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BRIEFING

# Ten things you need to know about the Health and Care Bill

It's the first big overhaul of the NHS in England since 2012. **Tom Moberly** asks what doctors need to know

Tom Moberly *UK editor*

## The clock is ticking

The new Health and Care Bill is the first major legislative reform of the NHS in England in a decade, and contains measures on the NHS, social care, and public health. The bill is scheduled to become law by April, although there are doubts this deadline will be met.

The proposed legislation is currently being examined by the House of Lords, and any amendments that are agreed then need to be taken to the House of Commons. The NHS's latest planning guidance has pushed back the deadline for when the new NHS structures would be established on a legal basis by three months to July 2022.

## It is a story of two halves

The bill consists of two big sets of legislative changes that are designed to perform two quite different functions but have been lumped together.

The first is largely to tidy up the mess left by Andrew Lansley's Health and Social Care Act 2012—promoting integration and collaboration over competition, ending requirements around enforced competition, and introducing legal and organisational changes to close the gap between how the current system was set up and how it is now working. These changes will make it easier for local health commissioners to renew contracts with those existing providers that are seen to be doing a sufficiently good job, without having to go out to the market before awarding a contract.

The second is to enact a ministerial power grab, giving the secretary of state more control over local health services. This is thought to be a response to ministers' frustration with the independence afforded to local health systems and their own relative lack of control over the delivery of their priorities for the NHS.

The bill also includes measures to allow the merger of arms length bodies, which will start with the absorption of Health Education England into NHS England, and to change the cap on care costs for social care, which critics point out will reduce the protection against high care costs for people with low to moderate assets.

## It provides the legal foundations for new structures

The proposed legislation will establish integrated care systems as statutory bodies. These replace clinical commissioning groups as the coordinators of local health services. They will organise care with the aim of improving local population health.

Integrated care systems already exist in non-statutory form in 42 areas. The bill will put them on a statutory footing and create integrated care boards as new NHS bodies.

Each system will be made up of two organisations: an integrated care board and an integrated care partnership. The board will be responsible for controlling most NHS resources, while the partnership will be a collaboration through which the NHS, local authorities, and other organisations make decisions about local health plans.

The structure and membership of integrated care boards is one of the most hotly debated aspects of the proposed legislation. This is because the bill opens up the possibility of private service providers sitting on the boards.

In terms of the starting point for the structure and membership of integrated care boards, the bill imposes certain mandatory members and sets out the structure. It then largely leaves it up to clinical commissioning groups to determine as they draw up constitutions for their replacements.

## We need more detail to know if it'll work as intended

Encouraging collaboration, rather than competition, between local organisations fits with the NHS direction of travel over the past decade. But that does not mean the new legislation will deliver exactly what proponents of further integration and collaboration want.

The BMA argues that the bill should go further to ensure adequate clinical leadership and engagement throughout integrated care systems. And National Voices wants patients to be working more closely with healthcare organisations and local government within integrated care systems to develop services.

The Health Foundation points out that, even though encouraging collaboration to improve care makes sense, the advantages of this approach are often exaggerated. "The benefits of these changes should not be overstated and there is a risk that the new NHS structure is complex, vague, and not adequately designed to support the bill's aims for better integration between NHS and wider services," it warns.[1]

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## The BMA and others want changes to stop the NHS being privatised

The BMA, the Labour Party, the campaigning group Keep our NHS Public, and others fear that the bill could allow contracts to be awarded to private providers without appropriate scrutiny. The BMA is lobbying for amendments to strengthen the proposed replacement for mandatory competition and to protect the NHS from the unnecessary involvement of the private sector. “We want the NHS to be the default option for the provision of NHS services, so that contracts are not simply handed to private providers,” it says.

It also wants to stop private companies from being able to sit on NHS boards and is calling for amendments to prevent corporate private providers from sitting on integrated care boards and influencing commissioning decisions. The government has brought an amendment to prevent someone from sitting on a board if their private sector involvement could present a conflict of interest, but the BMA says this doesn’t go far enough.

For Mark Dayan and Helen Buckingham of the Nuffield Trust the bill is not likely to dismantle and privatise the NHS or lead to a widespread corporate takeover. Rather, they say, removing requirements to tender all large contracts, allowing contracts to be rolled over, and having local health bodies working together “actually herald a less competitive, less marketised NHS.” They argue that the question of whether the bill will privatise the NHS is not an important issue and that focusing on this will distract people from properly examining other aspects of the legislation.

## Ministers’ power grabs could prioritise politics over patient care

The BMA, the King’s Fund, NHS Confederation, and NHS Providers warn that the new powers being given to the secretary of state could create a health service in which decisions are taken to suit party politics rather than patients. This is because the bill requires that the secretary of state be notified of any changes in local services, and it allows them to step in and take decisions themselves on these changes.

The concern is that there are no safeguards specified in the bill as to when the powers to take decisions away from local health organisations would be enacted. This could mean local decisions about the configuration of health services are held hostage to national political matters.

The constitution select committee of the House of Lords also raised concerns about the proposals. “This could alter the balance between the government’s constitutional responsibility for the provision of healthcare and providers’ ability to function in a manner that can respond effectively to local needs,” the committee said.

## It doesn’t do enough to tackle staff shortages, health inequalities, or problems in social care

Despite being the first major reform of the NHS for a decade, medical organisations, think tanks, and charities have pointed to a long list of problems that the bill does not do enough to tackle, including workforce shortages, health inequalities, and the problems in social care.

Medical royal colleges, the BMA, and NHS Confederation have described the absence from the bill of any provision for long term workforce planning as a “glaring omission.” The BMA wants to “make government accountable for safe staffing” and it is calling for a requirement to be introduced for the government to undertake regular workforce assessments and to be accountable for ensuring the NHS has adequate numbers of staff.

On health inequalities, the provisions in the bill “amount to more of the same,” according to the Health Foundation, and are a missed opportunity both to acknowledge the NHS’s role in influencing wider determinants of health and to broaden the duties placed on the government to tackle inequalities.

In terms of social care, the Nuffield Trust points out that the bill “does little to tackle the severe and worsening crisis” in social care. “The admirable goal of the NHS working better with social care will not be achieved if the sector is failing to deliver basic support and protection, as is the case today,” it says.

The King’s Fund argues that the change to the cap on social care costs is “regressive” as those who will benefit most are those who are already well off. It is calling for this change to be dropped from the bill.

## It has no champion and no clear independent narrative explaining its purpose

Some of the concerns about the bill stem from its conception as a legislative tidying up exercise, led by Simon Stevens when he was chief executive of the NHS and onto which Matt Hancock grafted a ministerial power grab when he was health secretary. With Simon Stevens and Matt Hancock no longer in post, their successors will want to implement their own plans which may be at odds with the direction of travel of the legislation.

Health Secretary Sajid Javid was reported to have pushed for the bill to be delayed or scrapped, only to be overruled by Prime Minister Boris Johnson. And Javid has already set out plans, such as for academy-style hospitals, that appear to be at odds with the bill’s push for NHS organisations to collaborate more closely and for ministers to be able to intervene in local service reconfigurations.

## The changes are an unhelpful distraction for a service buckling under workload pressures

Critics of the bill argue that it will not solve the big problems facing the NHS, such as staff shortages and a broken social care system—why then impose additional work on a service that is already struggling to recover from the pandemic?

“It is wrong to implement wholesale reform while the country is still fighting the covid-19 pandemic, the NHS is facing a significant backlog of care, and doctors have had little time to scrutinise the details,” the BMA says.

Its proponents would say, however, that the changes introduced by the bill are not additional work, but rather that the bill legislates for what the service is already doing, while removing pointless requirements to pretend that a competitive system still exists.

## There is still time to shape the changes

As the parliamentary process grinds on, the BMA wants members to contact MPs and peers, and has produced templates that doctors can use as the basis of letters to politicians and the media. “We need your support in telling policymakers that the Health and Care Bill is the wrong bill at the wrong time and encouraging them to support the amendments we are calling for,” the BMA says.

In the end, whether the bill makes a difference to patients or not will depend to some degree on how the health service engages with the changes. “Tangible differences in patients’ experiences will depend on how local organisations, leaders, and clinical teams implement these changes,” the King’s Fund says.

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The BMA is encouraging members to lobby their local integrated care systems directly. “Integrated care systems will be left a lot of leeway to make their own decisions about how they work, including who sits on boards.”

1 Health Foundation. Health and Care Bill: Commons Public Bill Committee. 7 September 2021. https://health.org.uk/news-and-comment/consultation-responses/health-and-care-bill-commons-public-bill-committee

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