

Report to the Cabinet Member for Adult and Community Services
Report submitted by: Director of Adult Services
Date: 7 December 2015

Part I

Electoral Divisions affected:
All

Implementation of the Care Act – Approval of revised Adult Social Care Policies and Procedures

(Appendices 'A', 'B', 'C', 'D', 'E' and 'F' refer)

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Executive Summary

The Care Act 2014 modernises and consolidates legislation on adult social care in England into one statute and has been described as the biggest change to adult social care law in 60 years. This legislation has changed the financial, legal, commissioning and operational landscape for councils, their workforces, for citizens, social care providers and partners.

The County Council's adult social care policies, procedures and practice guidance documentation forms part of an essential operating framework for those working with adults who have social care needs. The requirement to maintain and improve this framework is essential to the professional and high quality delivery of assessment, supports, information and advice to our customers and to ensure legal compliance.

A comprehensive review of the County Council's adult social care policies, procedures and practice guidance has therefore been undertaken and key policy documents have been identified for review and revision as part of a phased programme.

This report sets out the impact and benefits from undertaking this review and clarifies the need to subject all new Adult Social Care policies, procedures and practice guidance to robust governance arrangements.

This is deemed to be a Key Decision and the provisions of Standing Order No. 25 have been complied with.

Recommendation

The Cabinet Member for Adult and Community Services is recommended to:

- i. approve the following revised Adult Social Care Policies:
 - a. Wellbeing Principle (Appendix 'C')
 - b. Eligibility (Appendix 'D')
 - c. Ordinary Residence (Appendix 'E')
 - d. Independent Advocacy (Appendix 'F')
- ii. authorise the Director of Adult Services to approve all future revisions of adult social care policies.

Background and Advice

- Introduction

The Care Act 2014 modernises and consolidates legislation on adult social care in England into one statute and has been described as the biggest change to adult social care law in 60 years. This legislation has changed the financial, legal, commissioning and operational landscape for councils, their workforces, for citizens, social care providers and partners.

Many of the major provisions affecting social care policy and practice came into effect on 1st April 2015 and includes areas such as assessment, eligibility, safeguarding, independent advocacy, support planning and review, market shaping and provider failure.

The Care Act clarifies the duties placed on Local Authorities (many of which are new) and in response, it is essential that the County Council's policy framework for adult social care be reviewed and where necessary revised and redrafted to ensure compliance.

The County Council's adult social care policies, procedures and practice guidance documentation forms part of an essential operating framework for those working with adults who have social care needs. At a time when change is prevalent across the County Council, customers and stakeholders are seeking accurate information and the delivery of services through a consistent and equitable approach that is legally compliant.

Ensuring that we offer a clear statement of our duties and responsibilities is of particular importance as the Care Act has introduced a number of new statutory requirements. This has already occurred in regard to Adult Social Care policies approved earlier this year including Lancashire's Deferred Payment Scheme, Lancashire's Safeguarding Policy and the policy for Undertaking Assessments and Providing Support for Carers in Lancashire.

Securing this approval of the revised policies not only ensures compliance with this legislation but also demonstrates the County Council's commitment to deliver a fair, consistent and transparent offer.

The County Council's policies, procedures and practice guidance are crucial to the professional and high quality delivery of services to the public. This review of the County Council's adult social care policy framework has therefore been prioritised and will continue on a phased programme.

- New arrangements

To support the development and effectiveness of the County Council's adult social care policies, procedures and practice guidance, work has been undertaken to frame an agreed definition of terms – these are attached at Appendix 'A'

Working in partnership with other Local Authorities has enabled the County Council to develop a revised and more concise framework that incorporates the policies, procedures and practice guidance essential to deliver effective services. This new framework ensures that the County Council is legally compliant with the Care Act and other relevant legislation such as the Mental Capacity Act. The new framework is attached at Appendix 'B'

Governance arrangements will be formally established following the conclusion of this review to ensure that all future revisions and/or new policy documents will be legally compliant, informed by practice and robust in the event of challenge. It is recommended that all future revisions will be subject to final approval from the Director of Adult Services following operational and legal clearance.

- Summary of revised Policies

Wellbeing (Appendix 'C'):

The wellbeing principle applies equally to those who do not have eligible needs but come into contact with the health and social care agencies in some other way (for example, via an assessment that does not lead to ongoing care and support) as it does to those who go on to receive care and support, and have an ongoing relationship with the local authority.

The principle of wellbeing will inform the commissioning and delivery of universal services which are provided to all people in the local population, as well as being considered when meeting eligible needs.

Cabinet Members are recommended to refer to Appendix 'C', point 2.1, page 5 as this offers a definition of 'wellbeing' as defined by the Care Act 2014.

Eligibility (Appendix 'D'):

The introduction of a national eligibility threshold provides greater transparency on the threshold of need for eligibility. Improved clarity supports authorities in deciding whether the prior provision of information and advice or preventative services would delay a person from developing needs which meet the eligibility criteria or whether longer-term care and support might be needed. It should also help the person needing care or their carer to think more broadly about what support might be

available in the local community or through their support network to meet their needs and support the outcomes they want to achieve.

The Fair Access to Care Services (FACS) framework which was introduced in 2003 has therefore been repealed. However to ensure a smooth transition from old to new legislation with effect from 1st April 2015, individuals deemed eligible under the FACS criteria continue to be eligible until their next statutory review under the Care Act.

The County Council's records note that 16,830 people were assessed as eligible for adult social care services following data collected between April and September 2015. This emphasises the need for clear and accurate policies to support practice.

Two case studies have been included within this policy as an aid to understanding the application of the eligibility criteria for Social Care Workers. Cabinet Members are recommended to refer to Appendix 'D', page 11/13 Case Study 1 and 2.

Ordinary Residence (Appendix 'E'):

The understanding and framework for 'Ordinary residence' is crucial in deciding which local authority is required to meet the needs in respect of adults with care and support needs and carers. Whether the person is 'ordinarily resident' in the area of the local authority is a key test in determining where responsibilities lie between local authorities for the funding and provision of care and support. A local authority is only required to meet needs in respect of an adult who is "ordinarily resident" in their area (or is present there but has no settled residence).

In 2014 the County Council was involved in over 20 challenges to Ordinary Residence decisions. The need to have a clear, transparent and legally compliant policy and procedures is therefore crucial to support the County Council's decision making and its ability to respond effectively to future challenges and complaints.

Independent Advocacy (Appendix 'F'):

The Care Act places a duty on a local authority to arrange an independent advocate for all applicable adults. Local authorities must involve people in decisions made about them and their care and support or where there is to be a safeguarding enquiry or Self-Assessment Report (SAR). People should be active partners in the key care and support processes of assessment, care and support and support planning, review and any enquiries in relation to abuse or neglect. No matter how complex a person's needs, local authorities are required to involve people, to help them express their wishes and feelings, to support them to weigh up options and to make their own decisions.

The County Council currently contracts with four independent advocacy providers and it is essential that they are able to work in line with the County Council's policies and procedures. This new duty has therefore been recognised in a standalone policy specific to Independent Advocacy (Care Act) in acknowledgement of its place in legislation.

Cabinet members are recommended to refer to Appendix 'F', page 8 which details the referral process within a clear and easy to use flow chart.

- Review and revision of Policies, in plan

The following policies have been determined as high priority for review and revision and will be presented for Cabinet Member approval at a future date:

- a) Assessment
- b) Care and Support Planning
- c) Review of Care and Support Plans

In addition, Cabinet Members are asked to note that work is currently being undertaken to review the County Council's response plans to Urgent Home Closures as part of its planned approach to provider failure. The County Council has been invited to participate in a joint programme of development with NHS England and the Response Plan and Policy documentation will be present for approval following the completion of this project.

It is proposed that these documents will be presented for Cabinet Member approval in January 2016. All remaining policy revisions will be presented before March 2016.

Consultations

Wider public consultation has not been undertaken as the documents in question are not new presentations but rather revisions to ensure they fully represent the new duties and requirements placed on the local authority under the Care Act.

Implications:

This item has the following implications, as indicated:

Workforce

The professional response and practice of the workforce in supporting citizens and customers is guided by the County Council's comprehensive range of adult social care policies, procedures and practice guidance. The accuracy and relevance of these documents is therefore essential to support practice and the delivery of high quality supports.

As the revision of documentation has in the main been as a result of new duties under the Care Act, a further process of training raising in regard to the variations will also be undertaken across the social care workforce to ensure that the changes are embedded in practice.

A programme of training is already being delivered across the social care workforce and with key internal and external stakeholders to ensure understanding of legal responsibilities under the Care Act and to embed the new duties into practice. The workforce has been offered a range of awareness and business specific training via manager's briefings, e-learning, face to face training and learning circles. The training programme will continue through to March 2016.

Legal

The Care Act and supporting guidance places a series of new duties and responsibilities on the County Council in regard to the care and support for adults. All revised or new documents have been assessed and approved by legal before presentation to Cabinet Members for final approval. All documents will be publically accessible as part of this process with the aim of reducing legal challenge or complaints due to lack of understanding or transparency.

Equality and Diversity

The Care Act itself was subject to a wide range of consultation and its provisions were assessed for their equality impact.

Financial

The revisions have no new financial implications.

Risk management

The County Council is already operating within the framework of the Care Act. However publishing a clear policy framework supports the County Council. If the recommendations are not taken forward, the County Council will not meet its statutory duties under the Care Act which will result in the County Council being highly exposed to legal challenge and reputational damage.

List of Background Papers

Paper	Date	Contact/Directorate/Tel
Preparing for Implementation of the Care Act in Lancashire - http://mgintranet/ieDecisionDetails.aspx?ID=5721	10/09/2014	Heather Bryan/ Health & Care Systems Development/ 07876844624
Care Act 2014 – http://www.legislation.gov.uk/ukpga/2014/23/pdfs/ukpga_20140023_en.pdf		
Care and Support Statutory Guidance (October 2014) - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366104/43380_23902777_Care_Act_Book.pdf		
Implementing the Care Act 2014 - Approval of a new	01/04/2015	

Policy for Safeguarding Adults
in Lancashire

<http://mgintranet/ieDecisionDetails.aspx?ID=6604>

Implementing the Care Act - Approval of a new Deferred Payment Policy

15/01/2015

<http://mgintranet/ieDecisionDetails.aspx?ID=6289>

Implementing the Care Act 2014 - Approval of a new Policy for Undertaking Assessments and Providing Support for Carers in Lancashire

15/01/2015

<http://mgintranet/ieDecisionDetails.aspx?ID=6292>

Implementing the Care Act: Development of a s75 Partnership Agreement with Lancashire Care Foundation Trust for meeting the County Council's responsibilities for provision of Social Care in Prisons

15/01/2015

<http://mgintranet/ieDecisionDetails.aspx?ID=6293>

Reason for inclusion in Part II, if appropriate

N/A