

INTRODUCTION TO THE CARE BILL

To: **Adults Committee**

Meeting Date: **20 May 2014**

From: **Adrian Loades, Executive Director: Children, Families and Adults Services**

Electoral division(s): **All**

Forward Plan ref: **Not applicable** *Key decision:* **No**

Purpose: **The Adults Committee is asked to consider and discuss the implications of the Care Bill, as far as they are understood by officers prior to the release of the draft regulations expected in May 2014.**

Recommendation: **The Adults Committee is asked to agree to receive updates on the implications of the Care Bill, progress towards implementation in April 2015 and any matters for decision at its meeting in November 2014.**

<i>Officer contact:</i>		<i>Member contact:</i>	
Name:	Claire Bruin	Name:	
Post:	Service Director: Adult Social Care	Chairman:	
Email:	Claire.Bruin@cambridgeshire.gov.uk	Email:	
Tel:	01223 715665	Tel:	

1.0 BACKGROUND

- 1.1 Part 1 of the Care Bill represents a fundamental revision of adult social care legislation, finance and policy. It simplifies, consolidates and improves a confusing and sometimes conflicting legislative framework that has developed over the last 60 years.
- 1.2 Not only does the Bill seek to respond to the review of adult social care legalisation undertaken by the Law Society, it also responds to the Dilnot Report commissioned to review the funding for adult social care, and the Francis Report following the deaths of patients in Mid Staffordshire NHS Foundation Trust.
- 1.3 The last of these reports has influenced the focus in the Bill on the role of the Care Quality Commission including ratings for hospitals and care homes. The Bill also clarifies the role and expectations of Health Education England and the Health Research Authority. This report focuses on Part 1 of the Bill and the implications for adult social care.
- 1.4 The Bill was scheduled to receive Royal Assent in April 2014, but it did not return to the House of Lords until 7 May 2014, so Royal Assent has been delayed. It is hoped that the draft regulations to support the Bill will still be issued in May 2014, triggering a period of consultation through to the end of July 2014. The final regulations should be published in October 2014 to support the implementation of most of the requirements in April 2015 with care accounts and deferred payments (both explained below) due for implementation in April 2016.

2.0 THE INTENTION OF PART 1 OF THE CARE BILL

- 2.1 The stated intention of the Bill is to:
 - **modernise** care and support law so that the system is built around people's needs and what they want to achieve in their lives;
 - **clarify** 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;
 - **support** the broader needs of local communities as a whole, by giving them access to information and advice, and promoting prevention and earlier intervention to reduce dependency, rather than just meeting existing needs;
 - **simplify** the care and support system and processes to provide the freedom and flexibility needed by local authorities and care professionals to innovate and achieve better results for people; and
 - **consolidate** existing legislation, replacing law in a dozen Acts which still date back to the 1940s with a single, clear statute, supported by new regulations and a single bank of statutory guidance.

2.2 The Bill includes the following key provisions that are explained in more detail in section 3 with potential implications:

- **new statutory principles which embed the promotion of individual wellbeing** as the driving force underpinning the provision of care and support;
- **population-level duties on local authorities** to provide information and advice, prevention services, and shape the market for care and support services. These will be supported by duties to promote co-operation and integration to improve the way organisations work together;
- **clear legal entitlements to care and support**, including giving carers a right to support for the first time to put them on the same footing as the people for whom they care;
- **revised national eligibility criteria** setting out the minimum level of eligibility at which Local Authorities must meet the care and support needs of an individual or a carer;
- **set out in law that everyone, including carers, should have a personal budget** as part of their care and support plan, and give people the right to ask for this to be made as a direct payment;
- **a new cap on care costs**, setting the maximum amount that people will have to pay for care within their lifetime;
- **deferred payments** to ensure that nobody has to sell their home to pay for care within their lifetime.
- **new duties to ensure that no-one's care and support is interrupted when they move home** from one local authority area to another;
- **a new statutory framework for adult safeguarding**, setting out the responsibilities of local authorities and their partners, and creating Safeguarding Adults Boards in every area;

3.0 THE DETAIL AND POTENTIAL IMPLICATIONS OF THE CARE BILL

The Bill contains some clauses which are new in law but not new in policy and practice, as well as new provisions. Until we receive the draft regulations there is a degree of uncertainty on the detail and therefore some of the implications. However, it is clear that the implementation of the Act is a major undertaking and work has begun to scope and model the potential implications. The understanding coming from this work is set out below under each of the key provisions.

3.1 **New statutory principles which embed the promotion of individual wellbeing** as the driving force underpinning the provision of care and support.

3.1.1 The promotion of wellbeing requires local authorities to have regard to the adult's wishes and feelings and their particular circumstances when making decisions with and about them. This reinforces our approach to self directed support that promotes choice and control by the individual and the direction of travel through our new model of social work/social care: Transforming Lives, which is subject to a separate report to the Adults Committee.

- 3.1.2 The Bill also specifies that Local Authorities must consider “achieving a balance between the adult’s wellbeing and that of any friends or relatives who are involved in caring for the adult”. In doing so, the Bill strengthens the position of carers, and with the entitlement to assessment and support described in section 3.3, puts carers on an even footing with the people they support. Work to address this is being taken forward as part of the Carers Project that is redesigning the support to family/informal carers.
- 3.2 **Population-level duties on local authorities** to provide information and advice, prevention services, and shape the market for care and support services. These will be supported by duties to promote co-operation and integration to improve the way organisations work together.
- 3.2.1 The provision of information and advice will extend to all people in the local authority’s area and will be more specific than existing requirements, including how to obtain independent financial advice on the options for paying for care and support. The Council will need to ensure that the importance of accessing independent regulated financial advice for anybody considering deferred payments is made clear.
- 3.2.2 The provision of preventative services aimed at preventing and delaying needs fits well with the Council’s adult social care strategy to support people to be as independent as possible, whether this is about developing new skills with younger adults or retaining or maintaining skills with older people. This is a key aspect of our approach to reduce demand for core social care provision and is welcome in that it supports investment in preventative activities which the Council has maintained despite the financial pressures that have led to some authorities to disinvest heavily in these areas.
- 3.2.3 The existing responsibilities to shape the social care market to respond to local demand are reinforced with a particular focus on diversity and addressing the specific needs of people from minority ethnic communities. Delivery of Transforming Lives and Support for Carers will require the development of the market, particularly to deliver on individual outcomes. It is anticipated that specific consideration will need to be given to how effectively we are meeting the needs of people from minority ethnic communities.
- 3.2.4 Reinforcing the duty on Local Authorities to cooperate and integrate services with health and housing where this promotes wellbeing fits with the expectations within the Better Care Fund and our local practice and future intentions. Importantly, the Bill provides Local Authorities with a new ability to require cooperation from a relevant partner in respect to an individual case, although locally there is already good collaboration in cases, with are often complex.
- 3.3 **Clear legal entitlements to care and support, including carers** who will have the same right to assessment and support as the people for whom they care, for the first time putting them on the same footing.
- 3.3.1 Local Authorities will continue to have a responsibility to carry out assessments for people who have, or may have a social care need but the requirements of the assessment have been updated, to include, for example, a focus on outcomes. The strengths based approach and

emphasis on outcomes within Transforming Lives means that the Bill will underpin the changes that we have started to explore in our current assessment processes.

- 3.3.2 Carers will have a right to assessment without the need for the person that they are caring for being known to the local Authority and having assessed eligible needs. This is a very welcome change that recognises that carers have needs in their own right and these needs may meet a prescribed threshold for eligibility even if the person being cared for has needs that fall below the threshold for eligibility. These responsibilities include assessments for young carers if they will continue in a caring role when they reach 18 years, and carers of children with disabilities. This will, however, lead to more demand for assessments and support and this needs to be modelled although it is challenging to speculate how many of the 60,000 carers who identified themselves in the Census 2011 will come forward for assessments over what timescale.
- 3.3.3 Work within the Carers Project is building the requirements of the Bill into the new model of support for carers and paying attention to the need to provide advice and information to carers who do not meet the threshold and take a preventative approach to delay or reduce the need for carers to receive social care support.
- 3.4 **Revised national eligibility criteria** setting out the minimum level of eligibility at which Local Authorities must meet the care and support needs of an individual or a carer.
 - 3.4.1 The minimum level of eligibility will be set at substantial. Currently the Council's threshold is set at substantial, so we will continue to meet the needs of people with substantial and/or critical needs. However, an early draft of the eligibility criteria included needs that would currently fall within the moderate level of need. There is significant concern within the sector that rather than setting a national level that reflects the current position for the vast majority of Local Authorities (only 3 have a threshold set at critical only) the new criteria could broaden the eligibility and increase demand. Representations have been made through the Association of Directors of Adult Social Care and the Local Government Association. While we wait for clarity on this in the regulations, we are looking at ways to model the potential impact but this is challenging when we do not have information about people who have moderate needs only.
- 3.5 **Set out in law that everyone, including carers, should have a personal budget** as part of their care and support plan, and give people the right to ask for this to be made as a direct payment.
 - 3.5.1 The Council's model of self directed support includes the identification of a personal budget for service users and about a quarter of people take the personal budget as a Direct Payment (a cash payment) that gives them greater choice and control over how their needs are met.
 - 3.5.2 Work is required to develop the process for identifying personal budgets for carers and through the Carers Project we will also need to determine how much funding is invested in information, advice and preventative responses and how much for personal budgets.

- 3.6 **A new cap on care costs**, setting the maximum amount that people will have to pay for care within their lifetime.
- 3.6.1 The Bill introduces a limit on the amount that adults can be required to pay towards the costs of meeting their eligible **care costs** and prevents Local Authorities from making a charge (other than **daily living costs** i.e. the costs associated with living in a residential/nursing home that contribute to the building, utilities, food but not the staff that deliver the care) once an adult's **care costs** reach that limit.
- 3.6.2 The cap on care for people aged over 65 years is currently £75,000. For people who have a disability prior to reaching 18 years, there will be no contribution (i.e. cap on care is zero) and for people who become disabled between 18 and 64 years the cap is yet to be determined.
- 3.6.3 This significant change means that people who are currently funding their own care who have not had contact with the Council (self funders) will need to be assessed and if they meet the eligibility criteria the Council will set up a Care Account for them. The Care Account will track the amount that the Council would have spent to meet the person's assessed needs - this will be called the Independent Budget.
- 3.6.4 We are expecting the regulations to stipulate the annual amount for **daily living costs** that will apply both before and after a person's contribution reaches the cap on **care costs**. This means that once the **care costs** have met the cap, if people still have sufficient wealth they will continue to pay for the **daily living costs** even though the Local Authority will pay for the **care costs**.
- 3.6.5 We have started to model the extra demand for assessments but until the draft regulations are released it is not clear if it will be possible to undertake a shorter assessment process or an on-line process for the self funders. The work so far has determined that there are about 1,500 self funders in residential and nursing homes across Cambridgeshire. In comparison, we currently support about 1,300 people in residential and nursing homes. The number of self funders using home care agencies is expected to be considerably smaller.
- 3.7 **Deferred payments** to ensure that nobody has to sell their home to pay for care within their lifetime
- 3.7.1 The Government has given a commitment that no one will need to sell their home to pay for care home fees, within their lifetime. The mechanism to enable this is the use of deferred payments or loans that allow the Local Authority to make a charge on the person's property rather than require them to sell it to pay for care and support. The money owed will be paid from the proceeds of the person's estate. Local Authorities will be able to charge administration fees and interest, which will be set out in the regulations. . Everyone in a care home who meets eligibility criteria will be able to request a deferred payment whether they are a self funder or the Local Authority pays for their care.
- 3.7.2 There is provision under existing legislation for deferred payments and the Council typically has about 40 deferred payments at any one time. It is hard to predict how many people would choose a deferred payment but we will

be modelling a number of scenarios to gain an understanding of the additional resources required to administer a larger number and the potential impact on cash flow for the Council.

3.8 New duties to ensure that no-one's care and support is interrupted when they move home from one local authority area to another

3.8.1 When people move from one Local Authority to another there may be a loss of continuity of care, in part because there is no legislative provision to drive practice. The Bill requires that when a person in receipt of social care services moves from local Authority A to Local Authority B, if B has not carried out an assessment then they must continue to provide the care that A had been providing, until such time as B has undertaken the assessment.

3.8.2 This does reflect best practice but it is very helpful to provide this level of clarity for all Local Authorities and will have a positive impact for the person moving and for the Local Authorities who will have clarity on how they should respond under these circumstances.

3.9 A new statutory framework for adult safeguarding, setting out the responsibilities of local authorities and their partners, and creating Safeguarding Adults Boards in every area.

3.9.1 For some years Local Authorities have been lobbying the Department of Health to put safeguarding adults on a statutory footing giving it the same status as safeguarding children. The Bill sets out the Local Authority's responsibilities for safeguarding adults as:

- Making enquiries and take action if required in situations where an adult who has needs for care and support is experiencing, or is at risk of, abuse or neglect and cannot protect themselves because of their needs
- Establishing a Safeguarding Adults Board (SAB) with the objective to help and protect adults in its area in situations described above.
- The SAB must arrange for a review where there is reasonable concern about how the SAB, its members or other persons with relevant functions worked together to safeguard an adult and either
 - The adult has died and the SAB knows or suspects that the death resulted from abuse or neglect
 - The adult is still alive and the SAB knows or suspects that the adult experienced serious abuse or neglect.
- Requesting information to enable or assist the SAB in exercising its functions – these requests have to be complied with.

3.9.2 These statutory powers are welcomed and will strengthen the role of the SAB locally. A review and revision of the current safeguarding procedures and the structure of the SAB and its subgroups will be undertaken to ensure that arrangements are fit for purpose to meet the requirements of the Bill. The review will include the proposed introduction of an Independent Chair to provide greater challenge and accountability for members of the SAB. It is currently chaired by the Executive Director, Children, Families and Adults.

4.0 PROGRAMME ARRANGEMENTS

- 4.1 The Care Bill introduces significant change for adult social care and although much of it is welcome, the deadline for implementation of April 2015 for most of the Act is fast approaching and there is still much uncertainty about the fine detail until the draft regulations are released. Work is underway to deliver the requirements of the Care Bill through an overarching programme board led by Claire Bruin, Service Director, Adult Social Care with activity focused on the following areas:

- Support for Carers
- Transforming Lives – a new model for social work/social care – including prevention
- Information and advice
- Identifying self-funders, assessments, eligibility criteria and workforce capacity
- Managing the market
- Statutory status of the Safeguarding Adults Board
- Financial systems for deferred payments and care accounts – implementation date April 2016

- 4.2 The Eastern Region Branch of the Association of Adult Social Services has a small budget to facilitate collaborative working on elements of the Bill. A number of work streams are being established with representation from each Local Authority across the Region. These groups will be tasked with delivering frameworks or models that can be tailored to each Local Authorities particular circumstances and will be an efficient way of taking the work forward learning from each other.

5.0 ALIGNMENT WITH CORPORATE PRIORITIES

5.1 Developing the local economy for the benefit of all

- 5.1.1 The Care Bill requires the Council to shape and manage the market and our local programmes including Transforming Lives and Support for Carers will have the potential to further develop the social care market locally and through that develop the local economy.

5.2 Helping people live healthy and independent lives

- 5.2.1 The Care Bill reinforces this Council priority and the work that we are undertaking to deliver the Bill including Transforming Lives and Support for Carers focus on people living healthy and independent lives.

5.3 Supporting and protecting vulnerable people

- 5.3.1 The Care Bill and the work to implement the requirements of the Bill will support and protect vulnerable people by ensuring that people, including people who are caring for a relative or friend, are assessed and where they have eligible needs, the Council will identify a personal budget or individual budget to meet their needs, and provide support to arrange to meet those needs if required.

6.0 SIGNIFICANT IMPLICATIONS

6.1 Resource Implications

- 6.1.1 The report has highlighted the aspects of the Care Bill that are expected to have resource implications. Work to understand the level of resources required is still at an early stage locally and nationally, but the Department of Health has announced 2 allocations of funding to support the implementation of the Bill, set out below.
- 6.1.2 The Better Care Fund (BCF) includes an allocation of £130m revenue and £50m capital nationally (approximately £1.3m revenue and £0.5m capital locally) and £335m nationally (approximately £3.2m locally) has been identified in Local Authority allocations for "new burdens". The work of the Care Bill programme board will determine exactly how to deploy this funding to deliver on the requirements of the Bill. The close alignment of our intentions within the BCF and the Care Bill means that other expenditure from the BCF will also contribute to delivering the requirements of the Care Bill, in particular preventative activities and assessment and crisis intervention. **N.B.** The Better Care Fund is the transfer of £38m locally from the NHS into a pooled budget with the Council, but it should be noted that this is not new money it is already within the CCG allocation.
- 6.1.3 However, current opinion of the Local Government Association and the Association of Directors of Adult Social Services is that the allocations are not sufficient to address the requirements of the Bill. The Care and Support Reform Programme led by the Department of Health includes a work stream, Paying for the Reforms that is reviewing the costs of implementing the requirements of the Bill and the affordability risk to Local Authorities to inform resource allocation methodologies and decisions in the next Spending Review. This group has looked at some early work by a few Local Authorities, which indicates that the cost pressures could be up to 23% higher than the Department of Health has estimated.
- 6.1.4 The Council will contribute to this work as we model the financial implications, working with other Local Authorities across the Region.

6.2 Statutory, Risk and Legal Implications

- 6.2.1 The Care Bill introduces new legislation and statutory responsibilities that all relevant staff will need to understand and operate within. Briefings and training and the development of a number of 'Care Bill experts' will be necessary so that The Council is not exposed to challenge through none compliance with the Bill. This will be addressed through the Care Bill Programme.

6.3 Equality and Diversity Implications

- 6.3.1 The current and future requirements on the Council in respect of delivering adult social care require us to take account of each person's individual needs including issues relating to equality and diversity. The Council will continue to actively promote best practice in this respect through staff training, supervision and the programme set up to deliver the requirements of the Care Bill.

6.4 Engagement and Consultation Implications

- 6.4.1 The Care Bill Programme Board will be developing a communication and engagement strategy to ensure that service users, carers and the wider community are involved in the work to respond to the requirements of the Bill. Projects that are already underway, for example Transforming Lives, are developing communication and engagement strategies and these will be overseen by the Communications and Information work stream within the Care Bill Programme.

6.5 Public Health Implications

- 6.5.1 The new responsibility for wellbeing and prevention resonates with the public health agenda and adult social care will work collaboratively with public health colleagues to ensure that these new responsibilities for adult social care are fulfilled in the most efficient and effective way possible.

Source Documents	Location
Care Bill [HL] 123 21013-14, as brought from the House of Lords	http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0123/14123.pdf