National Audit Office

Report
by the Comptroller
and Auditor General

Department of Health

Care Act first-phase reforms

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Summary

1 Social care is personal care and practical support for people with physical disabilities, learning disabilities, or physical or mental illness. In 2012, the government set out its plan to reform care and support in the white paper *Caring for our future: reforming care and support*.[1] The objectives are to reduce reliance on formal care, to promote people's independence and well-being, and give people more control of their own care and support. The Department of Health (the Department) is responsible for achieving these objectives through the Care Act 2014, which it is doing in two phases.

2 The Care Act puts new legal responsibilities on local authorities in England and requires them to cooperate with local partners to meet them (**Figure 1** overleaf). As we have reported previously, only a small proportion of care is publicly funded. Unpaid family, friends and neighbours provide most care and support. Many adults pay for some or all of their formal care. But for many councils, adult social care is one of the biggest areas of spending. Local authorities provide universal and preventative services and usually only pay for individual packages of care for adults assessed as having high needs and limited means.[2] We estimate local authority net spend on adult social care in 2014-15 at £14.4 billion.

Scope of our report

3 This report looks at the Phase 1 changes occurring in April 2015 and the financial impact for 2015-16 of Phase 2 changes. We consider if the Department is carrying out Phase 1 in a way that is likely to achieve the government's objectives and be value for money. We have focused on the new duties to provide assessments and services to carers, and help for self-funders. We considered:

- the policy, financial and demographic contexts within which the changes are being implemented (Part One);
- the Department's arrangements to carry out the Care Act, and local authorities preparation for 2015-16 (Part Two); and
- funding which the Department has provided to introduce the Care Act in 2015-16 (Part Three).

4 We interviewed Department staff and examined Department data and interviewed stakeholders. Locally, we visited nine case study areas. Our audit approach is in Appendices One and Two.

1 HM Government, *Caring for our future: reforming care and support*, Cm 8378, July 2012.
2 Comptroller and Auditor General, *Adult social care in England: overview*, Session 2013-14, HC 1102, National Audit Office, March 2014.

Figure 1
The main changes in the Care Act 2014

The Department of Health is implementing the Care Act in two phases

Phase 1: The main changes introduced from April 2015 include duties on local authorities to:

- provide services that prevent care needs from becoming more serious, or delay the impact of their needs;
- meet a national minimum level of eligibility for a person's care and support needs;
- assess carers, regardless of how much care they provide, and meet carers' needs on a similar basis to those they care for;
- offer deferred payment or loan agreements to more people, avoiding property sales to pay for care and support;
- provide information and advice (including financial advice) on care and support services to all, regardless of care needs;
- provide an independent advocate where such support is needed;
- work with care providers to get a diverse and high-quality range of local services;
- comply with a new legal framework for protection of adults at risk of abuse or neglect;
- give continuity of care to those whose needs are being funded by the local authority who choose to move to another area;
- assess the care and support needs of children and their carers, who may need support after they turn 18, as they move to adult social care; and
- arrange and fund services to meet the care and support needs of adults who are detained in prison.

Phase 2: The main changes planned from April 2016:

- A cap (£72,000 for people aged 65 and over) on the amount someone will pay towards care and support, regardless of means, and monitored through a care account. This should encourage people who pay for their care (self-funders) to seek a needs assessment. The authority can then count their care costs towards their cap.
- An increase in the threshold, above which people start to contribute to their residential care costs, to £118,000.
- The right for people to appeal against local authority decisions about their care and support.

Source: Department of Health

Key findings

New approach to care and resource context

5 **The Department is introducing a new approach to adult social care which places new responsibilities on local authorities. We estimate Phase one of the Care Act will cost £2.5 billion to carry out from 2013-14 to 2019-20**. The government wants culture change, away from a system providing people with intensive support to one which empowers users and carers and promotes wellbeing and independence. The £2.5 billion includes some costs associated with the white paper which did not require legislation. Over half, or £1.2 billion, is for carers' assessments and services; a new entitlement and the largest single cost (paragraphs 1.2 to 1.4).

6 **Local authority budgets are falling and the proportion of savings from adult social care is rising**. The government cut its funding to local authorities by 37% in real terms between 2010-11 and 2015-16. Adult social care accounted for 15% of total savings from 2010-11 to 2011-12 but made up 40% of total savings between 2013-14 and 2014-15 (paragraphs 1.5 to 1.6).

7 **The Care Act will increase demand for assessments and services at a time when local authority provision has been falling and the number of people in need is rising**. Extended rights to carers' assessments, new entitlements to services for carers, and additional incentives for those who seem to be in need to seek assessments, including self-funders, will increase demand on local authorities. The population is ageing and the number of people over 65, and who are in need, is expected to rise by over 40% between 2005 and 2020. Better healthcare means that more ill and disabled children reach adulthood. In recent years, however, the number of carers' assessments and people receiving services has fallen, particularly for those aged 65 and over (paragraphs 1.9 to 1.11 and Figure 4).

Management arrangements and local authority readiness

8 **The Department's innovative joint governance with the sector has provided the support necessary to carry out this challenging piece of legislation**. The Department is overseeing the programme, with stakeholders on the main programme board. A programme management office, set up jointly with the Local Government Association and the Association of Directors of Adult Social Services, leads implementation. The main innovation is that stakeholders are partners, taking on responsibility and not just giving advice. This has been well received by local government and stakeholders (paragraph 2.2).

9 **The Department has consulted carefully on the Act, to understand the main risks and respond to sector concerns, and there is wide support for the Act**. Stakeholders have been involved in working groups to inform development of the policy and to produce the regulations and guidance which support the Act. The 'stocktake' survey of local authority preparation to implement the Act got a 100% response rate. Local authorities identified two big risks: cost, and uncertain additional demand from self-funders and carers. Consultation on draft guidance and regulations got 4,000 responses and the Department made changes as a result. Almost all responses to the government's consultation, and those we spoke to in our fieldwork, support the objectives of the Care Act (paragraphs 2.3 to 2.7 and 2.18).

10 The Department, working with the sector, has provided guidance materials and will give extra support to local authorities. The programme management office has organised events and meetings, and has commissioned tools and guidance. The sector has been involved in setting these materials' requirements and making sure they meet the required standards. The Department has provided funding to local authorities to support their preparation for the Care Act and has a strategy to provide increasing levels of support to those which need it (paragraphs 2.8 to 2.11).

11 The Department's tight time frame for the sector to act on final guidance and funding allocations has inhibited local implementation planning in some areas. The Department has worked with stakeholders over a long period to develop the policy, legislation and supporting regulations and guidance. The Department published its final regulations and guidance 5 months and 10 days before the Care Act was due to be introduced. The 'stocktake' surveys found that pressures on councils, compounded with uncertainty on key guidance and information, had delayed or otherwise affected Care Act preparations. For example, stakeholders and councils could not produce support material until the Department published final regulations and guidance (paragraphs 2.12 to 2.13).

12 Despite the challenging timetable, of local authorities with adult social care responsibilities, 99% were confident that they would be able to carry out the Care Act reforms from April 2015. However, it will take longer to change the culture. Most local authorities are confident that they will meet their statutory duties; for example, providing information and advice and giving carers extra support. However, it will take longer to make the culture change envisaged in the Care Act. Some local authorities will find implementation easier depending on which services they already offer, such as support for carers, and systems already in place (paragraphs 2.14 to 2.15).

Demand for local authority services

13 The Department might have underestimated the demand for assessments and services for carers. Calculating demand is complex and it is difficult to be precise. The Department considered a number of ways of estimating take up and decided to use, as a proxy, the number of people receiving Carer's Allowance, which the programme board judged was reasonable as an approach. We reviewed this and concluded that those carers who have applied for Carer's Allowance and are eligible, but do not get it due to receipt of other allowances, are as likely to seek an assessment. We estimate that this equates to a risk of some £27 million (26%) in extra assessments and services if these people also come forward (paragraphs 3.8 to 3.10).

14 Demand from self-funders is uncertain, particularly from those in the community. The Department, based on statistical modelling of national survey data and population projections, estimates that there are some 455,000 people paying for their care at home in the community. Existing research about self-funders in the community relies on limited evidence and the results suggest numbers could range from 145,000 to 249,000. The Department has not undertaken additional research to improve its understanding of the demand for assessments from self-funders in the community due to likely cost and difficulty (paragraphs 3.5 to 3.7).

Calculating the cost of the Care Act in 2015-16

15 The Department may have underestimated the cost to local authorities of extra assessments and services. To cost the additional demand for assessments and services, the Department used the median of unit costs that local authorities provided, weighted towards those which forecast more assessments than average. The programme board judged that the approach taken was reasonable. There is a risk that the Department's cost estimate does not consider local factors, such as a local authority's ability to achieve economies of scale (paragraphs 3.14 to 3.15).

16 The Department has learned from the problems it encountered in modelling the cost of Phase 1 and has improved its approach for Phase 2. The Department did not define clearly enough some of the data needed; nor did it use quality measures such as a range controls. The Department did not allow sufficient time to check the consistency and reliability of the data. The Department, with its partners has improved the approach it is taking to model the costs of Phase 2, using a sample-based approach and improving quality assurance (paragraphs 3.16 to 3.17).

Distribution of funds to local authorities

17 There is variation in the extent to which individual councils might have been over or underfunded. The Department has used various methods to distribute funds to local authorities. These include the formula used to fund clinical commissioning groups; the Adult Social Care Relative Needs Formula; and funding by prison population. As an indication of risk, the median gap between funds provided and local authorities' cost estimates may be 0.2% of spending on adult social care but varying up to 4% of spending. This will be affected by issues with the quality of the data provided by local authorities and their local spending decisions as well as by how well the formulae used match the need (paragraphs 3.26 to 3.29).

18 A significant proportion of the funding which the Department is providing for the Care Act's new burdens is not new money. The Department assumes that £174 million (40%) of Care Act funding will come through the Better Care Fund, from money previously allocated to clinical commissioning group budgets and existing local authority capital grants. Local authorities negotiate their allocations with local health partners. Local areas had to confirm funding for the Care Act in their Better Care Fund plans, and explain how duties would be met. This is not being monitored (paragraphs 3.23 to 3.25).

19 If demand or costs exceed expectations, pressures will fall first on individual local authorities. The Department may not have sufficient information and does not have a contingency fund to avoid impacts on services. The Department is working with the sector to monitor and respond to actual demand coming from the Care Act in 2015-16. However, the metrics do not cover fully costs incurred by local authorities. The Department plans to use data collected in the first three months to support its bid for the next spending review. Otherwise, options for the government could include changes to the regulations, additional guidance, peer-to-peer support and sector-led improvement. In the short term local authorities may have to cut or reduce services (paragraphs 3.30 to 3.33).

Conclusion on value for money

20 The Department has managed the introduction of Phase 1 of the Care Act well, with an innovative joint approach with the sector, ongoing involvement of stakeholders and open sharing of data and documents. Consequently, 99% of local authorities were confident that they would be able to carry out the Care Act reforms from April 2015. We judge therefore that the programme has been implemented well and the approach shows good practice from which other programmes could learn. However, with the level of demand so uncertain, the Department's cost estimates and chosen funding mechanisms put local authorities under increased financial risk. In a challenging financial environment, with pressures on all services, local authorities may not have sufficient resources to respond if demand exceeds expectation. In response, local authorities could delay or reduce services in the short term, risking legal challenge and potentially creating extra burden for individuals, their families and carers, who in turn might seek help elsewhere that is not suited to their needs. This is a longer term risk to value for money which needs to be managed and goes against the culture change envisioned by the Act. As the Department carries out Phase 2 of the Act, it needs to monitor carefully the adequacy of funding each local authority has for Care Act new burdens.

Recommendations

21 There are many positive elements in the way the Department has worked collaboratively with the adult social care sector to carry out the Care Act, which should provide lessons for future policy changes. Our recommendations are designed to help the Department minimise the impact of new burdens in the Act on individual local authorities.

a **As the Care Act rolls out, the Department needs to know quickly if individual local authorities are struggling, and respond**. The Department should work with the sector to monitor both the cost of, and demand for, services. The Department should also set out the options to help local authorities minimise the effect of increased demand and cost on service quality. We expect that the Department will need to continue to monitor both phases from 2015-16 until the pattern of demand stabilises.

b **The Department should report to Parliament whether it has achieved the government's objectives**. The Department has a strategy in place to monitor and evaluate the benefits of the reforms being introduced. The Department should include in its timetable a report to Parliament on progress towards achieving the government's objectives.

c **The Department should work with the sector to improve its data and reduce the level of uncertainty in its assumptions for Phase 2**. The Department should research the numbers of self-funders in the community. The Department should continue to work with the sector to improve the quality of data on demand and cost.

d **In the longer term the Department should maximise the time and resources available to carry out Care Act Phase 2, and any other changes which it may plan**. The Department should maximise the time that local authorities and other stakeholders have to carry out the government's changes. The Department should also be transparent about the source and amount of all extra funds it intends local authorities to have; for example, the amount available to each authority from the NHS through the Better Care Fund.