CARE, HEALTH & WELLBEING OVERVIEW AND SCRUTINY COMMITTEE
22nd June 2021

TITLE OF REPORT: Overview of NHS White Paper 'Working together to provide health and social care for all' and its implications

REPORT OF: Caroline O'Neill, Strategic Director, Children, Adults and Families

---

Summary

To provide an overview of the NHS White Paper 'Working together to provide health and social care for all' and its implications for the Gateshead health and care system

---

1. Background

1.1 The origins of the NHS White Paper go back to 2019, when the Secretary of State for Health and Social Care (SoS) asked NHS England to identify what legislative changes were needed to fulfil the ambitions of the ten-year NHS long term plan (making sure everyone gets the best start in life; delivering world-class care for major health problems; and supporting people to age well).

1.2 In late November 2020, NHS England/Improvement (NHSE/I) issued a consultation document 'Integrating Care: Next steps to building strong and effective integrated care systems across England' and sought comments by the 8th January. The document set out a proposed direction of travel for Integrated Care Systems (ICSs) as well as options for giving ICSs a firmer footing in legislation. A response to the consultation was prepared by the Health & Wellbeing Board on behalf of the Gateshead System and submitted to NHSE/I.

1.3 In February 2021, the NHS White Paper was published with a view to setting out the case for a new legislative framework to facilitate greater collaboration within the NHS and between the NHS, local government and other partners, and to support the recovery from the pandemic. It is structured around three key themes:

- Theme 1: Working together to integrate care – statutory ICSs with "dual structure" governance arrangements;

- Theme 2: Reducing bureaucracy – removing requirements on competition and procurement in the NHS;
- Theme 3: Improving accountability and enhancing public confidence – the formal merger of NHS England and NHS Improvement and new powers for the SoS.

1.4 The White Paper also includes some additional proposals, many of which are related to public health and adult social care.

2. Theme 1 - Working together to integrate care

2.1 The White paper proposes that the forthcoming Health and Care Bill will support two forms of integration:

- Removing barriers *within* the NHS and making 'working together' an organising principle. NHS bodies (NHSE, ICSs and providers) will have a "triple-aim" duty of better health and wellbeing for everyone, better quality of health services for all individuals, and sustainable use of NHS resources.
- Greater collaboration *between* the NHS, local government and wider delivery partners to improve health and wellbeing outcomes for local people. There will be a broad duty to collaborate across the health and care system with the expectation that local authorities and the NHS will be work together within their ICS. The SoS will have powers to issue guidance on how the duty may work in practice.

2.2 ICSs will be put on a statutory footing to allow stronger and streamlined decision-making and accountability. They will have dual structure arrangements which reflect the two forms of integration – an ICS NHS body (board) and an ICS Health and Care Partnership.

ICS NHS body

2.3 The ICS NHS body will be responsible for the daily running of the ICS. Responsibilities will include developing a Plan to meet the health needs of its population, setting out the strategic direction for the system, securing the provision of health services and achieving system financial balance. The body will take over the functions and funding of CCGs and will be able to delegate funding to 'place' level and to provider collaboratives.

2.4 NHS Trusts will remain separate statutory bodies and the ICS body will not have the power to direct providers. But there will be a mutual new duty to have regard to system financial objectives.

2.5 Each ICS body will have a unitary board accountable for NHS spend and performance within the system. It will, as a minimum, have a chair and a CEO and will include representatives from NHS trusts, general practice, local authorities and others determined locally, such as mental health trusts as well as non-executive directors. NHSE will publish guidance on how boards should be constituted.

2.6 There is a commitment to provide a more clearly defined role for social care in the structure of ICS boards to give it a greater voice in NHS planning.

ICS Health and Care Partnership

2.7 The ICS Health and Care Partnership will bring together the NHS, local government and wider partners such as the VCS and Healthwatch to 'develop a plan to address the system's health, public health and social care needs' and to promote partnership arrangements. The ICS body and local authorities will have to have regard to that plan when making decisions. The Health and Care Partnership cannot impose arrangements that are binding on local government. Membership and functions will be determined locally. The White paper suggests that the Partnership could be used as a forum for agreeing priorities, coordinating action and aligning funding on key issues.

2.8 The White paper states that within the dual structure there will be local flexibility over how ICSs are arranged, and partners are encouraged to develop mature joint arrangements that deepen integration and improve outcomes.

2.9 There will be new legislation to make it easier for organisations to work closely together through setting up joint committees which could either be between ICSs and NHS providers or between NHS providers. Both types of joint committee could include representation from other bodies such as primary care networks, GP practices, community health providers, local authorities and the voluntary sector.

2.10 The White paper makes many references to the 'primacy of place'. ICSs must support place based joint working, with place-based arrangements at the core of integration. Place-level commissioning will frequently align geographically to a local authority boundary, and the Better Care Fund (BCF) will be a tool for agreeing on priorities.

2.11 ICSs will be required to work closely with Health and Wellbeing Boards as they are seen as having the experience as place-based planners. The ICS body will be required to have regard to Joint Strategic Needs Assessments and Joint Health and Wellbeing Strategies produced at HWB level and vice versa - this suggest that HWBs will also need to have regard to the ICS partnership plan. ICSs will need to consider how they can align allocation and functions with 'places', such as using joint committees, but models will be for local determination. NHSE and other bodies will provide support and guidance based on insights from early wave ICSs.

2.12 The Department for Health Social Care (DHSC) will explore how to enhance the role of the Care Quality Commission in reviewing system working. The White paper states that it wants to strengthen the patient voice at place and system levels to create genuine co-production.

2.13 Other legislative proposals include:

- A reserve power to set a capital spending limit on foundation trusts, if needed, to support the third aim of the Triple Aim duty in relation to the sustainable use of NHS resources.
- More effective data sharing to support integration and digital transformation of care pathways.
- NHS decision-making bodies will be required to protect, promote and facilitate patient choice with respect to services or treatment.

3. Theme 2 - Reducing bureaucracy

3.1 The requirement for competition applied to the NHS through the Health and Social Care Act 2012 will be removed. The NHS will no longer be subject to the Competition and Markets Authority. Where there is no value in running a competitive procurement process, these can be arranged with the most appropriate provider. NHSE will consult on a bespoke health services provider selection regime which will enable collaboration and collective decision making. The division between funding-decisions and provision of care will be maintained. The NHS will have greater discretion over procurement.

3.2 The SoS will have the power to create new Trusts within an ICS where this would result in better health outcomes. Subject to engagement and consultation, ICSs may apply to the SoS to set up a new Trust.

4. There 3 - Improving accountability and enhancing public confidence

4.1 The merger of NHS England and NHS Improvement will be put on a statutory footing, with the organisation called NHS England.

4.2 The government will have new powers over the NHS to support greater collaboration, information sharing, aligned responsibility, and in responding to change. These include:

- Reforms to make the government's mandate to the NHS more flexible (the current mandate sets annual priorities and expectations for NHSE).
- Power to transfer functions between arm's length bodies.

4.3 The SoS will have the power to intervene at any point in the process around reconfigurations of health care. The SoS will have to seek appropriate advice to inform decision making and publish it transparently. Statutory guidance will be issued on the new process.

5. Additional Measures

5.1 Additional proposals have emerged from work on the pandemic to support health and care system recovery.

Social care

5.2 The White paper states that the government recognises the significant pressures faced by the sector and will bring forward proposals for reform this year, aimed at ensuring everyone can access affordable, high quality, joined-up and sustainable adult social care.

5.3 A new improved level of accountability will be introduced within social care, with an enhanced assurance framework allowing greater oversight over local authority delivery of care to raise standards and reduce variation in quality. The framework will involve improved data collection to allow for better understanding of capacity and risk. The Health and Care Bill will introduce a new duty for the CQC to assess local authorities' delivery of adult social care duties, and the SoS will have a new power to intervene if it is considered a local authority is failing to meet their duties. It is envisaged that the Department of Health & Social Care (DHSC) will work with the sector on the assurance framework which will be introduced over time.

5.4 There will be a new standalone legal basis for the Better Care Fund (BCF) separating it from the NHS mandate setting process.

5.5 The current requirement to assess people before hospital discharge will be replaced by a Discharge to Assess model in which an individual can receive NHS continuing health care (CHC) and NHS funded nursing care (FNC) assessments and Care Act assessments after they have been discharged. This will allow assessments in a familiar environment, enabling a more person-centred evaluation of care needs. The new model will not change eligibility thresholds for CHC or the Care Act; the White paper states it will not increase financial burdens on local authorities. The system of discharge notices and financial penalties will no longer be required.

5.6 The SoS will have a new legal power to make payments directly to social care providers in exceptional circumstances, such as in maintaining the stability of the market.

Public health

5.7 The experience of the pandemic has underlined the importance of a population health approach and robust health protection. The government will publish proposals for the future of the public health system – a new National Institute for Health Protection (NIHP) and the remaining functions from the closure of Public Health England.

5.8 The proposals in the White paper focus on issues that need primary legislation. There will be a public health power of direction through which the SoS can require NHSE to discharge public health functions and direct how the delegated functions are exercised – effectively strengthening existing powers.

5.9 Legislative changes will support the rollout of the national obesity strategy e.g. introducing further restrictions on the advertising of high-fat salt and sugar foods before 9pm and a new power for ministers to alter certain food and alcohol labelling requirements to make healthy choices easier.

Data Collection

5.10 The White paper proposes to improve the quality and availability of data across health and social care to address gaps in data to help understand capacity and risk in the system.

6. Implications for the Gateshead Health & Care System

6.1 The language of the White paper is one of collaboration, building upon the successes and learning from the pandemic and providing a statutory footing for key proposals. There are still many questions that remain unanswered, including on the relationship between health and social care and further guidance is awaited to provide the clarity needed. Some of the issues of particular interest to place based systems, such as Gateshead, are set out below.

ICS Body / Partnership

6.2 The creation of two distinct parts of an ICS adds a degree of complexity. Further clarity is needed on the respective roles and responsibilities of the proposed ICS statutory Body and the ICS Health and Care Partnership, including how they will relate to HWBs, OSCs etc.

6.3 Each ICS will need to agree how the ICS Body and the ICS Health and Care Partnership will work together and be held to account through the different accountability mechanisms for local government and the NHS. It will be important that any new national accountability mechanism builds upon and enhances existing local democratic accountability rather than bypassing or undermining it.

6.4 Clarity is also needed on how the ICS body and Partnership will relate to integrated activity at a local 'place' level and will support local leaders in developing arrangements that work best for their areas.

6.5 CCGs have become a valued part of the health and care landscape and the proposal that the ICS body will take on their responsibilities represents a significant change in organisational arrangements that will impact upon local place systems. It will be important therefore that their important contribution is not lost. In addition, clinical input to decision making will need to be maintained at all levels.

Primacy of Place

6.6 The emphasis on the primacy of place is to be welcomed, including:

- the recognition that it is at 'place' where real change happens;
- the commitment that existing local partnerships and democratic structures should be based on local government place;
- the expectation that ICSs will delegate functions to place-level partnerships.

6.7 It will be important that the principle of subsidiarity is put into practice and hard-wired into the way ICSs work with places, building from the bottom up.

However, additional powers to be given to the SoS under the White paper seem to run counter to this approach and there seems to be a contradiction between a welcome emphasis on flexibility and 'place' and greater central control and SoS powers of intervention.

Reducing bureaucracy

6.8 Whilst the aim of reducing bureaucracy and unnecessary requirements on commissioners and providers of health services is to be welcomed, it will be important that NHS and local government commissioning and financial frameworks are aligned. In particular, there will be a need to ensure that any measures to reduce requirements on the NHS do not create barriers to the NHS and other system partners working collaboratively.

Powers of the Secretary of State

6.9 There is a concern that the additional powers to be given to the SoS may undermine or bypass the existing powers and duties of local authorities on local NHS reconfigurations. Currently, the NHS has a duty to consult local authorities that are affected by any substantial variations or reconfigurations of health services.

6.10 Assurances will need to be sought from government that new powers granted to NHS bodies will not undermine local democratic accountability mechanisms.

6.11 The White paper states that the new power to be given to the SoS to make direct payments of funding to any bodies engaged in the provision of social care services will:

- not be used to amend or replace the existing system of funding adult social care, and
- only be used in exceptional circumstances,

However, it is not clear in what circumstances the power can be used.

Social Care

6.12 The White paper acknowledges the pressures facing social care and the need to address its long-term sustainability and reform. However, the government is yet to bring forward its long-awaited wider funding reforms.

6.13 With regard to the national oversight of adult social care, it will be important that any arrangements build on existing best practice and are co-designed with people with lived experience.

6.14 Councils will also need to be an equal partner in the design of these oversight arrangements, building on existing sector led improvement work and looking at 'whole' health and care systems. A shared agreement is needed on what good looks like e.g. around person-centred and locally flexible care and support. The aim should be for an assessment of integration along the lines of the CQC local system reviews.

6.15 ***Public Health***

Further clarification is needed on how the proposed power for the SoS to require NHSE to discharge public health functions as there is a danger it could undermine local leadership of prevention and promoting wellbeing. It will be important that this does not adversely impact on local government's public health responsibilities.

Data Collection

6.16 The stated aim of enhancing data quality is to be welcomed. It will also be important that data collection is proportionate, that data sharing is purposeful, and that its prime purpose is to support effective local commissioning and the delivery of care.

Health and Social Care Bill

6.17 The Government plans to introduce a Health and Social Care Bill to Parliament in 2021 so that the measures can start to be implemented in 2022. The document gives a commitment to continue to engage with stakeholders on the detail of the proposals and to work across government to address the interdependencies between health and other social determinants.

6.18 It will be important that Government commits to working with local partners on all aspects of the White paper, including subsequent legislation and to ensure full and inclusive consultation on the further development of its proposals.

7. Recommendation

7.1 Overview & Scrutiny Committee is asked to note the overview of the NHS White Paper and its potential implications as set out in this report.

Contact: John Costello **Tel:** (0191) 4332065