Parliamentary briefing

House of Lords Second Reading Debate on the Care Bill 2013-14,

Tuesday 21 May 2013

Summary

The Care Bill introduces new social care legislation and takes forwards elements of the Government's initial response to the Francis Inquiry. The Bill is split into three sections: Care and Support, Care Standards, and Health Education England and the Health Research Authority. It introduces a cap on care costs and new rights for carers.

In the coming year there will be a number of consultations related to clauses in the Bill that the NHS Confederation will be contributing towards. We will engage with the appropriate bodies on issues such as hospital ratings, a statutory duty of candour and national eligibility threshold requirements. We will continue to listen and reflect members' views on these issues and others as the Bill progresses through Parliament.

This briefing provides an overview of the NHS Confederation's reaction to specific elements in the Bill and our recommendations for how its narrative could be enhanced in the interest of those receiving care and support.

Our Reaction

- This Bill will make integration between health and social care easier, and improve people's access to early interventions and preventative care. However, the ambitions in the Bill will only be realised if the long-term social care funding challenge is solved.

- We therefore welcome the duty on local authorities in relation to prevention and early intervention (clause 2) and similarly clause 3 (local authorities and integration) is helpful in underlining how we should be working together to foster a greater spread of integration.

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• A **sustainable funding package for social care** is needed which does not stop at bailing out areas that are in crisis, but that also enables investment in services which will save money by improving people’s overall health and independence.

• When people’s needs are not met by the social care system, they turn to the NHS, which experiences the impact in the form of increased demand for emergency and unplanned work, and delays in discharging people from hospital. The Government must establish a **clear threshold for care that is fair** and does not allow the most vulnerable to fall through the cracks. This cannot be achieved without further investment in social care resources.

• We **welcome the introduction of a new offence relating to the supply or publication of false or misleading information** by providers. The current proposals are that a prosecution would be of the organisation and the penalty an unlimited fine or remedial order. There has been some discussion of whether this might be altered to expose individuals to sanctions (at present it would be a corporate prosecution), and we would want to seek clarification on this point.

• It is absolutely right to ensure NHS organisations never deliberately provide inaccurate or misleading information. **We must not dumb down how we report on the performance of NHS care**, leaving out crucial points that might affect patients’ choices or opinions, but nor must we bamboozle patients and their families with so much information they can no longer work out what is important to them.

• Through our work on the Bureaucracy Review¹, we know the NHS is already struggling under the weight of the data it is required to gather, process and publish. Any **performance rating system of the future** needs to ensure it takes into account all the data which is already available - as well as what we know from previous ratings systems. It is crucial that the end product reflects the complexity of NHS organisations and genuinely reflects what patients need to know about their care.

• When determining the process and format for publishing performance ratings for healthcare providers, it is crucial that the Care Quality Commission is allowed the time to get it right. The NHS is keen to demonstrate the quality of its performance, but it would wrong to introduce a new ratings system in a **rush**, before it has been fully road-tested.

• There is good care and excellent treatment being delivered across the NHS. We must now underpin the NHS’ commitment to removing a culture of blame

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¹ [http://www.nhsconfed.org/Publications/discussion-paper/Pages/Tackling-bureaucracy-NHS.aspx](http://www.nhsconfed.org/Publications/discussion-paper/Pages/Tackling-bureaucracy-NHS.aspx)
and embed a culture of learning and candour. It is important that in considering the **implementation of a statutory duty of candour**, the Government confirms what it will mean for individual staff in terms of reporting mechanisms and how they can perform this duty in the best interests of patients.

- **We support the recruitment of a Chief Inspector of Hospitals in principle**, but we aim to work with the CQC to clarify the detail on how this would work in practice. We note a recent Health Service Journal survey of senior people in the hospital sector, which revealed that 73% do not believe hospital inspectors will be effective\(^2\). This view broadly reflects that of our members, who are worried that having a Chief Inspector for hospitals, social care and potentially, primary and integrated care will be **counterproductive and serve to undermine efforts to tackle silos in the system**.

- The focus on quality and control will empower people to have a much greater say in decisions about how and where they receive their care. We are pleased that many of the provisions in the **Bill offer more clarity for people** and organisations, regarding assessments, care and support planning and safeguarding.

- We understand the concerns of some organisations regarding the Bill's ability to **protect the needs of young carers**. The focus must be on the quality of a young carer's transition from child care and support, to adult care and support. Ensuring a smooth, coherent and comprehensive transition will require greater joint working between the two Departments responsible for child health and wellbeing.

- **We welcome the introduction of a power that will require local authorities to refer to the NHS any person who they believe may be eligible for NHS continuing healthcare**. However, we are aware the process of applying for continuing healthcare is currently overly bureaucratic. We aim to address this as part of our Bureaucracy Review\(^3\).

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**ABOUT THE NHS CONFEDERATION**

The NHS Confederation is the only body to bring together the full range of organisations that make up the modern NHS to help improve the health of patients and the public. We are an independent membership organisation that represents all types of providers and commissioners of NHS services.

\(^2\) [http://www.hsj.co.uk/acute-care/exclusive-hospital-leaders-say-chief-inspector-role-wont-work/5056837.article](http://www.hsj.co.uk/acute-care/exclusive-hospital-leaders-say-chief-inspector-role-wont-work/5056837.article)