

Part 6.1B (18) – Duty of NHS Bodies to Consult

Under Regulation 23(1) of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 an NHS body or health service provider must consult the Committee, where it has under consideration any proposal for a substantial development of the Health Service or a substantial variation in the provision of such service. This will not apply where:

- a) it is a proposal to establish or dissolve or vary the constitution of the ICB or establish or dissolve an NHS Trust unless the proposal involves a substantial development or variation.
- b) proposals are part of a trust's special administrator's report or draft report (i.e. when a trust has financial difficulties and is being run by an administration put in place by the Secretary of State). These are required to be the subject of a separate 30-day community – wide consultation.
- c) the relevant NHS body or health service commissioner believes that a decision has to be taken without allowing time for consultation because of a risk to safety or welfare of patients or staff. In such cases the NHS body or health service provider must notify the local authority that consultation will not take place and the reason for this.

The NHS body or health service provider must inform the Committee when a consultation is happening, the timeframe of a decision and, following a decision, whether to proceed with the proposal. The Committee may comment on the proposals by a date set by the NHS body or health service provider.

Under Regulation 26(2) of The Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny), where an NHS or health service provides, or arranges for the provision of, services to persons residing within the area of several local authorities, its duty under paragraph (1) will be satisfied if it provides information to the joint overview and scrutiny committee of those authorities. The Buckinghamshire, Oxfordshire, and Berkshire West Joint Health Overview and Scrutiny Committee qualifies as the joint overview and scrutiny committee to be informed when a variation in services will affect residents across the Buckinghamshire, Oxfordshire, and Berkshire West Geography as a collective.

The Committee may report to the Secretary of State in writing to request that the Secretary of State call the proposal in where it is not satisfied that:

- d) consultation **with the local authority** on any proposal for a substantial change or development has been adequate in relation to content or time allowed ~~(NB. The Referral power in these contexts only relates to the~~

~~consultation with the local authority, and not consultation with other stakeholders)~~

~~The Committee may report to the Secretary of State in writing where it is not satisfied that:~~

- e) that the proposal would be in the interests of the health service in Oxfordshire
- f) a decision has been taken without consultation and it is not satisfied that the reasons given for not carrying out consultation are adequate

The Department of Health and Social Care expects requests only to be used in exceptional situations where local resolution has not been reached and expects that all reasonable attempts at local resolution should be attempted and exhausted Prior to making such a request the Committee will normally:

- i) allow all reasonable steps for local resolution to be taken
- ii) request the NHS body or health service provider to complete a substantial change toolkit if one has not been previously provided, and invite its representatives to a meeting of the committee
- iii) to determine whether the change proposed meets the threshold of being a 'substantial variation', whether all reasonable steps for local resolution have been exhausted, and whether the consultation or impact on health outcomes provide a legal basis to request a call-in by the Secretary of State.

A call-in request to the Secretary of State may require the NHS body to carry out consultation or further consultation with ~~only be made by a decision of the Committee as they consider appropriate. The NHS body must then have regard to the outcome of that and reconsider any decision it has taken. If such a request is made, the Scrutiny Officer will submit on behalf of the Committee a call-in request form to the Secretary of State. This form will include:~~

- a description of the NHS service change or reconfiguration
- the reason the Committee requesting that the Secretary of State intervene, its concerns and what the Committee would like the Secretary of State to do in response
- whether the Committee believes there has been a failure of process in relation to consultation, and its evidence
- whether the Committee believes a decision has been taken which is not in the best interest of the health service in the local area, and its evidence
- detail of the steps taken to resolve issues locally

~~There are certain limits on the circumstances in which the Committee may refer a proposal to the Secretary of State. In particular, where it has made a recommendation and the relevant NHS body or health service provider has disagreed with the recommendation, it may not refer a proposal unless:~~

- ~~g) it is satisfied that reasonable practicable steps have been taken to try to reach agreement (with steps taken to involve the provider where NHS England or a CCG is acting on the provider's behalf) but agreement has not been reached; or~~
- ~~h) it is satisfied that the relevant NHS body or health service provider has failed to take reasonably practicable steps to try to reach agreement within a reasonable period.~~

~~If the Committee has not commented on the proposal or has commented without making a recommendation, it may not refer a proposal unless it has informed the relevant NHS body or health service provider of its decision as to whether to exercise its power of referral and, if applicable, the date by which it proposed to exercise that power; or the date by which it proposes to make a decision as to whether to exercise its power of referral.~~

~~In the case of both discretionary committees (i.e. where councils have chosen to appoint the joint committee to carry out specified functions) and mandatory joint committees (i.e. where councils have been required under Regulation 30 to appoint a joint committee because a local NHS body or health service provider is consulting more than one local authority's health scrutiny function about substantial reconfiguration proposals):~~

- ~~i) where the power to refer has been delegated to the joint committee, only the joint committee may make a referral.~~
- ~~j) Where the power to refer has not been delegated to the joint committee, the individual authorities that have appointed the joint committee (or health overview and scrutiny committees or sub-committees to whom the power has been delegated) may make a referral.~~

~~In making a referral to the Secretary of State, the Committee should set out:~~

- ~~k) An explanation of the proposal to which the report relates.~~
- ~~l) An explanation of the reasons for making the referral.~~
- ~~m) Evidence in support of these reasons.~~
- ~~n) Where the proposal is referred because of inadequate consultation, the reasons why the Committee is not satisfied of its adequacy.~~
- ~~o) Where the proposal is referred because there was no consultation for reasons relating to safety or welfare of patients or staff, reasons why the Committee is not satisfied that the reasons given for lack of consultation are adequate.~~
- ~~p) Where the Committee believes that proposals are not in the interests of the health service in its area, a summary of the evidence considered,~~

~~including any evidence of the effect or potential effect of the proposal on the sustainability or otherwise of the health service in the area.~~

- ~~q) An explanation of any steps that the Committee has taken to try to reach agreement with the relevant NHS body or health service provider.~~
- ~~r) Evidence that the health scrutiny body has complied with the requirements which apply where a recommendation has been made.~~
- ~~s) Evidence that the health scrutiny body has complied with the requirements which apply where a recommendation has not been made, or where no comments have been provided on the proposal.~~

~~If the change/issue is being supported by the Health and Wellbeing Board, the Committee will need to be clear why they oppose this support.~~