



## NCF Briefing: Amendments to the Health and Social Care Bill

The Health and Care Bill was introduced to Parliament on 6 July 2021 and is currently in the Committee Stage. The Public Bill Committee is now considering the Bill ahead of two sessions on **7 and 9 September**. This briefing outlines the National Care Forum's (NCF) view of the Health and Care Bill and what we think must be questioned, challenged or amended.

### Who we are

[NCF](#) is the voice of the not-for-profit care and support sector. Our members:

- Provide care and support to over 195,000 people
- Operate over 7400 services
- Provide more than 47,500 care home places
- Employ over 104,000 staff and work with 13,500 volunteers

NCF works closely with a diverse membership of not-for-profit care organisations who are embedded in their local communities. Our members provide care and support to a wide range of people who are supported in their own homes, in residential care settings and in the community.

### Our Position

This briefing is based upon the feedback of our membership and a series of roundtable events in July 2021 which brought together providers, sector experts, people supported by social care and parliamentarians to look at social care reform, including the Health and Care Bill, commissioning practice and Integrated Care Systems (ICS).

Below we have outlined our view on what must be amended, questioned or challenged in the Bill and our rationale for this. We have also considered some of the amendments already on the Amendment Paper.

Our aim is to ensure that adult social care – both the providers of it and people supported by it – have a much better presence in the legislation and better influence within the new ICS landscape. At present, the Bill is largely silent on social care, despite being framed as seeking to better join up health & care at a local level for better population outcomes. Without these amendments, in our view, the legislation will fail to properly frame the ambition of better integrated roles & functions of ICSs, and will constrain future attempts to reform adult social care in England. We are in danger of entrenching in legislation an unequal and unhelpful relationship between adult social care and the NHS, where the latter always has priority to the detriment of the former, rather than a relationship of equals.

### New Clause: Parity with Adult Social Care

The Health and Care Bill has not been written with social care as an equal partner to the NHS despite the stated ambition to integrate health and social care. There is an imbalance – the Bill talks mainly about the NHS and its systems rather than social care – or indeed reform. There is an opportunity to address this imbalance and put social care in the Bill as an equal partner; while there is this absence, we believe that integration ambitions are not likely to succeed.

NCF feels that there must be an amendment at the outset of the Bill to frame the legislation which would filter through the rest of the legislation or at least draw attention to the need to address the imbalance in relationship.

We would suggest a new clause making it explicit at the outset that social care must be an equal partner, along the lines of the following:

***‘Duty to have regard for Adult Social Care***

- (1) The Secretary of State, NHS England, English Local Authorities and the Integrated Care Boards and Integrated Care Partnerships must have regard to adult social care providers and those that are supported by adult social care in relation to all the measures contained in this Bill. This must include:*
- a. Workforce Planning through a joined-up Adult Social Care People Plan and a NHS People Plan*
  - b. Representation of adult social care providers and those that use it on Integrated Care Partnerships and Integrated Care Boards*
  - c. A focus on the wellbeing of people*
  - d. Data collection systems and information standards that can be used by adult social care providers to enhance the quality of care*
  - e. A requirement for the bodies named above to co-produce with adult social care providers and people who are supported by care, any measures related to improving or measuring health outcomes*
  - f. Any other measures identified through co-production with adult social care providers and people that are supported by adult social care.*
- (2) Adult Social Care must be treated as an equal partner by NHS England in terms of outcomes, priorities, funding and planning.*
- a. Any planning and strategies must be tied to person-centred care and quality’*

**New Clause: Replace patients with people**

All references to ‘patients’ to be replaced with ‘people’. Social care works with people, not ‘patients’.

**Membership of Integrated Care Boards**

**Schedule 2, page 120, lines 12-26**

The Bill currently reads:

- “(2) The constitution must provide for the ordinary members to include—*
- (a) one member nominated jointly by the NHS trusts and NHS foundation trusts that—*
    - (i) provide services for the purposes of the health service within the integrated care board’s area, and*
    - (ii) are of a prescribed description;*
  - (b) one member nominated jointly by persons who—*
    - (i) provide primary medical services for the purposes of the health service within the integrated care board’s area, and*
    - (ii) are of a prescribed description, and*

*(c) one member nominated jointly by the local authorities whose areas coincide with, or include the whole or any part of, the integrated care board's area."*

Anne Marie Morris MP has suggested an amendment to add two further members after line 26:

*"(d) one member nominated by the mental health trust or trusts that provide mental health services for the purposes of the health service within the Integrated Care Board's area; and*

*(e) one member nominated jointly by the NHS Trust or Trusts and local authority or local authorities that provide social care services within the Integrated Care Board's area."*

### **NCF View**

We believe that the composition of the ICS Board must include representation of Adult Social Care but don't think Anne Marie Morris' amendment quite fixes this problem. We would amend Anne Marie Morris' suggested '(e)' to read something along the lines of:

*'(e) one member nominated by adult social care providers to represent their voice'.*

Local Authorities and NHS Trusts are the commissioners and will not necessarily nominate someone truly representative of the sector. We would suggest representation drawn from local care associations or something similar. Significant numbers of people will be receiving social care support in any given area, therefore social care needs guaranteed representation to reflect the importance of its role in the lives of the population of the area.

### **Membership of the Integrated Care Partnership**

#### **Clause 20, page 29, lines 3-7**

The Bill reads:

*The integrated care partnership for an area is to consist of—*

*(a) one member appointed by the integrated care board,*

*(b) one member appointed by each of the responsible local authorities, and*

*(c) any members appointed by the integrated care partnership.*

### **NCF View**

We believe this must be amended to explicitly give a duty to include representatives from adult social care, housing and mental health services. Significant numbers of people will be receiving social care support in any given area, therefore social care needs representation to reflect the importance of its role in the lives of the population of the area. Line 7 to be amended along the lines of:

*'(c) any members appointed by the integrated care partnership – including representatives from adult social care, housing and mental health providers and those supported by these services.'*

### **Duty to have regard to assessments and strategies**

#### **Clause 20, page 31, lines 9-20**

The Bill reads:

**“116B Duty to have regard to assessments and strategies**

*(1) A responsible local authority and each of its partner integrated care boards must, in exercising any functions, have regard to the following so far as relevant—*

- (a) any assessment of relevant needs prepared under section 116 in relation to the responsible local authority’s area,*
- (b) any integrated care strategy prepared under section 116ZB in relation to an area that coincides with or includes the whole or part of the responsible local authority’s area, and*
- (c) any joint local health and wellbeing strategy prepared under section 116A by the responsible local authority and its partner integrated care boards.*

**NCF View**

This duty must be strengthened so that the integrated care strategies created by Integrated Care Partnership are not able to be disregarded by saying existing strategies ‘are sufficient’. Any time strategy is mentioned in the Bill, it must be tied to person-centred care and quality, rather than systems. We would like to see something along the lines of the following to ensure we go beyond simply having ‘regard to’ by replacing lines 10-12 with:

*‘(1) A responsible local authority and each of its partner integrated care boards must, in exercising any functions, ensure that their actions support rather than hinder the delivery of the Integrated Care Partnership assessments and strategies so far as relevant-’*

**Duty as to patient choice**

**Clause 19, page 16, lines 25-38**

The Bill reads:

**14Z37 Duty as to patient choice**

*Each integrated care board must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.*

**NCF View**

This must include social care provision and be widened to people. Amend to:

**‘Duty 14Z37 Duty as to personal choice**

*Each integrated care board must, in the exercise of its functions, act with a view to enabling **people** to make choices with respects to aspects of health **and social care services** provided to them.’*

**Duty as to promote innovation**

**Clause 19, page 17, lines 1-4**

The Bill reads:

**14Z39 Duty to promote innovation**

*Each integrated care board must, in the exercise of its functions, promote innovation in the provision of health services (including*

*innovation in the arrangements made for their provision).*

#### **NCF View**

Social care should be included: *'Each integrated care board must, in the exercise of its functions, promote innovation in the provision of health **and social care services** (including innovation in the arrangements made for their provision).*

We would also like clarification on what exactly 'innovation' means.

#### [Duty for SoS to report on assessing and meeting workforce needs](#)

**Clause 33, page 40, lines 2-11**

The Bill reads:

##### ***Report on assessing and meeting workforce needs***

*After section 1G of the National Health Service Act 2006 (but before the italic heading after it) insert—*

##### ***"1GA Secretary of State's duty to report on workforce systems***

*(1) The Secretary of State must, at least once every five years, publish a report describing the system in place for assessing and meeting the workforce needs of the health service in England.*

*(2) NHS England and Health Education England must assist in the preparation of a report under this section, if requested to do so by the Secretary of State."*

Anne Marie Morris MP has suggested an amendment to insert after line 8:

*"(1A) The report under this section must set out how workforce integration has been achieved between physical health, mental health and social care."*

#### **NCF View**

We do not believe Anne Marie Morris' amendment above goes far enough. There must be a workforce plan for social care in order for this duty to work but the original bill is focused on the NHS. We need an amendment which replaces lines 6-8 with something along the lines of:

*"(1)The Secretary of State must, at least once every five years, publish a report describing the system in place for assessing and meeting the workforce needs of adult social care and the health service in England. (1A) The Secretary of State must ensure there is a workforce plan in place for adult social care in England which is joined up with the NHS People Plan."*

We would also suggest considering a shorter timescale between reports.

#### [Reviews and performance assessments: local authorities](#)

**Clause 121, page 101, lines 33-39**

The Bill reads:

##### ***46A Reviews and performance assessments: local authorities***

*(1) The Commission must, in accordance with this section—*

*(a) conduct reviews of the exercise of regulated care functions by*

*English local authorities,*  
*(b) assess the performance of those authorities following each such review, and*  
*(c) publish a report of its assessment.*

#### **NCF View**

We believe this must be amended to ensure the voice of the person receiving care and support and that of the provider of care and support are included in the process of assuring LA performance. We would suggest an additional sub-point between (b) and (c) which reads something along the following lines:

*‘Ensure the voice of the people using care and support services and the providers of those services are embedded in the process of each review and performance assessments of English local authorities’*

#### **Data and Adult Social Care**

##### **Clauses 79, 80, 81 & particularly 83.**

This provides the underpinning for any new data strategy for social care.

#### **NCF View**

This bit of the Bill is very wide ranging and gives the Secretary of State (SoS) significant power in terms of mandating what data is to be collected.

The clauses relating to the SoS’s ability to require social care providers to provide data in relation to *‘their activities in connection with the provision of adult social care in England’* must recognise the very significant potential data burden this may impose and it needs limits to the scope of the data being mandated for collection. There is no reference to the purpose of this data collection, no assurances on how it will be used to benefit those delivering or using care, no reference to the cost of such data collection and how that will be met and no safeguards about the future publication of that data. The experience of the Capacity Tracker which became re-purposed to require data from care providers to little tangible benefit but significant burden to them must not be repeated.

We would ask parliamentarians to seek assurances and safeguards on these points.

#### **Hospital patients with care and support needs**

##### **Clause 78, page 68**

The Bill reads:

##### ***Hospital patients with care and support needs: repeals etc***

- (1) In the Care Act 2014, omit section 74 and Schedule 3 (assessment notices etc in relation to the discharge of hospital patients with care and support needs).*
- (2) The Community Care (Delayed Discharges etc) Act 2003 is repealed.*
- (3) In consequence of subsection (1)—*
  - (a) in section 14 of the Coronavirus Act 2020, omit subsection (8);*
  - (b) the Care and Support (Discharge of Hospital Patients) Regulations 2014 (S.I. 2014/2823) are revoked.*
- (4) In consequence of subsection (2)—*
  - (a) in Schedule 1 to the Local Authority Social Services Act 1970, omit the*

*entry relating to the Community Care (Delayed Discharges etc) Act 2003;*

*(b) in the Children Act 1989—*

*(i) in section 17ZA(6)(b), omit sub-paragraph (iii);*

*(ii) in section 17ZD(8)(b), omit sub-paragraph (iii);*

*(c) in Schedule 2 to the Social Services and Well-being (Wales) Act 2014 (anaw 4), in Table 1—*

*(i) in the English language text, omit the entry relating to the Community Care (Delayed Discharges etc) Act 2003;*

*(ii) in the Welsh language text, omit the entry relating to Deddf Gofal Cymunedol (Rhyddhau Gohiriedig etc) 2003.*

### **NCF View**

This clause appears to have been introduced as part of the move towards Discharge to Assess and Home First – aiming to get those admitted to hospital back to their own homes before any decisions on long-term care arrangements are made. While we support the principles behind Discharge to Assess, we are concerned that simply repealing these pieces of legislation will have unintended consequences, particularly as it involves repealing duties in relation to the requirement for a needs assessments before discharge from hospital in the Care Act.

First, not everyone admitted to hospital for the first time will be able to go home – they may develop high needs suddenly or have been missed earlier in the system. The aim to move people home before they get an assessment in this scenario will not work and might result in multiple moves for people with high needs.

Second, if we want Home First and Discharge to Assess to work, we must ensure that community health teams and social care teams are resourced and nimble to be able to provide a needs assessment as soon as the individual is discharged. There is a danger that the removal of an assessment prior to discharge will result in less priority to undertake the assessment once someone has left hospital – for someone needing support to remain in their own home, this is concerning. We must ensure that there is a person-centred approach which involves the individual in deciding what their care will look like.

We would like to see some caveats and assurances here and would ask Parliamentarians to raise questions with regards to this clause. We must be clear about who picks up duty to assess and how the community social care services and assessments will be resourced to make it work. We would suggest that these pieces of legislation are amended rather than repealed. This would allow safeguards to remain and reflect the good practice in discharge and changes over the last few years.

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