The Whitehouse Consultancy

Political Briefing

'Integration and Innovation: working together to improve health and social care for all' white paper

Introduction

This briefing has been produced by the Whitehouse Consultancy and assesses the far-reaching proposals contained in the Department for Health and Social Care's (DHSC) 'Integration and Innovation: working together to improve health and social care for all' white paper, published 11th February 2021. The paper sets out in detail the government's plans for new legislation to restructure the NHS in England. Below, we provide an overview of the paper, the political context behind its development, stakeholder reactions, and implications for the UK's healthcare sector.

The white paper follows an NHS consultation on the health service's plans to expand the implementation of Integrated Care Systems (ICSs), which set out two models to meet this goal: 1) the creation of a statutory ICS board or joint committee with an accountable officer but separate to Clinical Commissioning Groups (CCGs) or 2) the abolition of CCGs by April 2021, stripped back competition rules and requirements for trusts to be part of 'Care Alliances'. It also follows DHSC's consultation on reducing bureaucracy in the UK's health and social care system, which found that NHS staff felt that unnecessary bureaucracy is "time-consuming, frustrating, and stressful", according to the department.

Overview

A draft of the government white paper was first obtained by Health Policy Insight and sets out wide-ranging legislative proposals for a new Health and Social Care Bill. The forthcoming plans for a major shake-up of NHS England comes amid growing frustration at the lack of central control over key policy levers, as well as changes in health provision due to the UK's ageing population. These issues have become particularly apparent throughout the course of the Covid-19 pandemic, which according to the paper, has represented an *"*unprecedented test to health and care services*".*

Chapter One of the paper makes the case for legislative changes on the basis that the health and care system has evolved since the Health and Social Care Act 2012 was introduced, and needs a new framework that *"*builds on changes already being made as well as building on the flexibility to support the system to tackle challenges of the future*".* The paper adds that the health and care system is finding *"*creative workarounds and innovations*",* which the government must build on.

Chapter Two sets out the government's proposed changes to health and social care, which focus on the following themes:

- Integration and collaboration;
- Reducing bureaucracy;
- Public confidence and accountability;
- Additional proposals – public health, social care, safety and quality.

The main legislative proposals include the following:

1. The Health Secretary and DHSC to take more direct control over NHS England

This proposal reverses previous reforms which reduced the responsibility of DHSC, passing some of it onto NHS England and other arms-length bodies within the service. This change will enable the Health Secretary to be held personally and politically accountable for the performance of the health service. The document nonetheless notes that the Health Secretary will not be able to direct local NHS organisations or interfere in clinical decisions.

2. **Health services from hospitals to GP surgeries and social care to work more closely to improve patient care**

   Over the last two years, ICSs have been formed across England as part of the NHS Long Term Plan (LTP) to deliver more coordinated care. Through ICSs, NHS organisations, in partnership with local councils and others, are better able to take responsibility for managing resources, delivering NHS care, and improving the health of the local population. Under the proposed changes, ICSs will be formally established in law to give them stronger decision-making authority and accountability. Proposals will reform existing legislation to remove barriers that currently prevent closer collaboration between NHS entities.

3. **The role of the independent sector to be reduced by reducing competition**

   The white paper sets out proposals for legislation that will clarify the central role of collaboration in driving performance and quality in the system, rather than competition. This reverses the regime put in place in 2012 (see political context below).

   Under the proposed changes, the Competition and Markets Authority (CMA) will no longer review mergers involving NHS foundation trusts and NHS Improvement's specific competition functions and its general duty to prevent anti-competitive behaviour will be removed. NHS commissioners will be permitted to award contracts without a tender process, which is aimed at reducing bureaucracy on both commissioners and providers. The document adds that independent and voluntary sector partners will continue to have an important, yet reduced role.

   The white paper states that there is a strong case for the governance arrangements for an ICS to include an ICS Health and Care Partnership, made up of a wider group of organisations including independent and voluntary providers. These partnerships will seek to develop joint working and decision-making arrangements that "deepen and improve over time in the interests of local people".

   The exact future and approach for procurement remains unclear from the proposals. However, there appears to be no proposal to make the NHS the preferred provider of NHS services as yet nor to bring existing contracted-out services back in house.

4. **A new assurance framework for social care**

   Recognising the demands of the UK's ageing population, the paper sets out the government's desire to work with local authorities and the sector to establish an assurance framework that will support its drive to improve patient outcomes and experience in accessing high quality care, irrespective of location. The paper reveals that the government intends to bring forward separate proposals on social care reform later this year.

5. **New limits on capital spending for foundation trusts**

   In line with NHS England's recommendation and as an additional safeguard for financial sustainability, DHSC will impose capital spending limits on Foundation Trusts.

Chapter Three outlines the ways in which the government hopes this legislation will encourage positive behaviours and innovations, remove barriers, enable flexibility, reduce bureaucracy, and allow for adaptation over time.

Some of the proposals include changes to the health and care system that have not been put forward by NHS England, such as the removal of Local Education Training Boards from statute to give Health Education England "more flexibility to adapt its regional operating model over time". This is aimed at "increasing flexibility and adaptability in the system".

Timeline

The proposals contained in the white paper will start to be implemented in 2022. NHS England and NHS Improvement will be formally merged in 2022. However, the document does not specify a date for the formal creation of ICSs and dissolution of CCGs.

The intention is to bring legislation forward as part of the Queen's Speech later this year, probably in May, meaning that there will no formal consultation and limited opportunity for pre-legislative scrutiny by the House of Commons Health and Social Care Select Committee, chaired by Jeremy Hunt.

Political context

The white paper outlines proposals to reverse major parts of former Health Secretary Andrew Lansley's Health and Social Care Act 2012, which sought to strengthen competition within the healthcare system but created a fragmented and complex organisational structure. Lansley's reforms were controversial: the left criticised the introduction of competitive tendering whilst the right came to dislike bureaucratic costs and confused lines of accountability.

The ambition to create a more collaborative system chimes with the direction of policy initiatives over the last six years. Before the Covid-19 pandemic, the strategy guiding the development of the NHS in England was the LTP. Published in 2019, the LTP focusses on developing more integrated services within the NHS and between health and social care with a combination of policy mechanisms proposed to drive progress (including but not limited to revised quality measurement and the greater use of digital technology).

The logic of the LTP – and the trends underpinning it – have strained against the more market-oriented framework of the Health and Social Care Act; as a result, NHS England proposed new legislation to government in 2019 to bring the rules governing the NHS closer in line with the direction the system was heading in practice. The plans were shelved when Covid-19 hit, but now the legislation is back on the government's agenda.

Why now?

Health was a central component of the Conservatives' election agenda in 2019 and worries about the NHS are of immense political risk. Increasingly, ministers are becoming frustrated with being held responsible when the NHS fails to deliver. The white paper claims that the Covid-19 pandemic response has demonstrated the need for more ministerial power over the NHS, reflecting a desire in government to take back control of the health agenda – particularly NHS spending – from NHS England, which under Sir Simon Steven's leadership has exercised its independence to maximum effect.

It is difficult to speculate how this control will be deployed but the move does suggest an attempt to improve political accountability and allow ministers to adapt structures and objectives to reflect the priorities of an elected government. This will be crucial if ministers want to play a more active role in leading the recovery effort but also deliver on the Conservative Party's manifesto commitments.

In addition, the scale of the challenges facing the health service in the wake of the Covid-19 are huge, including addressing staff shortages, prioritising the backlog of unmet healthcare needs and tackling health inequalities exacerbated by the pandemic. NHS England's previous proposals for new legislation, based on delivering the LTP, have been thrown off course in the meantime.

The government is also facing significant policy challenges. Delivering the Prime Minister's Levelling Up agenda – another key electoral promise – will require cross-governmental intervention, particularly to address health inequalities, reform social care and reverse wider increases in inequality and poverty across the UK. There is also the Conservatives' 2019 electoral win to consider, which saw a shift in Conservative representation towards parts of the country where the public sector is bigger and voters are more likely to lean to the left on economic issues. The government will be striving to keep this electoral coalition together.

Stakeholder reaction

Health Secretary Matt Hancock said: "The NHS and local government have long been calling for better integration and less burdensome bureaucracy, and this virus has made clear the time for change is now. These changes will allow us to build back better and bottle the innovation and ingenuity of our brilliant staff during the pandemic, where progress was made despite the legal framework, rather than because of it. The proposals build on what the NHS has called for and will become the foundations for a health and care system which is more integrated, more innovative and responsive, and more ready to respond to the challenges of tomorrow, from health inequalities to our ageing population."

Sir Simon Stevens, Chief Executive of the NHS said: "Our legislative proposals go with the grain of what patients and staff across the health service all want to see – more joined-up care, less legal bureaucracy and a sharper focus on prevention, inequality and social care. This legislation builds on the past seven years of practical experience and experimentation across the health service and the flexible 'can-do' spirit NHS staff have shown in spades throughout the pandemic."

Former Health Secretary and Chair of the Health and Social Care Select Committee Jeremy Hunt welcomed the proposed changes and said that whilst they marked a "very big change", it was "the right change". He said: "The big difference between now and then is the growth in older people who need much more joined up care. Last year was the first year in history where, across the world, there were more over-65s than under-fives. Older people have much more complex needs … that need to be addressed with a programme of care not just a single visit to a hospital," he told BBC Radio 4's Today programme, adding that the plans should allow "the joining up of care between local authorities".

Hunt also said there needed to be greater scrutiny for private providers working with the NHS. He said: *"*If we are going to allow local monopolies to come back in the NHS, we need to make sure, in the details of these reforms, there's a proper accountability mechanism*,"* pointing to Ofsted's role in the education sector.

Labour Shadow Health Secretary Jonathan Ashworth said that reducing the role of privatisation in the NHS was crucial, however, the reforms must also improve patient outcomes and reduce waiting times for treatment – an issue that has only been exacerbated by the Covid-19 pandemic. He said: "The Lansley changes were disastrous … and we pleaded with the government at the time not to do this, so it doesn't surprise me that now they've now come along and said we recognise those changes were counterproductive."

Ashworth also questioned whether now is an appropriate time to restructure the NHS as it is under immense pressure from the pandemic. He said: "NHS staff are feeling ground down. Is this really the time for another structural reorganisation? And fundamentally what is the aim of these reforms? This is a big task, and if government is going to embark upon this, it has to be clear what their destination is. Are these reforms going to improve outcomes for patients? That's the standard by which they will be judged."

David Hare, Chief Executive of the Independent Healthcare Providers Network (IHPN) said he was "pleased to see a recognition in today's white paper that patients will be able to choose from a wide range of healthcare providers so long as they meet NHS standards". He also said the IHPN "will look closely at proposals for a new provider selection regime where patients and taxpayers alike will want assurances that the NHS will have access to the best and most innovative services regardless of who provides them, and that poorly performing services will be challenged to improve, including through the option of alternative provision."

Nicholas Timmins, Senior Fellow at the Institute for Government and the King's Fund, has taken a critical view. Timmins argues that the proposals remove the one-part of Lansley's Health and Social Care Act 2012 that – in his view – worked, namely the statutory independence of NHS England. Timmins argues reverting to ministerial control over running the health service is not ideal, he attributes this to cases in the pandemic where ministers have had control over aspects of the health service, namely, the trials over personal protective equipment and the failings of the £22bn Test and Trace programme.

Implications

Ending the internal market

The Lansley reforms were introduced at to "liberate the NHS", and relied on a mix of patient choice, provider competition, and clinical, GP-led commissioning as drivers of the internal market to change and improve NHS service provision. This meant that the NHS became semi-autonomous from government, shifting control of the system to the NHS Commissioning Board (now NHS England), which is answerable to parliament through an annual mandate to set priorities.

The new legislation will effectively end the purchaser-provider split in the NHS in England. The move towards geographically based collaboration through ICSs is the NHS's preferred solution to maintaining and improving patient care. The move away from competition and towards collaboration/integration is not, however, recent. Sir Simon Stevens has been promoting collaboration and integration in his policy moves, first in 2014's Five Year Forward View and again in the LTP. The NHS leadership has over the past 18 months been refining its appeals for new legislation, and it has had most of its requests granted.

Many reports surrounding the publication of today's white paper have focussed on the removal of competition rules from the regime. However, this is unlikely to make much material difference, particularly in the short term. Firstly, there is no sign of outsourced contracts being transferred back to the NHS, which would require significant investment to fill gaps in NHS capacity. In addition, pressures to clear the backlog of overdue operations and other treatments, alongside a desire to prevent criticism of the government's handling of the pandemic, may actually lead to more independent sector outsourcing post-pandemic.

The NHS will be consulting on the new procurement regime shortly.

Returning power to the health secretary

As the new plans stand, the Health Secretary will get new powers to direct the NHS Commissioning Board; to intervene early in local reconfiguration decisions; to allow the creation of new provider organisations; and to abolish professional regulators and NHS arm's length organisations without needing legislation in parliament.

The likelihood of one of the major professional regulators such as the General Medical Council being abolished is low. This change is targeted more at the creation of more general, hybrid clinical roles. It is, however, indicative of the size of the proposed power shift back to ministers. A lot of extra power is being repatriated from the NHS.

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