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Local Government Association

Get in on the Act: Health and Care Act 2022

The Health and Care Act received Royal Assent on 28 April 2022. This briefing outlines what the Act covers and how it will impact local government.

23 May 2022

Background

In 2019, NHS England and NHS Improvement (NHSEI) was asked to identify any changes, including changes to legislation, that would help it deliver the ambitions in the **NHS Long Term Plan (http://www.longtermplan.nhs.uk/about/)**. NHSEI engaged with stakeholders and made **recommendations (https://www.longtermplan.nhs.uk/nhs-publishes-response-and-recommendations-on-long-term-plan-legislative-proposals/)** to the Secretary of State and to Parliament. A key recommendation was to transform the "system architecture of the NHS to increase coordination of services through the creation of integrated care systems".

In February 2021, the Government published the White Paper **'Integration and Innovation: working together to improve health and social care for all' (https://www.gov.uk/government/publications/working-together-to-improve-health-and-social-care-for-all/integration-and-innovation-working-together-to-improve-health-and-social-care-for-all-html-version)** and announced it would be followed by a

Health and Care Bill. The White Paper had the following key themes: working together to integrate care; reducing bureaucracy; and improving accountability and public confidence.

The Health and Care Bill was published in July 2021. **Explanatory Notes (https://publications.parliament.uk/pa/bills/cbill/58-02/0140/en/210140en.pdf)** to the Bill describe how it provides a new legislative framework to facilitate greater collaboration within the NHS and between the NHS, local government and other partners, and to support the recovery from the pandemic. The Health and Care Act 2022 (the Act) received Royal Assent on 28th April 2022.

The Act is a wide-ranging and complex piece of legislation with many measures that concern internal NHS operations, such as reducing bureaucracy, details about financial and staffing arrangements for establishing new bodies, and miscellaneous items that required primary legislation. This document summarises the broad provisions that are relevant to local government and gives the Local Government Association's (LGA) policy messages where appropriate.

Provisions in the Act come into force at different times, so a timeline of what is known so far is included in this document. In preparation for the Act, a range of interim guidance was produced by the Department of Health and Social Care (DHSC) in consultation with NHSEI and the LGA, on matters that relate to local government. The Act will be supported with secondary legislation, statutory guidance, and good practice guidance. This document lists the guidance and other resources already available and wherever possible identifies when further information is likely to be produced.

The document will be useful for executive members and officers responsible for health and social care integration, adult social care, and public health. It is also important for members of health overview and scrutiny committees and health and wellbeing boards, and for all those with an interest in understanding how the Act will impact on local government.

The Act is the legislative part of a wide range of policy reforms aimed at transforming health, care and wellbeing, in particular improving health and care services through better health and care integration and tackling growing health inequalities. Other key publications include:

- The health and care integration White Paper **'Joining up care for people, places and populations' (https://www.gov.uk/government/publications/health-and-social-care-integration-joining-up-care-for-people-places-and-populations)**
- The adult social care reform white paper **'People at the heart of care' (https://www.gov.uk/government/publications/people-at-the-heart-of-care-adult-social-care-reform-white-paper)**
- The White Paper '**Levelling up the United Kingdom (https://www.gov.uk/government/publications/levelling-up-the-united-kingdom)**'
- The Government's report '**Build Back Better: Our Plan for Health and Social Care' (https://www.gov.uk/government/publications/build-back-better-our-plan-for-health-and-social-care)**.

Further reforms and reports are expected in 2022, including a White Paper on health disparities, the **Messenger review (https://www.gov.uk/government/news/government-launches-landmark-review-of-health-and-social-care-leadership)** on health and social care leadership, the **Fuller stocktake (https://www.england.nhs.uk/2021/11/nhs-chief-announces-next-steps-for-local-health-systems/)** of primary care and delivering on the priorities laid out in the Secretary of State's **8 March speech (https://www.gov.uk/government/speeches/health-and-social-care-secretary-speech-on-health-reform)** on health and care reforms.

Key provisions and their implications for local government

NHS England (1.1)

The NHS Commissioning Board is renamed NHS England. Most of the functions of NHS Improvement are transferred to NHS England. This establishes a single regulatory body responsible for overseeing the

funding, planning, delivery, transformation, and performance of NHS healthcare in England.

Explanation: The NHS Commissioning Board was established through the Health and Social Care Act 2012 as an independent, non-departmental public body with executive powers, accountable to the Secretary of State for Health and Social Care (the Secretary of State) and to Parliament. It provided oversight and support to Clinical Commissioning Groups (CCGs) in their local commissioning responsibilities as well as commissioning some services directly. The board was operationally known as NHS England and the Act formalises this name.

NHS Improvement was established in 2016 to promote improvement in NHS trusts and foundation trusts. From April 2019, NHS England and NHS Improvement worked together as a single organisation but were unable to merge formally without legislation.

NHS England will not take on NHS Improvement's duties to promote competition in the NHS. Its primary role will be to support improvement in quality of care and use of resources.

LGA Comments

The LGA supports combining responsibilities for overseeing all aspects of the NHS into a single national body. This reduces the split between commissioning and provision established in the 2012 Act, is a good basis for improving collaboration, and enables NHS providers to work as partners in integrated care systems.

Spending on mental health (1.3)

In respect of each financial year, the Secretary of State must publish and lay before Parliament a document stating in comparison with the previous financial year:

- whether they expect an increase in the expenditure of NHS England (NHSE) and ICBs in relation to mental health
- and whether they expect an increase in the proportion of expenditure of NHSE and ICBs relating to mental health. NHSE's

annual report must include information on mental health expenditure.

Duties for reducing inequalities (1.6)

The section of the NHS Act 2006 regarding NHSE's duties for the reduction of inequalities is amended. NHSE must have regard to reducing inequalities between persons (replaces "patients") with respect to their ability to access health services. NHSE must also reduce inequalities between patients with respect to outcomes from the provision of health services – the Act specifies outcomes relating to the effectiveness of services, safety, and quality of experience.

Information about inequalities (1.11)

NHSE must publish a statement setting out a description of the powers available to relevant NHS bodies (ICBs, NHS trusts and NHS foundation trusts) to collect, analyse and publish information about inequalities of access to health services and inequalities in health outcomes. The statement will also set NHSE's views about how the powers should be exercised in relation to this information. ICBs and NHS trusts must review the extent to which they have exercised their functions in relation to NHSE's statement and include this in their annual reports.

Duty to have regard to wider effect of decisions – the triple aim (1.8)

NHS England must consider the effects of its decisions on:

- people's health and wellbeing
- quality of NHS services
- efficiency and sustainability of NHS resources.

Inequalities in health, wellbeing and the quality of services must be considered as part of the triple aim. The duty also applies to integrated care boards (ICBs) and NHS trusts and foundation trusts. NHS England has the power to produce guidance on this duty, must consult before publishing the guidance, and must have regard to it when it is in place. The triple aim was introduced in the NHS Long Term Plan. It is intended that the triple aim will help align NHS bodies around a common set of objectives.

LGA Comments

The inclusion of health and wellbeing as a criterion, and increased emphasis on inequalities mean that the NHS must formally consider wider factors when making decisions. This will be helpful for its role in prevention and tackling health inequalities, working in partnership with local government.

NHSE duties in relation to climate change (1.9)

In the exercise of its functions, NHSE must have regard to the need to contribute towards compliance with section 1 of the Climate Change Act 2008 (UK net zero emissions target), section 5 of the Environment Act 2021 (environmental targets) and any current or predicted impacts of climate change under section 56 of the Climate Change Act. NHSE may publish guidance on this duty and must have regard to it.

Public involvement extended to carers and representatives (1.10)

In its responsibilities for public involvement and consultation under section 13Q of the National Health Service Act 2006, NHS England has a duty to consult individuals to whom services are being or may be provided, in the planning and development of commissioning arrangements for those services. The Act extends this to include “carers and representatives” of people receiving a service or who may do so. The extension of this duty is replicated in an equivalent duty on integrated care boards.

LGA Comments

The LGA welcomes the inclusion of carers and the representatives of people receiving a service as specific groups who must be consulted by NHSE and integrated care boards in commissioning services. We will continue to work closely with DHSC and NHSE to develop a shared approach to consultation, including a co-productive and inclusive approach to the design and delivery of care and support services.

The structure of integrated care systems

Integrated care systems (ICSs) have two statutory components: integrated care boards (ICBs) and integrated care partnerships (ICPs). ICBs will take on the commissioning functions of CCGs and are

responsible for developing integration and collaboration, and for improving population health across the system. ICBs are accountable for NHS expenditure and performance within the system. They can exercise their functions through place-based arrangements.

ICPs are statutory joint committees established by ICBs and their partner local authorities in the system. ICPs bring together partners from across the system to develop an integrated care strategy to address the health, social care, and public health needs of the population. The ICB and local authorities in the system must have regard to the integrated care strategy when making decisions (**Health and Care Bill Explanatory Notes). (https://publications.parliament.uk/pa/bills/cbill/58-02/0140/en/210140en.pdf)**

The Act does not include measures for place-based arrangements since these do not require primary legislation. Place-based leadership and governance models are covered in the Health and Care Integration White Paper, 'Joining up care for people, places and populations' and will be subject to further guidance.

Integrated care boards

Establishing ICBs (1.19)

NHS England must order ICBs to be established on a day appointed in regulations made by the Secretary of State. CCGs are abolished at the beginning of that day. The planned date for this is 1 July 2022.

In preparation for this, NHS England must publish a list of the initial areas for which ICBs are to be established. The relevant CCG or CCGs for each area must, following consultation, propose a constitution for the ICB.

ICB constitution (1.19 and Schedule 2)

Each ICB must publish a constitution. It must set up, maintain, and publish registers of interest of members of the board, its committees or subcommittees and its employees. It must ensure there are arrangements to declare and manage conflicts of interest in relation to commissioning decisions.

An ICB must consist, as a minimum, of a chair appointed by NHSE with the approval of the Secretary of State, a chief executive appointed by the chair with the approval of NHSE and at least three other members ("ordinary members"):

- at least one nominated jointly by NHS trusts and foundation trusts
- at least one nominated jointly by primary care services
- at least one nominated jointly by the local authorities in the ICB area.

The constitution must set out the process for appointing "ordinary members" and matters such as tenure. The chair must ensure that at least one member has knowledge and experience of mental health services. The constitution may include arrangements for the appointment of committees or sub-committees which may include people other than members or staff of the ICB and which may exercise ICB functions.

LGA comments

The LGA welcomes the flexibility for ICBs to increase membership beyond the statutory minimum.

Functions of ICBs (1.21 &1.22)

ICBs have a duty to arrange for the provision of health services or facilities "to the extent it considers necessary to meet the reasonable requirements of people for whom it has responsibility". The services they must provide include:

- hospital services, such as medical services, and other health services including nursing and ambulance services; services for pregnant women and young people; services for the prevention of illness; palliative care services; the care of people suffering from illness and their after care; and services required for the diagnosis and treatment of illness (1.21).
- primary care services, including primary medical, dental services, ophthalmic services and pharmaceutical services (1.22).

ICBs have the power to commission health services or facilities that improve the physical or mental health of people for whom they have responsibility and for the prevention, diagnosis and treatment of illness (1.21).

Duties of ICBs (1.25)

ICBs have the following general duties:

- Promote the NHS constitution (14Z32).
- Exercise functions effectively, efficiently, and economically (14Z33).
- Secure continuous improvement in quality of services and outcomes (14Z34).
- Reduce inequalities between patients in relation to access to services and outcomes; promote the integration of health services where this would improve quality; and reduce inequalities of access and outcomes for individuals (14Z35).
- Promote the involvement of patients and carers and representatives in decisions that relate to prevention or diagnosis of illness in the patients, or their care or treatment (14Z36).
- Enable patients to make choices about their health services (14Z37).
- Obtain appropriate advice to enable it to discharge its functions effectively (14Z38).
- Promote innovation, research, education and training (14Z30 – 41).
- Promote integration of health services where the ICB considers this would improve the quality of services and outcomes and reduce inequalities of access and outcomes for individuals. Promote the integration of health services with health-related services (those that may have an effect on the health of individuals but are not health or social care services such as housing accommodation) or social care services where this would improve quality and outcomes and reduce inequalities of access and outcomes for individuals (14Z42).
- Have regard to wider effect of decisions – the triple aim (14Z43).
- Have regard to legislation on climate change (14Z44).

LGA comments

These duties are part of the basis on which ICBs will develop their forward plans and annual reports, and on which their performance will be assessed by NHSE. Duties relating to integration and inequalities will be of particular interest to local government.

Public involvement and consultation (1.25: 14Z45)

ICBs must arrange for people to whom services are provided or may be provided and their carers and representatives are consulted or provided with information. People must be consulted when plans or changes to commissioning arrangements would impact on the range of services available or how they would be delivered.

LGA comments

We welcome the requirement that ICBs will be required to consult with people who use services and their carers and representatives. We will continue to work closely with DHSC and NHSE to develop a shared approach to consultation, including a co-productive and inclusive approach to the design and delivery of care and support services.

Duty to keep the experience of members under review (1.25: 14Z49)

ICBs must keep the skills, knowledge and experience of board members under review and take action to ensure that these are appropriate to carry out the board's functions.

Joint forward plans, reports and performance assessment by NHSE (1.25)

Joint forward plans (14Z52 – 55)

Before the start of each financial year, each ICB and their partner NHS trusts and foundation trusts must publish a five-year joint forward plan, setting out how they propose to exercise their functions, including proposals for health services, and action on the ICB's general duties and financial duties. Plans must describe any steps taken to implement relevant joint local health and wellbeing strategies, to address the needs of children and young people under 25, and to address the needs of victims of abuse, whether adult or children. The ICB and its partner trusts must have regard to the plan.

The ICB and its partner trusts must consult people for whom the ICB has core responsibility and any others as appropriate and must involve each relevant health and wellbeing board (HWB) (those whose area coincides with or includes the whole or any part of the area of the ICB) in preparing or revising the plan. Each HWB must be given a draft of the plan, or any revised plan, and be consulted on whether it takes proper account of each joint local health and wellbeing strategy. HWBs must respond with their views on this. HWBs may give their views to NHSE, informing the ICB and partners if they do so.

A copy of published plans must be given to the system's ICP, each relevant HWB and NHS England. Published plans must include a summary of views from consultation and how these were taken into account, and the final opinions of each relevant HWB. A HWB may give NHSE its opinion on whether a published plan takes proper account of each joint local health and wellbeing strategy and if it does so, must give the ICB and its partners a copy of this opinion.

Joint capital resource use plan (14Z56)

Before the start of each financial year, each ICB and its partner trusts must prepare and publish a plan setting out their planned capital resource use covering a period specified in a direction by NHSE. A copy of the plan must be given to the relevant ICP, HWB and to NHSE. Joint capital resource use plans may be revised.

Annual report (14Z58)

Each ICB must produce and publish an annual report on how it has discharged its functions in the previous financial year. The annual report must explain how the ICB has discharged general duties 14Z34 to 45 and 49. It must also describe performance on the forward plan and on the capital resource use plan. Each ICB must review what has been done to implement any joint local health and wellbeing strategies and consult with relevant HWBs on this review. It must also review the extent to which it has exercised their functions consistently with NHSE's views about how powers in relation to information on inequalities (1.11). The annual report must cover information relating to mental health expenditure (1.3).

Performance assessment of ICBs (14Z59)

NHSE must conduct a performance assessment and publish a report on each ICB covering every financial year. In doing this they must consult each relevant HWB on its views on what the ICB has done to implement relevant joint local health and wellbeing strategies.

Integrated care partnerships and strategies (1.26)

Establishing integrated care partnerships (116ZA)

Each ICB and each ‘responsible’ local authority in the ICB (local authorities whose area coincides with or falls jointly or partly within the board’s area) must establish a joint committee of the ICB – an integrated care partnership.

ICPs must include one member appointed by the ICB, one member appointed by each of the responsible local authorities and any members appointed by the ICP. An ICP may determine its own procedure, including quorum.

Integrated care strategies (116ZB)

Each ICP must produce an integrated care strategy setting out how the assessed needs of its area are to be met by its ICB, NHSE and its local authorities. Local Healthwatch must be involved in the strategy, as well as people who live or work in the area.

Strategies must take into account:

- the extent to which needs could be met more effectively by arrangements under section 75 of the NHS Act 2006 (eg pooled funds and joint commissioning)
- the NHS mandate and any guidance issued by the Secretary of State.

Strategies may include a section on the ICP’s views for how health-related services, could be more closely aligned with arrangements for health services and social care services in the area.

Each time an ICP receives an assessment of relevant needs (Joint Strategic Needs Assessment – JSNA) it must consider whether the current integrated care strategy should be revised.

ICPs must publish their strategy and give a copy to each responsible local authority, and to each partner ICB of those local authorities.

Guidance on integrated care strategies is expected in July 2022.

Joint local health and wellbeing strategies (1.26 (5))

Joint health and wellbeing strategies will be known as joint local health and wellbeing strategies. When a responsible local authority and each of its partner ICBs receives an integrated care strategy from the ICP, they must consider whether any existing joint local health and wellbeing strategies sufficiently address how needs will be met. If existing strategies do not address this sufficiently, a new joint local health and wellbeing strategy must be prepared.

LGA comments

This describes how the system-wide integrated care strategy will influence place-based joint local health and wellbeing strategies. It means that HWBs will need to consider system priorities in their strategies and to decide whether these are being met. HWBs will need to keep their place perspective while working with other HWBs across the ICS footprint to consider what may work best at scale across the system.

Duty to have regard to assessments and strategies (1.26 (6))

A responsible local authority and each of its partner ICBs must have regard to:

- Joint strategic needs assessments in responsible local authority areas.
- Any integrated care strategy that coincides with or includes the whole or part of a responsible local authority area.
- Any joint local health and wellbeing strategy prepared by a responsible local authority and its partner integrated care boards.

The above duties also apply to NHSE when arranging the provision of health services in the area of a responsible local authority.

LGA Comments

HWBs are responsible for preparing JSNAs and a joint health and wellbeing strategy for their populations on behalf of their local authority and, previously their CCG (**JSNA and JHWS statutory guidance (https://www.gov.uk/government/publications/jsnas-and-jhws-statutory-guidance)**). The Act transfers the responsibilities of CCGs to ICBs.

These responsibilities provide an important way for place partners to influence ICB plans from a local perspective. It means that ICBs need to take into account JSNAs and joint local health and wellbeing strategies as key building blocks of their own plans. The change is that, in many ICSs, more than one HWB will be consulted. HWBs in a system will need to work together, so they understand system-wide health needs and priorities, while keeping a strong local focus so that the specific needs of places are recognised and acted on. This can be done through collaboration with ICPs.

ICBs, along with relevant local authorities, must have regard to the integrated care strategy produced by ICPs in developing their forward plans. The integrated care strategy will set the broad objectives for improving health and wellbeing, especially in addressing the wider determinants of health. Local authority public health will have an important role in supporting the system with population health management and tackling health inequalities.

Provisions to promote collaboration and joint working

The following sections set out some of the arrangements intended to remove barriers, such as competition between NHS organisations, and to support collaboration, integration and joint working – across the NHS and between the NHS and local government. ‘Relevant NHS bodies’ include NHSE, ICBs, and NHS trusts and foundation trusts. Explanatory notes to the Bill say that provisions will “make it easier for ICBs to commission services collaboratively with other ICBs and other system partners”

Joint working and delegation of functions (1.71)

Any relevant NHS body may arrange for any of its functions to be carried out by, or jointly with, other NHS bodies, local authorities or combined authorities.

Joint committees and pooled funds (1.71)

When a function is carried out jointly, it may be overseen by a joint committee. The bodies or the joint committee can establish and maintain a pooled fund made up of payments from parties that are involved in the arrangements. NHSE may publish guidance for relevant bodies about the exercise of their powers.

Explanatory notes to the Bill indicate that legislation did not allow NHS providers and CCGs to formally take joint decisions, and this measure creates a new legal mechanism to allow ICBs and providers to do this. Joint committees can have representation from other bodies such as primary care networks, GPs, community or mental health providers, local authorities, or the voluntary sector.

Joint appointments (1.74)

NHSE may publish guidance on joint appointments between NHS bodies and between NHS bodies and local authorities or combined authorities. This will provide a clear set of criteria for organisations to consider when making joint appointments. NHSE will consult on draft guidance.

Cooperation between NHS bodies and local authorities (1.75)

The Secretary of State may publish guidance on a duty to cooperate between NHS bodies and between NHS bodies and local authorities. The guidance will provide greater clarity about what the “duty to cooperate” means in practice.

Patient choice (1.78) and procurement (1.79 and 1.80)

The Act makes changes to commissioning and procurement arrangements to reduce competition and improve collaboration across the NHS and with local authorities (**Factsheet: provider selection and**

patient choice (https://www.gov.uk/government/publications/health-and-care-bill-factsheets/health-and-care-bill-provider-selection-and-patient-choice)). These include:

- Section 75 of the Health and Social Care Act, and NHS (Procurement, Patient Choice and Competition) Regulations 2013 are revoked. The Secretary of State will have the power to create regulations to implement a new provider selection regime and remove commissioning of NHS healthcare services from the scope of the Public Contracts Regulations 2015. The NHS, with local authorities on joint initiatives, will have more discretion over whether to use competitive tendering, and will be able to directly award contracts if this meets criteria, such as the current provider doing a good job and the service not changing.
- Patient choice remains an important factor in procurement. NHSE has the power to make guidance on patient choice and enforce this with ICBs.

LGA Comments

The LGA supports measures that remove the barriers to greater collaboration between NHS organisations and between the NHS and local government. We are keen to work with Government and NHSE to draw on existing partnership planning and delivery to encourage and support all areas to escalate the scale and pace of collaboration.

Reconfiguration of NHS services: intervention powers (1.46 and schedule 10A)

The Act gives the Secretary of State new powers over proposals to reconfigure NHS services. The Secretary of State can call-in reconfiguration proposals from NHS commissioning bodies and can take decisions on the proposal, including whether it should or should not proceed, or should proceed in a modified form. The Secretary of State can also direct an NHS commissioning body to consider a reconfiguration of NHS services. NHS bodies must notify the Secretary of State where ‘notifiable’ reconfigurations, to be defined in regulations as substantial developments or variations in a health service, are proposed. The Secretary of State is required to make a decision on a

proposed service change within six months of calling it in and must publish the reasons for any decisions. Guidance will be published on the new powers.

LGA comments

The LGA was concerned that the original proposals for greater powers for the Secretary of State to intervene in NHS configurations could undermine existing powers and duties of local health overview and scrutiny committees (HOSCs) and had the potential to reduce the views of local people and local democratic accountability mechanisms. We have been calling for safeguards on proposals for new powers and welcome amendments to the Bill which introduce checks and balances.

Amendments mean that both NHS organisations and HOSCs will have to be consulted and a summary of their responses be published. The requirement for NHS leaders to notify the Secretary of State whenever they are planning or even considering a change to services is removed; the Secretary of State will only need notification on substantial reconfigurations as defined in regulations.

Health and adult social care information

The Act includes provisions to address data gaps and to improve the quality, flow, and collection of data across health and social care. The experience of the COVID-19 pandemic has shown the vital importance of robust local intelligence for planning and service improvement.

Information standards (2.95)

The Act includes provisions that enable the Secretary of State and NHSE to publish mandatory information standards.

An information standard may be technical (for example relating to messaging), data-related (for example defining the structure and type of information to be recorded and submitted as a data set) or relating to information governance (for example relating to policies, procedures, or guidelines on information processing).

Information standards may apply to the Secretary of State, NHSE, public bodies and any person registered under Health and Social Care Act 2008 provisions in respect of carrying out regulated activity, eg

private providers. Some standards may only apply to public bodies and others may need to be extended to cover private organisations, such as interoperability standards. The Secretary of State may publish regulations following consultation.

Sharing anonymous information (2.96)

Public bodies that provide healthcare or adult social care may require another health or social care public body to provide anonymous information that relates to their activities in the provision of health or adult social care services in England. Public bodies may also require a private health or social care provider, with which they have an arrangement, to provide anonymous information of this type. Regulations will provide further detail, including exceptions to this requirement.

Provision of adult social care information to the Secretary of State (2.99)

The Secretary of State may require regulated providers of adult social care services to provide information for purposes connected with the health or adult social care system in England. The Secretary of State may direct NHS Digital (previously known as the Health and Social Care Information Centre, and, with NHSX, merged into NHSEI) to collect this information.

Enforcement of duties against private providers (2.100)

Regulations may give the Secretary of State the power to impose a financial penalty on a person, other than a public body, who fails to comply with an information standard or to provide required information or provides misleading information, without a reasonable excuse.

LGA comments

The LGA welcomes measures to improve the quality and flow of data. We support the merger of NHS Digital and NHSX into NHSE and stress the importance of continued collaboration with adult social care on digital and data strategies to deliver joined up health and care, and improved health, care and wellbeing outcomes for individuals.

The LGA seeks to be involved in developing further details to support implementation of new data requirements. An important element will be to ensure that individuals understand, trust and have control over the way their information is managed. New requirements on councils and social care providers to submit data need to be carefully considered, proportionate and appropriate, and planned in collaboration with councils and the wider social care sector. Any New Burdens need to be fully resourced.

The role of the Care Quality Commission (CQC)

The Act introduces new duties that extend the role of the CQC in two areas: integrated care systems and local government adult social care.

Reviews of integrated care systems (1.31)

The CQC will review healthcare and adult social care in each ICB, with reviews covering how partners work together in the integrated care system. Priorities for reviews will be set by the Secretary of State and include leadership, integration, quality and safety. Reviews will assess "the provision of the NHS, public health and adult social care, the activities of the ICB, local authorities and provider in relation to the care and the function of the whole system including the ICP"(**Health and Care Bill Integration Factsheet (https://www.gov.uk/government/publications/health-and-care-bill-factsheets/health-and-care-bill-integration-measures)**).

Regulation of local authority functions relating to adult social care (6.163-165)

The CQC will review, assess and report on council regulated adult social care functions under Part One of the 2014 Care Act, such as prevention, information and advice, market shaping and support services (**Care Act 2014 factsheet (https://www.gov.uk/government/publications/care-act-2014-part-1-factsheets/care-act-factsheets)**). The Secretary of State will set objectives and priorities for the reviews. The exact functions under review will be set out in secondary legislation as regulated care functions. The CQC will determine indictors of quality for the assessments which will be approved by the Secretary of State.

The CQC will also set out the methodology for reviews and their frequency in a published statement that will be agreed with the Secretary of State.

If the Secretary of State is satisfied that a local authority is not discharging its functions under the Act to an acceptable standard, they can direct it to act in accordance with their advice, or that of a nominee; collaborate with them or their nominee in taking specified steps; or provide specified information. Directions may allow specific functions to be exercised by the Secretary of State or their nominee, and for the local authority to comply with any instructions. Before giving directions, the Secretary of State must give the local authority concerned an opportunity to make representations about them, unless this is deemed impractical for reasons of urgency.

LGA comments

Oversight and assurance of ICSs

The CQC undertook **reviews of 20 local systems (https://www.cqc.org.uk/local-systems-review)** in 2017 and 2018 at the request of the Secretaries of State for Health and Social Care and for Communities and Local Government. This was a successful model for assessing integration and would be a good basis for future reviews. This process will be supported by the shared outcomes announced in '**Joining up care for people, places and populations: the government's proposals for health and care integration (https://www.gov.uk/government/publications/health-and-social-care-integration-joining-up-care-for-people-places-and-populations)**'.

Oversight and assurance of adult social care

The LGA understands the Government's desire for greater transparency in the planning, commissioning and delivery of adult social care.

An assurance process has the potential to highlight shortfalls in services and delivery of the intentions of the Care Act due to resource constraints. Any assessment of a council's adult social care services would need to be considered in terms of the impact of the extensive funding constraints on adult social care.

Councils need to continue to be an equal partner in the ongoing design of national oversight and assurance processes which must build on existing sector-led improvement work, recognise local democratic accountability, take into account the funding position of local government, and give a meaningful voice to people who draw on and work in social care.

Any new burdens placed on local authorities by these processes or structures for assurance or oversight should be captured by a New Burden assessment to fairly identify the capacity and resource implications for councils in meeting new regulatory approaches.

The LGA is working with the CQC and other stakeholders to develop the oversight and assurance framework for ICSs as well as the assurance framework for adult social care. We continue to make the case that ICSs will need to demonstrate not only that they work collaboratively and inclusively with place-based leaders, but that they also operate on the principle of subsidiarity to ensure that decisions are taken at the most appropriate local level. With two parallel assurance processes in development, it is important that the right links are made between them, including consideration of how the functioning of one may impact on the other.

Provisions relating to health and care integration

Funding for service integration (1.15)

The Secretary of State may direct NHS England to use part of its annual funding for service integration. Where the Secretary of State has issued a direction, NHS England may require integrated care boards to use an amount of their annual funding for service integration.

Explanation: this provision relates to the Better Care Fund (BCF), in which CCGs pooled a set amount of their budgets with councils to fund joint plans for integrated care. It gives a stand-alone power for directions to be made outside the NHS Mandate, because this may no longer be made on an annual basis. This is “a technical change” not intended to impact on how the BCF operates.

LGA Comments

The LGA supports this provision.

Hospital patients with care and support needs: repeals (1.91)

The Act provides more flexibility in hospital discharge and supports the discharge to assess model in which people are discharged as soon as they are clinically ready, with support where needed. Where an individual is likely to require care and support post-discharge, trusts must take any steps they consider appropriate to involve the patient and any carer as soon as is feasible.

The Act repeals the legal requirement for adult social care needs assessments to take place while an individual is in hospital and allows assessments to take place after discharge. The Act also repeals the system of discharge notices and associated financial penalties in the Care Act 2014.

LGA comments

The LGA supports the discharge to assess model and its underpinning principle of 'home first', which advocates that home is the most appropriate place for recovery for most people being discharged from hospital. The model needs to be properly funded, with funding channelled through the BCF. The LGA supports the removal of discharge notices and penalties which will promote a more collaborative approach to hospital discharge.

Adult social care provisions

Cap on care costs for charging purposes (6.166)

Legislation to allow a cap on care costs was already in place in the Care Act but implementation was postponed. The Act amends the measures in the Care Act so that:

- Only the amount that individuals contribute towards meeting their eligible care needs will count towards the cap on care costs – that is to say, any means tested local authority support cannot count towards the cap.
- Metering towards the cap, for a self-funder is based on a "would be" cost to a local authority, that is, what it would cost the local

authority if they had to meet that person's eligible needs. A technical amendment clarifies the purpose of personal and independent personal budgets. A personal budget is a statement which specifies the current cost to the responsible local authority of meeting eligible needs that it is required or decides to meet and how much cost an individual will be required to pay. An independent personal budget specifies what the current cost would be to the responsible local authority of meeting eligible needs.

- Where care needs assessments are delayed, a person awaiting local authority support who has to fund their own care for an interim period are to be allowed to have their contributions count towards the cap, if it is found there were eligible care needs.
- A further technical amendment allows certain legislative provisions to be commenced early in order to allow trailblazer local authorities to begin operating within the confines of the legal framework put in place.

Regulations are expected to be in place and commenced for trailblazer local authorities in January 2023 and for all other local authorities in October 2023. The final guidance is expected in 2022.

Information provided by the DHSC. For further information on the care cap see guidance and resources below.

LGA comments

The LGA recognises that protecting people from 'catastrophic care costs' and having to sell their home to pay for care is a government commitment. The care cap is a potentially important first step in changing the way adult social care is paid for and funded. However, the LGA has serious concerns and questions about how the cap will be implemented.

- We question the adequacy of the Health and Care Levy to fund all of the adult social care commitments identified in 'Build Back Better: the Government's plan for health and social care' and what proportion of the Levy will reach adult social care beyond the three-year period covered by the plan.

- There is a real lack of detail on implementing the care cap and related reforms, such as enabling people who self-fund their care to arrange for this at local authority rates. These reforms require councils to plan for and establish substantially new working arrangements. They will also have a major impact on the sustainability of the care home sector. This information is needed as a matter of urgency. The LGA and the Association of Directors of Adult Social Services are in discussions with DHSC.

For further information see the **LGA's response to Build Back Better: the Government's plan for health and social care (https://www.local.gov.uk/parliament/briefings-and-responses/lga-response-build-back-better-our-plan-health-and-social-care)**.

Provision of social care services: financial assistance (6.167)

The Secretary of State was able to provide financial assistance to bodies that provide health and care services, or those connected with health and social care provision, but this was restricted to non profit-making bodies. The Act extends this power to providers who operate for a profit. In adult social care, this is the majority of providers.

LGA comments

The LGA recognises Government's desire for a mechanism that gets funding to social care providers quickly, such as in cases of major national provider failure. However, local decision making, democratic accountability and knowledge of the local provider market are essential underpinnings of the system of social care funding and should not be bypassed or adversely impacted by direct funding from the Secretary of State. It is essential that this power is used only in exceptional circumstances and in close consultation with local authority commissioners.

Public health provisions

Exercise of Secretary of State's public health functions (1.42 and 43)

The Secretary of State may arrange for any of their public health functions to be carried out by any of the following: NHSE, ICBs, local authorities, combined authorities, any other body as may be prescribed.

The Secretary of State may direct NHSE or an ICB to exercise any of their public health functions.

LGA comments

The LGA will work with DHSC to ensure that the Secretary of State operates their powers in close consultation with local authorities with public health responsibilities.

Restricting the advertising less healthy food and drink (6.172 and Schedule 18)

The Act restricts the advertising of less healthy food and drink products with the aim of reducing childhood obesity and improving health outcomes for children. There will be a UK-wide 9pm watershed on advertising of less healthy food or drink on television as well as a restriction on on-demand programme services (ODPS) and paid-for advertising online. Compliance will be overseen by OFCOM. Less healthy food and drink generally includes items high in fat, sugar or salt; further detail on what counts as “less healthy” will be set out in regulations and guidance. The measures are to start in January 2023.

Hospital food standards (6.173)

The Act gives the power to make secondary legislation to impose requirements on food and drink in NHS hospitals. Regulations may specify nutritional requirements or standards, or which food and drink should or should not be provided.

Food information for consumers (6.174)

The Secretary of State in England and ministers in Scotland and Wales have the power to amend EU regulations to introduce new food and drink labelling requirements applicable to their territories, including changes to front of pack nutrition labelling and mandatory alcohol calorie labelling. This is to allow consumers to make more informed choices about food and drink purchases with a view to reducing obesity and promoting health.

LGA Comments

The LGA supports the introduction of new food and drink labelling requirements which provide an instant ‘at-a-glance’ understanding of nutritional content. Raising awareness of the amount of salt, fat and sugar in food and drink while giving families a more informed choice is crucial if we are to make a vital breakthrough in addressing the obesity challenge.

Fluoridation of water supplies (6.175-176)

Water fluoridation can reduce tooth decay and improve oral health inequalities. Local authorities have been responsible for proposing and consulting on new fluoridation schemes, variations or terminations. The Act transfers this power to the Secretary of State meaning that central government will take on direct responsibility for consulting on and introducing, varying, or terminating fluoridation schemes.

LGA Comments

Whilst the LGA welcomes a more streamlined consultation process for water fluoridation schemes, these must not be imposed on communities. Local decision-makers are best placed to take into account locally expressed views and to balance the perceived benefits of fluoridation with the ethical arguments and any evidence of risk to health. Local authorities have encountered difficulties with the current consultation process, including the fact that local authority boundaries are not coterminous with water flows, which require the involvement of several authorities in these schemes.

Mandatory training about learning disability and autism for health and social care provider staff (181)

From 1 July 2022, health and social care providers registered with CQC, must ensure that their staff receive training on learning disabilities and autism appropriate to their role. This new legal requirement follows **Baroness Sheila Hollins' successful amendment in the Lords (https://youtu.be/HppHgNQ32RQ)**.

The Care Quality Commission will issue guidance on compliance with this requirement for providers prior to DHSC consulting on and publishing a Code of Practice for the sector. We understand that this will

outline the content, delivery and ongoing monitoring and evaluation of the **Oliver McGowan Mandatory Training (https://www.hee.nhs.uk/our-work/learning-disability/oliver-mcgowan-mandatory-training-learning-disability-autism)**, which is training the Government developed and trialled. The Government anticipates that the publication of the full Code of Practice may take at least 12 months.

LGA Comments

The LGA will work with the government to identify any new financial burdens that may result from the new training requirement.

Timeline for implementation

Implementing the reforms stemming from the Act, and from associated major policy developments, requires a substantial amount of input and resources from councils and their partners. This is at a time when all organisations are facing pressures of increasing demand and constrained resources.

The Act, the white papers on adult social care reform, health and care integration, and levelling up, and the forthcoming white paper on health disparities, will be underpinned, as relevant, by regulation, and statutory and good practice guidance which will require implementation.

The LGA continues to work with the Government to try and ensure that reform programmes allow a realistic time for planning, preparation, and implementation. It will also identify where reforms put New Burdens on local government and raise these with Government.

Understanding the timing requirements of the reforms is crucial. The evolving commencement timeline confirmed by DHSC for measures in the Act so far is as follows:

- By July a small number of preparatory provisions will enter into force to enable integrated care boards to be established.
- Major elements of the Health and Care Act, including but not limited to integrated care boards, integrated care partnerships and the merger of NHSE and NHSI, The NHS Trust Development Authority and Monitor, will come into force on 1 July.

- Other measures of the Act are intended to come into force beyond July.
- The DHSC will be confirming more details in due course.

The LGA is producing a Health and Care Reform Timeline covering all major elements of the reform agendas which may be issued in quick succession in 2022/23. This will include actions/requirements on councils and their partners with deadlines, and any actions committed to by Government or NHSE.

Guidance and resources

DHSC (2022) **Consultation on operational guidance to implement a lifetime cap on care costs. (https://www.gov.uk/government/consultations/operational-guidance-to-implement-a-lifetime-cap-on-care-costs)**

Key documents for integrated care systems

The guidance documents below are on the **NHS England website. (https://www.england.nhs.uk/integratedcare/resources/key-documents/)**

DHSC, NHSEI, the LGA, (2022) Integrated care partnerships: engagement summary

DHSC, NHSEI, the LGA, (2022) Integrated care partnership engagement document: integrated care system implementation.

NHSEI and the LGA, (2021) Thriving places: guidance on the development of place-based partnerships as part of statutory integrated care systems.

NHSEI, (2021) ICS implementation guidance on working with people and communities.

NHSEI, (2021) ICS implementation guidance on effective clinical and care professional leadership.

NHSEI, (2021) ICS implementation guidance on partnerships with the voluntary, community and social enterprise sector.

NHSEI, (2021) Integrated care systems design framework.

NHSEI, (2021) Working at scale: guidance on provider collaboratives.

NHSEI, (2021) Interim guidance on the functions and governance of the integrated care board.

NHSEI, (2021) HR framework for developing integrated care boards.

NHSEI, (2021) Building strong integrated care systems everywhere: guidance on the ICS people function.

The LGA support offer

The Integration and System Transformation Team at the LGA provides a range of support using our well-established, well-respected sector-led improvement approach. Working with national partners including NHS Providers, NHS Confederation and the Better Care Fund we have a number of offers available to support with implementation of the requirements of the Health and Care Act. Support is designed to meet the needs of each system or place and can be operational or strategic in focus. This could include: embedding a Home First, discharge to assess operating model; strengthening partnership arrangements at system and at place, such as integrated care partnerships; ensuring there is strategic alignment between strategic priorities, underpinned by clear governance arrangements to support shared accountability and decision-making.

All support is free of charge and can be accessed via the Principal Advisor, Care and Health Improvement Advisor or by emailing **integration@local.gov.uk (mailto:integration@local.gov.uk)**.

As well as the bespoke improvement offer, the LGA also provides **a wide range of webinars, guidance and good practice publications (https://www.local.gov.uk/our-support/our-improvement-offer/care-and-health-improvement/integration-and-better-care-fund)**on health and care leadership.

References

DHSC, (2021) People at the heart of care: adult social care reform white paper (https://www.gov.uk/government/publications/people-at-the-heart-of-care-adult-social-care-reform-white-paper)

DHSC, (2021) Health and social care integration: joining up care for people, places and populations (https://www.gov.uk/government/publications/health-and-social-care-integration-joining-up-care-for-people-places-and-populations)

DHSC, (2013) JSNAs and JHWS statutory guidance (https://www.gov.uk/government/publications/jsnas-and-jhws-statutory-guidance)

Department for Levelling up, Housing and Communities, (2022) Levelling up in the United Kingdom (https://www.gov.uk/government/publications/levelling-up-the-united-kingdom)

HM Government, The Health and Care Act 2022 (https://www.legislation.gov.uk/ukpga/2022/31/contents/enacted)

HM Government, (2021) Health and Care Bill factsheets (https://www.gov.uk/government/publications/health-and-care-bill-factsheets)

HM Government, (July 2021) Health and Care Bill explanatory notes (https://publications.parliament.uk/pa/bills/cbill/58-02/0140/en/210140en.pdf)

HM Government, The Care Act 2014 (https://www.legislation.gov.uk/ukpga/2014/23/contents)

LGA, (2021) Briefing on the 2nd Reading of the Health and Care Bill (https://www.local.gov.uk/parliament/briefings-and-responses/health-and-care-bill-second-reading-house-lords-7-december-2021)

NHSE, (2019) The NHS Long Term Plan (http://www.longtermplan.nhs.uk/about/)

NHSE, (2019) The NHS's recommendations to Government and Parliament for an NHS Bill (http://www.longtermplan.nhs.uk/nhs-publishes-response-and-recommendations-on-long-term-plan-legislative-proposals/)