

WIRRAL HEALTH & WELLBEING BOARD

Meeting Date	10 July 2013	Agenda Item	11
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Report Title	Implications of the proposed Care Bill
Responsible Board Member	Clare Fish Strategic Director, Families & Wellbeing

Link To Shadow HWB Function	Board development	✓				
	JSNA/JHWS					
	Health and social care integrated commissioning or provision	✓				
Equality Impact Assessment Required & Attached	Yes		No		N/A	✓
Purpose	For approval		To note	✓	To assure	

Summary of Paper	Policy Briefing note summarising key points of the Care Bill and its potential implications for Wirral.		
Financial Implications	Total financial implication	New investment required	Source of investment (e.g. name of budget)
	£ N/A	£ N/A	£ N/A
Risks and Preventive Measures	N/A		
Details of Any Public/Patient/Service User Engagement	N/A		
Recommendations/Next Steps	That the board note the contents of the policy briefing and consider any additional strategic risks to Wirral.		

Report History		
Submitted to:	Date:	Summary of outcome:
List of Appendices	Appendix 1: General Responsibilities for Local Authorities: The table at Appendix 1 sets out the general responsibilities for local authorities with an initial assessment of considerations for Wirral	

Publish On Website	Yes	✓	Private Business	Yes	
	No			No	✓

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Implications of the proposed Care Bill

1. Background

The new Care Bill – which will replace a complex network of laws built up over 60 years with a “single, clear statute” – was among the new bills announced in the Queen’s speech. One of the headline measures of the bill is the introduction of reforms based on recommendations by the Dilnot commission, including a cap on lifetime care costs and free care and support for some younger disabled people. The main elements of the bill are wellbeing, prevention, carers’ rights, choice and personalisation. The bill is broken down into three parts:

Part 1 – Care and Support: This section establishes the general responsibilities of local authorities in promoting individual well-being, providing preventative support and for promoting integration of care and support with health services. **The changes in this section will have the most significant implications for local authorities and are detailed in Appendix 1.**

Part 2 – Care Standards: This section provides the legislative framework for the government’s response to unacceptable failings in health and social care provision in relation to the work of the Care Quality Commission. The main measures include developing Ofsted style ratings for health and care providers based on a system of performance review and assessment.

Part 3 – Health: This section covers the establishment and responsibilities of Health Education England and the Health Research Authority.

2. Broad Implications

The implications of the Care Bill are far more wide reaching than indicated. There has been widespread comment that in putting together the Bill there has been avoidance of the reality of funding pressures faced by Councils. The small additional packets of funding are welcome but an essential precondition of serious progress must be an honest appraisal of what a modern social care system costs and how it is to be funded.

In caring for an ageing population, with rising numbers of people living with long-term conditions, more integrated working is crucial to achieve good outcomes and make best use of resources. Working collaboratively with local services, clinical commissioners will drive redesign of services to ensure patients and their families get the care that will improve their health outcomes will be more efficient and effective and may save money. Divisions between health and social care make little sense to people using services. They expect joined-up services that give them choice and control. Users of social care services increasingly plan, purchase and control their own care and support through personal budgets. Personal health budgets are currently being piloted. The tough spending settlement for local government means that it is hugely important for health and social care to work closely with people needing support and their families, to get the most out of all the available resources.

3. Recommendation

That the Health and Wellbeing Board note the contents of this Policy Briefing.

Appendix 1: General Responsibilities for Local Authorities

The table below sets out the general responsibilities for local authorities with an initial assessment of considerations for Wirral:

Responsibility	Detail	Considerations for Wirral
Promoting individual wellbeing (clause 1)	Introduces a general duty on local authorities to promote individual's wellbeing. This will be the single unifying purpose of adult social care and the reference point for all outcomes.	Implications for future planning and commissioning strategies in ensuring that the general duty is embedded.
Preventing the need for care and support (clause 2)	Local authorities will have a duty to prevent, delay or reduce the need for care and support. The aim of this is to rebalance adult social care towards prevention, wellbeing and independence. The bill stipulates that the duty will apply both to carers and to people with care needs and that prevention work can be carried out jointly with other local authorities. Regulations will set out what local authorities can and cannot apply charges to.	Preventive strategies will now be underpinned by legislative duty. Wirral will need to collaborate across local authority boundaries on preventing the need for care and support. Charging policies will need to be reviewed in line with regulatory framework.
Promoting integration (clause 3)	Local authorities have a duty to carry out their care and support functions with the aim of integrating services with those provided by the NHS and with other health-related services. This provides a counterpart to the duty for integration on the NHS set out in the Health and Social Care Act 2012. The Care Bill incorporates the recommendation that housing should be specifically included as an example of a health-related service.	Wirral is developing an increasing focus on integration and fully joined up health and social care systems, for example through the multi-agency Long Term Conditions Integration Programme. In respect of this clause, there should be a more integrated approach to commissioning health, housing and social care. There are also implications for Health and Wellbeing Board, i.e. Wirral may wish to build in housing representation – this links to conversations at the Public Service Board about ensuring appropriate representation on the PSB and Health and Wellbeing Board and health priorities being dealt with by the appropriate partnership forum.

Responsibility	Detail	Considerations for Wirral
Information and advice (clause 4)	Local authorities are required to provide a universal information and advice service available to the local population not just those with assessed care and support needs. This information and advice must be accessible to all – not just online. This clause also includes the requirement to provide advice about how to access independent financial advice. The information and advice must be proportionate to need and should vary in range from a simple leaflet, through face-to-face conversation to independent advocacy support.	Significant implications for the strategic commissioning of a universal information and advice service as the Council reviews its commissioning approach. Independent financial advice is currently commissioned through Age UK, however there may be a need to extend access to this type of support
Market shaping (clause 5)	Local authorities have a duty to promote diversity, quality and sufficiency of local services so that a range of high quality providers are available for local people. The duty refers to the services that people from the area use, rather than just services located in the area. Guidance will address unacceptable commissioning practices that affect the market and will also cover the need for local authorities to engage with providers, people with care needs and carers.	Again, significant implications for strategic commissioning and managing the market which will need to be considered as this work progresses; will also need to be considered in respect of the neighbourhood working agenda in the it would be anticipated expect that discussions about care provision in local areas will emerge from constituency planning.
Cooperation (clauses 6 & 7)	Local authorities and other organisations with functions relevant to care and support have a general duty to cooperate backed by a specific duty to cooperate in relation to individuals with care needs and carers. The government does not agree that voluntary and private organisations should be statutory partners since they have different legal obligations and there are contractual ways of ensuring cooperation. However, Directors of Public Health have been specified in the clause since local authorities' new public health responsibilities needed to be reflected.	This section implies much greater cooperation around individuals to provide a more seamless experience of health and social care. Approaches such as “team around the adult” enable close cooperation across agencies. As with the clause on promoting integration, this may have implications for the Health and Wellbeing Board and wider partnership working as well as on how the local authority engages with individuals with care needs and carers – this will need to be explored further.

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<p>Assessing needs for care and support (clauses 8-12)</p>	<p>These regulations will replace existing statutory guidance on eligibility (i.e. the Fair Access to Care provisions). The bill outlines how people who use services and carers should be in control of their care and support. It emphasises that people need to be actively involved in assessment not just consulted.</p> <p>There is more emphasis on an asset-based approach, enabling people to achieve wellbeing within their own resources with additional support from local authorities. Assessment of this additional support should be 'proportionate'.</p> <p>Local authorities will be required by statute to refer adults with a primary health need to the NHS for assessment for NHS continuing healthcare and a fast-track assessment for the terminally ill will be reinforced in later guidance. A written record of assessment and eligibility decisions is to be provided in all cases.</p>	<p>Clearly, there will implications for care provision in respect of the FAC provisions being replaced by new regulations and the setting of a minimum threshold further to the spending review – this will need to be monitored closely as Wirral will need to respond to the new eligibility framework when published, with no scope to review in the short term.</p> <p>Wirral is starting to explore more asset-based approaches, and should be well placed to respond.</p> <p>Take up of NHS Continuing Healthcare is low in Wirral. The pathway is being reviewed in order to ensure that people are appropriately supported by the NHS and that outcomes are more in line with the national average. There are known training and development implications for front-line NHS staff charged with applying the guidance.</p>
<p>Eligibility (clauses 13-17)</p>	<p>During consultation on the Draft Bill, a majority of respondents were very supportive of a national minimum eligibility threshold; some argued it should be set at moderate, others at substantial. Local authorities emphasised the need to take resources into account. The government will give more detail about the minimum threshold in draft regulations following the settlement for adult social care in the spending round in June 2013.</p> <p>Under the eligibility clauses, local authorities are required to consider</p>	<p>The threshold in Wirral under FAC is currently Critical and Substantial, any move to include a moderate category could prove extremely expensive. A number of Authorities have ratcheted up their criteria to Critical only, but have tended to be challenged. Implementation of a national model is expected to enable people to transport their care needs and care assessment should they move around the country.</p> <p>Prevention and sign posting is a critical part of demand</p>

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	<p>which needs could be met by information and advice or preventative support. Everyone with care and support needs who is assessed will be informed of support available to prevent or reduce care needs and support whether or not they meet the eligibility threshold.</p>	<p>management as reflected in savings from social care. This requirement should inform the strategic commissioning of a universal advice service / gateways to advice or preventative support.</p>
<p>Charging financial assessment and cap on care costs (clauses 14-17)</p>	<p>These clauses give local authorities a general power to charge for certain types of care and support, at their discretion, replacing the existing duty on local authorities to charge for care home accommodation and powers to charge for other types of care and support. Where someone is not eligible for free care from the local authority, they may request the local authority to arrange their care and charge for so doing. Local authorities will be required to provide a written record of financial assessment. People have the right to opt out of a financial assessment while having their progress towards the financial cap recorded.</p>	<p>The main consideration is how is the cap to be resourced? The cap is likely to drive additional demand from people who would have been self funders. Wirral will need to forecast cost of implementation and build into financial projections as well as monitoring potential additional cost.</p>
<p>Duties and powers to meet needs (clauses 18-22)</p>	<p>Clause 22 which covered the boundary between local authority and NHS provision attracted considerable attention in the draft bill. The government did not agree with the Joint Committee that the current restrictions on local authorities providing or arranging the provision of nursing care should be reconsidered, and these restrictions remain. The government indicates that the intention of this clause is that the existing boundary is maintained.</p>	<p>Any anticipated changes to restrictions may have been an element of strategies for addressing urgent care issue in Wirral – suggest that this position will be of interest to the Health and Wellbeing Board.</p>
<p>Care planning, personal budgets and direct payments (clauses 25-34)</p>	<p>Local authorities will be required to provide, review and update an 'independent personal budget' for people who have eligible care needs but do not meet financial criteria. This notional budget will allow the individual to progress towards the care cap. It will be</p>	<p>These clauses would indicate the need to ensure that full fee payers are fully supported to access personal budgets and offset their costs to a level where they will eventually be eligible for free care. The cost related to increased demand</p>

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	<p>based on what the local authority would pay for care (rather than the amount the self funder may pay) to avoid the problem of people paying more and reaching the cap more quickly. Local authorities will also maintain and provide statements about care accounts – up to date records of the total care costs accrued.</p> <p>Other changes include more emphasis on the individual being in charge of decision-making e.g. the local authority must take all reasonable steps to reach agreement on the care and support plan and that the only requirement around the use of direct payments should be that they meet the needs and outcomes in the care and support plan. The Care Bill makes it clearer that the personal budget should be equivalent to the reasonable cost to the local authority of meeting the needs it has identified.</p>	<p>for assessment, increased administrative costs and increased package costs as full fee payers hit the ceiling. Wirral will need to undertake detailed work to forecast cost and implications for implementation and build into financial projections and service planning as well as monitoring additional cost.</p>
<p>Deferred payments (clauses 34-35)</p>	<p>Regulations will set out when local authorities may or must allow deferred payment (e.g. so that a person does not have to sell a house in their life time) and the interest and administrative fees allowed. It intends to consult on details of this scheme.</p>	<p>Wirral currently allows deferred payments along with applying CRAG regulations appropriately. We are looking at setting charges for interest etc.</p>
<p>Continuity of care between areas (clauses 36-37)</p>	<p>Where a care user moves to another area, the Care Bill will require the ‘new’ authority to take the original care and support plan into account and to provide a written explanation if it differs. A separate clause allows local authorities to recover costs incurred for meeting a person’s needs where another local authority is liable.</p>	<p>Usual residence agreements will need to be further clarified. Currently a person moving into a different local community becomes resident, however if they move into a care home they remain resident in the area that they came from. This is particularly important for Wirral because the Wirral Autistic Society attracts people with very complex needs from a range of other Local Authority Areas. Costs often exceed £50K per person</p>

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Safeguarding adults (clauses 41-46)	The draft bill set out the first ever statutory framework for adult safeguarding and received considerable support from the consultation. The government has agreed to give a new duty for relevant organisations to supply information on request to safeguarding adults boards. Following a consultation, it has <i>not</i> agreed to establish a power for entry for local authorities in situations where abuse was suspected but entry disallowed.	It is very positive news that adult safeguarding will be on a statutory footing. Case finding, prevention and the need to offer personalised responses to people that need to be safeguarded are key changes. The new role and duties will need to be considered by a strengthened Safeguarding Board.
Managing provider failure and oversight of the care market (clauses 47-54)	Local authorities are already responsible for ensuring continuity of care for people whose needs they are already required to meet. The bill extends this duty to people who are self funding a care home place or home care. The local authority response can be flexible dependent on the situation – from providing information about other providers to providing temporary replacement care. The CQC will monitor the financial position of difficult to replace providers – those providing specialist care or multi-area providers.	Wirral has invested in strengthening Quality Assurance arrangements. Our provider monitoring and improvement activity is critical to ensuring quality in the market. Commissioners have a duty to ensure that the market can respond effectively to need.
Transition for children to adult care and support (clauses 55-63)	The government has made changes to the bill to emphasise the links between children’s legislation and the Care Bill and to create a whole family approach. It noted the Joint Committee’s recommendation that young carers should be brought into the bill in line with the Law Commission’s recommendation. However it indicated that existing measures were sufficient to support young carers and it did not believe it was appropriate for young people to receive adult care and support before age 18.	Wirral has recognised the need for a whole family approach and should be well placed to respond to ensure that a coherent local response in place in respect of the links between children’s legislation and the Care Bill, will need to be explored further in respect of the specific implications.