

HEALTH AND SOCIAL CARE BILL

Commons Second Reading
26th November 2007

CAMPAIGN BRIEFING

which


Which? welcomes the Bill as we believe it is an important opportunity to create a truly patient-centred approach to regulation by reforming the system of regulating healthcare providers and professionals. Ensuring that all healthcare wherever and by whoever it is provided is safe, effective and of high quality, will go some way to improving protection for consumers, whether they are considering a cosmetic change such as laser hair removal or about to go into hospital for an operation.

This briefing sets out Which?'s specific demands to ensure the Bill guarantees all consumers safe, high-quality and effective healthcare. We want MPs to support:

- 1) Extending the regulatory scope of the Care Quality Commission to cover **all healthcare providers**, both public and independent sectors. (Part 1, Clauses 4 and 5)
- 2) Setting up a **rapid response unit** to fix problems and turn around failing services, units, hospitals or trusts. This should be included within the Care Quality Commission remit to tackle serious or persistent failures. (Part 1, Clauses 25-27 and 41-47)
- 3) Extending the Care Quality Commission's regulatory scope to ensure that **new developments in delivering healthcare are included**. (Part 1, Clause 5)
- 4) Appointing a **Patient Champion** on every NHS Trust board. The champion must have explicit responsibility for ensuring that the views of patients drives the delivery of services. For instance through the collection and analysis of patient feedback, review of issues and complaints raised, and in reporting back to the local healthcare community. (New provision)

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for all consumers

Part 1: The Care Quality Commission

Overview

Part 1 (Clauses 1 - 90) creates a new regulatory body, the Care Quality Commission, which is a merger of the Healthcare Commission (Commission for Healthcare Audit and Inspection), the Commission for Social Care Inspection and the Mental Health Act Commission.

Which? calls for regulation to include all healthcare providers (Clause 5 (2))

Which? wants MPs to call for:

- > The extension of the regulatory scope of the Care Quality Commission beyond that of the Healthcare Commission to cover all public and independent healthcare services used by consumers. This should include all new types of services emerging in the reformed NHS, such as walk-in centres, GPs with special interests and polyclinics as proposed in Lord Darzi's NHS review. This also needs to apply outside the NHS to include services such as cosmetic treatments.

Reason for action

Which? welcomes the opportunity the Bill offers to improve the regulation of healthcare providers and to address the inability of the Healthcare Commission to adequately regulate all providers of healthcare services.

As things stand, differences in the regulation of independent services compared to NHS services leads to loopholes and inconsistencies, as services are regulated in different ways and to different standards. This Bill provides a clear opportunity to establish a level playing field for healthcare consumers through registration of all service providers based on common standards. We warmly welcome this, as currently consumers of some privately provided services, such as dentistry, have had considerably less protection from regulators than they would if that service was provided by the NHS.

Outside the NHS, new services are emerging in the rapidly growing cosmetic treatments market which are subject to little or no regulation, for example cosmetic fillers. This leaves consumers at risk and can have harmful consequences.

For example, Which? highlighted in August the scandal of Isolagenⁱ. This was a cosmetic treatment promoted by an American company, Isolagen Inc



(Isolagen Europe in UK) that used patients' own cells to smooth out skin by taking a sample of collagen producing cells from the patient and then offering to store the cells in a laboratory for several years, for an annual fee. At a later date patients were able to have their own younger cells injected back into their skin with the promise of younger face. Isolagen made a number of claims about the effectiveness of treatment and its regulatory approval which were either untrue or unsubstantiated. Isolagen subsequently ceased trading in the UK, and neither the product nor the service was covered by existing UK regulation as it didn't fit within the definition of a medical device, leaving consumers to loose out on an average of £3,500 each.

Which? believes that consumers need greater protection, not less in the range of new treatments and services that enter the cosmetic treatments market.

Which? calls for the creation of a Rapid Response Unit (Clauses 25-27 and 41-47)

Which? wants MPs to call for:

- > The inclusion of a rapid response unit within the Care Quality Commission to tackle serious or persistent failures, and to turn around failing wards or hospitals.

Reason for action

Clauses 25-27 enable the Care Quality Commission to give a formal warning where a provider has failed to comply with the relevant service requirements, and potentially allows for the Commission to cancel that provider's registration with the Commission. Clauses 41-47 enable the Commission to make periodic and special reviews and investigations of NHS healthcare providers. We would like to see these functions tackle any urgent and serious issues in the delivery of healthcare services, responding to the concerns of patients, the public, staff and local agencies in a timely, targeted and appropriate manner. This will help prevent situations such as the high profile case of deaths at Maidstone Hospital from happening again.

New provisions for a Rapid Response Unit should be included within these clauses. They would demonstrate to patients and the public the new Commission's intolerance of poor performance, sensitivity to patients' experiences, and a willingness to hear their views and act on their concerns.

In seeking to improve services, we would like to see the Commission adopt a sophisticated approach and actively intervene to help turn around any



serious failures within a hospital, be they a particular ward or service, to ensure that the hospital rapidly returns to performing at the correct level.

Which? calls for a Patient Champion in every NHS trust board (new provision)

Which? wants MPs to call for:

- > Every NHS trust to appoint a Patient Champion on their board. This champion should have explicit responsibility for ensuring that the views of patients drives the delivery of services. For instance through the collection and analysis of patient feedback, review of issues and complaints raised, and in reporting back to the local healthcare community.

Reason for action

Recent Which? researchⁱⁱ has found that in many cases, even if they are unhappy with aspects of their care, hospital inpatients do not raise concerns because they don't believe that it will make a difference. And yet, the clear majority of staff we surveyed said that patients should speak upⁱⁱⁱ.

Delivering patient-centred healthcare means listening to the views of patients, and acting on what they say. Which? believes that the NHS needs to do more to listen to patients. It has to demonstrate that it wants to hear from patients and it has to show that patients' views count in delivering and improving services.

Patient Champions in every trust would be the public face of the NHS, as provider or commissioner. They need to have clear responsibility for collecting patients' views, acting on their feedback, drawing on complaints to improve services, and reporting back to local communities about changes and developments.

Part 2: Regulation of Health Professions and Health and Social Care Workforce

Which? broadly welcomes Part 2 of the Bill. We believe the current system has failed to protect patients and the public adequately from rogue or incompetent health professionals, as recent evidence from the Shipman and other inquiries has shown.

Important elements of the proposed changes to professional regulation are not contained within the Bill, but instead likely to be detailed within



Statutory Instruments (Orders in Council) enabled by Section 60 of the Health Act 1999. Which? is concerned that this piecemeal approach will mean it will take considerable time to adopt and implement all the proposed changes within the White Paper for all the healthcare regulators. This will result in greater inconsistencies and public confusion.

While recognising that individual regulators may have particular issues that require a more tailored approach, the proposed reforms are based on some consistent principles that can and should be introduced in one go. The Government must place all the intended legislative proposals within both the Bill and related statutory instruments, before Parliament at the same time.

We want to see the following introduced into the Bill.

Which? calls for a strong patient voice on every regulator's governing council (new provision)

Which? wants MPs to call for:

- > A lay majority of one on the governing bodies of all regulators' councils.
- > A stronger definition of 'lay', as someone who is not or has never been a registered healthcare professional.
- > All council members including professional members should be independently appointed.

Reason for action

For too long the regulatory bodies have been dominated by professional interests which has undermined public confidence in their operation and decision making. A lay majority of one will help to ensure that the public and patient interest is firmly embedded in all the work of each professional regulatory body. However, Which? believes that there should also be a much clearer definition of what is 'lay' to exclude any other health professionals or those who were once a registered health professional.

Patients and the public must have confidence in the work of the regulatory bodies and their ability to maintain the public interest and to hold professionals properly to account. A clear indication is required that high-level decisions taken by the organisations governing council are not only free from the domination of vested interests, but also in touch with the everyday views and needs of consumers.



Which? calls for healthcare professionals to be regularly assessed (new provision)

Which? wants MPs to call for:

- > Regular assessment (revalidation) of all healthcare professionals should be introduced to ensure they demonstrate their continuing fitness to practise, in all areas within their current professional practice. This should encompass softer skills, such as communication, to ensure a patient centred approach.
- > The registration and regulation of all health and social care professionals including students, healthcare assistants and support workers.

Reason for action

Currently a health professional may practise within a particular specialism or undertake a procedure without necessarily having undertaken any additional training or having their new expertise judged. For example a doctor, nurse or dentist may regularly administer Botox® to fee paying patients, but may not have had specific training or insurance to cover this type of procedure, thereby leaving patients potentially open to risk.

The introduction of regular assessment or revalidation will make sure that all professionals maintain appropriate standards of competence and conduct, keeping their skills up to date throughout their professional career. The process of revalidation is a clear demonstration to patients and the public that an individual healthcare professional retains their continuing fitness to practice. It will also help identify the current areas of specialist practice he or she currently works in to both the patient and the regulator.

Also, from the very beginning anyone involved in the care of patients, even during training and at the most junior level, should be registered with the appropriate statutory body to ensure they are subject to common standards of conduct and regulatory accountability. Student nurses are often involved in providing many aspects of the care needed for a patient in hospital, but not registered with the NMC. Even if there as a student, a hospital ward is a professional environment, and no-one should be exempt from the responsibility to deliver patient-centred healthcare.

Which? is calling for Increased consumer protection when things go wrong (Clause 104)

Which? wants MPs to support:



- > The introduction of a civil standard of proof in any fitness to practise cases, already adopted by some professional regulators, should apply to all regulators.

Reason for action

The civil standard of proof will ensure greater protection for consumers. In some cases, there has been a failure to take disciplinary action because it has not been possible to meet the high evidence standards of the criminal standard of proof, even though there have been significant concerns about the practice of the individual professional. If public protection is to be paramount, then professional regulation must be based on precautionary principles and action taken against healthcare professionals where there is strong evidence that they are unfit to practise.

Currently six of the nine statutory healthcare regulators operate fitness to practise disciplinary hearings on the basis of a civil standard of proof - the balance of probabilities. However, the General Medical Council, the Nursing and Midwifery Council and the General Optical Council are the exceptions to the rule, and operate instead on the basis of a criminal standard of proof - beyond all reasonable doubt.

Consistency is key across all of the statutory regulators to prevent confusion for the public, and to ensure greater consistency in the way that different health professionals involved in a single incident are treated.

The civil standard of proof should also apply in the work of the Office of Health Professions Adjudicator (Clause 91-104).

Other issues

Council for Healthcare Regulatory Excellence (Clauses 105-109)

Which? welcomes changes to strengthen the powers and functions of the Council for Healthcare Regulatory Excellence (CHRE). We particularly welcome:

- > The explicit obligation on the CHRE to promote the health, safety and well being of patients and other members of the public (Clause 105).
- > The explicit duty on the CHRE to consult and inform the public (Clause 108).

However, Which? is concerned about the proposed composition of the CHRE Council. The Bill needs to ensure that Non Executive Directors are not registered health professionals or formerly registered health professionals, and appointment by the Privy Council to the CHRE Council must be based on



competencies, with a transparent appointment process that is based on open competition and assessment.

The Office of the Health Professions Adjudicator (Clauses 91-102 and Schedule 6)

The duty in Clauses 100-101 to inform and consult the public is welcome; however the scope of the Adjudicator should apply to all health professionals, not just to doctors and opticians. Clarity is also needed about who can be a non executive director, with an assurance that the definition in Schedule 6 does not solely include a registered or formerly registered healthcare professional.

About Which?

Which? is the largest consumer organisation in Europe with over a million members, and works on behalf of all consumers to make them as powerful as the organisations they come up against in their daily lives. We have a long history of campaigning on health issues, and have recently been calling for a safe and responsible cosmetic treatments industry, and campaigning to improve the patient experience in hospital.

Our approach to all health policy and campaigns is framed around the following principles:

A patient centred NHS

Patient and public involvement in decision making

Public accountability

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ⁱ Which? Magazine, August 2007

ⁱⁱ Which? interviewed 1000 patients online using GFK Healthcare's consumer panel during August 2007. All respondents to the survey had spent at least one night in hospital in the last 12 months. Which? found that almost half (49 per cent) were unhappy with an aspect of their experience - such as the food, cleanliness, organisation of care - but fewer than half (48 per cent) of these spoke out.

ⁱⁱⁱ Which? interviewed 250 members of hospital staff using GFK Healthcare's panel including doctors (mixed specialities), nurses, caterers, porters and receptionists during August and September 2007. Almost all (99 per cent) said they would like to hear about their patients' concerns.