

# Appendix A – Framework of statutory duties

This Appendix is a technical appendix which sets out the statutory framework for preparation of JSNAs and JHWSs as well as a summary of other associated or potentially relevant statutory provisions. This includes the duties and powers of health and wellbeing boards relating to preparation of JSNAs and JHWSs which are set out in the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act") as amended by the Health and Social Care Act 2012 ("the 2012 Act"), which amendments are to come into force on 1st April 2013. This appendix forms part of the guidance on preparing JSNAs and JHWSs.

## 1. Functions of health and wellbeing boards in relation to JSNAs and JHWSs

### Enhanced JSNA

- 1.1 At the heart of the health and wellbeing board's role in joining up commissioning across health and social care, is the development of JSNAs. The preparation of JSNAs is an existing statutory duty, which currently rests with local authorities and PCTs. Under amendments made to the 2007 Act by the 2012 Act, local authorities and CCGs will both have an equal and explicit duty to jointly prepare JSNAs, and this duty will have to be discharged by the health and wellbeing board. It is intended that the relevant provisions will commence from April 2013.
- 1.2 The duty in section 116 of the 2007 Act is a duty to prepare an assessment of relevant needs in relation to the area of each responsible authority. For these purposes, there is a relevant need in relation to the area of a local authority which overlaps with the area of a partner CCG, if it appears to the local authority and partner CCG that there are current or future health and social care needs in relation to the area. These are needs which are capable of being met to a significant extent, by the exercise of functions of the local authority, and which could also be met or affected to a significant extent by the exercise of functions by the partner CCG, NHS Commissioning Board – or vice versa.
- 1.3 Section 116 also imposes a duty to involve the Local Healthwatch organisation for the area, the people who live or work in the area, and in the case of county councils, relevant district councils. In preparing JSNAs, it is crucial that the voice of local communities is heard and that the health and wellbeing board involves its local population. This duty does not distinguish between adults and children, and is expressed in the legislation as a requirement to involve people who live or work in

the area. This involvement must be in addition to that of the Local Healthwatch organisation, and any relevant district councils. Others, such as professionals from outside the area, wider public sector partners, voluntary and community organisations and providers of services may also be involved in, or be requested to contribute to its development as is appropriate in order to develop the fullest possible assessment of needs.

### The new JHWS

- 1.4 Building on enhanced JSNAs, the 2012 Act similarly places a new duty, which rests equally on the local authority and CCGs, to prepare a JHWS for meeting the needs identified in the relevant local JSNA. This duty must also to be discharged through the health and wellbeing board. Health and wellbeing boards will bring together the key local commissioners of health and social care services and it is envisaged that they will use the JHWS to enable them to consider the total resource available to improve their population's health and wellbeing, and to come to a joint understanding as to how those resources can best be invested.
- 1.5 In developing the JHWS, local authorities and CCGs have a duty to consider how the use of flexibilities under section 75 of the NHS Act 2006, such as pooled budgets and lead commissioning can more effectively meet the needs identified in JSNAs. This is intended to complement health and wellbeing boards' role in promoting integration, which is outlined at paragraph 4.2.6 below. The legislation enables health and wellbeing boards to use JHWS to consider how the commissioning of health, social care and wider health-related services, could be more closely integrated.
- 1.6 Health-related services are those that are not health or social care services, but may nonetheless have an impact on the health of individuals. It could also involve looking at how the health gains from factors such as transport, planning or the environment can be maximised. This may therefore involve considering the commissioning of health-related services by a broad range of local partners, such as for example, district councils, local authority housing services and strategies, local community safety partnerships, police and crime commissioners, local probation trusts, prisons, children's secure estate and all schools, including academies and free schools. This ability to look beyond health and social care will be critical to the success of health and wellbeing boards.

### Other statutory duties and powers in relation to JSNAs and JHWSs

- 1.7 The health and wellbeing board is able to request information from certain members or persons represented on it, for the purposes of enabling or assisting its performance of functions. For instance this could involve requesting information from partner CCGs in relation to

the preparation of JSNAs or the JHWS, or in respect of any further functions that the local authority, may have chosen to delegate to the health and wellbeing board.

- 1.8 In preparing JSNAs and JHWSs, local authorities and CCGs must have regard to any guidance issued by the Secretary of State. In preparing JHWSs local authorities and CCGs must also have regard to the Secretary of State's mandate to the NHS Commissioning Board.
- 1.9 The NHS Commissioning Board must appoint a representative to participate in preparation of JSNAs and JHWSs. The reason for this is that many of the services which the NHS Commissioning Board commissions will be critical to meeting the needs identified.
- 1.10 Both JSNAs and JHWSs must be published (see section 6).

## 2. Impact of functions in relation to JSNAs and JHWSs on other associated functions

### Strengthening the role of the JSNA and JHWS in the commissioning process; Duty to have regard to the JSNA and JHWS and alignment of commissioning plans

- 2.1 In the future there is a clear expectation that JSNAs and JHWSs will provide the basis for health and social care commissioning in relation to the local area. The 2012 Act has amended the 2007 Act to introduce a new statutory obligation on key health and social care commissioners (CCGs, the NHS Commissioning Board and local authorities) to have regard to the relevant JSNA and JHWS in exercising their functions. This means that in making any decisions to which a JSNA or JHWS is relevant (for example a commissioning decision), the body must take account fully of the relevant provisions of the relevant JSNA and JHWS, and consider them properly and seriously, not dismissively. CCGs, the NHS Commissioning Board and local authorities will be expected to develop their commissioning plans in line with any relevant JSNA or JHWS, and must be able to justify any parts of their plans which are not consistent.
- 2.2 If the health and wellbeing board does not believe that a local authority has had regard to the relevant JSNA or JHWS, it will be free to raise its concerns with the local authority. When preparing or significantly revising its commissioning plan, a CCG must consult the health and wellbeing board on whether it has taken proper account of the JHWS, and the board must give its views – a statement of the final opinion of the health and wellbeing board must be included in the CCG's published commissioning plan. The health and wellbeing board can express concerns to the NHS Commissioning Board, which would be able to take action where deviation from the relevant JHWS is not adequately justified. Within the 2012 Act, there is a suite of specific

duties and powers aimed at ensuring the alignment of CCG commissioning plans with the JHWS.

- 2.3 When the health and wellbeing board is considering a matter that relates to the exercise, or proposed exercise, of the commissioning functions of the NHS Commissioning Board, it may request the NHS Commissioning Board to send a representative to participate in these discussions – this request has to be complied with. It will be up to the NHS Commissioning Board to decide who would be most appropriate to attend at a particular meeting, and with the agreement of the board, the Commissioning Board may appoint someone to represent it who is not its member or employee, such as a CCG representative.
- 2.4 Although the legislation refers explicitly to health and wellbeing boards being involved in the development of CCG plans, it would be good practice for the local authority and NHS Commissioning Board (in relation to the area of the health and wellbeing board) also to involve them in the development of their plans for commissioning of health or social care services. This will enable health and wellbeing boards to help commissioners to ensure that their commissioning plans are aligned with the JHWS, and to promote integrated commissioning.
- 2.5 One of the prescribed public functions for local authorities within the new system will be to provide a free of charge public health advice service to NHS Commissioners. As part of this, local public health teams will support CCGs in making full use of JSNAs and JHWSs. They will also work have an important role in scrutinising the local delivery of services commissioned by the NHS Commissioning Board, such as screening and immunisation programmes.

### Role in promoting integrated working

- 2.6 There is a requirement for health and wellbeing boards to encourage integrated working between commissioners of health and social care services. Through this, we expect health and wellbeing boards will play a strong role in promoting integrated provision as between health, public health and social care services.
- 2.7 In addition, health and wellbeing boards will have a power to encourage closer working between commissioners of health-related services – those that may have an effect on health – with themselves and with other commissioners of health and social care services.
- 2.8 In particular they must provide advice, assistance or other support as they think appropriate for the purpose of encouraging the making of arrangements under section 75 of the NHS Act 2006 in connection with the provision of health and social care services. These arrangements include the pooling of funds, lead commissioning and integrated provision. For example, CCGs and local authorities may make arrangements with each other to commission services on each other's

behalf, where they feel it may improve commissioning. This could be the case for example, in meeting statutory arrangements for the provision of wheelchairs, or in the delivery of treatment, care and support for older people.

- 2.9 The NHS Commissioning Board is also under a duty to encourage the use of these flexibilities by CCGs where it considers this would secure the provision of health services in an integrated way or in a way that is integrated with the provision of social care or health related services and would improve quality or reduce inequalities with respect to access to services provided or outcomes to be achieved by services provided.
- 2.10 These flexibilities are intended to improve the quality of services or reduce inequalities with regards to access to services or outcomes. Groups that will receive the greatest benefits will be those with complex needs across a range of services such as children with an education, health and care plan, people with long term conditions including the frail elderly, troubled families or the homeless.

### Health and wellbeing boards are open-ended

- 2.11 The 2012 Act gives local authorities the power to delegate local authority functions to the health and wellbeing board. This creates potential opportunities for health and wellbeing board's to address factors that influence health and wellbeing – as long as the relevant services are within the local authority's functions and the local authority has delegated them to the board. For example, housing and leisure, substance misuse treatment; or other determinants of health could be considered by the health and wellbeing board, where delegated.
- 2.12 The legislation however makes clear that the local authority scrutiny function cannot be delegated to the health and wellbeing board. Subject to regulations, local authorities will have the flexibility to exercise their scrutiny functions, through health overview and scrutiny committees or other arrangements. The local authority scrutiny function will be an important lever to hold health and wellbeing boards to account on behalf of local communities.
- 2.13 Local authorities also cannot delegate their Equality Duties when assigning additional functions to the health and wellbeing board.

### 3. Other duties, to the discharge of which JSNAs and JHWSs can contribute

- 3.1 It is important to consider how these duties contribute to creating a health and care system that puts people first and continuously improves the quality and outcomes of care for everyone. Both local authorities and CCGs have general and specific duties under the Equality Act 2010. These duties are designed to help integrate consideration of advancing equality; eliminating discrimination and



fostering good relations into the day-to-day business of public authorities and to increase transparency of this.

- 3.2 Separately, there are specific statutory duties on both the NHS Commissioning Board and CCGs, set out in legislation, which relate to their duty to promote integration when making arrangements for the provision of services. Their active participation in the preparation of JSNAs and JHWSs will be able to contribute to these duties.
- 3.3 There are also other requirements for the NHS Commissioning Board and CCGs, in exercising their functions, to:
  - act with a view to securing continuous improvement in quality
  - have regard to the need to reduce inequalities between patients in access to and outcomes from health services
  - promote the involvement of patients, their carers and representatives in decisions about the provision of health services
  - promote innovation in the provision of health services.
- 3.4 From April 2013, each upper-tier and unitary local authority in England will have a duty to take such steps as it considers appropriate for improving the health of the people in its area. To fund their new public health duties local authorities will receive a ring-fenced grant under Section 31 of the Local Government Act 2003. As with other ring-fenced grants, this will carry some conditions about how it may be used. The Government has committed to keeping these to a minimum, to maximise local autonomy and flexibility. The intention is for the grant to be spent on activities whose main or primary purpose is to impact positively on the health and wellbeing of local populations. Local authorities will have to report back to the Department on how they have spent the grant.
- 3.5 Local collaboration aimed at achieving outcomes which benefit different bodies is entirely in line the established behaviour of local authorities. The role of the local authority in health and wellbeing boards, and the role of key local partners, in undertaking JSNAs and JHWSs is entirely in line with the localism agenda, and Best Value practices<sup>i</sup>. This joint working will also support local authorities to meet their own statutory duties and provide improved services – for instance in providing more integrated services for children with an education, health and care plan.
- 3.6 Similarly, preparing JSNAs and JHWSs can support other duties on some of the organisations represented at health and wellbeing boards such as the reduction of crime, antisocial behaviour and re-offending under the Crime and Disorder Act 1998. JSNAs and JHWSs can inform contributions those organisations make to wider partnerships such as Community Safety Partnerships (CSPs) and Local Economic Partnerships (LEPs).

---

<sup>i</sup> <http://www.communities.gov.uk/documents/localgovernment/pdf/1976926.pdf>