

Briefing: Westminster Hall Debate, *Legal duties of the Secretary of State for Health and Social Care*, Wednesday 17 July, 2.30-4pm.

What you need to know:

- There are more than 100,000 vacant posts in the NHS in England alone; including 40,000 nursing vacancies. We know that public health and social care are also have huge vacancy rates, although there is too little transparency in these sectors for a clear picture. **We have reached a tipping point for patient safety.**
- The existing duties for Government and other organisations in the health and care system regarding workforce supply are open to interpretation, **and it remains unclear who is responsible for interventions for workforce supply, recruitment, retention and remuneration requirements, and associated financial investment.** This is true at all layers within the health and care system. With ambiguity in regards to who has the power to intervene meaningfully, it is impossible to hold individuals or organisations to account when workforce supply fails, and services are short staffed.
- This accountability gap has led to a cycle of piecemeal workforce supply solutions, which have seen boom and bust investment across and within workforce sectors over decades, with no overarching costed workforce strategy.
- Solutions are needed now more than ever before. **We are calling for action to boost overall workforce supply now, and for legal accountability for growing and developing the workforce to be codified**, so that the health and care system is not plagued by crisis after crisis.

Accountability for the health and care workforce in England

The NHS and independent sector health and care workforce make up around 1 in 10 of the total workforce in England.¹ **Investing in the health and care workforce supports good health outcomes across the population** leading to increased national productivity, as well as providing opportunities for labour market and economic growth. It is appropriate and reasonable that this, and a fundamental understanding that health and care services are a safety critical industry, should be the starting position of any decisions taken by Government.

But, domestic vacancies within the health and care workforce are reaching new highs and we retain a fundamental over-reliance on international recruitment. Across the UK, we know that one in three nurses are due to retire within the decade² and following the referendum on our membership of the European Union (EU) in 2016, over 10,000 EU nurses and midwives have since left the UK workforce.³ This has left services with consistently unsafe nurse staffing levels which compromise patient care and safety, leading to unacceptable risk levels for nursing staff and the wider public. Available funding continues to dominate workforce planning. **Progress has been made by the system towards understanding the causes of the workforce crisis, and some of the interventions needed, but meaningful efforts to rectify this, have not yet been enacted.**

To ensure people have access to safe and effective care, we need the right professionals, with the right skills, in the right place, at the right time to care for patients. A comprehensive legal framework for workforce accountability must set out the specific accountabilities and responsibilities within Government and within the various levels of the health and care system with regards to workforce supply, recruitment, retention and remuneration. **Without explicit accountability for workforce provision, it will be impossible to transform health care safely and effectively.**

¹ The Health Foundation, Kings Fund and Nuffield Trust, 'The health care workforce in England', November 2018, <https://www.kingsfund.org.uk/sites/default/files/2018-11/The%20health%20care%20workforce%20in%20England.pdf>

² Institute for Employment Studies, 'One in three nurses to reach retirement age within ten years', press release 7 July 2016, www.employmentstudies.co.uk/news/one-three-nurses-reachretirement-age-within-ten-years.

³ Nursing and Midwifery Register, 'The big picture', November 2018. Available here: <https://www.nmc.org.uk/globalassets/sitedocuments/other-publications/nmc-big-picture-september-18.pdf>

We call for:

- A comprehensive legal framework for workforce accountability which sets out who in Government and in the health and care system is in charge of workforce supply, recruitment, retention and remuneration. This is true at all layers within the health and care system.
- **The Secretary of State for Health and Social Care must have clear and explicit powers for the growth and development of the health care workforce across England**, supported by clear implementation roles and responsibilities for organisations throughout the health and care system. **The Secretary of State for Health and Social Care should be accountable to Parliament for making sure there are enough health and care staff, with the right skills, in the right place, at the right time to care for patients, based on population needs now and in the future.** This means accountability for ensuring a credible, costed, national workforce strategy.
- National organisations responsible for delivering health and care should have duties for workforce planning and funding, as part of service delivery, to ensure health care services are safe and effective.
- Integrated Care Systems should be able to understand the needs of both patients and staff in their area, and they must communicate this to national organisations.
- Clinical Commissioning Groups and local authorities should have a legal duty to understand the current and new health needs of their local areas, and to enable planning of the workforce according to the health and care services required.
- Providers of publicly commissioned and funded health and care services should demonstrate accountability for the decisions they make about to ensure services are safe and effective, underpinned by evidence about the staffing needed to meet the needs of patients.

The upcoming amendments to NHS legislation is the clear and obvious opportunity for parliamentarians to expand the proposals to clarify and codify accountability for workforce in England, for now and for the future. We are expecting to see a legislative update to the 2012 Health and Social Care Act put before Parliament by the end of 2019. This new Bill will support the NHS Long Term Plan to be delivered. The legislative proposals suggest changes to the remit of the Secretary of State for Health and Social Care which is an opportunity to ensure explicit accountability for workforce provision is clarified. **The ultimate aim in clarifying accountability for workforce is to ensure all health and care services are of high quality, and equipped to provide safe and effective care to guarantee patient safety, and improve patient experience and outcomes.** Without these elements being addressed, it is likely that the workforce crisis will continue to develop as there is no clear recourse to hold Government and other bodies to account for the provision of sufficient staff to deliver safe and effective care.

What you can do:

Please attend and speak in the debate to raise the importance of the redressing the current ambiguities around roles and duties at Government level, as well as within the health and care system, to address the workforce crisis.

Suggested lines of inquiry

- *What plans does the Minister have to ensure that the opportunities for legislative changes to the Health and Social Care Act (2012) will include accountability for growing and developing the health and care workforce needed to achieve the ambitions in the Long Term Plan?*
- *If enacted, would the legal proposals put forward by NHS England and NHS Improvement go far enough to help health and care professionals deliver the Long Term Plan? How can we be assured that the workforce crisis will be meaningfully addressed in the forthcoming Bill?*
- *What would be the impact of not addressing explicit workforce accountability requirements within this update to the legal framework?*
- *Wales have successfully legislated for accountability for the nursing workforce in acute and surgical settings, and Scotland have just passed their Health and Care (Staffing) (Scotland) Bill. When will England legislate explicit accountability for the provision of workforce - within Government, and across the health and care system for workforce? Can the Government confirm that England will not be left behind by the progress made in the devolved nations to grow and develop their health and care staff?*

Additional information:

1. Does this mean you want the law to set out the right number of patients per nurse and have ratios?

There are many different types of health settings which nursing work in across the UK. It is not possible to identify a 'one-size-fits-all' number or nurse to patient ratio. The evidence base for these decisions is constantly being updated.

We need accountability to be in place in Government, and across the health and care system, to ensure staffing decisions can be made based upon professional judgement and up to date evidence. This would also mean that when inappropriate decisions are made, and staffing levels are insufficient, this would allow the public to hold the decision makers to account.

2. How do we know how many nurses and nursing staff we need in England?

The Government must put measures in place to regularly assess the health of our society and the needs of patients to use this information as the basis for working out how many health and care staff are required. As patient needs become more complex, the size of the workforce will need to increase to be able to meet the higher numbers of people needing care. These assessments should form the basis of a national strategy which sets out how the workforce will be increased, and the money available to do so.

At the moment, as an example, the total number of nurses and nursing staff is not linked with the health and care needs of society. Instead, decisions about the numbers of nursing staff we have are made based on the basis of the financial envelope, as opposed to need for safety and effectiveness. We want this to change.

Alongside achieving overall accountability for growing and developing the workforce, we are clear that there must be meaningful efforts to increase the number of nursing students studying to join the profession too.

We are calling for at least £1 billion per year to be reinvested into nursing higher education to increase student numbers, but also for continuing professional development and other initiatives which support recruitment and retention of existing nursing staff. Without simultaneous investment to encourage more students into the profession, the workforce crisis will persist.

3. What is the evidence that these changes will bring improvements?

There is a growing evidence that nurse staffing levels are linked to patient safety and better clinical outcomes. When there aren't enough nurses, there is a negative impact on patient experience, safety and recovery. Our position is that the best way to deliver safe and effective care is to have enough nurses and nursing staff in the workforce to meet the health and care needs of our society. At the moment, the system doesn't collect enough information about actual staffing levels or skill mix. This is really important to provide assurances about the quality and safety of patient care. Changing the law in the way we have set out would help decision makers to have all the tools available to them to make choices in the best interest of patient safety, experience and outcomes.

In Wales, the RCN campaign secured the Nurse Staffing Levels (Wales) Act. This law applies to acute settings, and is focused on accountability at provider level. The campaign in Wales seeks to scrutinise the implementation of this law, and aims to expand the coverage to other types of settings. The Scottish Parliament have also recently passed legislation, the Health and Care (Staffing) (Scotland) Bill. This bill sets out many of the accountabilities and duties, and provides a legal basis for making decisions about staffing.

4. What changes to the law has the NHS proposed already?

NHS England and NHS Improvement recently held an engagement process on potential changes to the law they believe need to happen to make sure that the NHS Long Term Plan is a success. Most of the proposals focus on supporting integration and collaboration between commissioners and providers of health and care services, including what processes would be in place to support health care mergers. The suggested proposals also suggest changes to the remit of the Secretary of State for Health and Social Care which is an opportunity to ensure explicit accountability for workforce provision is clarified.

Over 10,000 members of the RCN, and public supporters of our campaign asked NHS England and NHS Improvement to include accountability for workforce in these proposals. Our view is that workforce planning should be embedded into the ways in which services and finances are planned. We have broadly welcomed the intentions behind these proposals, but we want them to go further in relation to the workforce.

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