APPENDIX 3

AGENDA ITEM: 6

BRIEFING NOTE FOR CADEX MEETING TO BE HELD ON THURSDAY 14 JUNE 2001

SCRUTINY AND THE NHS

The Health and Social Care Act

CADEX will be familiar with the main principles of this Act, particularly in relation to the new scrutiny role of NHS organisations. Within the Bill, provision had been included for the abolition of community health councils consequent on local authorities assuming their new scrutiny role.

In the dying days of the last parliament however, concessions had to be made on this particular aspect in order to salvage the rest of the bill. The result of this has been that Community Health Councils will not now be abolished, or at least not yet. Closer examination of the Act does however confirm that several policy changes have survived although others will remain to be implemented. The key points are:

- The new scrutiny powers to be given to social service authorities are contained within the Act.
- The statutory obligation on NHS organisations to consult has been incorporated.
- CHCs have not been abolished and still retain their statutory role.
- The legislation to create the patient involvement and advocacy service was lost.

From conversations with the NHS Confederation and the LGA this week, it is clear that the Government is in some disarray over how best to retrieve the situation. Nonetheless it is significant that there has been no change to the Secretary of State for Health or his Junior Minister, both of whom are strongly supportive of the original proposals in the NHS Bill. There is a determination amongst ministers to revisit the legislation and to abolish CHCs. In doing this Government has a number of choices. For example they might:

- Introduce new legislation – perhaps a one sentence bill to abolish the CHCs
- See what else can be done through regulation
- See what can be achieved by the issuing of formal guidance
- Use a combination of the above.

The abolition of CHCs is critical for two main reasons. First, Government wanted to use the £23 million currently spent by them to reinvest, along with an additional £10 million which it had ear-marked, for patient support and advocacy services. Secondly, the Department of Health believes that the CHC role is unnecessary once local authorities have assumed their new scrutiny powers. However, as has already been seen, CHCs have considerable support, both at national and local level. Whilst the Government could use the Parliament Act to see their legislation through they still might feel this is an unnecessary distraction from some of the more critical parts of what is likely to be a major legislative programme for the next session.

The Way Forward

In all these circumstances the only safe assumption is that there is going to be no new money to support local authorities' scrutiny responsibilities. The Act provides considerable flexibility for local interpretation but for a variety of reasons the emerging model from those authorities which have considered the options is to develop their existing scrutiny processes, to include representation from District Councils. It is important to remember, however, that the Act provides additional powers for local authorities, not a duty. Nonetheless the indications are that most authorities, including the County Council, see this as an excellent

opportunity to develop the community leadership role and for that reason alone will merit very serious consideration.
There are a number of important factors to consider, the following being just some examples.

1. Consideration is needed of the position of Milton Keynes, which as a social services authority in its own right will have the power to scrutinise NHS organisations independently of the County Council. There is a case for a joint approach, or at least co-operation, in order to avoid duplication of effort and duplication of scrutiny of the same organisations.

2. The proposed boundary changes for the Health Authority and its change of status to a more strategic role bring concerns that the scrutiny of PCTs and other trusts is likely to be very significant in terms of how health services are delivered at the local level.

3. Scrutiny also needs to be seen in the broader context of local authority services and the approach should therefore be broader than simply a focus on performance at the individual unit level.

4. Scrutiny will need to be seen as constructive, not adversarial, looking at the impact of health policies on the community. Strategic commissioning issues for health services for whole client groups might be a more productive way of taking up these new responsibilities.

5. Careful consideration will be needed to the skills and expertise needed to support the scrutiny role to get beyond the twice yearly meeting with the chief executive approach that is suggested by the Act.

6. Health organisations are not familiar with the democratic processes and some bridge-building will be an essential part of a partnership approach.

Summary

Whilst the Bill would have abolished CHCs from the end of March 2002, no date has been set so far for the introduction of the new scrutiny responsibilities by local authorities. A reasonable working assumption, however, must be that Government will expect the new arrangements to be in place by April 2002. The County Council's Partnership Select Committee has already completed its first review, an analysis of the issues relating to managing "winter pressures". Bering in mind the resource constraints and the desire to develop scrutiny as an enhancement to the partnership approach with major partners, this committee has been given the lead in developing the County Council's examination of the implications of the Social Care Act.

Working with the NHS, the Audit Commission and the Local Government Association, Bedfordshire has already been carrying out some pilot work in the area and their favoured option is to establish a County Council-led scrutiny committee, which they think will provide the most coherent response to the new scrutiny duty. As a working estimate they have calculated that the additional cost of carrying out the full range of responsibilities in the Act would be at least £80-100,000. Discussions with health colleagues therefore, need to be set within the context of what is achievable for all parties concerned.

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