



Health Scrutiny Committee  
14 March 2013

## Revised Health Scrutiny Regulations

**Purpose of the report:** Policy Development and Review

This report updates the Committee on the amended Department of Health Regulations governing Health Scrutiny Committees, which have been published recently.

### Introduction:

1. Health Overview & Scrutiny Committees (HOSCs) were set up by the Health and Social Care Act 2001. They give local authorities the power to scrutinise the NHS through overview and scrutiny committees. They can review any matter relating to the planning, provision and operation of health services in their area, and make reports and recommendations to NHS bodies and local authorities.
2. HOSCs are governed by separate Regulations laid down by Parliament. The original Regulations were published in 2003, along with explanatory Guidance from the Department of Health.
3. The Health & Social Care Act 2012 changed the way in which health scrutiny functions are discharged as well as creating new commissioning bodies and provisions for health scrutiny. Therefore, the Regulations needed to be amended.
4. The Department of Health consulted on new Regulations in the summer of 2012. The final Regulations were subsequently published in February 2013 and are due to come into effect on 1 April 2013.

### Changes

#### Health Scrutiny Function

5. The most important change is that the health scrutiny function is now conferred directly onto the local authority. This was previously conferred

directly onto the committee itself. This means that each local authority can decide how it discharges its health scrutiny functions.

6. A local authority can now decide to retain its statutory health scrutiny committee or to discharge its functions through
  - a) An overview and scrutiny committee of the council
  - b) A joint overview and scrutiny committee appointed by the Council and one or more other local authorities
  - c) Another committee or sub-committee of the Council
  - d) An overview and scrutiny committee of another local authority

The local authority cannot discharge its health scrutiny function through the Health and Wellbeing Board.

### **Witness attendance and information**

7. HOSCs have always had the power to require information and attendance from commissioners and providers in respect of matters relating to the health service in the area.
8. The Health and Social Care Act 2012 has established several new bodies and added powers for a HOSC to call independent providers as well. The following bodies will be subject to scrutiny:
  - a) NHS Commissioning Board (NCB)
  - b) Clinical Commissioning Groups (CCGs)
  - c) NHS trusts or NHS foundation trusts providing services to people residing in the area of the authority
  - d) Other relevant health service providers, providing NHS services in the area (e.g. this may include voluntary, independent and private sector providers)
  - e) Health and Wellbeing Board – it is expected that HOSCs will hold HWBs to account for the decisions they take and make reports to the Cabinet, similar to how our current Select Committees operate
  - f) Public Health – commissioners who are now employees of the local authority; and providers.

### **Powers of referral**

9. Proposals for substantial variation of the health service in the local authority's area can be referred to the Secretary of State for several reasons, such as if the Committee felt consultation was not adequate or if it believes the proposals are not in the best interest of the residents in that area.
10. As the health scrutiny function was conferred directly onto the committee previously, the power of referral was also conferred onto the committee. Now that the health scrutiny function is conferred onto the local authority, so is the power of referral. Where a local authority retains a health

scrutiny committee, it can delegate the power of referral to this committee but it cannot delegate it to any other committee or sub-committee.

11. The DH position is that, regardless of what arrangements local authorities establish for referral to the Secretary of State, the full Council should be aware of how the powers are being exercised, as it is ultimately accountable for them. It proposed that a health scrutiny committee might wish to notify its full Council that it is likely to refer a matter to the Secretary of State to give the Council the opportunity to debate the matter, if it so wishes.

### **Joint Health Overview & Scrutiny Committees**

12. When proposals for major changes to health services cross local authority boundaries (e.g. Surrey and West Sussex or Surrey and south west London), under previous Regulations it was merely recommended that a Joint HOSC be set up. Under the new Regulations, in these circumstances the local authorities involved will be required to set up a JHOSC to scrutinise and respond to the proposals.

### **Additional changes**

13. The NHS body consulting the HOSC (or JHOSC) will now be required to work with the HOSC to publish clear timescales for decision-making. The NHS body will notify the HOSC of when it intends to make its final decision and the HOSC will have to respond by this deadline. The Regulations do give flexibility to amend these timescales should there be a need to do so.
14. Financial considerations will now be need to be taken into account in any referral to the Secretary of State on a contested proposal for service change
15. The NHS Commissioning Board will have a supportive role with a focus on facilitating engagement and local agreement on contested proposals.
16. It is expected that any NHS service change proposal will support the local Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy. If the Health and Wellbeing Board supports a service change proposal and the local authority decides to refer it to the Secretary of State for Health, it will have to set out clearly why it is referring something that the Health and Wellbeing Board supports.
17. It is suggested that the Health and Wellbeing Board could play a role in helping to resolve any local disagreements for service reconfiguration.
18. Healthwatch, the new health champion for local people and patients, will be able to formally refer a matter to a HOSC and it must respond within 20 working days. It must also keep Healthwatch informed of any further actions it plans to take.

## **Implications for the Health Scrutiny Committee**

19. As of the date of publishing these papers, a draft report to full Council on 19 March 2013 is recommending that the Health Scrutiny Committee be retained, with the power of referral delegated to it. If this is agreed, there will be no major change to how the Committee works.
20. The Terms of Reference for the Committee are also being amended, to reflect the changes outlined above. These are also going to the 19 March 2013 full Council meeting for approval.
21. The Health and Wellbeing Board presents an excellent opportunity for partners to work together to commission a more integrated and joined-up health and social care service in Surrey. The Committee will want to stay abreast of decisions made by the HWB. It is likely that the HWB will be publishing a plan of its key decisions that can be monitored. This will also offer the Committee an opportunity to perform pre-decision scrutiny on any major decisions.
22. Working with Healthwatch will be an important relationship for the Committee to foster. Healthwatch will be able to provide patient experience information and feedback to the Committee and may be able to identify areas of concern that the Committee needs to investigate. It will be vital that Healthwatch is encouraged to share information with the Committee, and vice versa, and any formal referrals are responded to and actioned by the Committee in a timely manner.
23. The new ability to require information and attendance from independent providers will also be important, given the new Any Qualified Provider regime and the Government's push for competition in the NHS. There may be more independent providers in future and it will be vital that the Committee is able to scrutinise their performance and plans in the same manner as NHS providers.

## **Conclusions:**

24. The changes to the Regulations Governing Health Scrutiny are important to note but they do not dramatically change the way in which the Committee operates at present. There is the potential for a future Council to reconsider the way in which it discharges its health scrutiny function but, for the time being, the Health Scrutiny Committee will remain.
25. The Committee will need to start building relationships with all of the new bodies that come into being on 1 April 2013: CCGs, HWB, Healthwatch, etc. The first year will very much represent a 'learning curve' for local authorities and the NHS in getting to grips with the new structures and ways of working. The Committee will need to be able to adapt to how it fits into the new health landscape and be ready to take on new challenges that this poses.

## **Financial and value for money implications**

26. There are no financial or value for money implications arising from this report.

## **Equalities Implications**

27. There are no equalities implications arising directly from this report; however, the Health Scrutiny Committee's remit is to ensure equity of health services across the County.
28. The Committee will continue to seek assurances from relevant NHS bodies and the local authority that the services provided do not unintentionally disadvantage any particular equalities group. It will also continue to work with partners to identify where health outcomes for a particular group need to be improved, services are put in place to do so.

## **Risk Management Implications**

29. There are no risk management implications arising from this report.

## **Implications for the Council's Priorities**

30. The Committee's continued scrutiny of health services in the County contribute to the Council's vision in three ways:
- a) Residents – the Committee offers residents the opportunity to hold commissioners and providers of NHS services to account for the decisions they make;
  - b) Partnerships – the Committee works with partners to identify where there are gaps in service provision and where there is inequity in access to services; and
  - c) People – the Committee is kept informed of changes to the Regulations and Members understand the role of the Committee in the overall health landscape.

### **Recommendations:**

31. The Committee note the changes to the Regulations Governing Health Scrutiny and their implications for the Committee's work going forward.

### **Next steps:**

The report to full Council on the changes needed to the Terms of Reference in the Constitution is on 19 March 2013.

The various bodies set up by the Health and Social Care Act 2012 will become statutory bodies on 1 April 2013.

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**Sources/background papers:** The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, Statutory Instrument 2013 No. 218