

The Health White Paper – What's changed?

By Mike Cooper for Tamarind Chambers December 2010

In July 2010 the government published its Health White Paper, *Equity and excellence: Liberating the NHS*, and invited responses to it and a set of consultation documents. On 15 December the Government published *Liberating the NHS: Legislative framework and next steps*, in which it gives its response to the consultation and describes how it will take forward its plans for NHS reform, set out in the White Paper.

The Government has reaffirmed its commitment to the White Paper reforms, but has announced some significant changes to the proposals in the White Paper. This is a summary of those changes, and should be read in conjunction with our briefing, *The Health White Paper – what it says* (for this and other comment and analysis see <http://tamarindchambers.wordpress.com>)

'Shared decision-making'. The NHS Commissioning Board will be under a duty to have regard to the need to promote the involvement of patients and their carers in decisions about the provision of health services to them.

'NHS information revolution'. The Government will publish its plans to make the information revolution a reality following separate consultation that will end in January 2011.

'Increased choice and control'. The Government has launched a consultation *Greater choice and control*, ahead of making proposals on choice early in 2011.

LINKs to become HealthWatch:

- Local HealthWatch will continue LINKs' role in promoting and supporting public involvement in the commissioning, provision and scrutiny of local care services.
- Local authorities will get additional funding for the increased roles of HealthWatch (not ring fenced).
- Government will set out proposals for HealthWatch governance and stakeholder engagement and the relationship between HealthWatch, the local authority and HealthWatch England.

Local authorities will be responsible for commissioning:

- Advocacy and support services to enable patients to exercise choice, from local HealthWatch.
- Mental health advocacy, which must be commissioned from bodies other than HealthWatch.
- NHS complaints services, which may be commissioned from HealthWatch or from other bodies.

HealthWatch pathfinders will test structures for governance and accountability and role of hosts, and test models for patient choice and complaints advocacy, during 2011/12.

HealthWatch England will:

- Be a committee of the Care Quality Commission (CQC), but will have a 'distinctive identity and role'.
- Agree standards against which local HealthWatch could be judged.

CQC will be under a duty to have regard to recommendations from HealthWatch England.

Outcomes framework – will be set out in the separate response to the consultation, *Transparency in outcomes – a framework for the NHS*.

GP Consortia (GPC)

GP practices will have flexibility to decide how they come together to form consortia; consortia do not have to be contiguous, will not have a statutory maximum or minimum size, and may change over time.

GPC will:

- Be required to have a published constitution and to publish remuneration and an annual report.
- Not have to have a statutory 'board' and will have flexibility over how they engage stakeholders.
- Be the commissioners for maternity services, not the NHS Commissioning Board.
- Be able to commission services from family health providers, additional to those services commissioned by the NHS Commissioning Board.

GPC pathfinders to be introduced and working with PCTs during 2011/12 (will not necessarily become GPC); statutorily established from April 2012; take on PCT staff and accountability for budgets April 2013.

NHS Commissioning Board:

- Will commission high security psychiatric services and healthcare for the armed forces and their families.
- May commission services on behalf of consortia, where that is agreed by both parties.
- Will be established in shadow form in 2011; in full effect from April 2012.

The criteria for which specialised services are to be commissioned by the NHS Commissioning Board will be specified in regulations, and can be amended over time.

Health and wellbeing boards

Every upper tier local authority will be required to establish a health and wellbeing board, but may set up a joint board with neighbouring authorities. The board will:

- Have statutory core membership of at least one elected councilor, directors of adult social services, children's services, and public health, representatives of relevant GPCs, and local HealthWatch.
- Be required to develop a joint health and wellbeing strategy spanning the NHS, social care, public health and potentially other local services; the local authority and NHS commissioners will be required to 'have regard to' the strategy.

Early implementers established in 2011. Take statutory responsibilities April 2013.

Scrutiny:

- Local authority scrutiny functions will not be taken over by the health and wellbeing board and the distinction between local authority executive and scrutiny functions will be maintained.
- The power of health scrutiny will be vested in the local authority, which will have flexibility to determine how it is carried out, and it will apply to any provider or commissioner of any NHS-funded service.
- GP Commissioning and the health and wellbeing board will be subject to scrutiny.
- Local authorities will have to consider how local HealthWatch relate to its scrutiny functions.

NHS commissioners may 'designate' a service – under guidance from Monitor – so that it is subject to additional licence conditions and Monitor will ensure it continues to be provided, even if the provider fails. The local authority right of referral to the Secretary of State will apply to 'designated' services, and the Secretary of State may direct that a change referred to him must be stopped.

When local authorities establish a joint OSC, the decisions of the joint OSC will be binding on all contributing councils, and the power of referral will be held by the joint OSC.

Autonomy of providers:

- All NHS Trusts to be Foundation Trusts by April 2014.
- CQC and Monitor will be under a duty to cooperate.

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