people who turn 18 with eligible needs will receive free lifetime support for their care costs. The total reasonable amount determined by the local authority to meet eligible needs will count towards the cap regardless of whether the person pays all of this or only contributes a proportion of the cost (following a means-test). People in care homes will still be responsible for their living costs (e.g. food, energy bills and accommodation), if they can afford to pay them. The contribution to living costs will be set at a maximum of about £12,000 a year but will be subject to a means-test so will be significantly less for many people.

2.10 **Extended means-test** - there will be significant changes to the financial support available to people under the new means-test capital limits. People will receive help with their care home costs if they have up to £118,000 (including the value of their home). Currently people with more than £23,250 have to pay full cost of their care without any state support. Where the value of the home is not taken into account because a partner or dependent is living in the home, financial help will be available to those who have up to £27,000. This will also apply to people receiving non-residential care.

2.10 **Direct Payments in residential care** – it is expected that care home residents will be able to use direct payments for some or all of their care and support.

3. General operational and financial implications

3.1 The reforms will lead to a significant increase in the number of people coming forward for needs and financial assessments. There may be as much as 21,000 additional assessments in 2016/17.

3.2 The potential impact on the care market should self-funders exercise their right to request the council to meet their needs is yet to be fully determined. (The right to 'request' is being delayed until April 2016). The Department of Health has stated that this will lead to greater transparency in the prices paid by local authorities and "will change the care and support market, although it is not clear whether pressure may fall on commissioners, care and support providers or both".¹

3.3 There are significant challenges in ensuring that the public understand the reforms and for individuals to know when the changes will apply and more importantly how they may be affected.

3.4 The reforms provide opportunities for more prevention and early intervention work, thus supporting the wider integration agenda.

3.5 The Government has announced funding for the first year (2015/16) of the implementation. Councils do not know the level of funding that will be made available for 2016/17 and beyond thereby raising the issue of affordability and sustainability of the implementation for local authorities.

3.6 Some costs will impact in 2015-16 and some in 2016-17 and the years after. The main impact in 2015-16 is for costs related to the assessment and provision of support to carers, prisoners and the introduction of the national minimum eligibility criteria. In 2016-17 the main impacts will be on the assessment and review of service users particularly self-funders, associated financial assessments and then the increased provision of services due to the increased capital thresholds.

4. Specific implications for JSNA and the Health and Wellbeing Strategy

¹ DH 'Caring for our future: Consultation on reforming what and how people pay for their care and support', July 2013

- 4.1 There is a strong alignment of key statutory provisions and principles of the Care Act with the agreed outcomes in the Kent Joint Health and Wellbeing Strategy. The Act emphasises the role of prevention and increased focus on the promoting the wellbeing of individuals as outlined in paragraphs 2.1 above. The guidance defines primary, secondary and tertiary prevention which gives prominence to support systems intervening early to support individuals to help them to retain or regain their skills and confidence as a result, prevent need or delay deterioration whenever possible.
- 4.2 The following key outcomes of the Health and Wellbeing Strategy closely relate to the key provisions of the Care Act as mentioned above:
- Outcome 2
 - Effective prevention of ill health by people taking greater responsibility for their health and wellbeing
 - Outcome 3
 - The quality of life for people with long term conditions is enhanced and they have access to good quality care and support
 - Outcome 4
 - People with mental ill health issues are supported to live well
 - Outcome 5
 - People with dementia are assessed and treated earlier
- 4.3 Primary prevention and promoting wellbeing is locally best expressed through the building community capacity discussion, in particular, the concept of 'Community Agents' as catalysts who will work with individuals to avoid developing needs for care and support, or to avoid a carer developing support needs by maintaining independence, good health and promoting wellbeing.
- 4.4 The implementation of the Health and Wellbeing Strategy has to be seen in the context of promoting integration between local authorities and health services, cooperating between councils and other public bodies including the Care Quality Commission. Improving the range and quality of services available locally is important to the Health and Wellbeing Board in respect of sustainability of high quality health and social care services in Kent.

5. Conclusions

- 5.1 The Care Act gives new rights to certain people (for example, carers and self-funders) as well as providing statutory underpinning to a number existing policies will be implemented in two phases. Phase 1 (April 2015) is largely to do with the care and support reforms and the introduction of the new and consolidated legal framework. Phase 2 (April 2016) is about the main changes linked to the 'Dilnot' funding reforms.
- 5.2 The critical outline of the new law has been brought to the attention of the Health and Wellbeing Board. Furthermore, the broad implications for the local authority as well as the specific links with the Health and Wellbeing Strategy have also been sketched out. It is expected that Health and Wellbeing Board members would be better informed about the changes which will soon take place.

6. Recommendation

6.1 The Health and Wellbeing Board is asked to:

- (a) **DISCUSS** the contents of this report.

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