

National Health Service Reform and Health Care Professions Bill – briefing for the 2nd reading in the House of Commons

The National Health Service Reform and Health Care Professions Bill was published on 9 November 2001. This briefing focuses on those parts of the Bill that relate to patient and public involvement (Part 1: National Health Service, etc Clauses 15 - 20). These clauses include provisions for the abolition of Community Health Councils (CHCs) in England and the Association of Community Health Councils for England and Wales (ACHCEW), and the establishment of Patients' Forums and a new national body called The Commission for Patient and Public Involvement in Health.

The Association of Community Health Councils appreciates that there have been a number of positive developments since the passing of the Health and Social Care Act 2001. In particular we welcome the Government's recognition of a continuing role for a statutory national body, with a remit to support patient involvement and raise issues of concern to the public with the appropriate bodies. We welcome any steps that will encourage hard to reach groups to become involved in the planning and delivery of NHS services. However, we do not believe that the Bill as set out will in fact facilitate such involvement, nor indeed will it fulfil the Government's stated desire to put patients and the public at the heart of the NHS.

The Bill replaces a system of proven efficacy that is easily understood and accessed by the public with a highly complex and fragmented structure. Not only will the structure presented in the Bill exacerbate problems of accessibility, co-ordinating the patient/public view across a local health economy is likely to prove impossible. This can only weaken the patient's voice. In addition, separating out the functions of complaints, scrutiny and representation is likely to result in significantly less well informed patient representation.

Also of concern to ACHCEW is the lack of detail in the Bill. Much of its implementation will be through regulations at the discretion of the Secretary of State. There is also no indication of how the new systems will be funded. MPs and Peers will be asked to agree to the abolition of Community Health Councils and ACHCEW without a clear indication of exactly what will be in their place and without sufficient safeguards to ensure that the new systems will improve patient and public representation and involvement in the NHS.

We believe that to be truly effective any systems of patient and public involvement must at the very least satisfy the criteria of independence, accessibility, integration and accountability. Measured against these criteria the Bill, as it stands, is unsatisfactory.

Clause 15 – Establishment of Patients’ Forums

Clause 15 requires the Secretary of State to establish a Patients’ Forum for each Primary Care Trust (PCT) and NHS Trust in England and sets out their functions. These include monitoring and reviewing Trust services, obtaining and reporting on the views of patients and their carers to their Trust, and giving patients advice and information on services provided or arranged by the Trusts.

There is no indication in the Bill about how Patients’ Forums will be held to account. Patients’ Forums must be accountable to the patients and the public they represent.

If patients are to have confidence in Patients’ Forums and their ability to act on their behalf it is essential that they are independent of the Trusts to which they are attached and are able to function as autonomous bodies. Forums must have access to staff independent of the Trusts capable of providing them with independent policy and legal advice, research and administrative support. CHC members are supported by independent professional staff and also have access to independent support and advice from ACHCEW.

The amendment put forward by David Hinchliffe during the passage of the Health and Social Care Bill proposed the establishment of "Patients’ Councils" as a statutory means of supporting the work of and facilitating the co-ordination of Patients’ Forums in a local area. They were also to provide advocacy for people wishing to make a complaint about the NHS in line with the provisions for the Independent Complaints Advocacy Service now enshrined in the Health and Social Care Act 2001. If Patients’ Councils had been adopted, not only would they have addressed some of our concerns about the accountability and independence of Patients’ Forums, they would also have provided members of the public with one-stop shops from which they could get information, general support and advice and assistance with complaints. As well as providing an identifiable locus where the public could raise concerns about the local health service. Community Health Councils currently provide easily accessible one-stop shops. If they are abolished the public will be faced with a confusing array of fragmented bodies from which to seek help. We are extremely disappointed that the Government has in this new Bill rejected the Patients’ Councils model despite the fact that the Hinchliffe amendment enjoyed cross-party support in both the House of Commons and the House of Lords.

Clause 16 - Entry and Inspection of Premises

This clause gives the Secretary of State the power to make regulations requiring Strategic Health Authorities, Primary Care Trusts, NHS Trusts or providers of family health services to allow authorised members of Patients’ Forums to inspect premises owned or controlled by them. The regulations may place conditions or limitations on the rights to inspect.

We would welcome regulations that would permit Patients’ Forum members to visit and inspect primary care and private sector premises. CHCs have been calling for an extension of their remit to include these areas in order to enhance their overall effectiveness.

Consideration should be given to making provisions to bring visits by Patients' Forum members in line with requirements for regulators to make unannounced visits to residential and nursing homes. If all visits must be announced Trusts will be in a position to conceal or mask any problems and visiting Forum members may not get an accurate picture of conditions.

Clause 17 – Annual Reports

This clause requires Patients' forums to produce annual reports of their activities including how they have obtained the views of patients and carers during the year. They will be required to submit their reports to their Trusts, the Secretary of State, the Commission for Patient and Public Involvement in Health and the relevant Overview and Scrutiny Committee and Strategic Health Authority.

We welcome the extension in the range of bodies (as compared with the previous Bill) that should be sent Patients' Forum annual reports.

Clause 18 – Supplementary

This clause allows the Secretary of State to make further provisions in the form of regulations with regard to the operation of Patients' Forums. The regulations may cover funding, accounts, membership arrangements, committees and proceedings, payments for members, premises and staff, reports and the provision of information to or by Forums.

We have a number of concerns about the implications of this clause and subsequent regulations.

If Patients' Forums are to be effective in their representation of patients and the public they must be given powers and resources that are commensurate with their duties. Some people have in the past referred to CHCs as 'watchdogs without teeth'. If Patients' Forums are not given sufficient powers and independence they are in danger of being muzzled because of their limited statutory remit.

Patients' Forums must have access to sufficient information to allow them to investigate/operate. Where information is not volunteered they must be able to insist upon access.

The inclusion of Patients' Forum annual accounts in the accounts of their relevant Trusts calls into question the independence of the Forums and would certainly not create the impression of independence.

If, as has been suggested members of Forums are to be appointed by the NHS Appointments Commission the very people that the Government wishes to attract into membership, those that are hard to reach, will be excluded. People from these groups are unlikely to put themselves forward for consideration by the Appointments commission. The criteria for membership of Forums must be open and transparent and must be applied consistently across the country.

If membership of Forums is to be drawn from the wider community, the Government must address the issue of statutory time off work where this is appropriate. Over the years CHCs have been limited in their choice of members and some members in turn have been limited in the time they were able to commit to CHC work because they could not take advantage of statutory time off work.

It is not clear how long members of Patients' Forums will serve. We believe that Forum members should be expected to serve for a period of not less than two years in order to give them sufficient time to gain knowledge and experience of the NHS locally and nationally. If the period of membership is too short this will not give members time to become acquainted with their role and be effective in their work. CHC members are appointed for four-year terms and can serve a maximum of two terms without interruption. A high turnover of members will also be costly in terms of the provision of training needed to equip people for effective membership.

Membership of Patients' Forums must be balanced, inclusive and representative. We believe that in addition to the specified members there should also be representation from persons who live in the locality or district of the Trusts. This would allow members to be drawn from the wider population. In addition we believe that membership for each group within a Forum should be expressed in terms of percentages rather than actual numbers. For example, at least 25% of members of a Forum should be patients or past patients. Specifying the percentages means that no single category of members will be able to dominate the Patients' Forum, and also allows for some flexibility.

The Government has stated that Patients' Forums will be able to elect one of their members to sit on the relevant Trust Board. Since there are no provisions for this in the Bill we can only assume that provisions will be made through secondary legislation. If this is the case we have a number of concerns about these proposals.

Patients' Forums must be able to elect their Trust board member free from interference from the Trusts. It is not inconceivable that some Trusts will try to manipulate the election process in an attempt to get someone who, for example, they know or someone they know to be amenable to their views.

We question how much influence, on behalf of patients a lone Forum member will be able to exert on a Trust Board. Consideration should be given to increasing the number of Patients' Forum elected members to Trust Boards. The Kennedy Report refers to the involvement of the public and patients being heavily outweighed by professionals as giving "the appearance of public involvement without any real substance."(p 401) Increasing the numbers of Forum members on Trust Boards could also counter the potential effects of isolation.

Forum members on Trust Boards may be faced by conflicting loyalties between the need to be bound by decisions of the board and their duty to represent patients and the public. It is not clear how these members will be accountable to fellow members of the Forum. Will Patients' Forums be able to remove their elected member from a Trust Board? The remuneration of Forum members acting as non-executive directors of Trust Boards will set them apart from other Patients' Forum members. How will these issues be reconciled?

Observer status rather than Trust Board membership has not been considered. CHC observers at health authority and Trust Board meetings are able to speak with authority and without being compromised by the notion of being bound by collectively made decisions. Observer status would allow Patients' Forum members to maintain their independence from management.

Clause 19/ Schedule 6 – The Commission for Patient and Public Involvement in Health

This clause and schedule make provisions for the establishment of an independent national Commission for England to oversee patient and public involvement, to advise the Secretary of State about these arrangements and to support the work of Patients' Forums.

We welcome the broadening of the remit of the Commission to include issues other than the operation of patient and public involvement in the NHS. We also welcome the fact that the Commission is to be a corporate body. CHCs and ACHCEW are not corporate bodies and as such their members are liable for any legal costs that might be incurred during the course of their work in representing the interests of the public in their districts. This has on occasion influenced whether or not CHCs have been able to enforce their rights through the courts.

We have a number of concerns about the functions and operation of the Commission, some of which are included here.

There is no indication of how the Commission will be held to account.

Schedule 6 details a number of interventions in the running of the Commission that may be made by the Secretary of State. Such interventions will seriously compromise the independence of the Commission and the perceived independence. For example, the Secretary of State will appoint the Chair of the Commission. The appointment of a chief executive by the Commission must also be with the consent of the Secretary of State. We believe that the appointment of the Chair should be made by the NHS Appointments Commission and that the Commission should have the freedom to appoint a chief executive of their choice without intervention from the Secretary of State. It is not clear why the Secretary of State will be given these powers particularly when it is proposed to give the Commission for Health Improvement greater freedoms in these areas.

If the Secretary of State delegates his powers in relation to independent advocacy to the Commission would it be the Commission or the Secretary of State that would be held accountable for any problems related to provision, accessibility etc?

The Bill is unclear about the type or level of assistance the Commission will be expected to provide to Patients' Forums. It is also unclear about how much advice and assistance the Commission will give to the providers of independent complaints advocacy.

Clause 20 – Abolition of Community Health Councils in England

This clause provides for the abolition of Community Health Councils in England and the Association of Community Health Councils for England and Wales.

Following extensive consultation the Welsh Assembly has taken the decision to retain and strengthen CHCs in Wales, the Scottish Parliament has also decided to retain Local Health Councils. If the current proposals are adopted this will leave England as the only country in the UK without the equivalent of a CHC.

ACHCEW strongly believes that reformed CHCs would allow the Government to deliver its proposals. Reforming CHCs would also allow the Government to build on the vast experience and knowledge of CHC members and staff, it would allow for a smooth evolutionary transition from the current system to the new, and it is likely to be a more cost effective option than that proposed. We are disappointed that the Government has not considered the reform of CHCs as an option in the development of its proposals.

With regard to resources there has been no indication of how the proposals for patient and public involvement will be resourced either in terms of finance or the number of personnel, including volunteers that will be required to facilitate the development of the new systems. It is unlikely that the development of meaningful public involvement will be without cost to the NHS.

We are also concerned that significant functions of CHCs are simply not replicated within the new structures. For example we are disappointed that the Bill contains no mechanism to remedy the deficiencies in the existing legislation concerning the right to refer contested decisions or inadequate consultation exercises. CHCs currently have responsibilities to refer these to the Secretary of State for Health. Without a means of ensuring that poor consultations or decisions, which have an adverse effect on patients and local communities, are reconsidered by Ministers, the new arrangements fall short of those which currently exist.

CHCs have also been responsible for playing a sustained advocacy role over prolonged periods of time for local groups with ongoing concerns about their local health service, for example, Alder Hey parents, users of mental health services, and homeless groups. It is difficult to see where such support could be accessed under the new structures.

A further gap in the proposals is the lack of an organisation for patients and the public which can contribute to debates about policy, local priorities and health inequalities.

The way the Bill is worded means that CHCs and ACHCEW will be abolished immediately it receives Royal Assent. Patients and the public must be assured that CHCs and ACHCEW will not be abolished until such time as the new bodies have been evaluated and shown to be working effectively. The public must not be left without an effective watchdog or an effective means of involvement and representation.

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