

Health Scrutiny Panel
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Implications of the Care Act 2014

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Context

- The Act passed into law in May 2014.
- Draft regulations and statutory guidance published in June for consultation (closing 15 August). Final regulations and statutory guidance (part one) to be published in October 2014.
- Care Act Programme Board in place, with programme leads in key areas.
- Corporate risks related to how the Act affects the wider adult social care system are being developed.

Summary

The Care Act sets out general responsibilities of local authorities, describing their broader care and support role towards integration with health provision and the local community. It emphasises a preventive approach including providing information to those needing care and duties to consider physical, mental and emotional wellbeing. The Care Act is being phased in, in two parts: part one duties need to be implemented by April 2015 and part two (funding reform) to be implemented by April 2016.

Part one - key areas and impacts include:

1. General Duties and Universal Provision

Timeline: from April 2015

- **Wellbeing:** Local authorities (LAs) must promote wellbeing and actively seek improvements when carrying out any of their care and support functions in respect of a person – this includes from provision of information and advice to reviewing a care and support plan.

***Impact:** The Act requires that wellbeing is embedded into all aspects of the Council's adult social systems, however due to the complex nature of the Act and the broad definition of 'wellbeing', there is an implication that wellbeing will need to be at the heart of all Council services.*

- **Prevention:** The Act requires local authorities to ensure the provision or arrangement of services, facilities or resources to help prevent, delay or reduce the development of

needs for care and support. This can include 'universal' services such as promoting healthier lifestyles.

Impact: *This reflects the Council's commitment towards effective prevention and early intervention, but enshrines it as a duty throughout all aspects of care and support.*

- **Information and Advice:** There is a duty on LAs to provide a comprehensive information and advice service, so that people know what type and range of care and support is available, how to access that care and support, where they can find independent financial advice about care and support and how they can raise concerns about the safety or wellbeing of someone who has care and support needs.

Impact: *The 'Choose My Support' directory might go some way to deliver the information and advice requirement, however there is significant further development work to ensure citizens receive information about signposting services including independent financial advice and universal services.*

- **Marketing shaping and provider failure:** LAs' responsibilities around market provision have been strengthened and is a driver for establishing a wide range of sustainable high-quality care and support services that is available in local communities.
- There will also be new responsibilities in place if care providers should fail where LAs will have temporary responsibility to ensure both residential and domiciliary care continues, regardless of who pays for the care.

Impact: *Generally this expands current the Council's Market role, although a better understanding of the relationship between Care Quality Commission and LAs is required.*

2. First Contact and Identifying Needs

Timeline: from April 2015

- **Assessment:** All individuals are entitled to receive an assessment of eligibility for care and support and, if relevant, a care plan based on needs. Individuals can ask the LA to arrange care irrelevant of whether or not the individual or the LA is responsible for funding care. Assessments must be outcome focused, strength based and holistic. There is an increased requirement to ensure independent advocacy is provided.
- Eligibility for care must be identified using the new national framework.

Impact: *We are confident with some adjustment current assessments will meet legal requirements but further understanding of the guidance is needed. The increase for advocacy services will need to be scoped.*

- **Carers:** LA will now not only have to complete Carers Assessments but also be under a duty to meet carers' eligible needs. Carers can be eligible for support in two

ways firstly to help them continue with their caring role and secondly their caring role is having a significant impact on their wellbeing and is having an adverse effect on their life.

Impact: *Currently we meet the needs of carers who are caring for citizens who are eligible. Some modelling work is taking place to estimate the number of assessments required, of which there is likely to be an increase.*

3. Charging and Financial Assessment

Timeline: April 2015

- **Deferred payments:** People will not have to sell their home to pay for residential care whilst they are still alive. However, LAs will be able to charge interest to cover their costs.

Impact: *Deferred payments are not new for the Council, however it has not been general practice. Therefore there is potential for a greater administrative and financial burden in keeping track of the value of the property.*

Timeline: April 2016

- **Cap on care costs:** The cap sets a limit how much people pay towards their care costs, with the local authority (LA) paying the full cost thereafter
- Individuals in residential care will be expected to contribute £12k annually to daily living costs (not part of cap)
- The cap will be set depending on the age of the person when they are assessed as having eligible needs e.g. £72k for state pension age, £0 for those aged 18
- Contributions to the cap will be tracked through a 'care account' managed by the LA
- The Act provides people with a legal entitlement to a personal budget and it consolidates the existing legislation on direct payments – whereby LAs must provide direct payments to with people with capacity

Impact:

- *More people will want a care assessment in order to start contributing towards the cap (self-funders) and more people are likely to qualify for support. At present numbers and costs unknown – modelling work is underway to estimate this.*
- *It is not yet known how the cap will be applied to citizens with eligible needs of 'working age'.*
- *Care accounts will be a new administrative burden for LAs and require the development and investment in IT systems.*
- *Nationally £470m Government funding has been allocated for 2015/16 to help implementation. There is no additional funding beyond this, although if funding was insufficient the Government has indicated guidance and regulations may be revised.*
- *As implementation for this part of the Act is post General Election 2015, there is potential for change. In the last stages of the Care Bill, the Labour Party withdrew its support, citing that that it did not address the under-funding of adult social care or protect individuals from large care costs, including living costs.*

4. Person Centred Care and Support Planning

Timeline: from April 2015

- **Care and support planning/personal budgets:** The Act places a duty on LAs to provide a care and support plan. The individual must be involved in the development of their plan and it must be periodically reviewed. Citizens and carers can have a joint care and support plan.
- **Direct payments:** Using the information from the personal budget, the person has a legal entitlement to request a direct payment. The local authority must provide a direct payment to someone who meets the conditions in the Act and regulations.

***Impact:** Previously only direct payments have had a place in law. Care and support planning and personal budgets, have only been set out in guidance. The Council currently provides care and support plans and direct payments. The Direct Payment policy will be refreshed.*

5. Integration and Partnership Working

Timeline: April 2015

- The Act requires greater integration and co-operation between the NHS, care and support, and the wider determinants of health such as housing. This relates to the principles of wellbeing and prevention. LAs must promote integration between care and support provision, health and health related services, with the aim of joining up services. LAs and their partners must also cooperate where this is needed in the case of specific individuals who have care and support needs.

***Impact:** The Council is already on this journey through the work of the Health and Wellbeing Board and the partnership work Nottingham City Clinical Commissioning Group. However the Act places additional legal requirements on internal and external cooperation and partnership working.*

- **Transition:** The Act says that if a child, young carer or an adult caring for a child (a “child’s carer”) is likely to have needs when they, or the child they care for, turns 18, the local authority must assess them if it considers there is “significant benefit” to the individual in doing so. This is regardless of whether the child or individual currently receives any services. The Act gives local authorities a legal responsibility to cooperate, and to ensure that all the correct people work together to get the transition right.

***Impact:** Current practice and operational processes are being checked for compliance. Much work has already taken place as part of the implementation of the Children and Families Act 2014.*

6. Adult Safeguarding

- The Act creates a legal framework requiring LAs to establish Safeguarding Adults Boards with local partners, with public plans, annual reporting and clear processes for investigating suspected abuse or neglect.

***Impact:** Current practice and operational processes, including for the Board, are being checked against the guidance to ensure compliance.*

7. Moving between areas: inter local authority and cross-border issues

- The Act outlines a process to be followed so that local authorities know when someone wants to move areas, and what must happen to make sure that their needs are met when they arrive in the new area and that care remains continuous.
- There are changes to ordinary residence. Responsibilities of the placing authority widen to include supported living and shared lives schemes.

***Impact:** Current practice and operational processes are being considered against the guidance to ensure compliance. A clear policy will need to be developed and possible changes to IT systems may be required to allow easier transfer of information to other LAs.*

Overall implications and next steps

- Duties under the Care Act will increase the council's costs significantly, with potentially high levels of set up cost in terms of IT, undertaking an increased number of assessments and increased administrative burdens going forward. The detailed financial modelling that is currently taking place will be essential to enable us to understand the financial risks going forward.
- The Corporate Risk Specialist has drawn up initial risks to be included in the corporate risk register, as below. The next steps are to establish actions and mitigations to these risks, with input from programme leads to ensure all risks are considered and managed.
 - *The government fails to set aside adequate funds to meet the council's additional costs arising from implementation of, and compliance with, the Care Act impacting the financial sustainability of the service and the MTFP*
 - *That the implementation of the Care Act significantly increases the service workload processing cases to determine eligibility during the window for self funders to register with the LA in 2015/16 impacting the timeliness of assessments, the quality of service provision and increasing processing costs*
 - *Changes in the Act relating to deferred payments raises the risk that there will be a rise in requests with substantial upfront care costs which cannot be recovered in the short to medium term against assets that are not control by the Council*

- *Existing software is not adequate to meet the requirements of the Care Act with the risk that there is insufficient time to procure a replacement or develop existing software/processes prior to the Act coming into effect in 2015/16 the impact of which could be a failure to comply with statutory requirements, increased procurement/ development costs, compromised ICT implementation and service quality*
- Many provisions in the Act reinforce or formalise a number of current initiatives and ways of working and the Programme Board have examined the non-financial impact of the Care Act and are currently reviewing the draft regulations and guidance to ensure compliance. The next steps are to formalise plans for implementation to meet the duties.
- The Programme Board has a lead representative for each of the key areas above (including transition from childhood and how this links to the Children and Families Act 2014), as well cross-cutting themes of finance, legal, IT, workforce, communications and equalities.
- ADASS, the LGA and Department of Health are working together to support LAs and a regional Programme Lead has been appointed to coordinate the regional support network.