

Health and Care Bill: Lords Second Reading

December 2021

Summary

- The Health and Care Bill is a vitally important piece of legislation which will give statutory footing to integrated models of care in the NHS. As the Bill passes to the Lords, this is your opportunity to have your say on the Bill and ensure it is able to meet its objective of enabling excellent health and care services for patients.
- **The NHS Confederation is calling on all Members of the House of Lords to support the Bill at Second Reading.** It is vital that the Bill is approved before April 2022 to enable Integrated Care Systems to operate safely and efficiently according to statute.
- Our members – NHS leaders working on the front line - need the legislation to be as permissive as possible to enable integration and local flexibility, rather than an overly prescriptive set of centralised rules.
- The NHS Confederation does not believe the legislation on its own solves all issues in the health and care system such as the elective backlog, long term funding for social care and tackling health inequalities. However, it will ensure the NHS has the framework in place to help tackle these challenges.
- The primary concern of our members relating to the Bill is the introduction of unchecked new powers that would allow the Secretary of State to intervene in local service reconfigurations, despite there already being an established process in place for deciding on reconfigurations. Health leaders are concerned that if these powers remain in the Bill in their current form, they will undermine progress towards integration, transparency, patient safety and quality of care. **More information on our proposed amendments are available below.**

Health and Care Bill – what and why?

The Bill is largely based on recommendations from local health and care leaders, as well as NHS England and NHS Improvement (NHSEI), to remove legislative barriers to the local integration of care services, which is already underway across England formally establishes 42 Integrated Care Systems as legal bodies with responsibility for designing and delivering services across a geographic area.

In many ways, the legislation is catching up with what is happening on the ground. ICS have existed in a non-statutory form since 2018. It is critical that this legislation is passed and given Royal Assent before April 2022. ICSs are due to function as statutory bodies by April 2022 and any delay to the passage of this legislation will risk reversing the progress made by ICSs to provide more joined up and efficient care for their patients.

Our members' top issue

Schedule 6 of the Bill places new powers of direction on the Secretary of State to intervene in local service reconfigurations.

Our members have consistently placed this as their **top concern** relating to the legislation. 80% of members disagreed with the statement 'the new powers in the Bill for Secretary of State will benefit patients.'

Schedule 6 risks undermining progress towards integration of health services. It could risk the quality and safety of patient care and impede the ability of health and care services to reduce the backlog. **Specifically, it will have the following impact:**

- The ability of local NHS organisations to make important and difficult decisions about the services they provide is significantly reduced. This takes away local accountability, which is the chief aim of the Bill.
- Without clinical advice, local input, or public transparency over local service reconfiguration decisions, the quality and safety of patient care may be at risk.
- Enhancing integration is critical to ensuring our health and care services can build back better. Our members are concerned this could impede the ability of health and care services to tackle the backlog caused by the COVID-19 pandemic.

The NHS Confederation calls on all Members of the House of Lords to carefully consider the unintended consequences of Schedule 6 and support our amendments on this issue. It is vital that the Schedule is given adequate focus and discussion during the Lords stages to hold the Government to account on this proposal in the interest of patients.

Our ask

We propose amending Schedule 6, so the Secretary of State is legally required to: (a) consider clinical advice about changes to clinical services, (b) consider the view of local health overview and scrutiny committees so there is outward accountability to

communities, and (c) set out transparently why the intervention is in the public interest.

The proposed amendments are supported by the Local Government Association, Centre for Governance and Scrutiny, the British Medical Association and National Voices.

We are therefore urging all Peers on behalf of our members to **support our compromise amendments to Schedule 6 as a matter of urgency** at later stages of the Bill.

The proposed amendments read as follows:

Amendments

Schedule 6, page 180, line 41, at end insert—

“(3A) Before taking a decision under sub-paragraph (2)(a), the Secretary of State must— (a) consult all relevant Health Overview & Scrutiny Committees, and (b) have regard to, and publish, clinical advice from the Integrated Care Board’s Medical Director.”

Member’s explanatory statement

This amendment would require the Secretary of State to consult any relevant Health Overview and Scrutiny Committee, and to have regard to and publish clinical advice from the ICB Medical Director, before intervening in local service reconfiguration.

Schedule 6, page 180, line 43, at end insert—

“(aa) publish a statement demonstrating that the decision is in the public interest,”

Member’s explanatory statement

This amendment would require the Secretary of State to publish a statement demonstrating that any decision they have made on a reconfiguration proposal is in the public interest.

Why is this important?

Case study – NHS Kent & Medway

The review of Kent and Medway's stroke services began in 2015. In Summer 2019, a local council referred the decision to create three hyperacute stroke units (HASUs) to the then health and social care secretary – who then passed it to the Independent Reconfiguration Panel, which approved the changes in Autumn 2019.

The 'green light' decision has now been sat on the desk of successive Secretaries of State for two years, meaning the stroke units won't be up and running until 2024 at the earliest.

One of the consultants involved in the reconfiguration previously estimated 20 to 25 patients a year would avoid death or disability if HASUs were set up.

Wider issues of importance

- **Workforce:** Our members are clear that workforce planning and funding is a key part of ensuring quality and safe care for patients both now and in the future.
 - o The duty on Secretary of State in the Bill as it stands does not go far enough in ensuring we know we are training enough people to deliver health and care services that meet population need in the future.
 - o **ASK:** We encourage Peers to support any amendment that would put a duty on Health Education England (HEE) to publish robust, projections of the numbers needed in every medical specialty and the numbers we need to be training to meet these projections every 2 years.

- **Integrated Care Boards:** Our members are clear that the success of ICSs will rely on managing local circumstances and relationships and this requires the ability to exercise judgement when it comes to appointing roles on Integrated Care Boards. Rather than mandating ICB positions through legislation, we believe that such positions can be ensured through supporting guidance where there is a good reason for doing so.
 - o **ASK:** We urge Peers to resist supporting amendments which legally mandate, or deny, positions and roles on Integrated Care Boards. These amendments may unduly restrict local leaders' ability to have flexibility in future, and work in a way that best addresses the needs of the communities they serve

For more information regarding our proposed amendments to Schedule 6, or an any issue relating to the Health & Care Bill please contact Caitlin Plunkett-Reilly caitlin.plunkett-reilly@nhsconfed.org.

About the NHS Confederation

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.