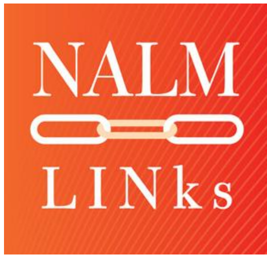

National Association of LINks Members

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HEALTH AND SOCIAL CARE BILL

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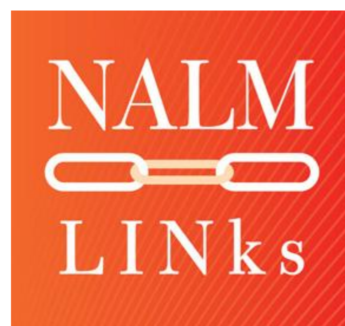

March 2012

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Health and Social Care Bill

Consequences of the government's HealthWatch amendments

(Revised fourth marshalled list and supplements)

Background

The intention of the government in creating HealthWatch was to renew the system of public involvement and to restore some of the powers and influence that have been lost during the past 8 years. The HealthWatch system was intended to ensure that lay people led their local HealthWatch. An independent HealthWatch England was intended to have influence on behalf of LHW and other community and public interests with the Secretary of State, Monitor, the NHS Commissioning Board and the CQC in relation to major problems regarding the safety, adequacy and quality of health and social care services. LHW was to be a statutory body in the public sector and was expected to be an independent and assertive champion of local people. Its seat on the Health and Wellbeing Board was intended to give it additional clout in relation to strategic commissioning and planning of local services. LINks were intended to evolve and go through a transition to LHW.

All that has now been reversed.

Instead, LHW need have no members and will be a social enterprise run by a PVSO (private or voluntary sector organisation). LHW will be able to employ staff (which could include current Host staff). The government intends that the LINk will be abolished and be replaced by a PVSO. In practice instead in the LINk evolving into strong powerful body to hold health and social care providers and commissioners to account, the Host may well become the HealthWatch

Government amendments abandon the statutory status of LHW. It will be a contractor to the local council which will be able to subcontract some or all of the LHW activities to other bodies. The statutory powers which remain will be operated by the contractor or the subcontractor/s. The government intends that HWE will be a Committee of the CQC with little independence.

The value of this change of heart by the government to the voluntary sector is enormous. If 60millions were to be divided between 450 organisations (assuming that each council area had three LHW contractors/subcontractors) each would benefit by 400,000 pounds over a three year period.

The DH has produced a Draft Programme Plan for 2012/13 which describes these issues in much more detail and may be available from Kasey Chan (kasey.chan@dh.gsi.gov.uk)

NALM's comments on key Clauses:

Clause 180 EARL HOWE
Power of HWE to give advice to LHW and local authorities

These amendments reduces the impact and substance of advice being given by HWE to LHW and local authorities, from specific advice on activities to general advice of activities in relation to s221(1) and s221(2)

HWE should be established as a body to provide expertise. To restrict its functions its role in this way, appears to weaken HWE from a body that can make specific recommendations to LHW and LAs to one that can only give general advice about arrangements during the establishment of LHW.

Power to take action when a LHW is failing to carry out designated activities

This amendment limits HWE to giving only an opinion to the local authority when a LHW is failing in its duties to monitor and influence local services and involve local people. There is no duty to take action beyond giving an opinion.

BARONESS TYLER OF ENFIELD – Liberal Democrat Peer
Recommendations to HWE from LHW – duty to respond

This positive amendment attempts to strengthen the powers of HWE to respond to recommendations made to it by a LHW in relation local health and social care services.

Deletion of Clause 181 and Schedule 15 - EARL HOWE
No membership required – Contractors and Sub-Contractors become LHW

The consequences of removing this Clause 181 and Schedule 15 is to remove the statutory status of Local HealthWatch watch and to transfer the statutory activities, i.e. monitoring services, influencing commissioning and providing advice and information, to contractors and sub-contractors in the PVS (private and voluntary sector. Many LHWs will lose their coherent identity as a result of the activities being divided amongst several contractors.

This will substantially weaken the status of LHW and will create in some areas a complex set of services, which will be confusing and difficult to coordinate. There will be no requirement to have members, only a requirement to involve the public in some way. There will be no regulations on membership or on the requirement for LHW to have a membership representative of the community; creating a diffuse and opaque system with no consistent public identity. The contractors instead are expected to be representative of the community!

Removing this Clause and Schedule fundamentally changes the nature of LHW from community-led bodies, to contractors and sub-contractors of services.

The duty to be subject to the public sector equality duty in part 1 Schedule 19 of the Equalities Act is removed. Limited duties will remain in relation to the Freedom of Information Act, Public Bodies and Admissions to Meetings Act, and in relation to Foundation Trust and the duty of the CQC to involve LHW. Although these duties will remain, they will only do so in relation to the specific activities of the contractor(s).

Clause 182 - EARL HOWE
Local authority can only commission one contractor. The contractor can subcontract

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This amendment requires the local authority to engage only one contractor for the supply of services for monitoring, influencing services, involving the public and providing advice. The contractor can sub-contract all or some of the statutory activities.

Granting license to use trade mark/brand/logo

This section introduces the granting of permission to use the HealthWatch brand/logo. It is an attempt to limit the use of HealthWatch brand and license only todesignated contractors and sub-contractors. The 'brand' will be the only common/consistent factor that identifies all contractors and sub-contractors.

Clause 183 - EARL HOWE

LHW organisations contracted by a local authority will be Social Enterprises not statutory bodies. The sub-contractor does not need to be a Social Enterprise

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The Clause privatises LHW. If LHW is a social enterprise it will be an organisation that applies business strategies to achieving philanthropic goals and can be structured as a for-profit or non-profit organisation. A social enterprise is a body that might reasonably be considered to acts for the benefit of the community in the private or community sector.

This Clause enables the privatised LHW social enterprise to sub-contract part or all of the LHW activities to other bodies which may be in the private sector, a charity or some other body. The subcontractor does not need to be a social enterprise.

The LHW organisation contracted by the council cannot be one of the following, it is possible for a sub-contractor to be one of the following:

(a) A local authority;

(b) A National Health Service trust;

(c) An NHS foundation trust;

(d) A Primary Care Trust; or

(e) A Strategic Health Authority.

LHW funding arrangements cannot be made with National Health Service Commissioning Board

This amendment appears to remove the possibility of the NHS Commissioning Board having an independent role in the commissioning of LHW. The NHSCB is the only independent statutory body that could independently fund LHW.

Guidance will be produced about the avoidance of conflicts of interest

This Clause requires local authorities and local HealthWatch to have regard to Conflicts Guidance produced by the Secretary of State. This is in response to repeated claims that the commissioning and funding of LHW by local authorities generates a major conflict of interest and undermines the status and independence of LHW.

After Clause 183 - EARL HOWE
Contractors and sub-contractors must be representative of the area and service users

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Sub-contractors can use the LHW logo

This clause enables a LHW subcontractor to use the HealthWatch logo/brand and designates LHW contractors and subcontractors as bodies which are to be representative of local people, users of services whether commissioned locally or in another area. As membership is not required to these bodies, the contractors and subcontractors will be the representatives of the community.

The amendment clearly envisages that a LHW could have multiple contractors and further concedes that their 'representativeness' is not required singly, but 'taken together'. As 'representativeness' is further defined as those "from that area to whom care services are being provided in any place", the door is opened to agencies from another area where some services are provided to some people, taking a share of the LHW contracts.

It is also suggested that an agency would be acceptable as a contractor/sub-contractor of LHW, even though as part of its other activities, it was involved with other agencies or organisations incompatible with the independence of a LHW

Clause 184 - EARL HOWE
ICAS – Health and social care complaints

This clause enables ICAS to investigate complaints against a local authority if the complainant is also to have an NHS complaint investigated using the services of ICAS.

ICAS is not included in the arrangement described above because it currently commissioned through voluntary sector providers.

Clause 185 - EARL HOWE

This Clause enables LHW contractors to carry out the function of LHW in relation to enter and view of health and social care services.

Clause 188 - EARL HOWE
Transitional arrangements

This clause enables the transfer staff from Hosts to LHW contractors under TUPE arrangements.

The amendment appears to enable to transfer of LINks assets to LHW contractors.

After Clause 188 - EARL HOWE
Statutory duties regarding FOI, admission to meetings and consulting with LHW

This clause requires LHW contractors to respond to requests under the FOI and to comply with the Public Bodies (Admissions to Meetings) Act 1960. These access arrangements do not apply to issues in relation to the ICAS component of LHW contact. There is also a duty for CQC and Monitor to have regard to the views of LHW.

The remit of LHW is widened in respect of the duty of the CQC to have regard to its views. The amendments would enable a LHW to comment on issues outside its immediate area.

<u>Information Notes</u>

1) **Freedom of Information Act**
http://www.legislation.gov.uk/ukpga/2000/36/schedule/1

2) **NHS Act 2006**
http://www.legislation.gov.uk/ukpga/2006/41/part/13/crossheading/independent-advocacy-services

3) HEALTH AND SOCIAL CARE ACT 2008

Matters to which the CQC must have regard:

(1) In performing its functions the Commission must have regard to—

- (a) Views expressed by or on behalf of members of the public about Health and social care services,
- (b) Experiences of people who use health and social care services and their families and friends,
- (c) Views expressed by local involvement networks about the provision of health and social care services in their areas,

4) LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT, 2007

Health services and social services: local involvement networks

(1) Each local authority must make contractual arrangements for the purpose of ensuring that there are means by which the activities specified in subsection (2) for the local authority's area can be carried on in the area.

(2) The activities for a local authority's area are—

- (a) Promoting, and supporting, the involvement of people in the commissioning, provision and scrutiny of local care services;
- (b) Enabling people to monitor for the purposes of their consideration of matters mentioned in subsection (3), and to review for those purposes, the commissioning and provision of local care services;
- (c) Obtaining the views of people about their needs for, and their experiences of, local care services; and
- (d) Making—
  - (i) Views such as are mentioned in paragraph (c) known, and
  - (ii) Reports and recommendations about how local care services could or ought to be improved, to persons responsible for commissioning, providing, managing or scrutinising local care services.

End