22 August 2017

Response to the Scottish Parliament Education and Skills Committee – call for views on The Children and Young People (Information Sharing) (Scotland) Bill

The Scottish Directors of Public Health welcome the opportunity to comment on the Health and Sport Committee’s call for views on The Children and Young People (Information Sharing) (Scotland) Bill.

Everyone wants to achieve better systems for children and response to individual situations. Named person is a positive development bearing in mind the need for services to be to be underpinned by public trust, and for timely and appropriate information sharing.

Clarity of guidance on information sharing was an issue in the ruling- a clear position would be that wellbeing information is shared with consent, and when it reaches a risk of harm threshold can be shared without consent i.e. under existing information sharing provisions. This is not sufficiently clear at present. Language used needs to align with professional codes of conduct and be understandable by the public.

The new guidance seems to suggest there are exceptional circumstances in a grey area where wellbeing information can be shared without consent when the infringement of privacy can be justified, but this would come back to a judgement about consequences of the wellbeing issue/s, which comes back to possibility or concern about adverse impact on the child or harm. Proportionality and common definitions of these thresholds are very difficult to define, and if it is unclear decisions either way will be challengeable.

With the Act there should be more information sharing with named person with consent and heightened awareness, so a requirement to consider information sharing is fine, subject to comments above on how it is worded. Whether this ‘consideration’ needs to be documented in every case needs to be questioned as many children or young people have wellbeing needs of some sort.

In a technical sense the sensitivity and specificity of information shared is important- to prevent the most serious cases a high volume of non-specific information may need to be shared. It is helpful to articulate that as with most screening programmes, even with the additional safeguard of named person the system may not always not pick up every single serious case, although it should result in earlier intervention for a number of children.
It would be detrimental to public health if trust in services were eroded by concern about information sharing without consent such that children were not brought or young people and parents/carers did not come to health services for assessment and advice, missing the opportunity to intervene, assess development and receive immunisations etc. and where needed refer to other agencies including named person where relevant.

For young people up to age 18 confidentiality of services is particularly important. Using the example of sexual health, there will be risk assessments for child sexual exploitation which would be referred to child protection, however the possibility of involving named person without consent at a level which does not reach a child protection threshold would need to be made explicit to service users at the outset if that were to be the case.

For those aged over 12 assessment of capacity of a child to consent or otherwise to information sharing and the implications can be difficult, and further explanation or offering the possibility of advice from a competent adult may be required. Engagement with young people who are potential or actual service users about these issues may be beneficial.

There is a need to ensure there is consistency in approach to gaining consent with the forthcoming General Data Protection Regulation (GDPR) in May 2018.