Duty to involve patients strengthened

Briefing on section 242 of NHS Act 2006

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In brief

The recently passed Local Government and Public Involvement in Health Act makes a number of changes to way the NHS is expected to involve and consult communities in the planning and development of services. This document provides an update on one of these changes – section 242.

What is section 242?

The National Health Service Act 2006 consolidates much of the current legislation concerning the health service. It came into force on 1 March 2006. Section 11 of the Health and Social Care Act 2001 is now section 242 of the consolidated NHS Act 2006. Section 242 applies in England to:

- strategic health authorities;
- primary care trusts;
- NHS trusts, and
- NHS foundation trusts.

These NHS organisations are required to make arrangements to involve and consult patients and the public in:

- planning of the provision of services;
- the development and consideration of proposals for changes in the way those services are provided, and
- decisions to be made by the NHS organisation affecting the operation of services.

Why the Local Government and Public Involvement in Health Act is important?

The Local Government and Public Involvement in Health Act makes provision to enhance and clarify section 242 of the NHS Act 2006 and places a new duty on SHAs and PCTs to report on consultation. The Act received Royal Assent on 30th October 2007 and the changes to section 242 and the new duty will come into force on 1st April 2008.

Why did section 242 need to be enhanced?

Section 242 has been the subject of some criticism. In para.10.2 of the Expert Panel Report, the Panel acknowledged that, "*There is a near universal call in the evidence we have examined, for Section 11 of the Health and Social care Act 2001 to be enhanced…*"

In para. 10.3 the Expert Panel went on to state that section 11 should be, *"..strengthened and its scope extended. The new section should require every body that is responsible for delivering health and social care services (commissioners and*

providers) to involve, consult and respond to users and the public in,

- *the assessment of needs and preferences of their user population;*
- *setting local priorities and deciding what services are commissioned;*
- *the decision making process of commissioners.. ;*
- *the reconfiguration of services and significant structural change; and*
- *the ongoing quality improvement process as a result of feedback.*"

What is different?

Section 242 now states,
"Each relevant English body must make arrangements, as respects health services for which it is responsible, which secure that users of those services are, whether directly or through representatives, involved (whether by being consulted or provided with information, or in other ways) in –

a) *the planning of the provision of those services*
b) *the development and consideration of proposals for changes in the way those services are provided, and*
c) *decisions to be made by that body affecting the operation of those services.* "

The duty applies if implementation of the proposal, or a decision (if made), would have impact on -

a) the manner in which the services are delivered to users of those services, or
b) the range of health services available to those users.

A person is a "user" of any health services if the person is someone to whom those services are being or may be provided.

Relevant NHS organisations in England "must have regard to any guidance given by the Secretary of State as to the discharge of the organisation's duty "
Section 242A applies to SHAs which must make arrangements to secure that health service users are involved (whether by being consulted or provided with information, or in other ways) in prescribed matters – this relates to the development of strategic frameworks (entire configurations – models of care)

Section 242B allows a SHA to direct a PCT or PCTs – for it to take a co-ordinating role, takeover or lead an involvement process (relieve the PCT of its 242 duty) This is expected to rarely occur.

Section 234 (of the Local Government & Public Involvement in Health Act 2007)
Each SHA and PCT must (at times directed by the Secretary of State) prepare a report -

a) on the consultation carried out, or proposed to be carried out, before it makes commissioning decisions, and
b) on the influence that the results of the consultation have on its commissioning decisions.

What does this mean for the NHS?

Commissioning in the NHS is increasingly locally driven, which means PCTs need to have robust commissioning processes that are informed and influenced by the views and opinions of local people. **World Class Commissioning** (WCC) sets out the common attributes that will characterise PCTs.

Commissioners act on behalf of the public and patients. They are responsible for investing funds on behalf of their communities, and building local trust and legitimacy through the process of engagement with their local population. In order to make commissioning decisions that reflect the needs, priorities and aspirations of the local population, World Class Commissioners will engage with the public, and actively seek the views of patients, carers and the wider community. This new relationship with the public is long term, inclusive and

enduring and has been forged through a sustained effort and commitment on the part of commissioners. Decisions are made with a strong mandate from the local population and other partners.

One of the WCC competencies PCTs will be expected to achieve is:

Proactively seeks and builds continuous and meaningful engagement with the public and patients, to shape services and improve health

To get this right PCTs will need to:

- forge and strengthen relationships between commissioning and PPI teams and local people;
- establish new ways of working; and
- support and develop commissioners so they are more proactive and focus on the needs and preferences of local communities as expressed by people in those communities.

Why does it matter?

This is a legal requirement – a 'must' do, and there are many good reasons for doing it well -

- putting people at the centre of commissioning is integral to the PCTs' development agenda, and how well they succeed as world class commissioning organisations;
- working in partnership with individuals, communities and other organisations moves commissioning to the heart of the community;
- sustained, mature engagement with communities around their needs and preferences will help to deliver improved outcomes around health and well-being;
- engaging with vulnerable groups and communities that are seldom heard, and responding to their needs, will help to tackle inequalities;
- working this way will help local people to have more trust in their local NHS and increase satisfaction; and
- compliance with section 242 and the development of the consultation agenda will have an impact on how well an organisation performs.

If this is not done well, or is neglected it can result in:

- lack of understanding of the views and priorities of different local communities;
- poor commissioning decisions that have not been informed or influenced by the views and priorities of different communities;
- services that fail to meet the needs and wants of local people;
- a disillusioned, cynical local population that has little trust in the NHS; and
- weak and strained partnerships with other local organisations.

This is not just about commissioning health services, providers of NHS services must involve people too. It is important that all providers of NHS services make sure that the care they provide fully reflect what people need and how they prefer it to be provided. It is also important that providers make sure that any changes to services are made as result of what people have identified and that the impact of the changes are improvements from the perspective of patients as well as managers and clinicians.

Department of Health guidance
From feedback, the Department of Health (DH) knows that the NHS still finds Strengthening Accountability, the policy and practice guidance for section 11 'fit for purpose'. However, it will produce new statutory guidance in Spring 2008 which NHS organisations in England must have regard to. The new guidance will build on

Strengthening Accountability and be more specific to the changed legislation and new policy, making clear references to expected practice. It will set out:

- the purpose of the legislation - what it is trying to achieve;
- how the different limbs of the legislation can be delivered by each of the different NHS organisations – SHA, PCTs, NHS trusts and FTs, and
- provide examples and useful links.

The guidance will focus on the lead role commissioners will have to involve local people and will clearly set out details of the new SHA and PCT duty to report:

- the periods to be covered and the matters to be dealt with by the reports;
- the form and content of reports, and
- the frequency of the publication of reports.

The guidance will not deal with section 7 of the Health and Social Care Act 2001, functions of overview and scrutiny committees, now section 244 of the NHS Act 2006.

How is the guidance being developed?

The guidance is being developed by the Patient and Public Involvement policy team at the Department of Health, which is:

- modelling good practice and involving a wide range of internal and external stakeholders in the development of the guidance;
- working closely with colleagues in commissioning and reconfiguration teams to make sure the guidance is coherent with, and supports the wider DH agenda.

There will be a staged approach - road shows and workshops will be held in regional and local settings to engage the main audiences in the development and to test out the content of the guidance.

A project reference group will be established which will have a crucial role as it will enable a wide range of stakeholders' input to inform the development of the guidance and assure the appropriateness of the developing content.

Early priority is being given to canvassing the views of the PCTs and stakeholders about what the guidance needs to include and exactly what SHAs, PCT and PbC commissioners need to know in order to comply with the new requirements.

How to help and get involved

We are seeking examples of innovative practice to use in the guidance – we need examples of how PCT/PbCs/NHS trusts and foundation trusts have involved local people or their representatives in –

a) planning services;
b) developing and considering proposals, and
c) decisions that affect the way a service operates.

We are interested in processes but more interested in what changed as a result of the involvement, in particular, the manner in which the delivery of a service changed, or the impact local people had on the range of services available.

If you have, or know of innovative practice in your area, please let us know. Please send no more than 2 sides of A4 – detailing:

- your contact details;
- the name of your organisation and its status e.g. NHS trust, foundation trust;
- who was involved – e.g. commissioners, local communities, local authority staff;
- how they were involved;
- when they were involved, and
- what happened as a result of their

involvement.

We would also like to know if there are particular scenarios where commissioners/PPI leads have been unclear about the involvement process. E.g. what needed to happen, with whom, when and how, that we should include in guidance. Please set out clearly what the situation was and why you found it complex.

Other changes to PPI

The Local Government and Public Involvement in Health Bill also introduced another measure to strengthen the voice of patients - the replacement from April 2008 of Patients' Forums with Local Involvement Networks. Made up of local individuals and organisations, LINKs will make it easier for local communities to say what they want from local care services, to talk with the people who run them and to hold them to account. For further information visit www.dh.gov.uk/patientpublicinvolvement

Contact details

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