Waltham Forest Health Scrutiny Committee
Substantial Variation Protocol

Background

Waltham Forest Health Scrutiny Committee ("the committee") is responsible for undertaking the Council's health scrutiny function, as set out in:

- National Health Service Act 2006
- Health and Social Care Act 2012
- Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013
- Local Authority Health Scrutiny: Guidance to support Local Authorities and their partners to deliver effective health scrutiny.

There is also statutory guidance for NHS commissioners that is relevant to health scrutiny and public consultation:

- Patient and public participation in commissioning health and care: Statutory guidance for clinical commissioning groups and NHS England

The committee is responsible for reviewing and scrutinising any matter relating to the planning, provision and operation of the health services in its area.

The 2013 Regulations require that where a substantial development to health services in the local area is proposed, the responsible organisation must consult with the committee.

The health scrutiny guidance is clear that the commissioner is responsible for undertaking the consultation (see 4.3.1).

The committee must invite the views of interested parties and take into account any relevant information made available to it. This includes Healthwatch in particular.

The committee has the power to make reports and recommendations, and there is a duty on the local health services to consider and respond formally. The regulations state where a recommendation is not agreed by the commissioner, it must:

- Notify the committee of the disagreement
- Work with the committee to take reasonable steps

The regulations do not define what qualifies a substantial development. However, the guidance suggests that a locally agreed protocol is in place between the health scrutiny function and commissioners.
Principles

This protocol is provided to support the following:

- A clear understanding of roles and responsibilities for commissioners, providers and health scrutiny members.
- Effective delivery of health scrutiny’s primary aim “to strengthen the voice of local people, ensuring that their needs and experiences are considered as an integral part of the commissioning and delivery of health services and that those services are effective and safe.”
- An enhanced role for public involvement in respect to commissioning health services.
- Compliance with the statutory powers and duties related to substantial variations, as well as modelling best practice in respect to the role of health scrutiny.

The guidance encourages early engagement with health scrutiny in order to establish how best to consult on any proposals.

It is important to note that any agreement with the health scrutiny committee does not alter the wider duty to consult service users placed on NHS organisations. In particular, any decision regarding whether a proposed change does not constitute a “substantial reconfiguration” will not impact on the wider duty to consult as set out under sections 14Z2 and 242 of the NHS Act 2006.

This is important as it will ensure there is a clear record of health scrutiny being involved in early planning discussions, and a clear audit trail in case a decision is challenged in the process.

Compliance with the process reduces the risk of decisions being delayed, put on hold or subject to judicial review.

Process for deciding what constitutes a substantial variation

There should be an initial discussion and agreement about whether or not a proposed change constitutes a substantial variation.

The commissioner will contact the committee scrutiny officer to discuss the details of the proposed change.

The attached pro forma is intended to support this discussion, and ensure that sufficient information is provided in order to make an informed decision.

This will then be referred to the committee Chair and Vice-Chair, along with any officer recommendation. The Chair will make a decision on the basis of the evidence. The following factors should form the basis of their consideration:

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- Changes in accessibility of services
- Impact of proposal on the wider community
- Numbers of patients affected
- Methods of service delivery
- The impact on specific groups of patients, for example: older people, those with mental health conditions or those with a life-long condition.

The scrutiny officer will confirm with commissioners in writing the outcome of this discussion, and schedule an item for the committee if necessary.

The guidance states that the committee and the commissioner should try to reach a consensus about what qualifies as a substantial variation. Where disagreement arises, it is recommended that the commissioner seek the advice of the Independent Reconfiguration Panel. The committee reserves the right to make a referral to the Secretary of State if an agreement cannot be reached (sec 224 (2ZA) National Health Services Act 2006 as amended).
<table>
<thead>
<tr>
<th>What is the change proposed? (for example relocation of wards, change of service model, closure of services)</th>
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<tbody>
<tr>
<td>What is the likely impact of the change?</td>
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<tr>
<td>How many patients are likely to be affected? (include specific groups where identified)</td>
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<tr>
<td>To date, how have people been involved in the planning for the change?</td>
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<td>What is the timescale for the change and what consultation activity is planned?</td>
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<tr>
<td>Has this topic been considered by the committee before, and if so what was the outcome?</td>
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<tr>
<td>What equalities impact analysis has been undertaken, and what were the key findings?</td>
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