



Title: **Consultation on Future of Health Scrutiny**  
**Department of Health**

To: **Health Scrutiny Board** On: **19<sup>th</sup> July, 2012**

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## **1. Key points and Summary**

1.1 Proposals to update local accountability have been put forward as part of a consultation launched by the Department of Health on 12 July on regulations governing local authority health scrutiny

1.2 The changes proposed in this consultation aim to update the arrangements and regulations for local authority health scrutiny and help to ensure that the interests of patients and the public are at the heart of the planning, delivery and reconfiguration of health services.

1.3 The Consultation runs to 3 September 2012

1.4 Any decisions to take further policy action on health scrutiny will be taken only after full consideration is given to consultation responses, evidence and other relevant information. Responses to the consultation, evidence submitted and other relevant information will inform the development of new regulations for local authority health scrutiny. It is intended to bring these new regulations into effect from April 2013

## **2. Proposals**

2.1 Requirement for local authorities and the NHS to agree and publish clear timescales for making a decision on whether a proposal should be referred;

- Propose introducing a requirement in regulations that, in relation to proposals on which the local authority scrutiny function must be

consulted, the NHS commissioner or provider must publish the date by which it believes it will be in a position to take a decision on the proposal, and notify the local authority accordingly.

- On receipt of that notification, local authorities must notify the NHS commissioner or provider of the date by which they intend to make a decision as to whether to refer the proposal
- If the timescales subsequently need to change – for example, where additional complexity emerges as part of the planning process – then it would be for the NHS body proposing the change to notify the local authority of revised dates as may be necessary, and for the local authority to notify the NHS organisation of any consequential change in the date by which it will decide whether to refer the proposal.
- The regulations will provide that the NHS commissioner or provider should provide a definitive decision point against which the local authority can commence any decisions on referral.

## 2.2 Requirement for local authorities to take account of the financial sustainability of services when considering a referral, in addition to issues of safety, effectiveness and the patient experience

- Propose that in considering whether a proposal is in the best interests of the local health service, the local authority has to have regard to financial and resource considerations. Local authorities will need support and information to make this assessment and the regulations will enable them to require relevant information be provided by NHS bodies and relevant service providers. This will be addressed in further guidance
- Where local authorities are not assured that plans are in the best interests of the local health services, and believe that alternative proposals should be considered that are viable within the same financial envelope as available to local commissioners, they should offer alternatives to the NHS. They should also indicate how they have undertaken this engagement to support any subsequent referral. This will be set out in guidance rather than in regulations.

## 2.3 New intermediate referral stage to the NHS Commissioning Board for some service reconfigurations

- Seeking views on how the NHS Commissioning Board could provide this support and help with dispute resolution. One option is to introduce an intermediate referral stage, where local authorities make an initial referral application to the NHS Commissioning Board.
  - Upon receiving a referral, the NHS Commissioning Board could be required by regulations to take certain steps, which could include working with local commissioners to resolve the concerns raised by the local authority. The NHS Commissioning Board would be required to respond to the local authority setting out its response and any action that it had taken or proposed to take.
  - If the local authority was not content with the response from the NHS Commissioning Board, it would continue to have the option to

refer the proposal to the Secretary of State for a decision, setting out in support of its application where the NHS Commissioning Board's response fell short in addressing the concerns of the authority.

- The exception to this referral intermediate stage would be where the reconfiguration proposals relate to services commissioned directly by the NHS Commissioning Board. In such a case, any referral would be made directly to the Secretary of State.
- An alternative approach would be for the NHS Commissioning Board to play a more informal role, helping CCGs (and through them, providers) and the local authority to maintain an on-going and constructive dialogue.
  - Local authorities would be able to raise their concerns about a CCG's reconfiguration proposals with the NHS Commissioning Board and seek advice. However, that would be at the local authority's discretion rather than a formal step in advance of referral to the Secretary of State.
  - If a local authority chose to engage the NHS Commissioning Board in this way, the Board would need to determine whether it was able to facilitate further discussion and resolution, and respond to the CCG and local authority accordingly.
  - If following the Board's intervention the local authority's concerns remained, the local authority would continue to have the option as under current regulations to refer the proposal to the Secretary of State for review.

#### 2.4 Requirement for health scrutiny to obtain the agreement of the full council before a referral can be made.

- Given the enhanced leadership role for local authorities in health and social care, propose that the full council should support any decision to refer a proposed service change, either to the NHS Commissioning Board or to Secretary of State.
- Aimed at enhancing the democratic legitimacy of any referral and assure the council that all attempts at local resolution have been exhausted. It is potentially undesirable for one part of the council (the health and wellbeing board) to play a part in providing the over-arching strategic framework for the commissioning of health and social care services and then for another part of the council to have a power to refer to the Secretary of State.
- This change would mean scrutiny functions would need to assemble a full suite of evidence to support any referral recommendation. It is important that all councillors should be able to contribute their views, to allow them to safeguard the interests of their constituents.

#### 2.5 Joint Overview and Scrutiny

- There are occasions when scrutiny functions from more than one local authority area will need to work together to ensure an effective scrutiny process. The Government is aware from its engagement with patients and the public, the NHS and with local authorities, that there are differences of opinion as to when a joint scrutiny arrangement should be formed. The

current regulations enable the formation of joint scrutiny arrangements, but do not require them to be formed.

- Propose to make further provision within the regulations on this issue Under the 2003 Directions to Local Authorities (Overview and Scrutiny Committees, Health Scrutiny Functions)<sup>12</sup> where a local NHS body consults more than one HOSC on any proposal it has under consideration for a substantial development of the health service or a substantial variation in the provision of such service, local authorities of those HOSCs must appoint a joint HOSC for the purposes of the consultation. Only that joint HOSC may make comments on the proposal, require information from the NHS body
- Require an officer of that NHS body to attend before the joint HOSC to answer questions and produce a single set of comments in relation to the proposals put before them.

### **Recommendation**

Members consider the consultation document and arrangements for feeding back a response to the consultation

### **Contact**

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Link to consultation document

<http://www.dh.gov.uk/health/files/2012/07/Local-Authority-Health-Scrutiny-Consultation.pdf>