

Health and Care Bill: Report Stage

February 2022

NHS Confederation view

The [NHS Confederation](#) largely supports the Health and Care Bill. There is clear consensus across our membership that the future of health and care must be based on collaboration and partnership working at a local level, which this Bill facilitates.

The Bill is, in most part, based on recommendations from NHS England and NHS Improvement (NHSEI), as well as local health and care leaders, to remove legislative barriers to the local integration of care services. In practice, this integration is already underway across England. In many ways, the legislation is therefore catching up with what is happening on the ground.

Our members – leaders across the NHS – agree that the Bill should be as permissive as possible. It should act as an enabler of integration and local flexibility, empowering local leaders to make decisions in the best interests of their populations rather than an overly prescriptive set of centralised rules.

Our primary concern is the proposed introduction of unchecked new powers that would allow the Secretary of State for Health and Social Care to intervene in local service reconfiguration, despite there already being an established process in place. Health leaders are concerned if these powers remain in the Bill in their current form, they will undermine progress towards integration, transparency, patient safety and quality of care. We therefore urge peers to vote in favour of the amendment in the name of Baroness Thornton and Lord Patel that would remove these powers from the Bill.

Also, our members are concerned about the Powers of Direction the Bill is due to give the Secretary of State, the need for the part of the legislation regarding workforce to be strengthened, and national and local spend on mental health.

For further information on any of the issues raised in this briefing, please contact caitlin.plunkett-reilly@nhsconfed.org.

Local reconfigurations (Schedule 6)

Our members' **most pressing concern** regarding the Health and Care Bill is the significant and largely unchecked new powers for the Secretary of State to intervene at any stage of a local service reconfiguration, with no minimum set of information requirements on which to base such a decision.

We believe this change risks undermining progress towards integration in the following ways:

- The ability of hospitals, GP surgeries, clinics and other local NHS organisations to make important and sometimes difficult decisions about the services they provide is significantly reduced. This takes away local expert accountability, which is a key aspiration 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.
- The current wording of the Bill would allow the Secretary of State to intervene, with no limitations, in a decision on local services for political reasons
- Empowering local health and care leaders to make service decisions around the needs of their local communities is critical to meeting rising demands. Allowing central intervention to override local decisions undermines this principle

80% of our members disagreed with the statement *‘the new powers for the Secretary of State in the Health and Care Bill will benefit patients’* when we surveyed them last year.

At Committee stage, significant concerns about these new powers for Secretary of State were raised by a number of peers from across the House. Some of the contributions included:

Baroness Cumberlege – *“We are told that the integrated care systems – the ICSs – will be given the flexibility to plan, to commission and to provide services according to the specific needs of their population. This principle is undermined by the unchecked power that the Bill gives the Secretary of State over local configuration of services.”*

Lord Howarth – *“The fact remains that Clauses 39, 40 and 64 make the Secretary of State untrammelled master of the NHS.”*

Lord Stevens – *“I believe that these measures are unnecessary and undesirable, but they are also unworkable.”*

Lord Patel – *“As a clinician, I find the unchecked powers for Secretaries of State over local service reconfigurations that the Bill proposes astounding.”*

Lord Hunt - *“once Ministers can intervene at any point—for example, if an MP’s local services are threatened with an unpopular change—even in the Lords, the pressure on them to intervene can be huge.”*

Baroness Walmsley – *“The powers of reconfiguration sought by the Secretary of State in Clause 40 would give the Government the ability to change the decisions of those put in place locally and well qualified to make them in a non-partisan and needs-based way, thus allowing the Government to wield unwarranted political power.”*

Baroness Thornton – *“[the clause] is a bad idea, and it adds nothing to the core of this Bill and its central aim, which is to grow place-based independent and innovative healthcare, and it probably needs to go.”*

These warnings are even more important in the context of the elective care backlog. Local services may need to make small changes to the way services are delivered to make progress through long waiting lists and these new powers would see the Secretary of State being pressured to intervene, causing a large number of cases to be worked through by DHSC, potentially leading to further delays to care and limiting progress.

We urge the government at the very least to bring forward amendments based on those tabled by Baroness Cumberlege at Committee Stage that would:

- Relieve the Secretary of State from intervening in small-scale reconfigurations.

- Ensure clinical advice is always considered in decisions about changes to services and is accountable to local communities where changes are sought.
- Provide transparency about why such intervention is in the public interest.
- Accelerate decisions, which must be made within 3 months of calling a decision on local reconfiguration in, to provide certainty to services.

These suggested amendments are intended to be a compromise to put essential checks and balances on the new powers, protect patient safety and ensure transparency with patients and the public.

Whilst we believe the system for local reconfigurations as it stands, involving the Independent Reconfiguration Panel (IRP), works well, we acknowledge the point made by the Minister at Second Reading of the Bill in the House of Lords regarding accountability to government. Amendments based on the principles above would stop undue political influence on the running of local health and care services which will be a particular risk in the run up to elections and in the context of the addressing the elective backlog – which the current Secretary of State has said is a key priority for the government.

Our ask - we urge peers to speak in opposition to the powers as they stand, urge the government to bring forward amendments to put safeguards around these powers and for Report Stage, vote for the amendment in the name of Baroness Thornton and Lord Patel to scrap the clause altogether. We believe this will show the strength of opposition to the powers over local reconfigurations as they stand in the Bill and prompt government to revise them.

This ask is also supported by:

- British Medical Association
- Centre for Governance and Scrutiny
- Health Devolution Commission
- King's Fund
- NHS Providers
- Nuffield Trust

Workforce (Clause 35)

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. The duty on the 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 the needs of the population in future.

In a survey of our members undertaken shortly before Christmas, 9 in 10 said that a lack of staffing in the NHS is putting patient safety and care at risk.

We are one of almost 90 health and care organisations, led by the Royal College of Physicians, that have been calling for the bill to be amended to mandate independent assessments of current and future workforce numbers to be published regularly.

Our ask – we encourage peers to support the amendment in the names of Baroness Cumberlege, Lord Stevens, Baroness Thornton and Baroness Walmsley which would mandate these assessments.

Conflicts of interest and integrated working (Clause 14)

We have very serious concerns about Amendment 9 to Clause 14 of the Bill, tabled by Baroness Thornton and Baroness Brinton, which risks critically undermining integration by reinforcing a rigid, out-dated purchaser-provider split and derailing the fundamental purpose of these reforms.

The current reforms aim to facilitate collaborative working by bringing all partners in local areas around the table to plan the most effective and the most efficient way to deliver care. This, by its nature, involves bringing providers of services, alongside commissioners, into committees and sub-committees of the ICB to plan how care is delivered within the resources available. All ICSs will be required to have effective, transparent conflict of interest (COI) rules and we welcome further discussion about how these are managed. However, the breadth of paragraph (c) of this amendment and lack of clarity on what constitutes a conflict of interest could prevent all providers – including NHS acute, mental health and some primary care providers, voluntary and charitable organisations as well as independent providers – from participating in collaborative partnerships to plan services, undermining the very purpose of the reforms.

Describing within the ICS constitution how any COI or perceived COI partners are to be excluded goes beyond a matter of conflicts of interest and poses a fundamental threat to integrated working. It risks take us back to the 2012 Health and Care Act, which prioritised competition over collaboration, and creates a wall between purchasers and providers.

Our ask – We urge peers to vote against Amendment 9 to Clause 14 to avoid undermining the key principles of the Bill.

Mental Health (Clause 20 & 77)

The NHS Confederation, including our [Mental Health Network](#), would like to see a requirement for the Secretary of State, NHS England and each ICS to state each year whether mental health spending is increasing as a share of overall funding, and by how much. We are pleased the Government has brought forward amendments that would build on the Mental Health Investment Standard at a local level for ICBs, by adding an additional legislative lever over current efforts. This would help to increase overall transparency on how local areas are funding mental health services.

Our ask – We urge peers to support the amendments in the name of Lord Kamall that would put a duty on integrated care boards to reduce inequalities, put a duty on integrated care boards and NHS England to produce an annual report of mental health expenditure, and to clarify the definition of the “health” in the Bill to clarify includes mental health.

These amendments are also supported by the wider Mental Health Policy Group, of which the NHS Confederation’s Mental Health Network is a member.

Powers of direction (Clause 39)

We are concerned about Clause 39 of the Bill includes measures to give the Secretary of State greater power to direct NHS England beyond the objectives set out in the government's NHS Mandate.

The Delegated Powers and Regulatory Reform Committee recently concluded that the scale of powers being moved from parliament to government by this Bill '*offends against the democratic principles of parliamentary scrutiny*'.

Without safeguards, we are concerned that these powers may mean decisions are made that undermine the ability of local service managers to respond to local population needs.

Our ask - we urge peers to challenge this clause and the rationale behind these powers. We encourage peers to urge government to bring forward amendments that would put safeguards on these powers. We urge peers to vote for the amendment in the name of Lord Lansley that would exclude ICS allocations and the procurement of goods and services from these powers.

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.

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