

CUMBRIA HEALTH SCRUTINY COMMITTEE

Meeting date: 22 March 2017

From: Corporate Director -Resources & Transformation

HEALTHCARE FOR THE FUTURE – WNE CUMBRIA

1.0 PURPOSE OF REPORT

1.1 This item outlines, for consideration by the Committee, the decisions made by NHS Cumbria Clinical Commissioning Group (NHS CCG) Governing Body on 'The Future of Health care in West, North & East Cumbria' proposals and represents Stage 3 of the Committee's Variation Protocol

2.0 ISSUES FOR SCRUTINY

2.1 The Cumbria Health Scrutiny Committee is asked to:

- i. Receive a note setting out the decisions taken by the NHS Cumbria Clinical Commissioning Group Governing Body, the decision-making documents presented to the Governing Body and supporting papers.
- ii. Seek any clarification it requires on each decision
- iii. To consider for each decision made by the NHS Cumbria Clinical Commissioning Group Governing Body, whether to refer the decision to the Secretary of State.

3.0 BACKGROUND AND CONTEXT

3.1 The Cumbria Health Scrutiny Variation Protocol states that where the parties agree that a proposed variation is substantial the Committee will provide comments/recommendations to the NHS Organisation which will then consider the comments and go out to consultation formally with the relevant stakeholders in accordance with the relevant legislation.

3.2 At its meeting of 24 February 2016 the Committee were advised that both the Success Regime and the NHS CCG considered the expected proposals (referred to at the time as the Clinical Strategy) to be a substantial variation. Having consulted the chair of the variation sub-committee, the Committee agreed that they would be a substantial variation and agree to move to stage two of the protocol. At that stage the detail of the proposals had not been announced.

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- 3.4 The Committee received an update from the Success Regime/NHS CCG on the development of the draft clinical Strategy at its 13 April 2016 meeting and again at its meeting of the 16 May 2016. At these meetings the Committee had opportunity to make comments and recommendations about the proposals for public consultation, and consultation process itself.
- 3.5 The Committee requested:
- additional public meetings, double the number of meetings originally proposed, including public meetings in all eight of the community hospital localities.
 - monthly briefing meetings for stakeholders to update them on consultation progress.
 - briefings for the County Council's four local committees on consultation progress.

These were all accepted by the NHS CCG and incorporated into the consultation plan

- 3.6 At the 16 May meeting the Committee agreed that:
- the proposed extent of consultation activity is appropriate (incorporating the requests of the Committee);
 - no specific additional consultation activity should be considered;
 - That its comments and recommendations had been accepted by the NHS CCG and that stage 2 of the variation protocol, with respect to consultation, had been discharged.
- 3.7 The consultation was launched on 26 September 2016 and ran until 19 December 2016. At the 13 October 2016 meeting Members received the Future of Health Care in West, North & East Cumbria Public Consultation Document and the proposals contained therein. The Committee were provided with an opportunity to listen to a range of witnesses to gather evidence on the likely impact of the proposals being consulted upon.
- 3.8 Members were informed that the CCG has the legal responsibility for undertaking local consultations highlighting that this was in close consultation with the Success Regime and partner organisations. It was noted that the outcome of the public consultation was an important factor in health service decision making and that no decisions had yet been made. They were briefed that the responses to the consultation would be analysed independently and reported to the NHS CCG Governing Body with the decisions brought back to the Cumbria Health Scrutiny Committee for consideration.
- 3.9 The NHS CCG Governing Body met on 8 March 2017 and their decisions on the various proposals are appended at Appendix 2.

- 3.10 Stage 3 of the Variation Protocol states that once the consultation has been completed the NHS Organisation will report the results of the consultation back to the Committee with its response and proposed next steps. If at this stage the Committee feel that the proposal would not be in the interests of the health service in its area, the Committee will then make a decision on whether or not to refer the matter to the Secretary of State.
- 3.11 The circumstances for referral of a proposed substantial development or variation are laid out in legislation. That is, where a health scrutiny body has been consulted by a relevant NHS body or health service provider on a proposed substantial development or variation, it may report to the Secretary of State in writing if:
1. It is not satisfied with the adequacy of content of the consultation with the committee.
 2. It is not satisfied that sufficient time has been allowed for consultation with the committee.
 3. It considers that the proposal would not be in the interests of the health service in its area.
 4. It has not been consulted, and it is not satisfied that the reasons given for not carrying out consultation are adequate.

As set out there are four grounds for referring a proposed substantial variation to the Secretary of State. Three of these grounds (grounds 1, 2 and 4) relate to consultation between the CCG and the Committee which were addressed at the Committee meetings on 13 April 2016, 16 May 2016 & 13 October 2016.

As a consequence when considering whether or not to refer the substantial variation to the Secretary of State, the consideration for Members at this meeting is whether the proposal would not be in the interests of the health service in Cumbria.

- 3.12 If the Committee determines that it will make a referral to the Secretary of State a report must be sent to the Secretary of State setting out:
- (a) an explanation of the proposal for a substantial variation to which the report relates, i.e. which parts (or all) of the proposals presented by the CCG;
 - (b) 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 of the authority;
 - (c) an explanation of the reasons for the making of the report; and
 - (d) any evidence in support of those reasons.
- 3.13 The report would be agreed by the Corporate Director - Resources and Transformation in consultation with the Health Scrutiny Lead Members and the Member of the Committee who made the recommendation to refer.
- 3.14 The variation protocol sets out a dispute resolution procedure to be followed where the health body and the Health Scrutiny Committee fail to reach agreement. This process was intended to allow both parties to investigate whether there was any way of resolving the situation before a referral to the Secretary of State.

If this process was to be followed then the Health Scrutiny would need to consider at its next meeting whether the resolution process had been successful and then make a further decision about whether to refer the decision to the Secretary of State. This would have the impact of delaying the final decision until the 24th May with a resultant increase in uncertainty within the health system. Given this, discussions have taken place with the CCG and it has been agreed that if necessary the resolution procedure will be undertaken within an adjournment on the 22nd March meeting. The Committee will then reconvene immediately after this on the 22nd to agree whether the resolution process had been successful and then make a further decision about whether to refer the decision to the Secretary of State.

- 3.15 Where the Committee makes a referral to the Secretary of State on the grounds set out above, the Secretary of State may:
- (a) Make a final decision on the proposal; or
 - (b) Give directions to NHS England, including directions as to direct the CCG, in relation to the proposal.

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Corporate Director – Resources and Transformation

March 2017

Appendix

- Appendix 1 Cumbria Health Scrutiny Committee Variation Protocol
- Appendix 2 Report from Cumbria Clinical Commissioning Group on decisions of the Governing Body
- Appendix 3 CCG Decision – making paper
- Appendix 4 Background papers

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