



RCN briefing
January 2012

Why the RCN is opposing the Health and Social Care Bill

The RCN has engaged with the Government at every stage of the NHS reform process since it was first announced in 2010.

The RCN has clearly and consistently set out which areas of the Bill must be changed, not as a matter of self interest, but to guarantee patient care and to retain the NHS as a national institution providing high quality care, free at the point of need.

Due to the Government's refusal to concede on sufficient points, and the risk we believe the legislation poses to patient care, the RCN is now moving to a position where we oppose the Health and Social Care Bill.

Background

The RCN has engaged with the Government at every stage of the NHS reforms since the NHS White Paper was published in July 2010. This engagement has included the legislative progress of the Bill, the "listening exercise", and the ongoing work of the Future Forum.

In response to the Government's NHS White Paper, the RCN outlined 18 assurances which had to be addressed to ensure that the reforms would deliver a health service fit for purpose. To date, the RCN has not seen satisfactory evidence that the legislation, and importantly the reforms taking place on the ground, fulfil the Government's initial promise to: place patients at the centre of care; reduce inefficiency in the NHS; to be clinician led; and improve standards and outcomes across all aspects of the health service. We do not believe that the Bill as it stands delivers on these principles.

The NHS already faces real issues with health inequalities, with people living in different parts of the country experiencing very different life expectancies and quality of life. Instead of solving the problem of inequality there is a fear that the reforms may actually further exacerbate these and create wider variations in quality and standards of care.

The RCN has worked with parliamentarians from both the Houses of Parliament and we recognise the Government has made some attempts to accommodate our concerns. We have achieved a number of changes to the reforms and the legislation. However, we do not feel that these changes have addressed our members' concerns adequately.

As a result of a recent meeting of its Council, the RCN has now taken the position of opposing the Health and Social Care Bill and calls for it to be withdrawn.

What are the RCN's concerns?

"Nicholson challenge" and the reforms

The "Nicholson Challenge", the drive to save £20bn in the NHS in England by 2014/15, is presenting staff with monumental difficulties. The RCN's 'Frontline First' campaign has exposed that 48,000 NHS posts have gone, or are earmarked to go, in England alone. This is far from the Government's promise to protect the frontline. Dealing with such significant cuts to services and staff numbers would be difficult at any time, having to deal with it during a programme of dramatic and distracting reform makes the job virtually impossible.

The RCN represents nurses and nursing, promotes excellence in practice and shapes health policies.



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The RCN warned that if the reforms were pushed through without first winning the support of NHS staff, and if an adequate risk assessment was not carried out, it could lead to the breakup of the NHS and have a negative impact on patient care. The RCN believes that in light of the Government's refusal to publish the risk register and in the face of such vast cuts to a demoralised workforce, this RCN warning is destined to become reality.

We are not seeing evidence of intelligent, well thought through service redesign and reconfiguration. The nursing workforce is not inflexible and is ready to take on the challenge of transferring the focus of service delivery from the acute to the community sector. However, with the short sighted cuts which we are aware of, the NHS faces a very real danger of losing many members of a highly skilled workforce.

Safe staffing levels and Healthcare Support Worker Regulation

At Committee Stage, the RCN worked with Baroness Emerton to lay amendments that would mandate safe staffing levels and regulation of Healthcare Support Workers. These important safeguards were rejected by the Government and the amendments had to be withdrawn.

These amendments were presented as nursing specific safeguards against the potential negative effects of the reforms and the "Nicholson Challenge". They would have guaranteed safe staffing levels when there is a real danger priority may shift from patient care to finance. The RCN is already aware of some Trusts downbanding nursing posts and replacing Registered Nurses with untrained Healthcare Support Workers for financial reasons, potentially putting patients at risk.

In care failures and tragedies, such as at Mid Staffordshire NHS Foundation Trust, nursing numbers were cut to unsafe levels due to financial constraint. The RCN's 'Frontline First' campaign has highlighted that already more than 48,000 posts in England have been earmarked for removal. Our analysis of 41 Trusts in England showed that 8.3% of the qualified nursing workforce will be lost. The nursing workforce cannot deliver high quality, safe care under such strain and we fear that potentially further care failures could occur.

Private Income Cap

One of the RCN's most significant concerns is the proposed removal of Foundation Trusts' cap on private income generation. The RCN has stated categorically that this cap should not be removed without evidence being provided that NHS patients will not be forced to the back of the queue, behind private, paying, patients. At a time when NHS organisations are being forced to slash budgets and maximise income, we are genuinely worried that many organisations will take advantage of the lucrative private market, impacting on the service delivered to NHS patients.

Competition and 'red tape'

The RCN does not oppose the principle of competition, nor independent or third sector involvement in the NHS. However, the reforms go too far in promoting competitive behaviour that the RCN believes will fragment the service and impact negatively on the patient experience.

The Government's amendments to the role of Monitor, from promoting competition to tackling 'anti-competitive behaviour', do not go far enough and whilst the language has changed, the overall direction of travel has not.

The reality of multiple providers competing for contracts will present a natural barrier to collaborative working, integration, and the sharing of best practice. This would make it harder for health professionals as part of a multi-disciplinary team to work with colleagues in hospital and other settings to create the integrated care pathways that patients want and need. There is a fundamental absence of suitable checks and balances in the Bill to ensure the right balance of competitive and collaborative forces for delivering safe and effective care.



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We are also becoming increasingly concerned about the hitherto unknown consequences of EU competition law, with a real worry that NHS funds will be diverted from funding care to fighting costly law suits.

The RCN has supported the Government's aim of removing the onerous burden of bureaucracy and red tape. However, we believe that the reforms will not achieve this objective. The Bill creates a new plural market system based on contracts, which we believe will lead to increased bureaucracy and transactional costs and less accountability and transparency.

We have consistently called for amendments to be introduced to guard against the potential negative consequences of competition, within the framework set out for the roles of Monitor and the Care Quality Commission. We have warned against unfettered competition without clear checks and balances to ensure co-ordinated and joined up services.

New structures

The RCN fears that the reforms create a new architecture for the NHS with increasingly complex interrelationships. Unanswered questions remain on how individual components within the reforms will be 'hard wired' together. There is a danger of confusion and duplication, with uncertainty regarding which organisation is ultimately in charge. We are also concerned about the consequences of unclear accountability structures and a lack of transparency.

Clinical involvement

The RCN is in favour of the principle of involving clinicians in the running of the NHS. However, it has become increasingly apparent that this will not be implemented to a satisfactory degree. Local implementation is not delivering genuine engagement with clinicians.

We campaigned long and hard to see nurses gain a greater involvement in the commissioning process. As a result, the Government introduced an amendment that would see nurses appointed to the boards of Clinical Commissioning Groups (CCGs). However, it appears that this is not being implemented properly on the ground and guidance from the Government has been lacking. In too many situations, nurses are either not being appointed to CCGs, or where they are, they are not nurses with the appropriate commissioning skill sets.

National pay, terms and conditions

The RCN has long been committed to the process of nationally agreed pay, terms and conditions. Agenda for Change has been good for employers, staff and patients – it ensures that staff don't leave from one hospital to go to another that pays a better wage, meaning that hospitals that can't afford good salaries aren't left without the appropriate staff.

Despite this, in his Autumn Statement the Chancellor announced a commitment to local pay bargaining. The RCN cannot support such a move.

Conclusion

The RCN has engaged with the Government at every stage of the NHS reforms since the White Paper and had remained hopeful that a pragmatic approach of engagement was the best option to represent RCN members. The RCN has clearly and consistently set out which areas of the Bill must be changed, not as a matter of self interest, but to guarantee patient care and to retain the NHS as a national institution providing high quality care, free at the point of need.

However, due to the Government's refusal to concede on sufficient points, and the risk we believe the legislation poses to patient care, the RCN finds itself with no other option than to adopt a position of outright opposition to the Health and Social Care Bill.