Guidance on undertaking scrutiny of substantial developments or variations to health services until the abolition of Community Health Councils

Purpose

This guidance clarifies the roles and responsibilities of Community Health Councils (CHCs) and local authority overview and scrutiny committees (OSCs) until 1 December 2003. It aims to provide guidance for CHCs, OSCs, NHS bodies and other stakeholders involved in substantial developments or variations to health services. In particular, it explains how the power of referral to the Secretary of State for Health, which applies to both CHCs and OSCs during this period, might be effectively applied.

Background

Strategic health authorities are currently required to consult CHCs on any proposal to substantially develop or vary health services. This guidance note deals with this issue as it relates to CHCs now that there are new requirements to consult with OSCs.

The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 provide that it shall be the duty of every local NHS body to consult the appropriate overview and scrutiny committee (s) on any proposals it may have under consideration for any substantial development of the health service in the area of the local authority, or on any proposal to make any substantial variation in the provision of such service (s). Government guidance on consultation recommends a 3 month consultation period (unless there are exceptional circumstances). The Regulations allow an NHS body not to consult where a decision has to be taken urgently because of the risk to safety or welfare of patients or staff. Where the committee is not satisfied:

a) that reasons for not consulting were adequate; or
b) that consultation on any proposal has been adequate in relation to content or time allowed; or
c) that the proposal is in the interests of local health services

it may report to the Secretary of State in writing, who may require the local NHS body concerned to carry out such consultation or further consultation ((a) & (b)) or take such action (c) as he considers appropriate.

The new duty on NHS bodies and the power given to the local authorities' OSCs, is similar to the duty placed upon strategic health authorities and the power given to CHCs by the Community Health Councils Regulations 1996 regulation 18 (as amended). This requires a strategic health authority to consult a CHC on any proposals which it or any PCT in its area may have under consideration for any substantial development of the health service in the CHC's district and on any proposals to make any substantial variation in the provision of such service. In any case where a CHC is not satisfied that sufficient time has been allowed, or that consultation has been adequate, the CHC shall notify the Secretary of State in writing who may require the strategic health authority

to carry out such further consultation with the Council as he considers appropriate.

Both OSCs and CHCs therefore have parallel rights to be consulted and powers to make recommendations to the Secretary of State whilst CHCs are in existence.

Clarifying roles

It is important to recognise that whilst OSCs and CHCs have similar powers in relation to substantial developments and variations in service, they may have different perspectives on the issues. CHCs represent the interests in the health service of the public in their districts, whereas elected councillors, who make up OSCs, are elected as community representatives.

NHS bodies will need to recognise that both OSCs and CHCs must be consulted on proposals for substantial variations or developments in services whilst CHCs exist. The same information should be provided and the same timescales for the consultation processes followed. Both consultees have equal status and should be treated as such.

To avoid duplication during the consultation period, it is recommended that OSCs and CHCs work together to ensure the most effective use of all stakeholders' resources. Many CHCs are already working closely with OSCs to share learning from their experience in this area of work, with CHC members participating in the committees and assisting in the development of scrutiny plans. This joint working will be particularly important during consultations.

Developing local protocols

It is recommended that simple protocols for interaction might be developed between OSCs and CHCs at a local level. These might include the following issues:

a) sharing correspondence and reports – how, when and in what format;
b) co-options onto OSCs and attendance at CHC meetings;
c) liaison with communities and other organisations (to avoid duplication where possible);
d) sharing conclusions and recommendations, especially where consideration is being given to referral to the Secretary of State.

Referral to the Secretary of State

The power of referral is held by both OSCs and CHCs.

It is therefore possible that one organisation may consider referral is not necessary whilst the other might consider that it is. Whilst both have the individual right of referral, the following issues should be considered in this context:

- whether the reasons for referral have been shared?
- if so, how has the non- referring body reached its decision not to refer?
- could consensus be reached between both authorities and if not, why not?

These are issues which the Secretary of State is likely to consider on receiving a referral from one body and not from both.

CHC Abolition

It is intended that CHCs will be abolished on 1 December 2003.

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