Item No 2

Warwickshire Health and Wellbeing Board

Meeting Date: 26 March 2014

Report Title: A Summary of the Care Bill and its Implications

Summary

This report provides an update on the current progress of the Care Bill and a summary of the potential implications for Warwickshire, based on current available information.

Recommendation(s)

The Board is invited to comment on the potential implications of the Care Bill for Warwickshire.

1.0 Purpose of Report

1.1 To update the Board on the current progress of the Care Bill, and summarise the potential implications for Warwickshire, on the basis of current available information.

2.0 Background and Context

2.1 In 2011, the Law Commission reviewed the current legislation associated with community care provision for adults and published a series of recommendations in their report 'Adult Social Care'. The intention of the recommendations was towards the establishment of a single, clear, modern statute and code of practice that would pave the way for a coherent social care system, with local councils having clear and concise rules to govern when they must provide services. Included in the Law Commission's recommendations were:

- putting the individual's wellbeing at the heart of decision-making, using new statutory principles
- giving carers new legal rights to services
- placing duties on councils and the NHS to work together
- building a single, streamlined assessment and eligibility framework

- protecting service users from abuse and neglect with a new legal framework, and
- for the first time, giving adult safeguarding boards a statutory footing.

2.2 Additionally, the Dilnot Commission was established by the Government to report on how to deliver a fair, affordable and sustainable funding system for adult social care in England. Local government and NHS finances were recognised as under significant pressure and the demand for services is increasing as the population ages. The Dilnot report suggested a costed model for the future, in terms of the future costs of social care services and how charges should potentially be applied in future. This information was considered by the Government and many of the recommendations were incorporated into the White Paper, 'Caring for Our Future: Reforming Care and Support' (July, 2012), and the Care and Support Bill (July, 2012).

2.3 As due process continued, the name was amended and it simply became 'the Care Bill'.

2.4 There was a wide range of consultation following the publication of the Care and Support Bill from July to October, 2012. A Joint Committee of Parliament was also established to conduct pre-legislatory scrutiny.

2.5 Over three months, the Joint Committee received further written evidence and held 10 oral sessions with a range of stakeholders. The Joint Committee's work concluded on 7 March, 2013, and their final report was published on 19 March, setting out 107 recommendations. The Government has responded to these recommendations. Parts 1-3 of the Care Bill reflect changes made, taking into account what was heard.

2.6 Progress of the Care Bill through Parliament continues. The current position at any time can be viewed at: http://services.parliament.uk/bills/2013-14/care.html

2.7 The current status is that the Bill has been through the House of Lords and there were some significant amendments. It is now at Committee stage in the House of Commons and the above website made provision for those with expertise, experience or special interest in the area to submit views or evidence by 4th February, 2014.

3.0 Overview of the Care Bill as brought from the House of Lords

3.1 The Care Bill spans a great range of duties and powers and the associated regulations are not yet finalised. To enable the presentation of a broad picture, this section of the report provides a general overview of the intentions of each of the three parts of the Care Bill. A further table then provides some examples of the more detailed implications which will need to be addressed locally. It is possible that there may be further significant change before the legislation is enacted. This means that in terms of preparation, careful thought is needed with

respect to which aspects seem very likely to be enacted as they currently stand, and which may be subject to further change or addition.

3.2 Part 1 (Care and Support):

- Modernises over 60 years of care and support law into a single, clear statute, which is built around people's needs and what they want to achieve in their lives;
- Clarifies entitlements to care and support to give people a better understanding of what is on offer, help them plan for the future and ensure they know where to go for help when they need it;
- Provides for the development of a national eligibility criteria, bringing people greater transparency and consistency across the country;
- Treats carers as equal to the person they care for and on the same legal footing;
- Reforms how care and support is funded, to create a cap on care costs which people will pay, and intends to give everyone peace of mind in protecting them from catastrophic costs;
- Supports the aim of rebalancing the focus of care and support on promoting wellbeing and preventing or delaying needs in order to reduce dependency, rather than only intervening at crisis point;
- Provides new guarantees and reassurance to people needing care to support them to move between local authority areas or to manage if their provider fails, without the fear that they will go without the care they need; and
- Intends to simplify the care and support system and processes to provide the freedom and flexibility needed by local authorities and care professionals to integrate with other local services, innovate and achieve better results for people.

3.3 Part 2 (Care Standards):

3.3.1 The report of the Mid Staffordshire NHS Foundation Trust Public Inquiry, led by Robert Francis QC and published on 6 February 2013, called for a system-wide response, across health and care, to ensure that the failures of Mid Staffordshire NHS Foundation Trust are not repeated. The report made 290 recommendations with the aim of ensuring that the commissioning, delivery, monitoring and regulation of healthcare brings about a transformational change that focuses on achieving reliably safe and high quality care, that puts patients at its heart and where compassionate care and patient experience is as important as clinical outcomes. The Government is progressing a range of further plans in response to the report and has also determined that some changes to primary legislation are needed to deliver the plans. Part 2 of the Care Bill takes forward a package of measures, the most significant of which focus on:

- Requirements for the CQC to develop a system of performance reviews and assessments – an intention for a single version of performance that will allow organisations and the services they provide to be compared like for like in a fair and balanced way, that is meaningful to patients and the wider public.

- Powers to allow the new Chief Inspector of Hospitals, appointed by the CQC, to instigate a new failure regime. This aim of this is that in cases where urgent changes are needed to address poor care or quality failings in NHS hospitals, this will be detected quickly, and there will be a clear and time limited process for intervening and tackling unresolved problems urgently.
- Greater transparency and stronger accountability about the information providers produce on their own performance and outcomes, making it an offence for care providers to supply or publish certain types of false or misleading information and introducing additional legal sanctions.

3.3.2 The measures within Part 2 of the Care Bill were not included in the Draft Care and Support Bill, and therefore were not subject to the same public consultation and pre-legislative scrutiny as the other areas of the Bill. There have been some concerns raised as to the potential for the proposed legislation to be used in other ways than that which is seemingly intended. For example, the Nuffield Trust Parliamentary Briefing 'Care Bill: Second Reading, House of Commons' (December, 2013), notes that the new powers to change the operations of trusts neighbouring a failing trust could radically shorten and centralise the process of reconfiguring hospital services.

3.4 Part 3 (Health Education England (HEE) and the Health Research Authority (HRA))

- Establishes Health Education England (HEE) as a non-departmental public body (NDPB), intended to provide the necessary independence and stability to empower local healthcare providers and professionals to take responsibility for planning and commissioning education and training.
- Establishes the Health Research Authority (HRA) as an NDPB to strengthen its ability to protect and promote the interests of patients and the public in health and social care research, as well as providing assurance that the HRA will continue streamlining the research approvals process and encouraging investment in research.

3.5 Examples of Implications that will need careful local consideration.

3.5.1 The following table provides some key examples of areas of the Care Bill, primarily those relating to local authority duties and powers, and provides some early indicators of possible implications.

Table 1: Examples of Implications of the Care Bill

	Subject	LA duties	Comments/ implications
1.	Well-being; and preventing, reducing and delaying needs for care and support (Clauses 1 and 2)	A new statutory principle to promote individual wellbeing when taking any step under Part 1 of the Bill. A duty to take steps (including providing or arranging services) intended to prevent, reduce or	Integration of services, prevention and re enablement elements to be delivered and supported through the Better Care Fund plans. The Making Every Contact Counts (MECC) agenda and health and wellbeing services will support and

		delay needs for care and support.	provide preventative care. Failure to follow the principle could be used in judicial review and complaints cases to challenge LA decision-making. Thought must be given to the balance of how to apply the 'national eligibility criteria' fairly, alongside a statutory function to provide lower level preventative / wellbeing services.
2.	Information and advice on care and support (Clause 4)	A duty to provide an information and advice service in relation to care and support.	Expands existing duty. Includes carers. Includes the need to provide advice on how to access independent financial advice for adults with care and support needs, or making plans for such needs; and support to identify matters relevant to their personal financial position. Services for 'self-funders' will need further development.
3.	Support providers (Clause 5)	A duty to promote a market of diverse and high-quality range of care and support services in the local area, including a focus on sustainability of the market.	There is a financial challenge associated with developing and maintaining a diverse and sustainable market.
4.	Care and support planning, including personal budgets and direct payments (Clauses 9, 11-13, 18, 24-26)	A duty to carry out 'needs assessments' [brings together a number of existing powers and duties to create a single legal basis for assessment] Even if an adult refuses, assessment must be carried out - a) if adult lacks capacity to agree but LA is satisfied that assessment would be in their best interests; or b) if adult is at risk of harm or financial abuse. Ongoing duty to offer assessment to someone who has refused but	Expansion of LA duties. Applies whether or not LA thinks the adult has eligible needs, and regardless of adult's financial resources. **There is likely to be a requirement for more assessments.** Those funding their own care (and intending to continue to do so) have right to assessment. There will be more interest in timely assessments, in order to 'register' expenditure against the new 'care cap'. **This may also mean more assessments,** and the need for skilled assessments, because of the difficulties of the situation. This indicates a need for a process for keeping track of people who have

		whose circumstances have changed. Duty to meet eligible needs of adults ordinarily resident in LA area who have not reached the care 'cap' – If services are not chargeable OR • If adult's financial resources are at or below the financial limit (so adult does not have sufficient financial resources to be able to pay the assessed charge); • If adult requests LA to meet their needs, even if their resources are assessed as above the financial limit, so that they have to pay for their care in full. • If adult lacks mental capacity to arrange care and support, and there is no other person willing/able to do it. Duty to meet adult's needs for care and support which meet the eligibility criteria where the adult's accrued costs exceed the cap on care costs, if adult is ordinarily resident in LA area. Duty to prepare a care and support plan for an adult with eligible needs; inform adult which of their needs LA will meet and where direct payments may be used to meet needs; help the adult in deciding how to have the needs met. Duty to provide a written explanation for any non-eligible needs and information about services to meet or reduce needs. Duty to provide personal budget for those entitled to care and support (regulations to exclude certain people)	refused but may need services, to determine when their circumstances have changed. LA has to meet needs of self-funders if they ask for this. But the LA can charge for making the care arrangements (the care itself is still paid for by the self funder). This will need practitioners to further develop skills in support planning, personal budget / indicative budget planning and 'talking about money'. A personal budget is already an available option in Warwickshire, but further work will be needed to meet the requirements of any national regulations on how a 'personal budget' is calculated.

		Duty to provide 'independent personal budgets' for adults who have eligible needs, but who choose not to have their needs met by LA, and to keep these under review	Must be broken down so adult can see how much of the costs are attributable to daily living costs, not direct care. Need new process to provide mechanism for recording care costs for the purposes of measuring progress towards the costs cap.
5.	Carers (Clause 10)	A new **duty** to assess carers and meet their eligible needs for support. A power to charge for support to carers.	This duty applies whatever the LA thinks about the level of carer's needs for support or financial resources of either the person needing care or the carer. **This is likely to increase the number of assessments needed.** The new system appears to introduce a significant financial disincentive for the family of vulnerable adults to provide informal care. As family care is not covered as an expense and would therefore not count towards the cap, this care provision would lengthen the time that an individual would need to fund their own care. Unless the service user was paying the full cost of their support, it would ultimately result in a worse financial situation. This anomaly has been identified to the Department of Health both as a significant risk both in financial terms to individuals but also in terms of the potential need for an increased social care workforce in the medium-term.
6.	Charging, the cap on care costs and the care account (Clause 14-16, 29)	LA to have general power to charge for services. May only charge what it costs to provide. LA can charge a fee for arranging support for person who has care and support needs but does not qualify for financial support from LA. There will be a limit ('cap') on the amount that adults can be required to pay towards eligible care costs over their lifetime. Level of cap to be set in regulations. May be set at	Some exclusions, as currently. Replaces **duty** to charge for residential care. DH formal consultation -17.7.13 to 25.10.13 https://www.gov.uk/government/consultations/caring-for-our-future-implementing-funding-reform Implementation from April 2016 likely: £72,000 cap for older people (2016/17 prices); £118,000 upper capital limit in

		different amounts for people of different ages. For care and support in a care home, daily living costs do not count towards accrued costs. LA can continue to charge for these even when cap is reached. Duty to keep a care account for adults whose care costs are counted towards the costs cap, provide regular statements, and inform adult if level of accrued costs in their care account reaches the cap.	residential care; £17,000 lower capital limit in residential care; and Around £12,000 annual contribution to general living costs. Given that any spending on care does not count towards the £72,000 cap until a formal community care assessment has been carried out by social services, there are likely to be a large number of people who are currently funding the cost of their own care who will approach the council for an assessment when the new rules come into effect. This is likely to be a significant number of people (in the thousands).This will present temporary recruitment difficulties as additional staff will be required for the year 2016 to undertake these one-off assessments. The new rules will also lead to a significant permanent increase in the total number of community care assessments requested by self-funders who wish to start recording eligible care costs counting towards their £72,000 cap after 2016. Similarly more people who have assets of less than the new upper capital limit of £118,000 will present for assessment and care services. The extra staffing needed to respond to this permanent increase is currently being calculated. In the new system, therefore, self-funders will require needs assessments, financial assessments, care management and care reviews to determine their level of need, how much the LA would pay to meet that need, what the individual is actually paying, and a recording process to track how much the person has spent on care, in progress towards the 'care cap'. This will require additional staffing of various types. There will be set-up costs for new recording systems/processes and costs associated with maintaining

			these. There may be loss of income to the council, for those who reach the 'care cap' where previously, the customer would continue to have contributed to their own care costs.
7.	Eligibility and continuity of care (Clauses 36-40)	A national threshold for eligibility for care and support; A duty to meet the needs of care and support for users and their carers who move into their areas, from the day of arrival until they undertake a new assessment.	DH launched a policy discussion document and draft regulations on 26.6.13. https://www.gov.uk/government/publications/draft-national-eligibility-criteria-for-adult-care-and-support. Formal consultation will take place in 2014. Detailed provisions for notification between LAs when adults move are likely, e.g., new processes/standard letters needed.
8.	Transition for children to adult care and support (Clauses 55-63)	A power to assess children, children's carers and young carers on request, in order to consider their future needs and support transitional planning. A duty to continue to provide children's services after the child's18th birthday, where adult care and support is not in place.	Care and Support through transitions and to young carers is likely to be an area where further changes to the bill can be expected.
9.	Prisoners (Clause 69)	A duty to assess prisoners and provide care and support (in conjunction with prisons/approved premises) This will be the responsibility of the local authority of the area in which the prison/approved premises is situated. The threshold will be the same as for people who live in the community and require care and support.	
10.	Adult safeguarding (clause 41-44)	Duty to make enquiries (or ask others to) where they reasonably suspect that an adult in LA area is at risk of neglect or abuse, including financial abuse.	Applies to adults who have care and support needs (regardless of whether they are currently receiving support, from LA or indeed anyone); and who are either at risk of or experiencing neglect or abuse, including financial abuse; but are unable to protect themselves. Applies whether or not

		Duty to establish a Safeguarding Adults Board (SAB), to help and protect individuals who LA believes to have care and support needs and who are at risk of neglect and abuse and unable to protect themselves, and to promote their wellbeing.	adult is actually OR in area. SAB must conduct a Safeguarding Adults Review into cases where there is reasonable cause for concern about how the SAB, its members or some other person involved in the case worked together and either adult has died and SAB knows/ suspects that death resulted from abuse or neglect or adult is still alive and SAB knows/ suspects that adult has experienced serious abuse or neglect.
11.	Provider failure (Clauses 47-49)	A duty to ensure that adults' needs for care and support continue to be met when service providers fail.	LA's duty applies to adults and carers whose needs are being met by residential and non-residential services in the LA area (even if ordinarily resident in another LA area). Importantly, this duty also applies to self-funders, not just those supported by the Local Authority.
12.	Universal deferred payments (Clause 34-35)	A duty to offer deferred payments for residential care, with consistent rules on who is eligible, what fees may be deferred and for how long. LA will be able to charge interest throughout.	Details of scheme to be subject to consultation. Government will also be consulting on DPs for non-residential care and for younger adults Warwickshire County Council already runs a deferred payments scheme, although the national rules are likely to be changed, for example, to allow councils to charge interest for the whole duration of the loan rather than only after the person's death, as now. The current scheme will be evaluated against the new regulations as soon as these are published.
13.	Training of social work and contact centre staff on the Bill/Act		It will be necessary to train existing social workers in the new law. The Law Commission suggested a requirement of four days of training per adult social worker in the first year and a further two days in the second year.
14.	Complaints		Due to the new financial implications of determining 'eligible' care needs by social services, it is expected that there will be an increase in the number of appeals and complaints

			about the outcome of these assessments, particularly from people who have been funding their own care but whose needs are not deemed as being 'eligible' using national eligibility criteria.

4.0 Timescales and next steps

4.1 The current national plans indicate that the Care Bill will be enacted by 2016.

4.2 Scoping work continues locally and the next step is an estimate of the local financial impact of the Care Bill and the creation of an implementation plan. This work will need to be integrated with the ongoing work associated with the One Organisational Plan in due course.

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