

# **The Care Act 2014**

## **The impact of the Care Act on the work of Healthwatch**



# Time Line

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- The Care Act was passed in 2014
- The government has just completed a consultation on guidance and regulations
- There will be another consultation, probably in December, on care and support funding
- Most of the Act will be implemented in April 2015
- The new long term funding system will not be implemented until April 2016, but local authorities will start assessing the needs of individuals from April 2015



# How the Care Act 2014 will affect commissioning of services (1)

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- The Act imposes few requirements directly on service providers, but new duties on local authorities will have a major impact on how they commission services
- Anything the local authority does to implement the Act, including commissioning and contracting with services, will have to take account of the principle of promoting the wellbeing of the individual
- Local Authorities will have new duties to manage local markets to ensure that there are sufficient good quality services locally, and that people have a choice of good quality services
- Local Authorities will have a duty to promote integration between care and 'health related services'. The latter are defined very broadly to include housing and leisure services



# How the Care Act 2014 will affect care provision(2)

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- There are new requirements on local authorities to make information, advice and advocacy available.
- Local Authorities will have new safeguarding duties, including a duty to investigate allegations of abuse or neglect (but no specific duty to take subsequent action)
- The 'user journey', through the process of assessment, determining eligibility and care planning will be better defined by the act and by regulations so where services are arranged by the local authority people care should be much more based around individual care plans
- Direct payments will be available to people to purchase residential care



# The 'Wellbeing principle'

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- Applies to local authorities but also to the Secretary of State for Social Care when he or she issues regulations
- Local Authorities must take account of the wellbeing of the individual, and in particular of;
  - personal dignity (including treatment of the individual with respect);
  - physical and mental health and emotional well-being;
  - protection from abuse and neglect;
  - control by the individual over day-to-day life
  - participation in work, education, training or recreation;
  - social and economic well-being;
  - domestic, family and personal relationships;
  - suitability of living accommodation;
  - the individual's contribution to society



# Managing the market

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- Local authorities will have a duty to manage local care markets in order to ensure that people who need care and support (including self funders and direct payment users) have a choice of good quality services
- This duty includes ensuring that sufficient care and support services are available
- Purchasing decisions made by individuals using personal budgets will help to shape markets, so it is important that users of personal budgets are supported to make choices and control their support arrangements.



## Age UK's view

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- Commissioners should take into account the social added value that services can contribute, for example by supporting carers, or by providing a focus for the development of community networks, and should recognise the added value that local or user led organisations can bring to services as a result of strong links to existing community networks.
- Where specialised services are needed that would not be sustainable in one local authority area council's should co-operate to ensure that the need is met.
- Commissioners should ensure that where services are contracted out to other agencies, contracts require that the agency involves service users. Contracts should ensure that providers respect the rights of service users, including under the Human Rights Act.



# Integration

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- Local authorities have a general duty to act to promote integration with 'health related' services
- 'Health related services' for this purpose are defined very broadly and include housing and leisure services
- In contributing to Joint Health and Wellbeing Strategies local authorities must consider greater integration of services, if it would promote wellbeing, prevent or delay needs or improve the quality of care
- The Act attempts to clarify the boundary between care and housing by barring local authorities from providing care to meet needs that the housing department is required to meet.



## Information, advice and advocacy

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- The Act includes wider requirements for local authorities to provide information and advice, including to self funders
- This includes providing financial advice and information to help people to plan to meet care needs
- People who need support to be able to participate in assessment and care planning, and who do not have a suitable person to assist them will be entitled to advocacy. A person is not suitable if the person who needs care and support does not want them as their representative



# Safeguarding

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- The Care Act is the first legislation to require local authorities to take steps to safeguard adults against abuse or neglect
- It requires local authorities to investigate if abuse or neglect is suspected.
- However there is no duty or power to take subsequent action, though local authorities might have duties under the Human Rights Act or common law duty of care, and have powers to seek an injunction to protect the person
- The current framework for considering eligibility for local authority care and support includes risk of abuse or neglect, but this has been removed from proposed new eligibility criteria



## Age UK's view

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- Guidance should make clear what local authorities are expected to do if as a result of an investigation they find that abuse or neglect has taken place or is an immediate risk
- This should include setting out what statutory powers local authorities have and how the Human Rights Act and common law duties might require them to take action
- Risk of abuse or neglect should be included in the eligibility criteria



# Assessment

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- There will continue to be an entitlement to assessment for people who may have care and support needs
- Assessment will still be free
- Assessors will have to be appropriately trained and skilled
- People will be able to carry out a ‘supported self assessment’, though the local authority will only be required to ‘have regard’ to this so it will not be the final say on what people need
- People will need an assessment to decide how much they can count towards the new lifetime cap on individual; spending on care (see below).



## Age UK's view

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- Regulations and guidance (including requirements for staff training) should cover the whole process from first contact to the final decision about what help the person gets. This should include any initial screening process or post assessment panel
- Assessments by telephone must fully involve the individual, and must be capable of identifying whether the person is at risk of abuse and neglect. In practice this will not be achievable for everyone, so we think the role of telephone assessment is limited
- Guidance on assessment should include reassessment, which should be defined as any review that might lead to changes in the person's care



## Eligibility criteria

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- There will be a single national system of eligibility for care and support
- Eligibility Criteria determine who is entitled to support, but also important because only spending to meet eligible needs will count towards the lifetime spending cap
- Under the new system people will be entitled to care if they are unable to carry out 'some or all' basic care activities, 'access necessary facilities' (which includes shops and recreational facilities, maintain family or other important relationships, or engage in work, training, education or volunteering, to the extent that it has 'a significant impact' on their wellbeing



## Age UK's view

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- If people need help with only one basic care activity (rather than 'some or all' they should receive it
- 'significant impact' is not defined (though 'wellbeing' is). How local authorities interpret 'significant' will vary according to how tightly local authorities want to restrict eligibility
- Risks should include risk of abuse and neglect. The Department of Health thinks this is unnecessary because there are specific safeguarding duties in the Act, but these are only duties to investigate, not to take action



## Entitlement to support

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- At present there are different statutory entitlements depending on whether someone lives in their own home or in residential care
- Under the Care Act there will just be one system. This resembles the current system for residential care in that if people can afford to arrange their own care under national rules, the local authority is not automatically responsible for arranging or monitoring care
- However people in this situation will be able to ask the local authority to arrange their care. The local authority would then have to do this but in this case will be able to charge for the cost of arranging and monitoring services, as well as for the service itself. This is the first time that local authorities have had powers to charge to arrange care so we do not know how much they are likely to charge.



## Age UK's view

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- Care home residents can be very vulnerable even when they have income and assets, so we are pleased that all residents will have the option of having the local authority arrange their care
- Since local authorities can usually purchase residential care at lower rates than private funders this option is likely to be popular as people might be able to obtain a care home place at less cost
- However we are concerned that charges for arranging care will be too expensive and this will deter vulnerable people from taking advantage of the scheme



## How the context of inspection will change (1)

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- The wellbeing principle should be likely to have an impact on how inspectors and commissioners evaluate the quality of services
- Service users, particularly self funders, should have improved access to advice and information so may be better able to seek support
- There will need to be mechanisms for using knowledge gained through inspection to support local authorities in their duties to manage care markets
- Inspectors will need to co-operate with local authorities in discharging their safeguarding duties



## How the context of inspections will change (2)

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- Care service users, including care home residents, will include people who are automatically entitled to have care arranged by the local authority, those who have requested, that the local authority should arrange their care and are paying for this, users of direct payments and self funders. It will be important to understand to what extent the local authority is accountable for the welfare of these different groups
- As the process of assessment and care planning is defined in law people, including self funders, should have better care plans enabling providers to provide more personalised care. Inspecting on the basis of whether the goals of people's care plans are being met should become more realistic

