From the Earl Howe
Parliamentary Under Secretary of State for Quality (Lords)

Department of Health

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Dear Member of the House of Lords,

HEALTH AND SOCIAL CARE BILL – GOVERNMENT AMENDMENTS

As you will be aware, the Health and Social Care Bill's Report stage is scheduled to begin on 8th February. Today I have tabled a wide range of amendments which respond to improvements suggested and concerns raised during Committee stage.

We had many informative and passionate Committee debates in the autumn. I would like to thank all Peers who contributed in those debates, and have made to time meet myself, Baroness Northover and Ministerial colleagues over the past few months. I have found these discussions invaluable.

Our amendments aim to strengthen the Bill in the following ways:

- ***Secretary of State accountability.*** Put beyond doubt the Secretary of State's responsibility and accountability with respect to a comprehensive health service. These amendments follow the extremely constructive cross party discussion about this area, and are in response to recommendations from the Constitution Committee.
- ***Education and training.*** Require the NHS Commissioning Board and clinical commissioning groups to play an active role in the new education and training system. This follows on from the detailed policy framework for education and training the Government published on 10th January.
- ***Research.*** Strengthen the research duties on the Secretary of State and NHS Commissioning Board and clinical commissioning groups. This is in addition to establishing the Health Research Authority (HRA) as a special health authority, and the publication in the coming months of clauses establishing the HRA as a non-departmental public body for pre-legislative scrutiny.
- ***Integration and competition.*** Making clear Monitor's role with

respect to integration and competition. Including making explicit Monitor's power to require healthcare providers to cooperate and to actively support integration, and amending the clauses relating to reviews by the Competition Commission so that competition reviews are focused on what benefits NHS patients.

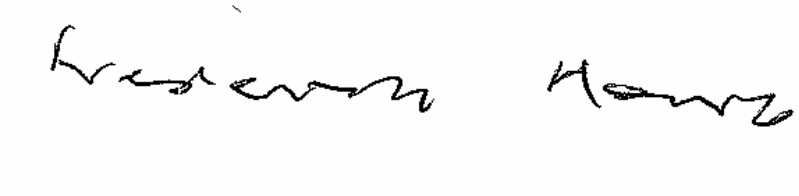
- ***Health inequalities.*** Strengthen duties as to reducing health inequalities by including new duties on the Secretary of State and commissioners to report regularly on his progress in tackling health inequalities.
- ***Greater role for patients.*** Strengthen patient involvement in decisions about their own care and treatment, and safeguard the independence of Healthwatch England. The Government also published a consultation document on membership of Healthwatch England on 26th January.
- ***Conflicts of interest.*** Ensure CCG constitutions contain arrangements for managing conflicts of interest of all members (for example clinicians, or commissioning support organisations) of committees or sub-committees of either the CCG or its governing body.
- ***Public health.*** Strengthen the role of Directors of Public Health by giving them statutory 'chief officer' status within local authorities. The Government will also use secondary legislation to establish statutory regulation of non-medical public health consultants.
- ***Patient confidentiality.*** Ensure patient confidentiality is appropriately protected by clarifying the Bill's clauses in relation to information.
- ***Delegated powers***. We have accepted in full the recommendations of the Delegated Powers and Regulatory Reform Committee.

Annex A to this letter summarises the amendments we have tabled in order to achieve these aims.

In addition, we have published briefing notes to explain each of the amendments in more detail. To assist Peers whilst we await the first marshalled list, we have also published a consolidated list of the amendments on the Department's website. Please note that the numbering is provisional until the amendments are allocated their numbers within the first marshalled list.

Should you have any questions about these amendments, please do contact my office, or the Bill Team directly at healthandsocialcarebill@dh.gsi.gov.uk.

I hope that Peers will agree that these amendments improve the Bill, and look forward to discussing them further with you during our upcoming debates.



EARL HOWE

Annex A – Description of Government amendments to the Health and Social Care Bill, tabled on 1st February 2012

Secretary of State accountability

Put beyond doubt the Secretary of State's responsibility and accountability with respect to a comprehensive health service

- Amend the Secretary of State's duty as to promoting autonomy, so that he must "have regard to the desirability" of securing autonomy rather than "act with a view to securing" it. This ensures it is subsidiary to his duties in section 1 of the NHS Act 2006 (to promote a comprehensive health service and to exercise function as to secure the provision of services).
- In addition, the duty is amended so that it is clear that in the event of conflict between the interests of the health service and the desirability of autonomy, the Secretary of State must give priority to the interests of the health service.
- Similar amendments are made to the NHS Commissioning Board's autonomy duty.
- Make clear that CCGs must act consistently with the discharge by the the Secretary of State' and the discharge by the NHS Commissioning Board of their duties to promote the comprehensive health service, and with the Government's mandate to the Board.
- We plan to support the Constitution Committee's amendment to clause 1, tabled by Baroness Jay, Lord Patel and Baroness Thornton. This makes clear that the Secretary of State retains ministerial responsibility to Parliament for the provision of the health service in England.

Education and training

Require the NHS Commissioning Board and clinical commissioning groups to play an active role in the new education and training system

- Require the Board and CCGs, to support the system for education and training which the Secretary of State must secure under clause 6 of the Bill. This will help to ensure alignment between service commissioners and workforce, education and training plans, encourage collaborative working between the Board and Health Education England at a national level and Local Education and Training Boards and CCGs at a local level, and promote the use of service contracts to support good education outcomes.

Research

Strengthen the research duties on the Secretary of State and NHS Commissioning Board and clinical commissioning groups

- Strengthen the duties on the Secretary of State, the NHS Commissioning

Board and clinical commissioning groups with regards to research, requiring each to promote research and the use of evidence obtained from research.

Integration and competition

Strengthen Monitor's powers to enable integration; focus competition reviews on the interests of patients

- Strengthen Monitor's ability to enable integration and co-operation by putting on the face of the Bill that Monitor can set or modify licence conditions for the purposes of enabling integration and encouraging cooperation between healthcare providers (a key part of giving statutory underpinning to the Principles of Co-operation and Competition in the provision of NHS services).
- Extend the requirements for Monitor to consult on its proposed guidance on procurement, choice and competition regulations on commissioners, so that consultation includes guidance about compliance with and enforcement of the regulations, and revisions of guidance.
- Amend the provision about Competition Commission reviews of competition and Monitor's exercise of its functions to make clear that the reviews are concerned with the effectiveness (not development) of competition in the interests of patients.
- Clarify the list of matters to which Monitor must have regard in exercising its functions.

Health inequalities

Strengthen duties as to reducing health inequalities by including new duties on the Secretary of State and commissioners to report regularly on his progress in tackling health inequalities

- Require the Secretary of State, the NHS Commissioning Board and clinical commissioning groups to report annually on how effectively they have discharged their duties to have regard to the need to reduce health inequalities.
- Require the Secretary of State to report annually on how effectively he has discharged his duty to exercise his functions with a view to securing continuous improvement in the quality of services provided. This complements existing duties on the Board and clinical commissioning groups to report on what they have done to secure continuous improvement in the quality of services provided.

Greater role for patients

Strengthen patient involvement in decisions about their own care and treatment, and safeguard the independence of Healthwatch England.

- Clarify that the duties on the Board and on clinical commissioning groups to promote patient involvement include patient involvement in decisions about an individual's care and treatment, and require the Board to publish guidance for clinical commissioning groups on the patient involvement duty.
- Safeguard the independence of Healthwatch England by stipulating in the Bill that the Board of Healthwatch England cannot have a majority of members from the Care Quality Commission. This complements the consultation document on the membership of Healthwatch England published on 26th January.
- Strengthen the link between Healthwatch England and Local Healthwatch through the creation of a requirement for Healthwatch England to share copies of its reports with Local Healthwatch.

Conflicts of interest

Strengthen safeguards for potential conflicts of interest

- Ensure CCG constitutions contain arrangements for managing conflicts of interest of all members (for example clinicians or commissioning support organisations) of committees or sub-committees of either the CCG or its governing body.

Public health

Strengthen the role of Directors of Public Health by giving them statutory 'chief officer' status within local authorities

- Amend the Local Government and Housing Act 1989 to add Directors of Public Health to the list of statutory chief officers.
- Give the Secretary of State the power to issue guidance, to which local authorities must have regard, on the status of Directors of Public Health and on their reporting arrangements.
- Ensure that this power is broad enough to extend to other matters relating to the role and function of Directors of Public Health – for example, the process for appointing Directors of Public Health jointly with the Secretary of State.
- Give the Secretary of State the power to issue guidance, to which local authorities must have regard, on the recruitment, dismissal and management arrangements of public health staff.

Patient confidentiality

Ensure patient confidentiality is appropriately protected by clarifying the Bill's clauses in relation to information.

- Require the Information Centre to publish a code of practice for health or social care bodies (or those providing health or social care) on how to deal

with patient-identifiable or other confidential information.

- Limit the ability of the Information Centre to require person identifiable information from bodies providing publicly funded health or social care services.
- Raise the threshold for disclosure by the Board and CCGs of confidential information in certain cases where common law is currently disapplied, such as the investigation of a criminal offence.
- Clarify when dissemination by the IC of information which identifies an individual or enables the identity of an individual to be ascertained or some other categories of information, would be permitted.
- Clarify how the Information Centre is to treat information derived from information it has collected or analysed, i.e. the information generated through analysing and linking information. This includes derived information that is person identifiable information.