Health and Social Care

news and advice for GPs and Healthcare Professionals from Birkett Long

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Government announces changes to Health & Social Care Bill

Following suspension of the sweeping reforms to be implemented under the Health & Social Care Bill, the Government has announced that it has listened to fears about increased competition and more powers for GPs and will now slow the pace of change.

Key changes to the bill include:

- The renaming of GP consortia to "clinical commissioning groups" to reflect the stronger emphasis on wider professional involvement in commissioning decisions by patients, carers and the public and a wide range of doctors, nurses and other health and care professionals
- Relaxation of the April 2013 deadline for clinical commissioning groups to take over budgets from PCTs
- PCTs will still cease to exist in 2013 and local arms of the NHS Commissioning Board will commission on behalf of groups that are not ready to take over
- Commissioning groups will not be able to delegate their statutory responsibility for commissioning to private companies or contractors
- Governing bodies of commissioning groups will have to meet in public and publish their minutes
- Changes to the quality premium for commissioning groups to make clear its purpose is to reward effective commissioning
- Health and Wellbeing groups will have a new duty to involve users and the public, and to promote joint commissioning and integrated provision between health, public health and social care
- Greater input into commissioning groups' decisions from other health professionals such as hospital consultants and nurses
- The removal of Monitor's powers to promote "competition" and a narrowing of its powers over anti-competitive purchasing behaviour so that these are more proportionate and focus on preventing abuses rather than promoting competition
- The creation of additional safeguards against privatisation, price competition and cherry-picking of profitable, "easy" cases, including a pricing system that accurately reflects clinical complexity, except where this is not practical
- Commissioning groups will have to "promote research" and include "NHS" in their names.

The changes followed weeks of political wrangling and publication of a highly critical report from the NHS Future Forum. The expert forum gave recommendations on the changes following a 10-week 'listening exercise'. The BMA acknowledges that the forum's recommendations address many of its members' concerns and hopes that other issues can be addressed as detail emerges. The British Dental Association feels that the response does not deviate from BDA-supported plans for dental commissioning, while appearing to address some of its areas of concern.

Reform for adult social care laws

The legal framework for the provision of adult social care services is long overdue and the Law Commission's final report setting out recommendations for the reform paves the way for the introduction of a single act for adult social care, equivalent to the Children Act. The Government will introduce legislation in 2012 to implement the Law Commission's recommendations. The current legal framework consists of a complex and confusing patchwork of legislation including 38 statues, the oldest of which dates back to 1948; outdated both in language and approach, it represents a time of institutional rather than personal care.

It is hoped that the new legislation will introduce a clear set of overarching prinicples to guide decision-making and which will be accessible to the lay person, ensuring they can understand their entitlements and have recourse to the legislation if the system fails them.

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Will regulations lower the quality of care in the healthcare industry?

From 1 October 2011 agency workers gained the right to be treated in the same way as any employee employed directly by the care provider. The exact impact of these Regulations remains to be seen but suggestions are that they will increase staffing costs for care providers and could even lower the standard of care provision.

To comply with the Regulations agency workers must receive the same basic working and employment conditions as they would had they been recruited directly by the hirer. These conditions include pay, working time, rest breaks, annual leave, bonuses, access to facilities and amenities, and access to employment vacancies. Some rights are specifically excluded from the Regulations and these include sick pay, redundancy pay and bonuses paid regardless of amount of work done.

With the exception of the rights of access to facilities and access to employment vacancies, which start from day one, the right to equal treatment is subject to a 12 week qualifying period. Any provider who utilises agency workers on a short term basis will encounter minimal impact. Those who use agency workers on a longer-term basis will face increased costs and as such will have to make some difficult business decisions. Any hirer found to be deliberately acting in a way so as to avoid the Regulations can face a £5,000 fine, for example if they were to continually use the same worker for 11 week periods of time before providing them with a different role or re-hiring them after a week off.

It is possible to avoid these increased staffing costs legally. Care providers could stop hiring agency staff on a long term basis, amend their employee's terms and conditions to match those of the agency workers (although this would involve a complicated process of variation of contracts and considerable upheaval of the existing workforce) or look to use alternative methods of staffing such as current staff working overtime or using casual employees.

As well as increased costs or the need to restructure their workers and employees, employers could also see a reduction in the number of agency workers working for periods of over 12 weeks and a consequent reduction in continuity of care. Whether these will combine to lead to a reduction of the quality of care provision as a whole, only time will tell; individual providers who are likely to be affected will need careful planning to prevent these Regulations indirectly lowering their own standard of care.

New dental contract trialled

The coalition Government's plans for modernisation of the NHS centre on improving quality of care and patient outcomes. As part of this, 62 dental practices selected from around England trialled a new dental contract during summer 2011, aimed at improving the quality of patient care and increasing access to NHS dental services, in particular ensuring improvement in the oral health of children.

For the first time, dentists will be paid for the quality of the treatment they give rather than the number of treatments provided. The new contract is based around capitation, registration and quality. Dentists have been given guidelines on how to deliver this new emphasis on quality and patients will be provided with security of receiving continuing care through a focus on patient registration with practices.

Three different models were piloted to help better inform the development of the new national contract. The pilot trials are to be assessed after an initial period of one year, with scope to extend them where they are successful, until the new contract is ready in its final form. The new contract requires legislation because of changes to the patient charge system, a process which will take time, and therefore a new contract is not expected until April 2014, if the legislation is approved by Parliament.

Adult social care excellence award scheme abandoned

Following the Care Quality Commission's (CQC') consultation on proposals for a new excellence award scheme for adult social care services in England, originally to be launched in April 2012, the Department of Health has confirmed that it will not go ahead. The consultation asked:

- **Do you agree with the Social Care Institute for Excellence's (SCIE) definition of excellence?**
- **What sort of evidence should be gathered to demonstrate excellence?**
- **Should the scheme offer a pre-screening process for providers?**
- **How long should the award last?**
- **Under what circumstances would a provider lose the award?**

The response to this consultation exercise showed that there was a lack of support for the award and the CQC was clear that any award had to be supported by the sector to proceed. Many care providers remain unhappy with the discarding of the star system following the re-registration process last October and as a result care home owners and home care agencies remain unclear as to how their services and capabilities will be judged in future.

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