Parliamentary brief
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BMA

Health and Care Bill

Consideration of Amendments
March 2022

About the BMA

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

Overview

The BMA believes the Health and Care Bill is the wrong bill at the wrong time. The NHS is still under huge pressure from the pandemic; it is not the right time for the health and care system, or patients, for the biggest reorganisation in a decade. The Bill fails to adequately safeguard the NHS from unnecessary outsourcing to private providers; ensure Government accountability for safe staffing; or to ensure clinical leadership is at the heart of new ICSs.

At Lords' Report Stage, we saw some amendments to the Bill which, whilst they do not address all the BMA's concerns with the legislation, would significantly improve the legislation in the interests of the NHS, healthcare workers and, most importantly, patients. We therefore call on MPs to support the following key Lords' Amendments to the Bill:

- **Report on assessing and meeting workforce needs – (Clause 41)**– The BMA, alongside a huge coalition of 100 health and care organisations, including colleagues in the Royal Colleges, influential think tanks and charities, is calling on MPs to support Clause 41 as amended by the Lords, which would place a much-needed duty on the Secretary of State to publish regular, independently verified assessments of the workforce numbers needed, now and in the future, to meet the growing needs of the population.
- The BMA estimates that the NHS is currently facing a shortfall of almost 50,000 full time equivalent doctors. COVID-19 has highlighted and exacerbated the demands on the workforce, with burnout leading to significant numbers of doctors considering leaving the profession or reducing their hours. There is urgent need for drastic action to address the huge workforce shortages across the NHS.
- The current data gap on how many staff we need must be resolved to put the NHS and care workforce back on a sustainable footing. Read more about the overwhelming support from across the health and care sector for the amendment here.
- **Removal of Secretary of State powers to intervene in local service reconfigurations – (Clause 40)** – Powers for the Secretary of State to intervene in service reconfigurations risk decisions being made according to political, rather than clinical priorities. In the context of the huge backlog of care facing the NHS, it is more vital than ever that decisions over local services are made in the best interests of patients and are led by clinical expertise.
- Lords voted to remove these unnecessary powers from the Bill, a change that must be upheld to stop undue political influence on the running of local health and care services and ensure decisions are based on patient safety and local need.

- **Extension of conflict of interest rules to ICS sub-committees – (Clause 14)** – a significant concern for doctors raised throughout the Bill's progress is that it leaves open the possibility for corporate healthcare providers to gain seats on ICS boards, which would allow them to influence ICSs strategies and risk conflicts of interest in commissioning decisions. During the Commons' stages, the Government recognised the risk of conflicts of interest as a consequence of private providers sitting on ICBs, but the subsequent Government amendment doesn't go far enough to rule out private company influence across NHS decision-making boards and sub-committees. As such, we urge MPs to uphold Lords' Amendment to the Bill that would apply conflict of interest rules to sub-committees that may also have control and influence over key priorities and commissioning decisions.

Report on assessing and meeting workforce needs – Clause 41

We urge MPs – alongside a coalition of 100 organisations – to keep Clause 41 in the Bill, as amended by the House of Lords, to deliver regular national, independent assessments of current and future workforce numbers.

Overcoming unsafe staffing levels is an essential measure to ensure patient safety and to boost the wellbeing, morale, retention, and productivity of staff working in the NHS. This legislation is an opportunity for the Government to take sustainable action to alleviate issues relating to workforce supply and demand in England.

Throughout the passage of the Bill, the BMA has lobbied for the inclusion of a legal duty for the Government to be transparent about the current and future numbers of health and care staff verses how many are needed. Now contained in Clause 41 (as amended by Peers), this duty to publish regular transparent workforce assessments will deliver a shared understanding of the levels of staffing needed to meet national, population-based demand and should inform local and regional recruitment needs. It will enable proper scrutiny and debate about what policies and investment are needed to prevent instances of unsafe staffing occurring.

To-date, the Government has so far dismissed the need for this reporting on the basis that 'Framework 15' (HEE's long term strategic framework), which the Department of Health and Social Care (DHSC) has commissioned HEE to refresh, will "provide a framework for the health and regulated social care workforce… [and] look at the key drivers of workforce supply". Whilst greater clarity on these drivers is welcome, Framework 15 was first published in 2014, last updated in 2017, and there is still no agreed, publicly available assessment of workforce numbers now nor into the future – the framework does not address what would be achieved by Clause 41 but could, instead, feed into those regular publications of workforce modelling.

The Government has to date resisted efforts to make this amendment, stating that it has commissioned NHSE/I to develop a long-term plan for the workforce. However, the BMA and coalition of organisations we have been working with in calling for the amendment, do not believe this commitment goes far enough it. The Government has made no commitment to include modelling on the numbers of staff needed across the health and care system to meet population demand for services, now or into the future. A workforce plan without numbers doesn't add up.

The non-legislative approach has not worked. That is why Clause 41, as amended in the House of Lords, has been backed by those who have formerly been at the helm of the NHS, including Lord Simon Stevens (former NHS chief executive), Baroness Dido Harding (former chair of NHS Improvement), and the Rt Hon Jeremy Hunt MP (former Secretary of State for Health and Social Care). Their experience is clear that the Government's workforce planning will continue to omit this vital component unless they are 'expressly required' to be 'honest about the mismatch between supply and demand of healthcare workers'.

Having a collective, national picture of the health and care staff numbers needed to ensure the healthcare system can deliver the care that patients expect will provide the strongest foundations to take long-term

strategic decisions about funding, regional and specialty shortages, and skill mix. We urge MPs to seize the opportunity to address the existing accountability gap for workforce planning and ensure Clause 41, as amended by the House of Lords, remains in the Bill

Removal of Secretary of State powers to intervene in local service reconfigurations – Clause 40

The BMA has joined NHS Confederation, The Kings Fund, the Nuffield Trust and others in calling for the removal of the Secretary of State's powers to intervene in service reconfigurations and welcome the Lords Amendment to this effect at Report Stage.

As highlighted by peers during the Report Stage debate on the amendment powers for the Secretary of State to intervene in service reconfigurations risk decisions being made according to political, rather than clinical priorities. In the context of the huge backlog of care facing the NHS, it is more vital than ever that decisions over local services are made in the best interests of patients and are led by clinical expertise.

Whilst the BMA supports clear lines of political accountability for the NHS at Secretary of State level, power must be balanced with responsibility, and we have consistently raised concern that the measures in the Bill focus much more on affording new powers to the Secretary of State without the necessary accountability. Unchecked, we are concerned the powers within the Bill could result in undue political influence in NHS decision making and undermine long-term planning.

We call on MPs to ensure the Lords' amendment to remove powers over service reconfigurations, as previously contained in Clause 40 of the Bill, are upheld to help ensure decisions over local health services are based on patient safety and local need.

Rule out private providers on NHS Boards - Clause 14

The Bill leaves open the possibility for corporate healthcare providers to gain seats on ICS boards and, as a consequence, could allow them to influence ICSs overarching strategies and risk conflicts of interest in commissioning decisions.

In response to amendments tabled by the Opposition and supported by the BMA, the Government brought an amendment to the Bill at Report Stage in the Commons that would prevent the appointment of a member of an integrated care board if they "could reasonably be regarded as undermining the independence of the NHS because of their involvement in the private healthcare sector or otherwise".

Whilst the Government clearly recognises the risks posed by private sector companies sitting on NHS decision-making boards, the amendment does not go far enough to address this. It fails to rule out private sector companies sitting on NHS decision-making boards or sub-committees and therefore wielding influence over decisions and the overarching strategy of the ICS.

To help guard against conflicts of interest and undue influence in decision-making, corporate providers must not be involved in the leadership of ICSs or any commissioning decisions they make. We therefore call on MPs to support the Lords Amendment to Clause 14 of the Bill that would extend conflict of interest rules to ICS sub-committees. This would help go some way in strengthening provisions to avoid certain persons who may have a conflict of interest in promoting private healthcare from being appointed as members of sub-committees and help ensure commissioning decisions are made in the best interests of the NHS and patient care.

Other issues

HSSIB safe spaces

The BMA supports the establishment of the HSSIB on a statutory footing and believes the safe space approach should be universal. As such, **we welcome Lords Amendments to the Bill to remove the drafted exception for coroners re. the disclosure of protected material, and call on MPs to uphold this change to Schedule 14 of the Bill.**

The establishment of the HSSIB and its focus on fostering a learning culture in the NHS aligns with the asks set out in our Caring, supportive, collaborative report, which found that doctors want to see the way patient safety incidents are investigated radically changed to ensure that they can be seen as opportunities to improve future care rather than assigning blame.

By using data to improve systems and practice to meliorate risk, rather than to apportion blame or find fault, safe spaces should help improve safety as has been evident in other safety critical industries, notably aviation. Establishing 'safe spaces' for information relating to patient safety incidents on a statutory footing is essential to making sure the approach is sufficiently robust, and to ensure professional confidence. Any exceptions for coroners could undermine the safe space approach and the confidence of staff in reporting patient safety incidences and we urge MPs to resist any attempt to reinsert this exemption into the legislation.

Clinical leadership within ICSs

Throughout the passage of the Bill, the BMA has called for amendments to strengthen clinical leadership within ICSs including strengthening minimum ICB membership to ensure there are at least two positions for primary care, a secondary care clinician and a member appointed to provide independent public health advice for the whole ICS.

The Government has resisted changes to strengthen minimum ICB membership, citing the need to retain local flexibility over membership, but moved its own amendment to require ICBs to review their membership and take action to address shortcomings. However, the BMA is concerned the duty to review ICB membership will have little impact if there is no clear guidance or regulations setting out what skills, knowledge and experience is necessary for the board to possess to effectively carry out its functions.

In any debate over ICB membership, we urge MPs to press the Government on how they will ensure ICBs effectively recognise gaps in their skills, knowledge and experience and are held to account for addressing these.

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