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

The Health and Care Bill is currently making its way through Parliament. The government aims for it to be enacted by April 2022, although formal implementation has been delayed until July 2022. This Bill, if passed, will undermine the control and provision of the NHS as a *national* health service aiming to provide comprehensive, universal treatment and care in response to need that is free at the point of use.

**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 changes that 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 local health and social care services.

In addition, the Bill fails to ensure that emergency services will be provided for every person present within an area, which has been a requirement for CCGs. This raises concerns about possible refusal or delays in treatment, especially for migrants and homeless people.

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 aims to do**:

* Repeal Section 75 of the Health and Social Care Act (2012). This will *not* end privatisation. Instead, the Bill provides powers to *reduce regulation* of the health and care ‘market’ by exempting contracts for clinical services (including mixed tenders with a clinical component) from the Public Contracts Regulations. This will reduce oversight of how contracts are awarded, and undermine environmental, social and labour protections. During the pandemic, contracts worth billions have been handed to the private sector, a lesson the government now wishes to apply to the NHS as a whole.
* 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. A government amendment accepted during the Committee stage “prevents the appointment of a member of an integrated care board (1) if they could reasonably be regarded as undermining the independence of the NHS because of their involvement in the private health sector or otherwise”. (2) This subjective test does not actually prevent the private sector from sitting on Integrated Care Boards, let alone on decision-making committees, sub-committees, Provider Collaboratives with delegated budgets, or the Integrated Care Partnerships.
* 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. Instead the Bill endorses ‘discharge to assess’, a controversial policy [4] placing increased demand on community services that are currently woefully overstretched.
* Grant the Secretary of State major new powers (including ‘Henry VIII’ powers (5)) allowing, for example, political control of NHS bodies and creating new opportunities to intervene 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.
* Include a general requirement for public consultation and involvement, but without providing an explicit guarantee that all meetings of Integrated Care Boards, Partnerships and committees taking 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. [6]
* 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 the replacement of professional expertise with digital applications and algorithmic decision-making, threatening the quality of patient care.
* Provide powers to merge or abolish 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 the National Pensioners Convention.

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

[2] <https://publications.parliament.uk/pa/bills/cbill/58-02/0183/amend/health_day_rep_1122x.pdf>

[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>