Appendix 2

Care Bill Summary

Background

The Care Bill introduces far-reaching changes to how social care will operate. From April 2015, there will be new charging rules, new regulations about adult social care assessment, and a requirement to offer a deferred payment agreement so that people going into residential care do not have to sell their house in their life-time. From April 2016, local authorities will assess the care and support needs of people who fund their own care. For people who meet eligibility criteria the local authority will calculate valid expenditure against the cap of £72,000; once the cap is reached the state takes over payment. The amount of assets which individuals can retain while still being eligible for state support will also increase - £118,000 for people in residential care and £27,000 for those receiving home care. Local authorities will also have to provide access to independent financial advice.

The Government has allocated £335 million in 2015-16 to help local authorities prepare for the changes, including funding to allow them to begin assessing needs six months before the cap is formally introduced if they choose to do so. The Department of Health (DH), the LGA and the Association of Directors of Adult Social Services (ADASS) have agreed to work on a joint programme to support delivery.

The public consultation, which closed in October 2013, focused on how practical details of the changes to social care should be managed. The Government is still analysing the feedback from the consultation and is yet to publish its response.

This briefing is focused on the most significant aspects of the reforms for social care, which are eligibility and funding (Part 1 of the Bill) rather than Part 2 of the Bill which sets out changes to the inspection, regulation and monitoring of standards. This briefing has been informed by the consultation document, which can still be accessed by following the link: https://www.gov.uk/government/consultations/caring-for-our-future-implementing-funding-reform and, also, by analysis and commentary published by a number of national organisations, including the Local Government Information Unit; Nuffield Trust; Kings Fund; and NHS Confederation.

Part 1: Care & Support

Awareness raising and financial advice

The consultation report indicated that around 40 percent of people are unaware that they may need to pay for care and may only discover this in a crisis. People will need advice on financial planning for the future and on decision-making when care is needed. The Care Bill gives local authorities a duty to arrange for the provision of independent advice on financial planning for the future and on decision-making when care is needed, but others such as the NHS and financial service providers may have a role too. The DH indicates that it expects the financial services sector to respond to the need for products in time for 2016; it asks what financial solutions will be important.

Assessment for care and support

The role of assessment will shift from primarily being the 'gateway to care and support' to more emphasis on helping people to explore their options and to avoid or reduce the need for care where possible. The consultation document indicates that around 500,000 more people with eligible care needs could contact local authorities in 2016. Once assessed, people will need regular reviews to identify any changes to their care needs and to expenditure that counts towards the care cap. The consultation document anticipates that local authorities will also be contacted by more people who do not have eligible care needs (*presumably people with lower level needs who are unsure about eligibility criteria)* - there are no estimates for these numbers.

The consultation document indicates that this contact provides an opportunity for councils to raise awareness about maintaining independence and financial planning. More carers' assessments will also take place due to the relaxation of the criteria that a carer must provide 'substantial and regular care'. In the legal reform impact assessment to the Care Bill this is estimated at 230,000 to 250,000 additional carers' assessments over four years.

The consultation indicates that this will be a demanding time and to help manage change effectively local authorities should:

- adopt advice from the Audit Commission report: *'Reducing the cost of assessments and reviews'* (2012)
- consider staggering a rush on 1 April 2016 by commencing assessment from November 2015 (accruing expenditure towards the care cap would only start from April)
- ensure that effective information, advice and self-assessment tools to manage the demands of people who have lower levels of needs are in place
- ensure that people already receiving state funded care or support have a personal budget calculated in advance of April 2016 so that local authorities have the information they need to make a care account.

It also says that assessment for many self-funders could be a 'lighter touch process' with reduced local authority contact, e.g. self-assessment, on-line or delivered by a third party. Details will be covered in forthcoming regulations. It also indicates that local authorities will not necessarily need to develop a care and support plan for people funding their own care; it asks for views on this and intends to develop statutory guidance.

On the issue of undertaking assessments before the cap formally starts, Annex A to the consultation also indicates 'issues we will need to consider include deciding whether assessments will remain valid, and reviews and/or re-assessments may be needed shortly after the date of implementation as a result'. *This would seem to negate some of the benefits of bringing assessments forward.*

The consultation seeks evidence on what flexibility should be given to local authorities in how they provide assessments, while meeting demands on resources but maintaining personalisation, early intervention and safeguarding.

Local areas are expected to consider integrating personal social care and personal health budgets (the latter will not count towards the cap). The consultation seeks evidence on potential barriers to integrated planning and how these can be reduced or overcome.

New groups of people requiring support (with different 'expectations and characteristics') and different approaches to assessment will require new assessment tools and workforce development.

Financial assessment, payment and charging

DH analysis suggests that by 2025/26 100,000 extra people will be receiving state funding. Good financial assessment (which individuals can decline) will be central, and the need for an accurate valuation of property is likely to be more important than in the current system. The consultation seeks evidence on how financial assessment can be both proportionate and accurate.

The consultation indicates that the current charging framework is unfair, poorly understood and differs according to setting - residential care charging is based on regulations, which ensures a standardised approach, and services to people in their own home on statutory guidance so there is more local flexibility. The Government intends to introduce regulations to establish a single overarching charging system (local authorities can still choose not to charge). The consultation seeks evidence for what can be included in a common approach and what needs to be treated differently.

Another prospective change could come if direct payments can be used for residential care. The Government had indicated the intention to amend legislation to allow trailblazer areas to test this out from Autumn 2013, though it is possible that the timescale for this has slipped.

Changes to systems

The consultation indicates that care and support information and financial systems will need to change and local authorities will need to consider new options including greater use of on-line transactions. Integration with health also needs to be pursed and the DH will work with ADASS and others to support the use of the NHS number as unique identifier.

The consultation sought evidence and views on a range of technical issues including:

- rules relating to different care caps for adults at various ages under 65, to reflect different ability to build up assets - or whether this could be managed more effectively through the charging framework
- contributions to daily living costs
- the administrative fee that local authorities can charge people who self-fund who want them to arrange their care and support
- interest on deferred payments for care home placements - allowed, but local authorities cannot make a profit
- systems for measuring what counts to the care cap & management of care accounts
- implications of any relaxation to allow people receiving local authority funding to financially top-up their own care
- resource allocation systems - there is unlikely to be a single national RAS, but national principles will be defined in guidance.
- complaints - one possible model is that used in appeals about school placement decisions

- any differences in approach between independent personal budgets for people who pay for their care and support, and personal budgets for people receiving state funding.

Impact on the care and support market

The consultation explores the impact of the reforms on care and support providers. Individuals will understand the fees local authorities are paying providers because this is the rate at which progress towards their care cap will be calculated. They will have on-going contact with local authorities through the system of reviews and may be more inclined to ask for their help to arrange services as will be their right under the Care Bill. The consultation indicates that all this will bring pressures and opportunities for providers, individuals and commissioners. It is not clear where the pressures and opportunities will fall, and the consultation called for evidence on how the market may change as a result of the reforms with a view to developing a programme of support.

Distribution of funding

The Government is considering new adult care and support formulae to implement the reforms and has commissioned independent experts from Local Government Futures, the Personal Social Services Research Unit at LSE (London School of Economics) and the University of Kent to identify new formulae; an advisory group from the LGA (Local Government Association) and ADASS (Association of Directors of Adult Social Services) is also involved. The timetable is to have proposals by spring 2014 and a consultation in summer 2014. No decisions have been made on the use of new formulae for the £335 million grant.

Local Government Information Unit (LGiU) Comment

The consultation brings home the fact that the impact of the funding reforms on adult social care will be huge. The direct impact will be on care assessment and financial systems, but there will be knock-on effects on market management, information, integration and a range of other areas.

Even local authorities that are already advanced in a personalised approach to assessment and care planning and with well-developed financial and information systems are going to find these reforms challenging. Those that are less developed are going to struggle considerably.

The DH is seeking to develop better estimates of the additional numbers likely to contact local authorities; this is essential - the numbers identified in the funding reform impact assessment (180,000 - 230,000 assessments and 440,000 to 530,000 reviews) and the consultation document (500,000 new people with eligible needs) do not seem to tally.

One of the fundamental tensions in current policy is the drive to integrate health and care - organisations that are completely different in their approach to charging. Funding and systems are increasingly being brought together, but for this to make proper sense perhaps one of two things needs to happen:

- the NHS introduces charges for some long term support or
- taxpayers shoulder the burden of free personal care.

Part 2: Care Standards, provider failure, and Duty of Candour

Single provider failure regime

The Care Bill introduces a new, unified system for dealing with hospital trusts which are failing to maintain standards of quality, governance or finance. This would replace the current system where Monitor, which regulates the finances and governance of Foundation Trusts, the NHS Trust Development Authority (NTDA) which regulates the finances and governance of NHS Trusts, and the CQC which regulates quality each have difference and separate processes to address failure. The changes laid out in the Bill aim to create an integrated system for dealing with failures of quality in hospital trusts. The intention is for there to be a "single version of the truth" when it comes to identifying failures in quality – that the CQC will put together information on quality arising from ratings and its inspection activities with financial and governance information from Monitor and the NHS Trust Development Authority in an overall rating.

The mechanism for failure laid out in the Bill has three stages, with a fixed period of time for improvement. If at the end of the period CQC concludes that improvement has not been satisfactory it may require Monitor to appoint a Special Administrator, or request that the Secretary of State do so.

Linked to the new failure regime, the Bill contains important changes to the role of Trust Special Administrators (TSAs). It provides statutory backing for TSAs to formally recommend action at trusts other than those for which they have been appointed, as long as the activities of a neighbouring trust would be "necessary for and consequential on" the process of dealing with a failing trust. Effectively, this would reverse the implications of the recent High Court ruling regarding Lewisham Hospital. The court judged here that the Secretary of State did not have powers to implement service reductions at Lewisham on the recommendation of a TSA at the neighbouring south London Healthcare NHS Trust.

Duty of Candour

The Bill provides for the introduction of a Duty of Candour on all health and social care providers through the conditions they must meet from the CQC. Recommended by the Public Inquiry into Stafford Hospital chaired by Robert Francis QC, this provision will mean that when certain incidents occur which have an impact on the safety of patients or service users, those patients or service users must be informed by the organisation responsible.

Assessment and Rating

The Care Bill amends the existing requirements on the Care Quality Commissioning in relation to its role in reviewing and assessment the performance of health and social care providers, paving the way for the new Ofsted-style ratings of hospitals, care homes and domiciliary care services announced in the government's response to the Francis report. These provisions broadly follow the recommendations made following the review of performance ratings commissioned by the Secretary of State from the Nuffield Trust.

The Government's intention is to use the three "Darzi domains" as a framework for selecting the quality indicators used in rating. These are effectiveness of treatment, patient or care user experience, and patient or care user safety. As well as quality measurements. CQC will have the power to take account of indicators relating to the quality of governance and trust finances.