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BRIEFING

Health and Care Bill: What changes do healthcare leaders want to see?

The BMA has said it won't back the government's Health and Care Bill. With the bill passing its second reading in the House of Commons, **Gareth Iacobucci** looks at the proposals

Gareth Iacobucci

What is the purpose of the bill?

The legislation has two major aims.¹ The first is to remove legal barriers to integrating healthcare in England by ending the internal market and reversing most of former health secretary Andrew Lansley's controversial Health and Social Care Act 2012. The second is to shift substantial powers away from the NHS and back to the secretary of state for health and social care, giving Sajid Javid more power to intervene in the running of the NHS and in local decisions.

What does the bill say on competition?

Legal requirements introduced in the 2012 act to promote competition and competitively tender some clinical services will be revoked. The rationale is that this approach led to a fragmented and at times wasteful delivery of services, with organisations finding it difficult to cooperate and join up services across the system and spending a lot of money on bidding for contracts. This change was requested by the leadership of NHS England and has now been backed by the government.

How will the NHS structure change?

The 106 GP led clinical commissioning groups that were established (originally as 211 bodies) under Lansley's act to coordinate local services will be abolished next April. In their place will be larger integrated care systems, which already exist in non-statutory form in 42 geographical areas. ICSs will be tasked with coordinating and planning care across a local area, with the aim of improving population health. Each ICS will comprise two new bodies: an integrated care board, responsible for controlling most NHS resources; and an integrated care partnership, less formal collaborations between the NHS, local authorities, and other agencies that will develop plans to guide local decision making.² The ICSs have been heavily backed by NHS England's departing chief executive, Simon Stevens, and are due to become statutory bodies next April.

What new powers does the bill give to the secretary of state?

The new bill reverses much of the operational independence of NHS England that was enshrined in Lansley's act. It gives the health secretary substantial new powers to direct the operational running of NHS England, to intervene early in local decisions on service reconfiguration and to direct decisions in areas such as service procurement,

funding of new drugs and treatments, and senior leadership appointments. The bill would also allow the health secretary to abolish professional regulators and NHS arm's length bodies without needing additional parliamentary legislation. This huge shift of power towards Whitehall was not requested by NHS England and is a source of concern among health and care leaders.

What are their concerns?

Nigel Edwards of the healthcare think tank the Nuffield Trust warns, on the basis of past evidence, that giving politicians more control over the detail of how the health service runs may lead to worse decisions.³ Richard Murray of the think tank the King's Fund says the bill risks distracting from important reforms concerning integration,⁴ while Jennifer Dixon of the Health Foundation argues that there is "no clear rationale" for the move.⁵ In a joint statement the NHS Confederation, NHS Providers, and the Local Government Association warn that handing significant power to Whitehall could "undermine the ability of ICSs to meet their statutory responsibilities to ensure that services are safe and that financial targets are met."⁶

What else have critics said about the bill?

The lack of action on workforce issues is also a big concern. The BMA passed a resolution this week formally calling for the bill to be rejected, arguing that it carries "significant risks" and fails to tackle the major problems the NHS is currently facing, most notably the covid-19 pandemic, workforce shortages, and the extensive backlog of care.⁷ In a joint letter to the *Times* the leaders of several medical royal colleges, the BMA, the NHS Confederation, charities, and think tanks said that absence of provision for long term workforce planning was a "glaring omission" from the bill.⁸ The Royal College of Physicians supports integration but said the bill's inclusion of a new duty for the health secretary to publish a report "describing the system in place for assessing and meeting the workforce needs of the health service in England" once every five years fell short of what was needed in terms of workforce planning.⁹

What about the role of the private sector?

The BMA supports the removal of enforced competition but said the bill as it reads would permit the awarding of contracts "without scrutiny" to

private providers, as has been seen with the procurement of personal protective equipment for the covid-19 pandemic and the £37bn spent on the test and trace system. It also warned that the legislation leaves open the possibility of private health providers having a formal seat on ICS boards and being able to influence commissioning decisions, which it said “must be ruled out.”⁷ The Labour Party’s shadow health secretary, Jonathan Ashworth, also raised concern about a “new wave of lucrative crony contracts handed to the private sector.”¹⁰ The campaigning group Keep our NHS Public is opposed to the bill on similar grounds.

Wasn’t privatisation also a big fear with the Lansley reorganisation?

It was. In 2014 *The BMJ* found evidence of a big increase in the number of contracts being awarded to private firms after the 2012 act, although this didn’t translate into significantly increased spending, as many contracts were of small value.¹¹ In 2018-19 7.3% of the health budget was spent on private providers, up from 5.5% in 2012-13.¹²

But isn’t the new bill unpicking the 2012 act?

It is, but that hasn’t stopped similar accusations of privatisation being made. Whether they have credence is likely to come down to your ideological viewpoint and the intent you ascribe to the wording of the new bill. Critics believe that the government is paving the way for the continuing advancement of commercial interests into the NHS and that the bill as it stands will allow private companies to not only secure new contracts but hold onto existing ones regardless of past performance.¹³ But others say the legislation does not suggest this and that privatisation is a long way down the list of concerns about the bill.¹⁴

What amendments are healthcare leaders calling for?

The BMA said that the bill would require “significant amendment” to gain its support.⁷ Specifically, it is calling for “genuine and transparent protections” against increased involvement of the private sector in the NHS, embedding clinical leadership throughout ICSs, dealing with the “power grab” by the secretary of state, and ensuring political responsibility for staffing levels. In their *Times* letter the coalition of national leaders urged the government to amend the bill so that England has “robust, independent projections of the health and social care staff the country will need, to help make shortages a thing of the past.”⁸ Saffron Cordery, deputy chief executive of NHS Providers, said the “longstanding lack of a transparent, costed, and funded long term workforce plan,” must be tackled.¹⁵ In addition to backing the call for workforce projections, the Royal College of Physicians has also called for the bill to make it mandatory for ICSs to ensure that NHS organisations for which they are responsible conduct and resource clinical research.

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