mhp mischief

# BILL WATCH

## A REVIEW OF THE HEALTH AND CARE BILL'S PASSAGE THROUGH THE LORDS

# INTRODUCTION

Ten years ago last week, the 2012 Health and Social Care Act became law, abolishing Primary Care Trusts, establishing Foundation Trusts and establishing NHS England. A decade later, in what we won't quite call serendipity, the Health and Care Bill is in ping-pong, following amendments in the House of Lords.

It's safe to say the popcorn moments we hoped for in the Lords didn't really materialise. Yes, the somewhat regressive clause to change the cap on social care costs was removed – and the workforce planning powers were strengthened – but these amendments were widely considered by the health policy world to be in the "probably pragmatic" box of amendments. Unfortunately, the Government disagrees – and has rejected several amendments, the most controversial being the amendment on workforce projections, which you may recall is backed by a coalition of 100 health organisations as well as many members of the Conservative party. Consensus like that is rare.

So far as health minister, Sajid Javid has made the mood music of the NHS focus on the age-old buzz words "efficiency" and "accountability". This amendment would help the Government achieve both – as Hunt rightly pointed out – because it would compel the NHS to train more doctors, but also to reduce the £6.2bn locum bill which makes a huge dent on the NHS budget.

Meanwhile, wonks in Westminster have been kept busy by a whole raft of Government policy proposals on health – with the Integration White Paper, the Elective Care Recovery Plan and the 'Levelling Up' White Paper all published while the Bill has been in the Upper House. Sajid Javid delivered his vision for Health and Social Care, in which integration received only a fleeting mention. In last week's Spring Statement, the Chancellor doubled the NHS's efficiency targets – as inflation and energy costs continue to rise – and no new money was allocated for workforce.

> "THE GOVERNMENT ARE REJECTING THE AMENDMENT BECAUSE THEY THINK IT WOULD COMPEL THEM TO TRAIN MORE DOCTORS, WHICH IS TRUE, BUT IT IGNORES THE FACT THAT THIS IS THE BEST WAY TO REDUCE THE £6.2BN LOCUM BILL THAT IS CURRENTLY DEVASTATING THE NHS BUDGET."
>
> **Jeremy Hunt, Chair,**
> **Health and Social Care Select Committee**

As the NHS Confederation set out last week, time is running out. The Government doesn't have time for a complicated round of ping-pong if the Bill is going to gain Royal Assent by the end of April. If this amendment becomes the sticking point, the impact on local system leaders could be huge. With amendments to accept, compromises to make and implementation still to come, Integrated Care System (ICS) leaders remain in flux and the political attention on this Bill seems to already have waned. The best course of action for the Government now might be to compromise where they can and minimise the ongoing uncertainty for NHS leaders, who already face an impressive to do list.

Here, our MHP Mischief Health dream team set out the updates from the Lords and things to watch out for in ping-pong. Get your popcorn ready.

MADDY FARNWORTH
**Director, Health**

THEME 1

# POWER OF THE SECRETARY OF STATE

**One of the key areas of contention throughout the Bill's passage through Parliament has been the additional powers that the Bill affords to the Secretary of State for Health and Social Care.**

Before entering the House of Lords, the Bill outlined 138 new powers for the Secretary of State to give directions to the newly merged NHS England, which fuelled concerns from NHS bodies and opposition members of a power grab that would enable the Secretary to intervene in the reconfiguration of local services. The Secretary's powers to intervene in local service reconfiguration remains one the most contentious of all, with the Commons disagreeing to the Lords' amendment to remove clause 40 outlining these intervention powers. It has been widely debated that increased centralised power here could in fact undermine progress towards integration, a fundamental principle this Bill seeks to achieve.

It is worth noting that these additional powers for the Secretary of State were thought to be of particular interest to Sajid Javid's predecessor, Matt Hancock. However the question remains as to whether the new Secretary of State will be more willing to compromise on them in order to appease Parliamentarians and non-parliamentary health policy influencers.

The Secretary of State's powers to direct the NHS remain in the legislation following scrutiny in the House of Lords, despite Lord Hunt of Kings Heath's (Lab), amongst others', concerns that new powers to direct the NHS "will result in a more politicised NHS". Former CEO of NHS England, Lord Simon Stevens (Cross), was critical of the increased Secretary of State powers noting his "central charges for crimes against the NHS" related in part to the Government's decision to propose additional powers for itself in the Bill, as reported in a Health Service Journal article. His opposition here is no surprise given as CEO he had built consensus on the Bill's proposals with the NHS, which did not include extensive powers for the Department of Health and Social Care to intervene in local service reconfiguration.

This was a major point of contention even for those who support the vast majority of reforms in the Bill including Chris Hopson (CEO, NHS Providers) and Matthew Taylor (CEO, NHS Confederation).

THEME 2

# ICS STRUCTURES AND ACCOUNTABILITY

**This series has continually noted that the changes in the Health and Care Bill to bring Integrated Care Boards (ICBs) onto statutory, legal, footing are merely an "evolution, not a revolution". Integrated Care Boards are the body in these systems which will commission services, taking on powers from the old Clinical Commissioning Groups (CCGs) and some from NHS England, whilst Integrated Care Partnerships (ICPs) will also bring in other bodies like local authorities and the voluntary sector to make an integrated plan for addressing health needs within the ICS footprint, but will not commission services. Given its moderate nature, it's unsurprising that the House of Lords has not challenged the headlines set out in the Bill and has stuck to the details, and so it's equally unsurprising that most of the amendments made in this area were accepted by the Government and House of Commons.**

The passage of the Bill through the Lords saw Peers embellish and add to the duties in relation to particular topics. For example, the Upper House ensured they now have a duty to plan palliative care services and NHS England can issue guidance to ensure ICBs weigh the impact of their actions on the environment. Whilst amendments have also beefed-up NHS England's duties with respect to research, the duties of ICBs in this area have been turned from just 'promoting' to 'facilitating or otherwise promoting' research. Crucially, each ICB will also be assessed on their performance in respect of promoting research by NHS England each financial year, arguably addressing the previous weakness of this commitment.

One structural change inserted by Labour Peer Baroness Thornton was an amendment expanding the obligations to manage conflicts of interest to cover members of each ICB's commissioning sub-committee, rather than just the members of the Integrated Care Board itself.

The most foreboding debate was the discussion of ICBs' new responsibility for the many specialised services currently commissioned directly by NHS England, and the need to prevent patients in some areas potentially missing out on the quality specialised care they need. Plenty of amendments probed this issue, and former Health Secretary Lord Lansley warned against a return to the 'bad old days' where local commissioning arrangements led to disparities in access to specialist care in different areas of England. Whilst no Peer proposed a solid, workable, alternative to the current proposal, a cross-party coalition representing patient groups, industry, and specialist hospitals probed at this previously under-discussed change. This is likely to be a major issue in health policy debates in the coming years and months as this set of reforms take hold.

THEME 3

# WORKFORCE

**The subject of workforce has been challenged from all sides throughout the Bill's legislative journey. The Commons have repeatedly denied the movement of amendments that would strengthen workforce planning and require more regular reporting informed by accurate projections of future workforce needs. It was therefore anticipated that the Lords would seek to table amendments that would keep the Government accountable when it was their turn to debate the Bill.**

The House of Lords voted in favour of the amendment, moved by Baroness Cumberlege (Con), which would require independently verified assessments of current and future NHS workforce needs every two years. The notion of a workforce strategy was supported by Lord Stevens, and by 100 organisations including 16 Royal Colleges, representing more pressure for this measure to be adopted. Despite this, Sajid Javid has announced that no additional funding will be provided for the upcoming NHS long-term workforce plan. Instead, funds must be allocated from the existing pot. Lord Stevens raised a comment by the Chair of the Health and Social Care Committee, Jeremy Hunt MP (Con), on the subject of funding, who questioned whether funding was what had prevented this amendment from being accepted to date. However, Wes Streeting (Lab), Shadow Secretary of State for Health and Social Care, identified that this amendment did not commit the Government to new funding for the NHS, and claimed that unless the Government face the scale of the workforce challenge, shorter waiting times will not be delivered for patients. Cancer Research UK and The King's Fund have also supported that the workforce crisis is the key rate-limiting factor and, by burying heads in the sand, world-class cancer outcomes and tackling the elective care backlog will not be achieved.

In response to the Health and Social Care Committee's report 'Workforce burnout and resilience in the NHS and social care', the Government had rejected the call for 'transparent and independent' workforce planning to be included in the Bill. Jeremy Hunt called the response a "missed opportunity to properly address the biggest driver of workforce burnout, staff shortages". During the Lords Committee stage, Lord Warner (Cross), himself a former health Minister in Tony Blair's Labour Government, also argued that that there could be no meaningful policy of patient choice without sufficient NHS capacity, and questioned how much elective capacity the Government would fund over the next two years.

It appears that the conflict between workforce and funding is being played out in the Bill as the lack of clarity around workforce planning and spending continues to raise concerns. The ping-pong between the houses is seeing this in real time, with the Commons rejecting the amendment for a second time despite robust argumentation for the need to pass the amendment. The strong consensus towards the need for greater workforce provisions may mean that the Government is 'defeated' on the argument and may be required to back down in a bid to prevent continued ping- pong between the Houses and secure Royal Assent by the end of April.

THEME 4

# HEALTH INEQUALITIES

**The Bill's weight for meaningfully addressing health inequalities could be considered limited in the context of deepening regional inequalities, and a lack of specific measures in the Spring Statement to meaningfully address the social determinants of Health. Critics will say that the legislative proposals fall short and could have gone further, including greater accountability for newly formed ICSs. However, it should also be noted that primary legislation generally provides frameworks for implementation rather than be overly directional.**

The Government would argue that an 'important suite of government amendments' was successfully agreed by the Lords to improve outreach and access to health services for people – not just patients – and improve data collection and publication for marginalised groups. This represents significant progress. In our last briefing we reported that no amendments for action on health inequalities were successfully tabled in the Commons.

It is positive to see wording of the 'triple aim'[1] be updated to include consideration of inequalities in health and wellbeing, the quality of services and the sustainability and efficient use of resources – this was concurred in the Commons. Additionally, the Lords agreed that existing duties must now explicitly include patients' experience of care, the safety of services and the effectiveness of services in acknowledgment that disparities are not limited to health outcomes or access. Of particular note, duties must now include "people" before they are patients.

Furthermore, it was agreed that NHS England must produce a yearly document describing the "powers of certain NHS bodies to collect, analyse and publish information relating to disparities in health, together with NHS England's view on how these powers should be exercised". While efforts will be made to improve outreach to marginalised groups, further detail was not provided, however it may be read that this will be informed by the newly proposed data collection and analysis, as well as involving those with lived experiences.

**On return to the Commons, Government reaffirmed its commitment to tackling health inequalities, and noted that the Lords amendments 5, 7, 8, 10, 13, 14, 16, 17, 24, 31, 32, 38, 39 and 41 take us further in "tackling disparities and levelling up opportunity and outcomes across the country".**

"OF THE MANY CRITICAL TOPICS, WE DISCUSSED IN COMMITTEE, OUR DEBATE ON HEALTH INEQUALITIES STANDS OUT AS ONE THAT PROMPTED UNANIMOUS AND EMPHATIC AGREEMENT FROM ALL BENCHES ON THE NEED FOR US TO RECOGNISE IN THE BILL THE CENTRALITY OF THE INEQUALITIES ISSUE."

**Earl Howe**

[1]Triple Aim: The 'duty to have regard to wider effect of decisions

# CONCLUSION

**As the Bill exits the Lords, where Peers have spent months poring over the details and adding (and removing) amendments great and small, how is the next parliamentary stage shaping up? What are the chances of fireworks during the stage commonly known as ping-pong where the amendments from the Peers are considered? The fundamental tenet of the Bill, integration, looks set to be passed through without much trouble, as stakeholders from across the community have already 'bought in' to the concept and recognise that this is the direction of travel, with ICSs already part of the landscape and vernacular of the NHS. How much power the Secretary of State will eventually have over these new structures though remains to be seen, as efforts to clip the wings of the centre in the legislative process thus far may be resisted throughout ping-pong.**

Sajid Javid, Secretary of State

It will most likely be workforce – and the vexed question of how it can be funded – which NHS-watchers will want to keep a close eye on as the Bill bounces between the red and green benches and progresses to Royal Assent. It has been pretty clear from recent DHSC and NHS announcements that the big pot of money needed to sort out the acute workforce pressures will not be forthcoming from the Treasury and, given the economic squeeze elsewhere in the economy, nor is it likely to appear soon. This inter-departmental tension may play out in a hard-line stance from the Government in response to repeated calls – from all sides of the House – to address workforce, as restricted ambitions is reflective of restrained budgets.

And then there is time. How long will the Government want to entertain the ping-pong? Is there merit to waive through concessions to get the Bill through to Royal Assent and turn rhetoric on integration into action, or will the Government double down on its vision for future of the NHS? All eyes will be on Parliament to see how it plays out over the coming weeks.

At each step of the way the health policy geeks at MHP Mischief have been monitoring the progress of the Bill's passage. We will keep you on the inside track as it nears completion and look ahead to what it will all mean for those working and interacting with the health service.

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