

Health and Social Care Bill

post-Committee /pre-Report

Position Statement from Labour House of Lords Front Bench Team

Labour's frontbench in the Lords continues to share the view of almost every external stakeholder organisation to the NHS that the Health and Social Care Bill is unnecessary and poses risks to the patient care. Despite the legislation remaining incomplete, the unprecedented scale of reorganisation continues apace, bringing destabilisation and huge additional costs at a time when the NHS is facing major financial pressures.

During 15 days in Committee, the much delayed Bill came under thorough scrutiny from peers across the Lords, led for the most part by Labour, often working with crossbenchers and, occasionally, backbench Liberal Democrats. As with the Commons stage of the Bill, the Government has to date given no significant concessions while at the same time losing most of the arguments. With the next version of the Bill just published, Lords Report Stage will start in early February and last for 4 to 5 weeks.

During the Committee stage, we have effectively seen a second "pause" in the Bill, so that issues around the duties of the Secretary of State can be examined. There is general agreement that the Bill has to be changed in this area, backed up this week by a report from the Lords Constitutional Committee recommending significant changes

The thorny issue of the lack of availability of the Bill's Risk Register remains unresolved, raised through an FoI request by Labour. Consequently, the final timetable for Report Stage has yet to be formally agreed.

The main concerns with the Bill remain unresolved and in considering the key Part 3 (which deals with Competition and the role of Monitor as Regulator), Labour put forward a full rationale for an alternative approach to NHS reform (see accompanying document). Whatever concessions are made before Report, it is clear the government will not be persuaded that changing the NHS from a managed system into a full blown market will be detrimental to patient care.

During Report, it is already clear that many key issues will have to be addressed. Many Labour peers have signalled their intention to put down amendments for consideration and in January we will circulate further briefing material. For now however, these are the areas likely to be covered:

Secretary of State's (SoS) powers and autonomy

- SoS must remain both politically and legally accountable for a comprehensive NHS

- Powers and duties of the SoS must be broadly compatible with those in the 2006 Act
- The complete removal of any (unearned) autonomy presumption.

Competition and Monitor

- A provision should be inserted that defines the NHS as a universal system provided for the purposes of social solidarity – to deter inappropriate intrusion of competition legislation
- Monitor must be the financial regulator of providers not the economic regulator of the health system; the role as regulator of Foundation Trusts (FTs) must be separate
- There must be no presumption that competition is necessary or required or to be promoted; it is to be used when appropriate within a framework defined by the SoS
- The poorly thought out regime for dealing with “failure” must be simplified extensively and the power to de-authorise FTs continued

Governance of new bodies: Clinical Commissioning Groups (CCGs) and NHS Commissioning Board

- CCGs must be coterminous with local authorities and be free of Conflicts of Interest
- CCGs must have proper governance arrangements including a Board with a majority of independent non-executive directors
- The NHS Commissioning Board should not commission local services

Independence for Public Health England

- Many issues have been raised by the professional bodies to ensure Public Health England is adequately funded, has enough influence within local authorities and remains connected to the NHS

Independence from Care Quality Commission (CQC) for Health Watch England (HWE)

- HWE should not be part of CQC
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Powers for Health and Wellbeing Boards (HWBBs)

- HWBBs must produce an integrated commissioning plan covering NHS, PHE and social care
- HWBBs must agree the commissioning plans of CCGs

Other amendments certain to be moved by others, will include:

- Training & Education
- Research
- Monitor’s role in continuing oversight of FTs
- Private Patient Cap
- Regulation of the workforce

Labour’s position on these matters will depend on the actual amendments proposed but in general terms we agree with views already expressed that extensive changes to the relevant aspects of the Bill are required.

Labour’s Lords Health Team, 22nd December 2012