An Opportunity to Level Up Health?
Health and Care Bill 2021: 2nd Reading Briefing for MPs
The Health Devolution Commission

OVERVIEW

The Health and Care Bill published on 6th July 2021 has the potential to transform the way that our health and social care system works to both improve the quality of health and social care services ***and*** to improve the health of the population and reduce health inequalities.

However, the cross-party, cross-sector Health Devolution Commission - whilst broadly welcoming the legislation - stresses the need to embed in the legislation three key principles if the Bill is to be the much needed step forward in building a system-wide approach to addressing the challenges we face as we emerge from the Covid-19 pandemic. These are:

- **build a genuine partnership of equals** between the NHS and local government to deliver person-centred care through place-based partnerships
- **ensure genuine levelling up in the system**: levelling up between DHSC and local government, between NHS services and social care, between physical and mental health, and between treatment and prevention.
- **provide a genuine focus on reducing health inequalities** in communities as well as delivering better, more integrated health and social care services.

The Health Devolution Commission has published a number of reports[1] including most recently Levelling Up Health. **The Commission believes there is a risk that the new legislation could lead to a more centralised NHS** focused on acute health care services and will fail to deliver its goal of system-wide transformation unless it includes a number of key checks and balances. These include mechanisms to ensure there is a balance of duties, resources and powers in local systems between:

- improving health and care services for people, and improving the population's health and reducing health inequalities;
- improving NHS services alone, and improving and integrating health and social care services;
- improving and integrating health and care services in the community, and improving institution-based acute services;
- freedom for local and accountable partners to work together to deliver an effective system, and national direction of local systems by central government.

The Commission is also deeply concerned that these proposals for better integration of health and care are being taken forward before proposals for reform and additional funding of social care have been agreed and published. This is now an urgent priority if the Bill is to achieve its aims.

This briefing by the Commission for MPs prior to the 2nd Reading Debate on the general principles of the Bill on the 14th of July highlights seven key issues that should be raised now and will require further detailed examination during its Committee Stage in Parliament. It draws upon the Bill and the accompanying Explanatory Notes, and the ICS Design Framework published by NHSE in June 2021.[2]

If MPs would like further information or clarification on these issues, please contact steve@devoconnect.co.uk

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[1] See https://healthdevolution.org.uk/

[2] https://www.england.nhs.uk/publication/integrated-care-systems-design-framework/

1 COLLABORATION

The Bill's replacement of competition with collaboration as the organising principle for the procurement of clinical healthcare services is welcome. It allows for health service providers to work collaboratively to improve patient outcomes and patient experience of care along an identified care pathway or across identified geographical areas. The duty to cooperate on the integrated care board and local government is also welcome and reflects the Commission's support for a shared duty of collaboration.

The creation of provider collaboratives – the formal bringing together of all bodies delivering NHS services - for this purpose within and between integrated care systems - is part of the proposed legislation. However, the Commission heard concerns that this new system of provider collaboratives in which services are delivered through a merger of organisations or a lead-provider model of collaboration might allow large-scale private health organisations, such as those in the USA, to run all the health services within a locality or across a care pathway including community and acute care services. This wold not be an outcome the Commission supports and contradicts the public's long-held support for the tradition of the NHS as a predominantly publicly provided service funded through general taxation and free at the point of need.

Key Points

- **Transparency:** The process of awarding service contracts to clinical healthcare service providers should be made transparent, and open to scrutiny and challenge, to ensure patients receive the best quality services from provider collaboratives.

- **Privatisation:** The government should make clear during the passage of the Bill that privatisation of the NHS through the creation of large-scale private health provider collaboratives is neither its intent nor would it allow this to be an outcome of the reforms.

- **Equal partners**: The system should avoid provider collaboratives being dominated by large hospital providers, and enable small statutory and VCSE sector health service providers to be treated as equal partners in a provider collaborative where they can add most value for patients.

2 THE PURPOSE OF AN INTEGRATED CARE SYSTEM

The explanatory notes say that 'Since 2016, health and care organisations have increasingly been working together in every part of England to coordinate services and to plan in a way that improves population health and reduces inequalities between different groups.' Consequently, the legislation includes a new "triple aim" duty on all NHS organisations to: 'consider the effects of their decisions on the better health and wellbeing of everyone, the quality of care for all patients, and the sustainable use of NHS resources'[3].

This 'Triple Aim' duty on the NHS is very welcome as it clearly goes beyond the delivery of better health services to encompass the crucial goal of improving the population's health. It will 'require organisations to think about the interests of the wider system and will provide common, system-wide goals that need to be achieved through collaboration.'

However, one part of the explanatory notes to the Bill appears to be narrower in scope than the broad Triple Aim in saying that 'integrated care boards must, in the exercise of their functions, have regard to the need to reduce inequalities between patients in relation to their ability to **access health services** and in the outcomes achieved from **health services'** rather than having regard to health inequalities of the population as a whole.

[3] Health and Care Bill Explanatory Notes,

Key Points

- **Reducing health inequalities:** The triple aim duty should be more specific than 'consider the effects of their decisions' or 'have regard to the need to reduce inequalities between patients' and include a specific duty to reduce health inequalities in the population as well as in the delivery and outcomes of health services.

- **The purpose of integrated care boards and partnerships**: The broader triple aim duty should apply to both the integrated care board and the integrated care partnership as the dual statutory structures within each integrated care system.

- **Evaluating the triple aim:** The ICS Board and the Partnership should develop clear criteria for evaluating jointly the ICS's success in achieving the triple aim including reducing health inequalities in service delivery and inequalities in the health of the local population.

3 THE DUAL STRUCTURE AND STRATEGIES OF AN INTEGRATED CARE SYSTEM

The integrated care board (ICB) and the integrated care partnership (ICP) will be a dual structure within each system and both be statutory in nature (the ICP will be a joint committee of the ICB and relevant local authorities). The ICB will take on the commissioning role of CCGs, that will be no longer exist, and establish the ICP for their area. The ICS design framework refers to the NHS and Local Government as equal partners and being committed to working together equally.

The ICB with its partner NHS Trusts and Foundations Trusts must produce **a five year forward plan** setting out how it will meet the health needs of its population including primary, community and acute care. The forward plan must explain how it will seek continuous improvement in the quality of services to reduce inequalities, fulfil its duty to have regard to the wider impact of decisions, ensure public involvement and consultation and its financial duties. It must also reference how the plan implements any relevant joint local health and wellbeing strategies to which the integrated care board is required to have regard.

The ICP will tasked to develop a j**oint local health and wellbeing strategy** detailing how the health, social care and public health needs of its area will be met by either the ICB, NHS England or the local authorities. In preparing this strategy the ICP must have regard to the NHS mandate and guidance published by the Secretary of State and involve the Local Healthwatch and people who live or work in the ICP's area.

The ICB and local authorities will have to 'have regard to' that strategy when making decisions. All published forward plans must include a statement as to whether the relevant Health and Wellbeing Board(s) agreed that the plans have due regard to the joint health and well-being strategy or strategies.

Key Points

- **Equal partners**: The legislation should make clear that the NHS and Local Government are viewed as equal partners in integrated care systems, working together equally, as described in the NHSE ICS Design Framework, to produce both the ICB forward plan and the ICP health and wellbeing strategy.

- **Relationships in the new structure:** It should be clear what it means for ICBs to 'have regard' to the integrated care strategy. In the legislation for new standards on information sharing, the explanatory note says, that 'providers of health or adult social care to whom such standards apply will have to *comply with them, rather than merely having regard to them'* (our italics.) Similarly, the ICB should have to comply with the ICP's integrated care strategy rather than 'merely' have regard to it.

- **ICB Chair and Membership**: There are detailed regulations on the nature and process for the appointment of the chair of an ICB by NHS England with the approval of the SoS. The explanatory notes suggests that this could be a person seconded from an NHS organisation such as a large NHS or Foundation Trust. Secondments to the chair from NHS organisations should not be permitted given potential conflicts of interest. Rather, the chair of the ICB should be an independent person as described in the NHSE ICS Design Framework[4] and be appointed jointly by the NHS and Local Government partners without involvement from the Government. The Bill should include a provision that a democratically elected council leader – or Metro Mayor where ICS and Combined Authority geographies align – could be the vice-chair of the ICB.

- **ICP Chair and membership**: There is no guidance in the legislation on the chair and membership of the integrated care partnership. This flexibility for local determination is welcome but there should be a presumption that the chair is a local government leader agreed among local partners to ensure visible local democratic leadership within the integrated care system.

- **Health and Wellbeing Boards**: There should be guidance on how local Health and Wellbeing Boards will assess whether the integrated care board has given due regard to the integrated care partnership's health and wellbeing strategy, with clear recourse if it has not done so.

4 DECENTRALISATION AND PLACE-BASED PARTNERSHIPS

Under the Bill the Integrated Care Board will have the ability to exercise its functions through place-based committees as described in its legally required constitution but will remain accountable for them to the NHS. The ICS Design Framework went further and provided more detail. It says that ICBs 'will have the freedom to set a delegated budget for place-based partnerships ..and should engage local authority partners on ..services to be commissioned at place and support transparency on the spending made at place level. It should explain any variation from previous CCG budgets and enable the shared planning or pooling of NHS and local authority budgets, including stated minimum NHS contributions to Better Care Fund arrangements'.

The Health Devolution Commission was clear that 'place based partnerships', based on the principle of subsidiarity and the footprints of councils with adult social care responsibilities, should be the building blocks of the Integrated Care Systems and the principal level at which integration, and delivery, of services should be taken forward.

Key Points

- **Purpose:** The purpose of place-based partnerships should be clearly specified in the legislation to include reducing population health inequalities as well as delivering integrated care services.

- **Decentralisation:** The Government should make clear its support for decentralisation, and that every ICS should establish place-based partnerships co-terminous with councils with adult social care responsibilities, and with delegated powers and resources to deliver integrated health, social care and public health services. There should be reserve powers for NHSE to intervene if place-based partnerships are not in place after a suitable period of time for their development.

[4] ICS Design Framework

- **Accountability:** The Secretary of State should not have the power to intervene in any local decisions of an ICS unless there is a clear breach of the NHS mandate or constitution. The government should make clear its expectations on the accountability of place-based partnerships to the integrated care board and partnership in ways that respect the principle of decentralisation. Any new national accountability mechanism for ICSs or place-based partnerships should build on and enhance existing local democratic accountability, not bypass or undermine it.

5 THE WORKFORCE

The Bill will set out a duty on the Secretary of State to publish, at least once every five years, a report describing the system in place for assessing and meeting the workforce needs of the health service in England. However, this will not include the social care workforce which is similar in number to the NHS workforce (around 1.5 million people) and delivers care and support to people in need, many of whom receive health care too.

Key Points

- **The social care workforce**: The development of the social care workforce should be included in the 5-year workforce plan to be published by the Government. This should be in the form of a Social Care People Plan and Promise that mirrors the NHS People Plan and Promise as proposed by the cross party, cross-sector Future Social Care Coalition[5]. This is an urgent first step towards the long term goal of a single Health and Social Care People Plan.

- **The ICS workforce**: The ICS board and partnership should be required in the legislation to develop a joint plan for the development of the health and social care workforce in its area.

6 THE VOLUNTARY, COMMUNITY AND SOCIAL ENTERPRISE SECTOR

The NHSE ICS design framework is clear about the role of the VCSE sector:

> 'The VCSE sector is a vital cornerstone of a progressive health and care system. ICSs should ensure their governance and decision-making arrangements support close working with the sector as a strategic partner in shaping, improving and delivering services and developing and delivering plans to tackle the wider determinants of health. VCSE partnership should be embedded as an essential part of how the system operates at all levels. This will include involving the sector in governance structures and system workforce, population health management and service redesign work, leadership and organisational development plans.'

The Bill includes a new legal mechanism that will allow ICBs and NHS providers to form joint committees, or indeed two or more providers, to make joint arrangements and pool funds; and these could include representation from other bodies such as primary care networks (PCNs), GP practices, community health providers, local authorities or the voluntary sector.

The explanatory note says that the VCSE sector can be invited to be members of integrated care partnerships, and VCSE staff could be included within Primary Care Networks as suggested in the NHSE ICS design framework.

[5] https://futuresocialcarecoalition.org/wp-content/uploads/2021/06/Final-FSCC-A-Social-Care-People-Plan-Framework-1.pdf

Key Points

- **Value of the VCSE sector**: The government should make clear its support for the NHSE view of the value of the VCSE sector in integrated care systems and reflect this more clearly in the legislation.

- **VCSE Concordat**: The Government should support the idea of a VCSE Concordat describing how integrated care boards will invest in and support the sector, to play its part in delivering better care and reducing health inequalities including the option of a VCSE Alliance as suggested by NHSE in its ICS design framework.

7 SOCIAL CARE

The Bill does not include proposals for reforming and increasing the funding of social care. This is both a missed opportunity and a serious risk to the success of the Government's own legislation working in practice.

However, the Bill does contain a new a new legal duty for the Care Quality Commission to review and make an assessment of the performance of local authorities in discharging their 'regulated care functions' under Part 1 of the Care Act 2014. Given that many regard the current social care system as fundamentally flawed it is not clear how an additional national inspection regime will be of value.

Key Points

- **Fundamental reform**: The government is wrong to bring forward proposals to develop an integrated health and care system without the essential changes needed to place one half of that system - social care - on a sustainable footing and it must publish these forthwith to enable the new system to work as a whole.

- **Inspection of Local Authorities**: The proposed inspection of the performance of local authorities in discharging their 'regulated care' function to give added assurance and oversight should not be introduced ahead of clear proposals for reform and investment in social care; and sufficient additional funding must be made available to councils for this purpose.