NHS Reform and Health Care Professions Bill - Lords' Briefing

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Introduction

This briefing sets out the background to the patient and public involvement clauses of the NHS Reform and Health Care Professions Bill, considers the state of the Bill as it enters the Lords, and commends a number of amendments which would improve the Bill whilst remaining consistent with the framework set out by the government.

Background

For the past 27 years Community Health Councils (CHCs) have been the most democratic and accountable part of the NHS. CHCs perform various functions on behalf of their local communities. These include:

- Providing help and support to NHS complainants.
- Acting as a convenient one-stop-shop for the local community, providing help and advice on a range of NHS related issues.
- Acting as a powerful voice for community concerns about local health issues.
- Monitoring and scrutinising the work of the local NHS.

CHCs have a substantial record of accomplishment within the NHS. Recent high profile successes have included playing a key role in helping to expose events at Alder Hey; providing help and support to the relatives of Harold Shipman's victims and highlighting the lengthy waits faced in the nations A&E departments through the 'Casualty Watch' surveys. In short CHCs have have been at the forefront of ensuring that the patient’s voice is heard and their complaints listened to.

The NHS Reform and Health Care Professions Bill currently before Parliament proposes the abolition of CHCs and their replacement by a range of new bodies. The Bill's proposals on patient and public involvement have provoked widespread controversy. Concern about the proposed changes was reflected by a substantial backbench Labour rebellion during the Commons' stage of the Bill.

David Hinchliffe, Labour Chair of the Health Select Committee and the Liberal Democrat Health Team tabled an amendment to the Bill which would have ensured that there continued to be a community-led, independent NHS Watchdog at local health economy level called a "Patients’ Council". The amendment was supported by a range of organisations including the Association of Community Health Councils for England and Wales (ACHCEW), the National Pensioners' Convention, Action for Victims of Medical Accidents (AVMA), Age Concern, the Consumers’ Association and the Patients Association. The rebellion by Labour MPs, including 4 former Ministers and the support of the Conservative Party resulted in the government's majority being reduced to only 74.

The NHS Reform and Health Care Professions Bill as it enters the Lords

Despite several welcome government amendments to the Bill, ACHCEW believes that the Bill remains fundamentally flawed. The key concerns are:

Fragmentation

- The Bill replaces a system of proven efficacy that is easily understood and accessed by the public with a highly complex and confusing structure. Many patients have complex problems involving a number of different services. Where a patient journey spans a number of different Trusts, the individual patient could be faced with the prospect of approaching a confusing array of new bodies for advice and support: Patient Advice and Liaison Services (PALS), Patients' Forums, and Independent Complaints Advocacy Services (ICAS). In addition the fragmentation of the monitoring function will mean that it is no longer possible for one body to monitor or track the whole of a patient's experience. CHCs have 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.
- The proposed separation and fragmentation of scrutiny, monitoring and complaints work - between Overview and Scrutiny Committees, the Independent Complaints Advocacy Service the Patient Advice and Liaison Service and Patients' Forums - is likely to considerably diminish the extent to which these areas of work mutually inform one another. The danger is that the broader patterns that emerge from complaints work will never come to light.
- Individual Patients' Forums will only have a remit for considering their own Trust's services, with no formal way of coming together to provide an informed overview of local health issues from the patient and public perspective.
- Lack of a one-stop-shop. CHCs provide help and advice to members of the public across a range of areas. They are a convenient, community based, frequently high street presence, that is able to address concerns such as: 'what are my rights in the NHS?', 'I've been removed from my GPs list is their something I can do about it?', 'I believe I may have been the victim of malpractice, can you help? There is no adequate replacement for this function in the Bill.
- At present the work of a core group of expert staff in each CHC is overseen by local community representatives, drawn from the voluntary sector, the local authority and interested members of the public. The new Trust based Patients' Forums will have no staff of their own. They would have to rely on help from staff of the separate Commission for Patient and Public Involvement in Health. This would create a significant organisational barrier between lay representatives and the staff whose job it is to support them and mean that the Commission staff had no formal lines of accountability and connection with local communities.

Limited remit and independence of the new bodies

- The Bill gives Patients' Forums and the Commission for Patient and Public Involvement in Health a range of duties but restricts their remit considerably. As the Bill stands the Commission and Patients' Forums' activities would be much more restricted than CHCs and ACHCEW are at present. They would be acting outside their authority if, for example, they undertook activities previously undertaken by CHCs such as campaigning work or engaging in legal proceedings – even querying the impact of a Private Finance Initiative (PFI) could be deemed to be outside of their remit (ultra vires).
- There are also concerns about the independence of the new Commission for Patient and Public Involvement, in that the Secretary of State for Health will appoint the Chair, will appoint the first Chief Executive and will be able to direct the work of the organisation.
- Although local authorities have been given the power to undertake scrutiny of the NHS they are not obliged to do so. It is therefore, possible that some areas may be left without any scrutiny at this level at all.
- CHCs have the right to be consulted and to refer any lack of consultation to the Secretary of State. The Bill does not replicate this right. CHCs also have the power to refer 'substantial variations' in local NHS provision to the Secretary of State, when they are unhappy with decisions made by local NHS managers. This power ensures that the local community can hold NHS managers to account over unpopular decisions, and guarantees political accountability for NHS decisions. Although the Parliamentary Under Secretary of State for Health has said that she wants "the new powers for overview and scrutiny committees to refer contested reconfigurations to the Secretary of State to be no less rigorous than those that community health councils enjoyed", the Bill contains no mechanism to remedy the deficiencies in the existing legislation to allow that to happen. 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 that currently exist.

Cost and administrative efficiency of the new bodies

- Too often confidence in public bodies is undermined by the perception of poor administrative and resource efficiency. The potential cost of the new system has been estimated at 10 times that of CHCs. Some of this additional cost is attributable to the fragmented and cumbersome structure of the new proposals. It would make both fiscal and operational sense to aggregate many of the functions of the proposed new bodies. This would provide for economies of scale and improved operational efficiency.
- The development of meaningful public involvement is costly in terms of the time and effort that is required, so it is unlikely that the proposals will be without cost to the NHS. No indication has yet been given about the resourcing of the new system in terms of level of staffing, funding and volunteer requirements.

Proposed improvements to the Bill

ACHCEW remains firmly of the opinion that the retention and reform of CHCs would be the preferable option. However ACHCEW has worked hard, in conjunction with politicians of all parties, to develop a number of amendments that would improve the Bill whilst remaining consistent with the framework set out by the government. These amendments will focus on a number of key areas:

- The absence of an independent, community-led, local NHS Watchdog. It is ACHCEW's contention that the absence of such a body represents the most serious flaw in the government's proposals. The introduction of such a body would address many of the concerns about fragmentation, the lack of a one-stop-shop, the absence of a powerful voice for local communities and the poor administrative efficiency of the new bodies.
- Ensuring that the proposed new bodies have the powers, remit and independence necessary to ensuring that they can fulfil their function of holding the NHS to account on behalf of patients.
- Provide for rights for patient and local authority bodies to refer failures to consult or contested decisions to Strategic Health Authorities or to the Secretary of State.

Conclusion

If CHCs were abolished as the Bill proposes it would leave England as the only part of the UK without a robust network of local NHS Watchdogs. The Scottish Parliament and the Welsh Assembly have both signalled their intention to continue with a CHC, or equivalent, model.

Parliament is being asked to abolish a known quantity, CHCs, without sufficient detail about how the alternative structures will work in practice. Although it has been suggested that this detail will be dealt with by future regulations and guidance, we believe that if patients are to have a robust system of involvement and representation it must be established by statute. This will ensure that its independence is not compromised by the threat of changes in regulation and will guarantee that any future changes in this crucial area of public concern are subject to parliamentary scrutiny.

The Bill in its current form remains fundamentally flawed and the subject of much controversy. If amended to reflect the concerns outlined in this briefing paper, the result would be a much-improved Bill which could command a broad consensus and the confidence and trust of patients and the public.

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