2 December 2021

Briefing – Health and Care Bill, Lords Second Reading

With a membership of around 465,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing is the voice of nursing across the UK and the largest professional union of nursing staff in the world.

The Health and Care Bill is a landmark opportunity to address structural issues and embed more collaborative working across health and social care. As it currently stands the Bill does not go anywhere near far enough to address the concerns of nursing staff and ensure patient safety.

As the Royal College of Nursing's recent *Ten Unsustainable Pressures on the Health and Care System in England* report outlined, health and care services are currently under unsustainable levels of pressure and action must be taken to tackle serious staffing pressure, sickness, burnout and the growing backlog of undelivered care. The RCN is seeking significant amendments to ensure that the Bill meets the needs of nursing staff and their patients.

RCN members are calling for changes to the Bill which:

- Set out in the legislation that the Secretary of State for Health and Social Care has full accountability for the planning and supply of the health and care workforce.
- Create a new duty on Secretary of State to publish an assessment of workforce requirement based on population need.
- Include a role of Executive Nurse on Integrated Care Boards.
- Ensure that decisions about service reconfiguration are made in partnership with local communities and based on health expertise, safety and quality.
- Guarantee consultation with relevant trade unions on any changes to the NHS Payment Scheme.
- Provide professional bodies such as the RCN have delegated standard setting functions.
- Ensure a safe space for health and care staff raising safety concerns.
- Recognise that within the current severe workforce crisis, the Discharge to Assess model cannot be implemented safely for patients or staff.
- Set out explicit duties for Government and NHS England to tackle health inequalities and for Integrated Care Boards (ICBs) to report on the action they are taking to reduce health disparities.

Accountability for the health and care workforce

The Health and Care Bill must embed accountability for workforce planning and supply with the Secretary of State, as part of service and finance planning, to help ensure staffing for safe and effective care on an ongoing basis. The NHS has itself recognised that 'the most urgent challenge is the current shortage of nurses.[1]

[1] NHS England, Interim People Plan 2019 - https://www.longtermplan.nhs.uk/wp-content/uploads/2019/05/Interim-NHS-People-Plan_June2019.pdf

In its recent report on workforce burnout, the Health and Social Care Select Committee identified the current workforce planning system as 'at best opaque and at worst responsible for the current unacceptable pressure on the current workforce'.[2]

The latest statistics from September 2021 show 39,813 FTE registered nurse vacancies in the NHS in England, equating to a rate of 10.5%. Since published central NHS vacancy records began in 2017, the registered nurse vacancy rate in the NHS has been around this level or higher, showing the serious and sustained pressure on professionals working in understaffed services.[3]

At the moment, in the context of widely reported vacancies in health and care, there is no shared credible system understanding of workforce shortages and of the increasing demand in both population and service. It is not acceptable for nursing staff to be required to practise in this way or for patient safety to be compromised so severely. Persistent, systemic workforce issues put nursing staff and patients at risk.

Without clear legal duties on the Secretary of State for Health and Social Care, the RCN considers the current approach to be a false economy propping up an unsustainable system.

Currently, Clause 34 within the Bill relating to workforce planning does not go far enough, with current drafting only requiring Government to publish a report describing the system in place for assessing and meeting workforce needs.

This approach is insufficient, as it does not place a requirement to sufficiently assess population and service need, deliver a strategy and undertake planning in place to meet these needs through sufficient provision of workforce. Should this aspect of the Bill not be altered, it provides no assurance that the system is recruiting and training enough staff to sustainably deliver health and care services.

Announcements such as the HEE Framework 15 still do not address this requirement, as HEE does not have sufficient powers or levers to generate a credible response to demand-led workforce strategy and planning requirements.

RCN members are clear that responsibility for safe staffing in the health and care system must sit with the Secretary of State. The scale of the current workforce crisis and the lack of sustained political response to credibly tackle these issues in a sustainable way demonstrates that the existing powers and duties in legislation are inadequate to hold Government to account.

The Bill should require Secretary of State to lay before Parliament a fully funded health and care workforce strategy to ensure the numbers and skill mix of health and care staff are sufficient for safe and effective delivery of health and care services.

The RCN, in coalition with over 70 organisations, is supporting a campaign to require the Secretary of State to carry out and publish an assessment of workforce requirements in health and social care, looking five, ten and twenty years into the future. These long-term projections would provide the basis for strategic workforce planning to ensure the health and care workforce can meet the health needs of the future population.

The RCN will be seeking amendments to address these areas.

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[2] Health and Social Care Select Committee, Workforce burnout and resilience in the NHS and social care, 2021 https://committees.parliament.uk/publications/6158/documents/68766/default/

[3] NHS Vacancy Statistics November 2021 NHS Vacancy Statistics (and previous NHS Vacancies Survey) - NHS Digital

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Nursing leadership in legislated health and care structures

Any clinical roles being legislated for within health and care systems – including ICBs – must include nursing executive leadership roles filled by registered nurses. Nursing leadership should be embedded throughout ICS structures, including within executive and decision-making functions. Registered nurse expertise is critical to ensuring decisions are made in the best interests of patients. The Bill should include statutory roles for nursing leaders on ICS Boards.

Registered nurse executive leadership roles must also be built into any national health and care structures, including a Chief Nursing Officer within UK Government and in each nation's government.

Registered nurse leadership is vital to delivering the ambitions of this Bill and the NHS Long Term Plan. Nurse leaders are well placed to understand the health and care needs of their populations and identify opportunities for joining up relevant parts of the patient pathway. It is vital that nursing leadership is represented in all ICS structures, given their unique expertise in developing systems for promoting health and enabling prevention.

The Bill should include an executive director of nursing role (registered nurse) within core membership of every ICB. This would align with the structure set out in the NHS England and NHS Improvement design framework for ICSs which was published in June.[4] Furthermore, the Bill should include a nursing role in list of 'ordinary members' of the ICB.

The RCN will be seeking an amendment to address this.

Service reconfiguration

RCN members have highlighted concerns about the proposed new power for the Secretary of State to intervene at any point within a service reconfiguration.

Currently, decisions about service reconfiguration are made based on local insight, health expertise and considerations of safety and quality. This is undertaken in partnership with local decision makers and informed by engagement and consultation with local people. Clinical needs of patients should be addressed locally: any change should be supported by full business case, risk assessment, needs of population and not subject to political will.

Therefore, additional safeguards are needed in the Bill to ensure that these powers are used in a proportionate and appropriate way to ensure care quality and patient safety. Service reconfiguration must enable continuity of care, and not impact negatively through unintentional siloes of care.

Placing registered nurse leadership at the centre of decisions will support a whole care pathway approach, and integration of services, where this best meets the needs of people using services.

The RCN will be seeking an amendment to address this.

New NHS Payment Scheme

[4] https://www.england.nhs.uk/wp-content/uploads/2021/06/B0642-ics-design-framework-june-2021.pdf

The proposal to introduce a new NHS Payment Scheme is based on a stated intention to provide greater flexibility to reflect local factors, and to support better flow through care pathways. The RCN is mindful that current payment systems can act as a disincentive to early intervention and timely discharge from acute settings because trusts are paid for activity rather than outcomes. The RCN supports the principle of the planned payment scheme for systems to work together for better outcomes.

However, the RCN is also clear that proposals developed in the new NHS Payment Scheme must not detrimentally affect the existing mechanisms for negotiations on pay, terms and conditions for health and care staff. Professional bodies and trade unions must be consulted by NHS England on the new NHS Payment Scheme.

Any staff commissioned for NHS, public health and social care services across pathways should be in receipt of pay, terms and conditions which are at least equitable with Agenda for Change. Payment levels should be based on transparent economic modelling, to allow sense checking and scrutiny.

Professional Regulation

The use and impacts of proposals for new powers pertaining to professional regulators, including removing a profession from regulation and abolishing a regulator, must be carefully considered. Nursing regulation should not be "diluted" by being merged with another profession, and delivery bodies should not have a role in professional regulation. Therefore, we are seeking further assurances about the detail and use of the proposed powers, such as the criteria for removing a regulation.

As a safety critical profession, the setting of good standards across the nursing profession is hugely important and should include the knowledge and experience of Royal Colleges. As such we seek to enter into a delegated relationship with the NMC to determine UK applicable education standards and training, including those for advanced level practice. We would like to be recognised as the professional body setting the standards and guidance for nurses, and to have parity with the medical Royal Colleges, who already have the power to set mandatory standards for their professions.

The RCN will support amendments which clarify appropriate safeguards for the new powers for the Secretary of State to make changes to regulators and regulated professions.

Safe space for healthcare staff raising concerns about patient safety

The Bill sets out the general principle of the 'safe space' for investigating HSSIB incidents, but also provides powers for the Secretary of State to create regulation to remove said 'safe space', including the identity of a person who had made a disclosure to the HSSIB. This could ultimately deter nursing registrants from raising concerns, as they are required to do by their Professional Code of Conduct, and therefore impact on whether an issue is reported, responded to and lessons learned.

The policy intentions behind creating the safe space have been described as helping staff, patients and families feel more confident to take part in investigations by protecting them from unfair consequences, improving local investigations and spreading a just culture in the NHS.

While it is important that serious incidents are investigated properly by the right organisations (criminal activity for example), the safe space principle is vital for effective learning to be gathered and shared. It is essential to learn from major events such as Mid-Staffordshire, Gosport and Shrewsbury and Telford, ensuring staff are safe and supported in a no-blame environment to raise concerns about patient care and safety. This is part of a demonstrable commitment to the Duty of Candour for health and care services and includes provision of support from Freedom to Speak Up Guardians.

There are no circumstances not already accounted for by the law that would require for the safe space principle of confidentiality to be removed by the Secretary of State.

The RCN will be seeking amendments to address these areas.

Discharge to Assess

In the context of current high vacancy rates across district and community nursing, and poor understanding of workforce shortages across the health service, public health and social care, along with chronic underfunding due to failure of the current service payment model to recognise community nursing, this legislation should not seek to demand a service delivery approach which transfers such disproportionate risk to nursing staff and patient

We agree in principle with the intention to stop delayed discharges. However, without assurance around registered nurse staffing levels, including in social care and/or community settings, which depend upon our proposed amendment on workforce assessment and planning being accepted into the legislation, this cannot be implemented safely given the current state of the system.

Health Inequalities

The current duties on health inequalities in the 2012 Health and Social Care Act have not driven the necessary action to tackle health inequalities.[5] The COVID-19 pandemic has exacerbated health inequalities, and over the last decade improvements in life expectancy have stalled.[6]

People living in the most deprived areas in England develop long-term health conditions between 10-15 years earlier than the wider population.[7] For the sustainability of the health and care system, it is critical that greater action is taken to reduce inequalities and achieve good health and wellbeing for all.

RCN will support amendments regarding adding health inequalities to the Triple Aim, and to mandate increased data collection.

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[5] Michael Marmot, Jessica Allen, Peter Goldblatt, Eleanor Herd, Joana Morrison (2020). Build Back Fairer: The COVID-19 Marmot Review. The Pandemic, Socioeconomic and Health Inequalities in England. London: Institute of Health Equity

[6] ONS Health state life expectancies by national deprivation deciles, England: 2017 to 2019 Published 22 March 2021

[7] Churchill, N. (2019) Closing the gap on health inequality NHS England, blog published 10 January 2019