**Health and Care Bill 2021 – Briefing Notes from Keep Our NHS Public**

The Government’s Health and Care Bill is progressing rapidly through Parliament. If enacted it will undermine control and provision of the NHS as a *national* health service aiming to provide comprehensive, universal treatment and care in response to need, free at the point of use.

The NHS and local authorities are under severe pressure as a result of the Covid pandemic and need a period of stability, not further structural change. Government procurement during the pandemic exploited emergency regulation to hand contracts worth billions to the private sector, often with scant regard for transparency, risk assessment or conflict of interests. The government now wishes to enshrine this approach post-pandemic by enabling increased involvement of the private sector in planning and running publicly funded services.

**What the Bill doesn’t do:**

The Bill does nothing to solve the crises in funding, staffing shortages, lengthening waiting lists, mental health and social care services, crumbling estate and other major problems facing the NHS nor does it provide adequate support for the wide-reaching public health and social and environmental improvements which are necessary to improve people’s health.

It does not assist the integration of health and social care services: there is still no national plan for social care and completely inadequate funding to meet publicly funded social services or to enable the Integrated Care Systems (ICSs or ‘system’) to manage local health and social care services. The Bill does not address the needs of staff in social care, in terms of their security of employment, their pay, and whether their private employers have appropriate resources to enable them to provide good care for those in care homes or living independently.

In addition, the Bill gives no certainty about the provision of emergency services for those not registered with an ICS, raising concerns about possible delays in treatment. It also does nothing to challenge NHS England’s growing expectations of staff to be ‘flexible’ and open to working across different sites and organisations within and beyond an ICS - an approach that adds additional stress to overstretched staff while posing risks to patient care.

**What the Bill will do**:

* Repeal Section 75 of the Health and Social Care Act (2012). This will *not* end competition. Instead, the Bill provides powers to *reduce regulation* of the health and care ‘market’ by exempting contracts, including for clinical care services, from the Public Contracts Regulations. This will reduce oversight of how contracts are awarded, and undermine environmental, social and labour protections.
* Allow private companies (including many multi-national corporations accredited by NHS England to support ICSs) to sit on ICS boards and their committees, making decisions about how public money is spent. The Minister for Health has promised an amendment to the Bill “to protect the independence of ICBs (1) by preventing individuals with significant interests in private healthcare from sitting on them”, (2) leaving membership of the IC Partnership (3) and other joint decision-making committees of the ICB open to individuals representing private providers.
* Severely limit the representation of local authorities on the main IC Board where plans and decisions will be made, and relegate them to the IC Partnership tasked with developing a strategy that is *not* binding on the main Board.
* Repeal the legal requirement to assess patients who may require on-going support and to have a care package in place before they are discharged from hospital, allowing ‘discharge to assess’, a controversial policy [4] placing increased demand on community services which are currently woefully overstretched.
* Grant the Secretary of State major new powers, (including ‘Henry VIII’ powers (2)), allowing, for example, political control of NHS bodies and creating new opportunities to intervene at every level in local decisions about service reconfigurations.
* Put a strict cap on funding, so ICS boards will be expected to ration NHS services in line with their funding, rather than funding being provided to match need. Already, the UK spends far less on healthcare than comparable countries like France or Germany.
* Introduce a Payment Scheme that can vary by area, provider and patient characteristics, with the private sector to be consulted on details, so fragmenting the financial basis of the national NHS. Such fragmentation could threaten national agreements covering pay, terms and conditions of staff.
* Give no explicit guarantee that meetings of Integrated Care Boards, Partnerships and committees taking on significant decisions about local services will be held in public, that papers must be published in advance, and that the public can raise questions.
* Promote a ‘digital first’ approach to patient care. Although digital options are helpful and welcomed by some, they represent a major barrier for many because of lack of digital access or literacy, language barriers, learning disability etc. and can be used to deny care. [3]
* Confirm NHS Digital’s power to share patients’ data with third parties, including a wide range of private companies, raising concerns for patients’ privacy.
* Allow greater use of less skilled staff and replace professional expertise with digital applications, threatening the quality of patient care.
* Provide powers to disband regulatory bodies that oversee the conduct and competence of the professions, putting patients at risk.

**Social Care Cap**:

The Government made a last-minute addition to the Bill (Clause 140) at Report stage, rather than during the Committee stage, which would have given appropriate time for discussion. This clause will benefit wealthy home-owners – it will protect 90% of a property worth £1 million – while people with assets of about £106,000 will have to sell their home to pay for care costs. Under Sir Andrew Dilnot’s original proposals, they would have lost about 59% of their assets; under the revised proposals they will lose 70%. Also, the cap will only cover personal care costs, so they will also have to pay for all the ‘hotel’ costs of care. As yet, the Government has not produced an impact assessment of the proposed Social Care Cap.

The Bill is opposed by a growing number of organisations, such as the British Medical Association and National Pensioners Convention.

[1] An ICB (or Integrated Care Board) is responsible for financial control and overall running of the ICS.

[2] <https://www.theyworkforyou.com/pbc/2021-22/Health_and_Care_Bill/06-0_2021-09-14a.234.2?d=2021-09-14>

[3] An IC Partnership is responsible for planning and delivery of services.

[4] <https://www.bmj.com/content/370/bmj.m3747>

[5] <https://www.parliament.uk/site-information/glossary/henry-viii-clauses/>

[6] <https://www.theguardian.com/us-news/2021/jul/02/algorithm-crucial-healthcare-decisions>

For more information about what the Health and Care Bill will mean for the NHS and background information on the development of Integrated Care Systems, see the KONP website: <https://keepournhspublic.com>