

# Using the Children and Families Act 2014 to improve outcomes for children and young people with SEN and disability: a briefing for health services



*“I struggle to understand why health feels my daughter is not their responsibility as we plan for her transition to adult services. We’re looking for an integrated package of care to address her sensory needs, incontinency needs, mobility and equipment needs, hormone management and mental health/behaviour support needs. Health is one important component of that package.”* Mother of a young woman with complex needs

The Children and Families Act 2014 will be implemented from September 2014 and has major implications for how the NHS organises and delivers services to children and young people who have a Special Education Need and/or Disability between the ages of 0 and 25. It will reform the system of support across education, health and social care to ensure that services are organised with the needs and preferences of the child and their family firmly at the centre, from birth to the transition to adulthood.

This is an important step forward, children and young people who have a Special Education Need and/or Disability make up a significant proportion of the childhood population, with up to 20% of school age children and young people having SEN. Across this group there are a diverse range of health needs, which include children and young people with long term health conditions, children and young people with autism and children and young people with sensory impairments and children and young people with mental health issues. It will also include children and young people with multiple and complex needs who may be dependent on technology, children and young people with behaviour that challenges and children and young people with a life-threatening or life-limiting condition.

Meeting these health needs will often require a range of different NHS services, provided by different professionals which often cut across organisational boundaries. Children with SEN and disability are therefore disproportionately disadvantaged by a system that does not integrate services, support them to make decisions about their own care or adequately support them during the transition to adult services. The Children and Young People’s Health Outcomes Report highlighted the need to improve services for children and young people in England, and to make sure they work closely alongside education and social care services to provide the right support where and when children, young people and their families need it.

Getting this right will require practical and cultural changes from professionals, clinicians and commissioners working with and for children and young people. While this will present a challenge, the solutions will build on many of the current drivers of change within the NHS and social care, and present an opportunity to reduce costs in the long run.

The focus on person centred care and integration of services that are central elements of the NHS Mandate and NHS England's Everyone Counts strategy and prioritising children and young people's decision making supports the principles and rights set out in the NHS Constitution. The reforms sit alongside the commitments in the Better Health Outcomes for Children and Young People Pledge to improve the health system for children, young people and their families by delivering integrated, person centred health care, and will support the integration agenda being strengthened by the Care Bill.

This briefing highlights the key reforms in the Children and Families Act 2014 and some of the key issues professionals in health services should be addressing as they prepare for the implementation of the reforms.

The main areas of focus are:

- The new joint commissioning arrangements for local authority and health commissioners
- Health services' role in the identification and assessment of children and young people with SEN and disability
- What the introduction of Education Health and Care plans (EHC plans) for children and young people with SEN mean for health services
- Complaints and redress

## The importance of working together

To achieve person centred support across Education Health and Social Care the Children and Families Act 2014 is placing duties on local authorities (LAs), health bodies and other partner organisations to work together to deliver support and services to the children and young people with SEN and/or disability they are responsible for.

The Children and Families Act requires LAs and their health partners (meaning each CCG with responsibility for commissioning health services in the LA area, and NHS England) to establish joint commissioning arrangements to improve outcomes for children and young people with SEN and disability. Commissioning Support Units may take on an important role in supporting this agenda. In addition NHS Trusts, NHS Foundation Trusts, Health and Wellbeing Boards and service providers must also have regard to the Children and Families Act 2014/Code of Practice to ensure they are able to contribute to the implementation of the new system of support.

Joint working between local authorities and health bodies is not new; there are a range of existing duties on the LA and health bodies requiring them to work together.

The Health and Social Care Act 2012 and the NHS Mandate both make clear that NHS England, CCGs and Health and Wellbeing Boards must promote the integration of services if this will improve services and/or reduce inequality, and they should consider arrangements under section 75 of the National Health Service Act 2006, including the use of pooled budgets. The Children Act 2004 also places a duty on local authorities to make arrangements to promote cooperation with its partners (including the police, health service providers and youth offending teams and the probation services) in promoting the wellbeing of children and young people under 18 which includes safeguarding and the welfare of children.

In order to have the greatest impact the joint commissioning arrangements introduced by the Children and Families Act 2014 should build on examples of existing good practice where possible. It is also important each area looks at the links between the implementation of the reforms and the current drivers of system transformation and integration in each local area. This may include the priorities in the Joint Health and Wellbeing Strategy or work being undertaken as part of the Better Care Fund.

## Joint Commissioning Arrangements

The Children and Families Act 2014 gives local areas the freedom to meet local challenges flexibly. It does not specify how joint commissioning processes should be structured in each area or how specific services should be commissioned. However there are some specific arrangements that every local partnership must put in place to improve outcomes for children and young people with SEN and disability.

**Every local authority areas' SEN and disability joint commissioning arrangements must clearly set out:**

- **The education, health and social care provision reasonably required by local children and young people with SEN and disability, and how this provision will be secured and by whom**
- **What advice and information is to be provided about education, health and care provision and who is responsible for providing this advice**
- **How health services will support the identification of children and young people with SEN and disability**
- **The process by which local health services (including primary and secondary care) are able to inform the local authority of children, including those under compulsory school age who they think may have SEN and/or disability**
- **How complaints about education, health and social care provision can be made and are dealt with**
- **Procedures for ensuring that disputes between local authorities and CCGs are resolved as quickly as possible**
- **How partners will respond to children and young people who need to access services swiftly**
- **The joint commissioning must also include arrangements and responsibilities for securing outcomes and personalised services, specifically:**
  - **Securing Education, Health and Care assessments;**

- **Securing the education, health and care provision specified in EHC plans; and**
- **Agreeing personal budgets**

The joint commissioning arrangements should also take account of the full range of policies that affect the provision of education, health and social care services to children and young people with SEN and disability, which may include:

- The Common Assessment Framework
- Criteria for NHS Continuing Health Care Funding and National Framework for Children and Young People's Continuing Care
- The implementation of the supporting pupils at school with medical conditions guidance
- Individual schools' SEN information reports
- The legal requirements to make reasonable adjustments under the Equality Act

## Key Questions

What services is your organisation currently commissioning or delivering to improve outcomes for children and young people?

What are the current drivers of integration between services in your organisation?

What role will your organisation have in supporting the new SEN and disability joint commissioning arrangements set out in the Children and Families Act 2014?

## Who is responsible for making this happen?

The Joint Commissioning Duty in the Children and Families Act 2014 specifies that the Local Authority and its partner CCGs and NHS England must establish local governance arrangements which ensure clear ownership and accountability across SEN and disability commissioning with clarity about who is responsible for delivering what, with accountability to named councillors and senior commissioners across education, health and social care. These arrangements should be clear regarding who can make decisions both operationally (e.g. deciding what provision should be put in an EHC plan) and strategically (e.g. what provision will be commissioned locally, exercising statutory duties).

It is important that these arrangements make clear the links between services commissioned by a local CCG and services commissioned by NHS England to ensure that the provision children and young people with SEN and disability receive fits together seamlessly and there are not gaps in provision at critical points.

To coordinate health involvement in the joint commissioning arrangements the Children and Families Act Code of Practice states that a Designated Medical/Clinical Officer should be identified by each CCG. The Designated Medical/Clinical Officer role should be to ensure that the CCG is exercising its statutory functions effectively. They can also function as a point of contact for local partners such as local authorities and schools when making statutory notifications and seeking advice on SEN and disability. The Code of Practice recommends that they are an employee with clinical expertise such as a paediatrician or other health professional who will be able to exercise their functions effectively.

# Improving outcomes for children and young people with SEN and disability in your area

The goal of joint commissioning is to improve outcomes for children and young people and their families with SEN and disability. Local partners will need to develop a shared vision for children and young people with SEN and disability and their families in their area and a clear plan of what needs to be put in place to achieve this. This requires local partners to share a clear understanding of these needs and how they are currently met by education, health and care provision and to identify any gaps in provision that need to be addressed.

Partners must also involve children, young people and their families in this process, they are central to the process of reviewing provision and developing shared outcomes. These outcomes should form the basis of reviewing strategic commissioning decisions and should contain measures for monitoring and evaluating progress.

The local authority and its health partners should monitor the changing needs of children and young people with SEN and disability in their local population and assess whether or not the available provision is improving their outcomes. This process of assessing need, provision and identifying outcomes should be linked to the existing Joint Strategic Needs Assessment (JSNA) carried out by the Health and Wellbeing Board and make full use of the available local data. This is an opportunity for local partners to think about how they can work together to achieve their existing outcomes. This may include how joint commissioning for SEN and disability can help partners meet goals in the Joint Health and Wellbeing Strategy, objectives in the NHS Mandate, or indicators in the NHS Outcomes Framework, the Public Health Outcomes Framework, or the CCG Commissioning Outcome Indicator Set.

Examples of shared joint commissioning outcomes include:

- Improved educational progress and outcomes for children and young people with SEN and disability
- Increasing the proportion of children with SEN and disability whose needs are identified in the early years
- A reduction in avoidable unplanned episodes of care in acute hospital services

- Improved family (or patient) experience feedback.

[The Children and Young People's Outcomes Forum Report](#) contains more information on the importance of outcome measures for children and young people.

When these outcomes have been agreed the local authority and health partners will have to agree how they are going to be achieved. This may involve commissioning services in a different way, integrating workforces and involving children and young people with SEN and disability and their parents in the commissioning process. Partners should also consider using their powers to pool budgets to deliver improved outcomes.

Progress against these outcomes should be reviewed on an ongoing basis, and this process must involve the views of children and young people with SEN and disability, and their parents. There must also be clear arrangements that set out how the partners will resolve disputes over commissioning decisions and hold each other to account for delivery of the outcomes.

Any changes in the education health or social care provision commissioned locally as a result of this process should be clearly reflected in the local offer.

## Key Questions

What role is the Health and Wellbeing Board in your area taking in improving outcomes for children and young people?

How will the joint commissioning arrangements for children and young people with SEN and disability fit with local health and wellbeing board arrangements?

What information and data is available on children and young people with SEN and disability and their families in the JSNA in your area? What gaps are there?

How will the delivery of joint commissioning outcomes be assessed and how can this support your organisation to meet its own outcomes?

## The Local Offer

Alongside the joint commissioning arrangements the Children and Families Act 2014 introduces a duty on every local authority to publish and maintain a Local Offer. The Local Offer is a document that sets out the provision the local authority expects to be available for children and young people with SEN and disability who they are responsible for, including provision outside the local area. The Local Offer **must** be developed by local authorities and their health partners, together with children and young people with SEN and disability and their families. The Local Offer should build on the JSNA and the analysis of local SEN and disability needs. As well as providing information about the services that the local authority expects to be available the Local Offer should also perform an important function as a tool to improve provision by setting out how services will meet local need and achieve the outcomes set out by the joint commissioning arrangements.

The Local Offer will need to set out the health provision available to children and young people with SEN and disability. The local authority **must** consult with all health authorities, including CCGs, NHS England, NHS Trusts and NHS Foundation Trusts when drawing up the local offer and these organisations **must** cooperate with the local authority by providing information on their services including:

- Clinical treatments and delivery of medications
- Therapies such as speech and language therapy, occupational therapy and physiotherapy
- Services assisting relevant early years providers, schools and post-16 institutions to support children and young people with medical conditions
- Nursing, portage, continence services
- Child and Adolescent Mental Health Services (CAMHS)
- Palliative and respite care and other provision for children with complex health needs; specialist equipment such as wheelchairs, splints and continence supplies
- Emergency healthcare provision
- Information about Continuing Health Care Funding

- Support for young people when moving between healthcare services for children to healthcare services for adults.

It should also include highly specialist services commissioned centrally by NHS England including:

- Alternative communication systems
- Services for rare conditions
- Specialist mental health services
- Provision for young offenders in the secure estate

The Local Offer **must** also meet the following requirements:

- The local authority **must** involve parents, children and young people in developing and reviewing the local offer, and cooperate with service providers.
- The local offer should be promoted to children and young people with SEN and disability and their families, and the information should be easy to understand and jargon free.
- The local offer **must** cover available provision across education, health and social care from the ages of 0 to 25, with details of how these services can be accessed and any admission or eligibility criteria. It must also include clear details of where to go for information, advice and support, as well as how to make complaints about provision or appeal against decisions.
- The local offer **must** be clear about how commissioning decisions and decisions about services are made and who is accountable and responsible for them.

## Key Questions

Who will be responsible for providing information as part of the development of the Local Offer?

Is the importance of the Local Offer as a tool to improve service provision clearly understood across the health service in your area?

How will the health provision contained in the Local Offer be reviewed and improved in line with this review?

How will your organisation involve the views of children, young people with SEN and disability and their families in the planning and reviewing of services?

## What are health services' responsibilities towards individual children and young people with special educational needs?

In addition to strategic joint commissioning arrangements, the Children and Families Act 2014 also introduces new responsibilities for the health service towards individual children and young people with special educational needs (SEN). This is a different definition and does not cover disabled children and young people who do not have SEN.

The importance of delivering health services as part of an integrated package for children and young people with SEN is underlined by the NHS Mandate objective that children and young people "have access to the services identified in their agreed care plan, and that parents of children who could benefit have the option of a personal budget based on a single assessment across health, social care and education."

## What is health's role in identifying children and young people with SEN?

The health service has an important role to play in identifying children and young people who may have, or may develop SEN. The joint commissioning arrangements between the local authority and the health service must set out how the health service will support the identification of children and young people with SEN. This requires clear arrangements, understood by staff, to ensure that:

Professionals in local health services (including primary and secondary care) understand how they can inform the local authority of children who they think may have SEN

Identification of children with SEN is a consideration at key points of a child's interaction with the health service, especially health checks in the early years

There are individuals designated with responsibility for fulfilling this function who provide a clear point of contact for LAs and schools seeking health advice on children who may have SEN and disability

### Key Questions

What are the key opportunities to improve the identification of children with SEN and disability in your area?

Who will act as point of contact for LAs and schools seeking health advice for EHC Plan assessments?

How will this process be promoted to all relevant health professionals across services and providers?

## What is the health service's role in the EHC Plan Assessment process?

Once a child has been brought to the attention of the local authority as potentially having a special educational need the local authority has to decide whether to carry out a statutory assessment for an Education Health and Care Plan, and it must inform the relevant health service of its decision.

Education Health and Care (EHC) Plans are legal documents that set out the education, health and social care support a child or young person with SEN requires when their needs cannot be met by resources available to mainstream early years providers, schools and post-16 institutions. They are focused on the outcomes the child or young person wants to achieve and set out how services will work together to support these outcomes. They will also set out the details of any personal budget that has been identified to deliver some or all of the provision set out in the EHC Plan.

Information on the number and content of EHC Plans should also be used to inform the review of the joint commissioning arrangements by providing clear information about provision and outcomes relating to children and young people with SEN in each area.

When carrying out a statutory assessment of SEN the local authority must seek medical advice and information from health care professionals with a role in relation to the child or young person's health, and this information must be provided in a clear and specific written submission. The Children and Families Act 2014 makes clear that this assessment process should be well coordinated and result in timely, well informed decisions. All professionals involved should focus on the needs and preferences of the child or young person and their family and support them to be actively involved and make informed decisions regarding the assessment process.

Following this assessment process the local authority will use this information to develop an EHC Plan setting out details of the education, health and social care provision required by the child or young person and who is responsible for securing it.

## Key Questions

How will the health service in your area coordinate the process of contributing to the development of EHC Plans?

Who will be responsible for taking decisions about the health provision contained in EHC Plans and what will be the process for taking these decisions?

How will the relevant health commissioning body and the local authority resolve disagreements about the provision in EHC plans in your area?

How will information relating to the health provision and outcomes in EHC Plans be collected, analysed and fed into the commissioning process?

## Who is responsible for provision set out in the EHC Plan?

The relevant health commissioning bodies must agree to the health provision set out in the EHC Plan. If the health commissioning body does not accept the health provision set out in an EHC Plan because it does not agree that the provision is reasonably required to meet the child or young person's health needs then the health provision is not included in the EHC Plan. At this point if agreement can't be reached between the health commissioning body and local authority the partners should engage the dispute resolution process that must be set out in their joint commissioning arrangements.

After an EHC Plan has been agreed the relevant health commissioning bodies must ensure that the services listed as health provision are available to the child or young person until the plan is reviewed. This will involve drawing on the joint commissioning arrangements that set out how EHC Plans will be delivered, including responsibilities for funding arrangements between partners.

NHS England will be responsible for taking action to promote children and young people's access to the health provision set out in their EHC Plans, and will have an important role in supporting CCGs to meet these obligations.

## Key Questions

Will your organisation have a role in the securing or delivery of provision set out in Education Health and Care Plans?

What processes will be in place to ensure that provision set out in an EHC Plan is delivered by the appropriate provider?

How will providers be held to account for their delivery of services?

## Mediation, complaints and redress

When children, young people and their families are unhappy about the content of their Education Health and Care (EHC) Plan they can challenge decisions in a number of ways.

This involves the mediation and appeals system relating to special educational provision including the Special Educational Needs 1st Tier Tribunal, and the complaints process in health and social care.

The Government has made clear that it wants these processes to be better integrated and more accessible for parents, and have committed to investigating the extension of mediation and redress mechanisms to cover the social care and health elements of an EHC Plan. This involves a review and pilot process that will investigate different mechanisms to achieve this, including extending the authority of the Special Educational Needs 1st Tier Tribunal over health and social care provision.

This will be an ongoing process while the Children and Families Act 2014 is implemented but it is vital that all health bodies consider how they will respond to children, young people and their families who are not happy with the health provision available as part of the Local Offer

or decisions relating to an Education Health and Care Plan. This should include thinking about how this information is collected, and how it is used intelligently to improve commissioning and delivery of services. The role of local Healthwatch, working together with local Parent Partnership Services should also be explored.

## Key Questions

What are your organisations current complaints procedures? How will you respond to complaints relating to provision set out in the Local Offer or an Education Health and Care Plan?

How will feedback and complaints to your organisation be used to improve the commissioning and delivery of services for children and young people with SEN and disability?

What role will Healthwatch play in supporting children, young people and families in challenging the health system in your area?

## Going forward

CDC will be working with NHS England to develop a set of resources that will support health bodies to understand and meet the new commitments that will be introduced by the Children and Families Act 2014.

As part of this process we want to engage with health organisations and professionals who are addressing some of the challenges set out in this document. Any examples of good and innovative practice will help us develop resources that best meet the needs of a range of health professionals, and provide clear information about what they can be doing in their local areas to improve outcomes for children and young people with SEN and disabilities.

If your organisation would like to share good practice on any of the issues set out in the briefing please contact Anna Gardiner at [AGardiner@NCB.org.uk](mailto:AGardiner@NCB.org.uk)



CDC is hosted by NCB