

NHS England and NHS Improvement Board meetings held in common

Paper Title: Health and Care Bill – update

Agenda item: 5 (Public session)

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Paper type: For noting

Organisation Objective:

NHS Mandate from Government	<input type="checkbox"/>	Statutory item	<input type="checkbox"/>
NHS Long Term Plan	<input checked="" type="checkbox"/>	Governance	<input type="checkbox"/>
NHS People Plan	<input type="checkbox"/>		

Executive summary:

The Health and Care Bill has passed Third Reading in the House of Lords and is nearing the end of its Parliamentary passage. This paper invites the Boards to note the likely areas of further Parliamentary attention and future impact on the NHS.

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1. In September 2019, the Boards made recommendations to Government about changing NHS primary legislation.
 2. In our June 2021 meeting, the Boards set out five high-level NHS aspirations for the Bill, prior to its Parliamentary passage. That:
 - i. the Bill progresses the recommendations made by the NHS itself;
 - ii. the Bill is suitably permissive and avoids over-prescription;
 - iii. the Bill ensures that NHS clinical and operational independence continues to be adequately and clearly supported, within a transparent framework of Parliamentary and Departmental accountability;
 - iv. the spirit of listening to and achieving consensus with NHS organisations staff and patients that was the hallmark of the original proposals should hold true for the passage of this Bill, so that:
 - (a) the legislative process itself does not become a distraction from our focus on improving NHS care, and
 - (b) the Bill provisions are able to command the broad overall support of NHS, whilst recognising it is not always possible to achieve 100% agreement; and
 - v. the legislative process continues to support ICSs taking statutory form from 1 April 2022 given that delay could adversely impact on NHS recovery.
 3. In December the Government announced a delay to the legal establishment of

integrated care boards until 1 July. **We and local systems are reassured by the Secretary of State for Health and Social Care's (SofS's) confirmation that the Government is fully committed to achieving the 1 July date.**

4. The Bill has now completed its House of Lords Third Reading. It now returns to the House of Commons.
5. **All our 2019 recommendations, and the detail of the provisions giving effect to these, have now been agreed by both Houses**, albeit with a few important specifics under ongoing consideration. **The Boards are invited to welcome this position.** The measures will set the statutory foundation for the NHS for the coming years and the basis for integration across the health and social care system.
6. **The Boards are also invited to note that the Lords have improved the Bill significantly in a number of areas.** To list but a few: on strengthening obligations on net zero, transparency of the mental health investment guarantee, and tackling inequalities – all of which are in line with NHS England's own policies.
7. While NHS stakeholder concerns remain, **The Government gave clear and welcome commitments in the Lords about some aspects of the new Power of Direction over NHS England.** Lord Kamall made clear it was not a power Government would seek to use regularly and made a number of commitments in relation to its use, including:
 - “We agree that it is inappropriate for the Secretary of State to be involved in individual procurement decisions. That is not the motive behind this power, and it is not the way it would be used.”
 - “the Government have no ambition to use this power to interfere with individual allocations of money to the system.”
8. NHS-related issues under ongoing debate include two amendments which have hitherto attracted strong and unanimous support from stakeholders:
 - Workforce assessment: An amendment that would oblige the Secretary of State, at least every two years, to lay a report including an independent assessment of health, social care and public health workforce numbers for the following 5, 10 and 20 years and expected need/demand. NHSE and Health Education England must assist the preparation of this report. *[Baroness Cumberlege, Lord Stevens of Birmingham, Baroness Walmsley, Baroness Meron].*
 - SofS reconfigurations power: removing the provisions in relation to the new Secretary of State reconfigurations power from the Bill *[Baroness Thornton, Lord Patel, Baroness Walmsley, Lord Lansley].*
9. On a subset of areas where the Government was defeated in the Lords, there is a risk of unintentional adverse consequences. We are working closely with DHSC to support the development of consensus in Parliament to mitigate these risks.