NHS Confederation

Parliamentary briefing

The health and care bill

This is a briefing for parliamentarians ahead of the second reading of the health and care bill, which is due to take place on Wednesday 14 July. The bill was introduced on Tuesday 6 July 2021 and promotes integration between health and care. It is the first major piece of primary legislation on health and care in England since the Health and Social Care Act 2012.

July 2021

Key points

- Health leaders broadly welcome the reforms, many of which were set out in a white paper in the spring. There is clear consensus across the Confederation's membership that the future of health and care must be based on collaboration and partnership working at a local level. The reforms proposed in the bill will provide the necessary updates to legislation to make that happen.

- We encourage MPs to support the bill as it is an essential enabler to the integration of healthcare services. The legislation is catching up with changes that have been taking place on the ground for many months, if not years in some parts of the country.

- However, there are important areas of the bill that we believe need to be amended during the legislative process:

  — Greater clarity and checks and balances on the basis upon which the Secretary of State's power to intervene in the NHS will be used.

  — Provisions for workforce planning should be strengthened, ensuring the NHS has the people it needs to provide high-quality care.

  — We need further clarity from the government on how integrated care system (ICS) partnerships and health and wellbeing boards will work alongside each other.

  — Greater clarity on whether accountability for quality of care ultimately lies with trusts or systems.

- Alongside the bill, the Secretary of State should urgently clarify the future of ICS boundaries to allow leaders to plan for the future.

- For more information on the content of the reforms, read our summary of the bill and our report on the white paper.

Positive reforms to improve services for patients

- NHS leaders are relieved that the bill has been brought forward before the summer recess, providing more certainty to help ICS leaders to take on statutory responsibilities in time for April 2022.

- We welcome the creation of statutory ICSs, consisting of an integrated care board (ICB) to commission services, and integrated care partnerships (ICP) to develop local health and care strategies collaboratively.

- We welcome the repeal of burdensome requirements from the 2012 Act, including mandatory tendering of services. The bill is unlikely to lead to greater 'privatisation' of services; it puts more trust in local NHS leaders to make decisions, rather than enforcing consideration of private sector bids to provide services.

- We also welcome the provisions for NHS England to delegate more functions, including some public health and specialised commissioning functions, to ICSs to support integration of services.

- Requirements on the Secretary of State to publish a report at least every five years describing the system in place for assessing and meeting the NHS's workforce needs, are welcome but should go further.

Areas of concern

1. **Significantly increased powers for the Secretary of State**

   The Secretary of State will gain powers to intervene in local services currently taken locally by health and care organisations. This power allows the Secretary of State to catalyse service reconfiguration decisions at any stage, even before being officially notified of these plans by the integrated care board or NHS England, which goes beyond those powers envisaged in the government's white paper. If retained, these powers should be carefully and rarely deployed and be subject to full public disclosure of decision-making. The bill should ensure service reconfigurations are based on clinical and not just political rationale. Additionally, the bill should ensure checks and balances on new powers for the Secretary of State to control the direction of NHS England and transfer functions between arm's-length bodies (ALBs). ALBs should retain a level of operational and clinical independence from government. A publicly funded service like the NHS should of course be held to account, but we should not undermine local autonomy and clinical decision-making.

   We would like to see the setting of robust checks and balances to ensure that such powers are proportionate and limited.

Question

Could the Secretary of State describe the circumstances in which he might use his new powers of intervention in local service reconfigurations? What guarantees are there that clinical expertise will be considered? Can the government commit to local NHS bodies (ICBs and NHS England) always having input in service reconfiguration decisions? When will the government publish in detail the evidence upon which a decision on service reconfiguration is made?

2. Workforce planning

The health and social care workforce face unprecedented pressures from the ongoing pandemic and a rapidly increasing elective care backlog. There is widespread uncertainty around the impact of the pandemic on staff numbers, which are compounding longstanding workforce supply issues. The duty on the Secretary of State to publish a report every five years describing how workforce planning responsibilities are being discharged is insufficient and far too infrequent.

We would like to see the bill go further to ensure more regular, independent and published assessments of future workforce requirements across the NHS and social care.

Question

Given the success of these reforms will rely on the capacity of the NHS workforce to deliver them, will the government give further consideration to including a duty to publish more regular workforce projections in the bill?

3. Governance and accountability

While the bill defines the roles of the respective ICS bodies, we are concerned that the different roles of HWBs and ICS partnerships may conflict, given that ICBs have a legal duty to include HWBs in planning. There is also a danger that the legislation indicates that the ICS board is more important than the ICS partnership and creates confusion between the roles of ICS partnerships and local authority HWBs.

MPs should ask the government to clarify this issue, while allowing ICSs flexibility to establish the most appropriate local arrangements, not one which is overly centralised.

Question

How does the government envisage ICS partnerships and health and wellbeing boards working alongside each other?

4. Permissiveness and local flexibility

ICS leaders are clear that they need local flexibility to be able to take on their new accountabilities and improve the health and wellbeing of their local populations. While the bill is largely flexible and permissive, we must ensure that health and care organisations are not restricted by overly prescriptive and rigid guidance. There are concerns from some ICS leaders that the regulatory environment – under NHS England, the Care Quality Commission and now the Healthcare Services Investigation Branch – will impede their progress. Further detail is expected via a government amendment to the bill after the summer recess. There is also a raft of supporting guidance expected over the coming months, the detail of which will have significant implications for ICS dynamics.

MPs should call on the government to ensure the bill supports a collaborative, improvement-focused culture in the NHS.

Question

What steps will the government take to ensure that ICS leaders are partners in ensuring quality of care and driving improvement, and not tied down by an overly burdensome regulatory regime?

5. Quality

The bill sets out a duty of quality improvement for the ICB, which potentially dilutes provider organisations' legal duties around quality of

services. We seek clarification on these potentially overlapping roles. As ICSs are not directly involved in treating people, the ICB's responsibilities should be aimed at a system assurance approach.

MPs should call on the government to ensure clear accountability for the quality of services.

Question

Can the government confirm that providers of care will still be accountable for the quality of the services they provide?

To find out more about the issues raised in this briefing, please email Edward Jones, our policy manager at: edward.jones@nhsconfed.org

The NHS Confederation is the membership organisation that brings together, supports and speaks for the whole healthcare system in England, Wales and Northern Ireland. The members we represent employ 1.5 million staff, care for more than 1 million patients a day and control £150 billion of public expenditure. We promote collaboration and partnership working as the key to improving population health, delivering high quality care and reducing health inequalities.

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