
Meeting: Social Care, Health and Housing Overview and Scrutiny Committee

Date: 16 December 2013

Subject: Care Bill 2013

Report of: Cllr Mrs Carole Hegley, Executive Member for Social Care, Health and Housing

Summary: This paper provides a summary of the Care Bill setting out Government's vision for a modern care system, encompassing the recommendations of the Law Commission and the Francis Inquiry which identified failure across the health and care system.

The Bill puts into legislation the changes recommended by the Commission on the Funding of Care and Support to introduce a cap on the costs that people will have to pay for their care in their lifetime.

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Public/Exempt: Public

Wards Affected: All

Function of: Council

CORPORATE IMPLICATIONS

Council Priorities:

1. The Care Bill has implications for effective delivery of Council's statutory functions and more specifically will contribute to the priority to Promote health and wellbeing and protecting the vulnerable.

Financial:

2. The Care Bill will have important implications for the Council and Adult Social Care Services. From April 2015, there will be a universal requirement for local authorities to offer people the option of deferring payment towards the cost of their care services, within a certain criteria. The Council will need to fully consider the financial implications of further resources required to manage a capped cost model as well the additional cost of discharging the new duties for assessment and support of carers, provision of information and advice and the national minimum eligibility framework. As yet, it is unclear what financial support will be available from the Government to support the changes proposed by the Bill.

Legal:

3. The Care Bill proposes fundamental changes to adult social care legislation and the future provision of care and support. It refocuses the law around the person not the service and strengthens rights for carers to access support. It introduces a new statutory adult safeguarding framework.

Risk Management:

4. Risks will be determined and recorded as further policy and project work on the implications of the Care Bill is carried out.

Staffing (including Trades Unions):

5. The Workforce implications of the Care Bill proposals are yet to be determined.

Equalities/Human Rights:

6. Equality impact assessment of the Care Bill has been undertaken by Government. It sets out the financial and non-financial implications of the proposed changes. It is likely that the proposals will have a positive effect on people's health and wellbeing, however the specific impact on equality locally will not be known until further examination of the Bill is taken forward.

Public Health

7. The Care Bill makes provision for local authorities to improve people's wellbeing and sets out new statutory principles for the promotion of wellbeing and prevention which includes physical, mental and emotion wellbeing.

Community Safety:

8. Not Applicable.

Sustainability:

9. Not Applicable.

Procurement:

10. The Bill sets out some key principles for shaping the market for care and support and for how care and support is commissioned.

RECOMMENDATION: The Committee is asked to note the changes associated with proposals as set out as part of the Care Bill and the potential implications for the transformation of Adult Social Care in Central Bedfordshire.

Introduction.

11. The Care Bill which was published in May 2013 brings together the Government's vision for the transformation of adult social care. The Bill is intended to put into primary legislation government policies as set out in the white paper 'Caring for our future: reforming care and support'. In addition, reflect the changes put forward by the Commission on the Funding of Care and Support, chaired by Andrew Dilnot, that introduces a cap on the costs that people will have to pay for care in their lifetime. It also looks to address the recommendations of the Law Commission in its report on adult social care.

12. The Care Bill takes forward key elements of the Francis Report and advocates that the quality of care and people's experience should be the basis on which providers of health and care are judged.

Key themes of the Care Bill

13. The Care Bill is formed on a number of themes which emphasise the following principles that:
- Individuals, communities and the Government have a responsibility to do everything they can to prevent, postpone and minimise people's need for care and support. The support system should therefore be based on the simple notion of promoting people's independence and wellbeing.
 - Individuals should have control of their own care and support and be empowered to make the choices that right for them, using personal budgets, direct payments and by accessing clear, comparable information and advice. This principle is intended to improve the quality and integration of care being provided with local authorities having a responsibility to provide leadership in shaping the local market and ensuring local services are integrated.
 - A transparent and fair approach to charging for care alongside a new funding system that will help people plan and make provision to pay for their future care needs.

Promoting Individual Wellbeing and Prevention

14. The Care Bill makes provision for local authorities to improve people's wellbeing and sets out new statutory principles for the promotion of individual wellbeing as the driving force underpinning the provision of care and support. It makes clear that local authorities must arrange services that can contribute towards prevention, delaying and reducing the need for care and support. This general duty for prevention and promotion of wellbeing includes:
- Physical; mental and emotional wellbeing
 - Personal dignity, protection from neglect;
 - Control by individual over day to day life
 - Participation in work, education etc
 - Social & economic wellbeing
 - Control for individual prevention
15. The Bill makes clear the importance of identifying services, facilities and resources already available in the authority's area and the extent to which these could be used in promoting wellbeing and prevention.

16. The Bill promotes the integration of care and support provision with health and health related services in order to contribute to local wellbeing, preventative action and improved care services through joint working, including assessment, delivery and recording of care services. This will challenge local authorities and partners to share resources and develop innovative health and care services with Trusts, Clinical Commissioning Group's and Third-Sector partners. Local authorities will have to consider:
- The services, facilities and resources already available in the area (for example local voluntary and community groups), and how these can be developed to offer more preventative options and support local people to remain independent.
 - How to identify people and carers in the local area who might have care and support needs that are not being met in order to increase wellbeing.

Providing Information & Advice

17. The Care Bill requires local authorities to provide comprehensive information and advice about care and support services in their local area. This will help adults and carers to understand the local care and support services available, the options for meeting their care needs, the main service providers (public, private & Not-for-profit) and how services can be accessed.
18. The Bill strengthens the offer to people who do not have eligible needs, to ensure they receive advice and information about reducing, preventing or delaying the need for care and support.
19. The Bill clearly sets out that local authorities must provide advice, guidance and information on:
- The type and availability of care and support services – e.g. specialised dementia care, befriending services, reablement, personal assistance and care accommodation
 - The process or system that local people will need to follow to access care and support services
 - The range of local care providers and the support services offered
 - Access to independent advice and support in relation to both accessing and paying for care and support services, including financial advice.
 - Access to local advocacy groups and support networks that enable adults to challenge poor care and develop shared resilience
 - How people can raise concerns about the safety or wellbeing of someone who has care and support needs
20. The Bill emphasises the need for cooperation and partnership working in the exercise of the functions relating to adults with needs for care and support. A key consideration will be how local authorities intend to develop data and information sharing protocols with local partners in order to create a common understanding of community care priorities, and how local services can be shaped to meet priority needs and safeguard adults.

Care Duty and Personalisation

21. The Care Bill sets out local authority responsibilities to meet care and support needs of adults and will enshrine in legislation access to services which are person-centred; enabling people to make decisions about their care needs and exercise choice over the services they want in order to improve their wellbeing.
22. There is a legal responsibility to provide each individual with a care and support plan or a support plan in the case of a carer. The support plan must be worked out together with the person themselves and their carer to support person. This duty applies even if a person does not have any eligible needs (self funders) and must be given support and information to help prevent further needs developing. These responsibilities do not end once the care and support plan has been put into place. There is a requirement to review the plan to make sure that care needs and outcomes continue to be met over time.
23. There is a legal entitlement for an individual to receive their personal budget which outlines the total costs involved in providing the agreed care and support plan identified.
24. An important consideration for local authorities will be how they will deliver care and support that enables adults to access personalised services whilst also meeting their duty of care, particularly in relation to safeguarding adults from harm and self neglect.
- 25.. The Bill also requires local authorities to develop, provide and review Independent Personal Budgets for self funders specifying what the costs of meeting the eligible needs for care and support would be to the local authority. The local authority must advise people about their cares needs and the options for accessing support. Understanding the cost of accessing care will be central to creating an effective local funding system.
26. All individuals will have the right to ask the local authority to arrange their care for them, irrespective of who is funding the care package. These plans should ensure there is a consistent approach for everyone with eligible needs to get the care and support they require.

Assessment & Eligibility

27. The Care Bill aims to simplify existing legislation and create a new single duty for local authorities to undertake an assessment of an adults care needs and determine eligibility for support against a new national minimum threshold which are yet to be set in regulations. Local authorities must ensure that assessments:
 - Are provided to all adults and carers who appear to need care and support, regardless of a their finances or whether the local authority thinks they will be eligible;
 - Are focussed on the adults' and carers' needs and the outcomes they want to achieve, not just the provision of care and support services;
 - Are carried out with involvement from the adult and, where appropriate, their carer, family members or someone else they nominate
 - Consider the adults' and carers' capabilities and what other support might be available from the individual, family or local community to contribute to those outcomes and to prevent or delay their wellbeing deteriorating.

28. The Care Bill proposes to make the provision of assessments and services to Carers a statutory duty. There is a clear duty to undertake a carer's assessment, placing support for carers on an equal standing to meeting an adult's care needs. Local authorities must have regard for whether the carer works or wishes to do so, or is participating in education, training or recreation.
29. This supports the promotion of individual wellbeing, encouraging informal carers to come forward and also formally requiring local authorities to consider, where appropriate, the care and support needs of both the carer and the service user side by side, to ensure that care and support arrangements support the individual and collective wellbeing of these individuals.
30. It will be important to develop an assessment process that considers any additional support for achieving the adult's care outcomes. For example this may involve alternative housing accommodation or health services. Evidence of this will help to demonstrate how authorities are meeting their duty of care and promoting wellbeing.
31. Further provisions in the Bill will enable local authorities to combine adults' and carers' assessments where both parties agree, and work jointly with local partners undertake different types of assessments at the same time. This gives an opportunity to further develop integrated services.
32. Where a local authority is satisfied of the need for care and support, it must determine whether any of the needs meet the eligibility criteria and a written record and reasons for the determination of edibility must be provided.
33. From 2015, a national minimum eligibility threshold will be introduced to replace locally determined eligibility. Once introduced, local authorities will be free to set their eligibility threshold at a more generous level but will not be able to tighten it beyond the new national threshold. The national eligibility criteria, will replace the current Fair Access to Care Services (FACS) statutory guidance. Currently, each social services local authority is required to establish an eligibility for care services policy based upon the FACS guidance; the FACS guidance specifies four broad eligibility criteria aligned to the assessed care needs of an individual;
 - Critical
 - Substantial
 - Moderate
 - Low
34. An initial review of the proposals for a national minimum eligibility threshold for adult care and support, published in June 2013, indicates that the Care Bill would implement eligibility criteria that would include those with moderate assessed care needs.

Development of Internal & External Care Markets

35. The Care Bill requires local authorities to develop and support a market that delivers a wide range of care and support services that offers greater choice and gives people more control over their care. Therefore, the local market will need to offer care services that meet individual needs and promotes wellbeing.

36. Local authorities will be expected to set priorities for the design and development of services that meet the needs of their local communities. Key to this will be the development of a Market Position Statement which identifies the type of services that are needed to best support the population and allow service providers to design solutions geared to local needs. The Market Position Statement will enable local authorities to influence the type of services required locally and will set out how those services will be commissioned.
37. In relation to market oversight, the Bill introduces a clear responsibility on local authorities to ensure continuity of care for all, where a care provider fails, regardless of who pays,. The Bill will place a duty on local authorities to:
- Cooperate with local partners, agencies and providers to deliver care and support; and
 - Fulfil a temporary duty to ensure that both residential and domiciliary care continues where providers fail
- It will therefore be important for local authorities to develop effective contract monitoring controls that enable joint working and information sharing with health, housing and other partners.
38. The Bill further strengthens market oversight by enabling the Care Quality Commission (CQC) to assess the financial sustainability of care providers and enforce measures on providers to address identified risks. Importantly, CQC will be required to inform local authorities of likely provider failings and enable access to the provider's business information where it would support the authority to maintain care and support services.

Paying & Charging for Care

39. The Care Bill intends to set out a transparent and fair approach to charging people for the care they receive alongside a new funding system that will help people plan and make provision to pay for their future care needs.
40. Regulations will set the powers available to local authorities to charge for providing care and support with some restrictions in relation to specific services and low income levels. There will be a clear duty to assess people's financial means to pay for their eligible care needs, taking into account both income and capital assets, and provide a written explanation of amount they will be expected to contribute.
41. The Care Bill proposes the introduction of a cap on the financial contributions made by any individual towards their eligible care and support to help protect the assets and savings of people and to encourage them to make plans to meet the costs of their care and support needs in advance of the needing care.
42. The cap is proposed to be set at £72k for those people above the state pension age attending residential care, £27k for those people receiving Home Care with a lower cap, yet to be determined, for those who are below that age. Those people with eligible care and support needs at the age of 18 will not be required to contribute at all towards the costs of their care. Once the cap has been reached the local authority will be required to meet any further reasonable costs for those with eligible care needs. It will be important for local authorities to fully consider the financial implications of the cap in relation to a growing older population, increased life expectancy and looked after children and young people transitioning to adult social care.

43. The funding cap will apply whether an individual is receiving care and support within the community or within a care home. Similarly, the cap will apply regardless of whether an individual is funding all the costs of their care and support or whether the Council is also providing a financial contribution.
44. The duty to complete a financial assessment for everyone with eligible care and support needs, regardless of whether the Council is also making a financial contribution supports the introduction of the Care Account, which is a record of an individual's accrued costs towards the cap.
45. From April 2015 a national deferred payments scheme, for when people enter residential care to allow individuals to delay the sale of home will be introduced. Under conditions yet to be determined, local authorities will be required to cover all care costs and operate a deferred payment scheme to recover costs and reasonable interest at a later date.
46. Central Bedfordshire Council already operates a deferred payments scheme; however this will need to be reviewed in line with national scheme.
47. While the funding framework has yet to be determined, it will be important for authorities to develop a flexible system that tracks care costs for all including self funders and enables people to access financial support, particularly for those on low incomes. Any system will also need to take account of provisions in the Bill that will enable the recovery of care costs between local authorities where an adult's ordinary residence either changes or is in dispute.

Quality & Safety

48. The Care Bill builds on the 'No Secrets' statutory guidance and reinforces the priority that safeguarding is everyone's business. Provisions in the Bill places greater importance on organisations working together to protect vulnerable people who need care and support.
49. The duty of local authorities in relation to safeguarding is set around the promotion of adult wellbeing when making decisions about their care needs and outcomes. The Bill sets four key duties for local authorities in relation to safeguarding adults:
 - A duty to undertake or request all reasonable enquiries where an adult in the local area (whether or not ordinary resident) is believed to be experiencing or at risk of abuse or neglect and is unable to protect themselves. This also includes financial abuse.
 - A duty to set up a Safeguarding Adults Board (SAB) in the local area with membership of the local authority, the NHS and the police, who should meet regularly to discuss and act upon local safeguarding issues. The Board will be required to develop joint safeguarding plans for protecting vulnerable adults and publish an annual report to inform and engage with other local agencies and organisations.

- A duty for the SAB to carry out adult safeguarding reviews where it knows or suspects that serious abuse or neglect has contributed to the death or harm of an adult receiving care, and there is reasonable concern about how the SAB or its partners have worked to safeguard an adult.
- A duty for the SAB to request and share information in relation to safeguarding enquiries. Requests for information must be met where it will assist the SAB's functions, and the person or organisation (i.e. GP or voluntary group) subject to the request is likely to have the relevant information.

50. It will be important for local authorities to consider how best to facilitate collaboration and develop strong relationships between the SAB and local partners in order to make sure information sharing protocols work effectively to protect adults.

51. In its current form the Bill does not give local authorities any powers to enter an adult's home in the event of safeguarding concerns or suspected abuse or neglect. It is unlikely that further changes to the Bill will introduce such powers.

Transition for Children to Adults

52. The Care Bill introduces a statutory duty on local authorities to for effective and appropriate transition of services. It seeks to help children and young people plan for adulthood by giving them the right to request an assessment before they reach the age of 18 and need to access adult social care services.

53. The Bill will place a duty on local authorities to:

- Undertake an assessment of a child, young carer or an adult caring for a disabled child if they are likely to have care needs when they, or the child they care for, reaches the age of 18, and where it is considered there is 'significant benefit' in doing so. This is regardless of whether the person currently receives children's services.
- Provide information and advice to help children, young carers or adults caring for a disabled child understand the options for meeting their eligible care needs and how they improve their wellbeing or prevent their need for care and support.
- Provide a written explanation of decisions not to undertake an assessment of need.

54. Local authorities will have flexibility on whether and at what point an assessment should be undertaken in order to take account of individual circumstances. The Bill's provisions in relation to 'transitions' will directly support the Government's objective to develop joined up assessment and support planning processes across education, health and social care, as proposed by the Children and Families Bill. This will require local authorities to consider how to improve cooperation between all services to best support children and young people moving into adulthood and how to secure continuity of care, particularly for children with Special Education Needs.

Conclusion and Next Steps

55. The Care Bill has far reaching implications for all aspects of adult social care and introduces new statutory duties and powers on local authorities. It prioritises people's wellbeing, needs and goals so that individuals will no longer feel like they are battling against the system to get the care and support they need. It transforms significantly the way in which care and support is provided and accessed.
56. There are important financial implications. The introduction of a funding cap introduces a fundamental change to the current system for charging and paying for care, where the level of individual contribution is determined by financial assessments based on an individual's assets. As a consequence, it is likely that there will be an impact on the Council's projected income and the need for significant changes to the financial assessment process and recording.
57. A significant amount of work will be required to ensure effective implementation of the proposed changes. This will include understanding the potential volume of assessments and the capacity required to sustain such increases.
58. Work has already started to analyse and assess the implications for the Council and a programme management approach will be used to manage the implementation of the actions required to meet the duties as set out by the Bill.

Background papers and their location: (open to public inspection)

<http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0123/14123.pdf>

<http://www.parliament.uk/documents/impact-assessments/IA13-14E.pdf>