HFMA briefing
July 2021

Summary of the Health and Care Bill

Background

The *Health and Care Bill*[1] (the bill) was given its first reading in Parliament on 6 July 2021. Once the bill is enacted, it will bring into effect the proposals set out in the white paper[2] *Working together to improve health and social care for all*.

The bill was published with explanatory notes[3] prepared by the Department of Health and Social Care (DHSC) to help inform debate on the bill.

This briefing summarises the key parts of the bill focusing on those areas that will impact on HFMA members. The bill and explanatory notes should be referred to for the full detail.

Integrated care board

Establishment and function

[1] UK Parliament, *Health and Care Bill*, July 2021
[2] DHSC, *Working together to improve health and social care for all*, February 2021
[3] UK Parliament, *Health and Care Bill explanatory notes*, July 2021

The bill allows the establishment of integrated care boards (ICBs) and the abolition of CCGs. An ICB will be a body corporate.

Each area of England will be covered by one ICB – there is no requirement for ICBs to be co-terminus with local authorities. To establish ICBs, NHS England must publish a list of initial areas that will be covered by each ICB. NHS England will be required to publish rules for determining the group of people for whom each ICB has core responsibility.

ICBs will be established by an order made by NHS England. Property, rights and liabilities will be transferred from CCGs to ICBs or NHS England in accordance with a transfer scheme. The schemes will transfer everything either to a single ICB where the areas both bodies cover are the same or to one or more ICBs where the areas do not coincide. Staff will transfer in accordance with TUPE regulations. ICBs will be able to employ staff, their remuneration and terms and conditions are to be determined by the ICB.

The ICB's function will be to arrange for the 'provision of services for the purpose of the health service in England'. This means commissioning health services, including primary care services, for the area that the ICB covers unless those services are commissioned by NHS England (see below in relation to specialised services). NHS England will be able to delegate some of its functions to ICBs.

Governance

Each ICB will be governed by a constitution. The constitution of each new ICB will be proposed by the CCGs covered by the initial area.

Each ICB will consist of:

- a chair – appointed by NHS England with the approval of the Secretary of State for Health and Social Care (the secretary of state)
- a chief executive – appointed by the chair with the approval of NHS England
- at least three other members – referred to as ordinary members. The appointment of ordinary members will be set out in the constitution but must be approved by the chair. Ordinary members must include:
    - one member jointly nominated by the NHS providers that provide serves in the ICB's area
    - one member jointly nominated by those who provide primary medical services in the ICB's area
    - one member jointly nominated by the local authorities whose areas coincide with, or include all or part of, the ICBs area.

The constitution will set out how members are appointed and what the terms of their appointment will be, including remuneration or allowances for the chair and ordinary members.

The constitution will also set out how the ICB will discharge its functions including what committees and sub-committees the ICB will have. ICBs will be required to maintain a register of interests.

Members of the public will be able to attend meetings of the ICB.

NHS England will conduct a performance assessment of each ICB each financial year of how well the ICB has discharged its functions.

The bill sets out a failure regime for ICBs.

Financial and other duties

All ICBs will have a duty to exercise its functions effectively, efficiently and economically. The general duties of an ICB will include improving the quality of services, reducing inequalities, promote patient involvement and patient choice, promote innovation, research, education and training.

ICBs will be able to enter into income generation arrangements as long as they do not interfere with its other functions. They will also be able to make grant payments to NHS trusts or NHS foundation trusts and grants or loans to voluntary bodies.

At the start of each year, the ICB and its partner NHS trusts and NHS foundation trusts must prepare:

- a forward plan setting out how they propose to exercise their functions in the next five years
- a plan setting out their planned capital resource use. The period covered by that plan will be directed by the Secretary of State. NHS England may set out in a direction a description of resources which must, or must not, be treated as capital and specifying the uses of capital resources which must, or must not, be taken into account in the plan.

Both plans must be shared with the integrated care partnership for the area, each health and wellbeing board established by a local authority that covers some or all of the ICB's area and NHS England. The forward plan must be subject to consultation with the people that the ICB is responsible for.

ICBs will have to contain expenditure within the limits directed by NHS England. NHS England may also make directions about ICBs' management or use of financial or other resources.

NHS England may also set joint financial objectives for ICBs and their partner NHS trusts and NHS foundation trusts. ICBs and partner NHS trusts and NHS foundation trusts must exercise their functions with a view to ensuring that limits specified by a direction by NHS England are not exceeded.

It would seem that NHS trusts or NHS foundation trusts may be able to be members of more than one ICB as the bill makes allowances for capital or revenue resources to be apportioned for the purposes of assessing performance against financial targets. However, this may be subject to direction or guidance from NHS England. The explanatory notes state that this part of the bill may be enacted later once ICBs are more established.

Each ICB will prepare an annual report that will include disclosures specified in the bill. It will also prepare annual accounts as directed by NHS England. These accounts will be audited by local auditors in accordance with the *Local Audit and Accountability Act 2014*.

For VAT purposes, ICBs will fall under s41 of the VAT Act 1994.

Integrated care partnerships

An integrated care partnership (ICP) must be established as a joint committee of every ICB with those local authorities that fall wholly or in part in the area covered by the ICB. The ICP will be made up of:

- one member appointed by the ICB
- one member appointed by each of the responsible local authorities
- any members appointed by the ICP.

The ICP will determine its own procedures including its quorum.

The ICP must be given the local authorities' joint strategic needs assessment. The ICP will prepare an integrated care strategy that sets out how the assessed needs of the area are to be met by the exercise of the functions of the ICB, NHS England and local authorities. This strategy must consider the extent to which those needs could be met more effectively by making pooled budget arrangements under s75 of the NHS Act 2006.

NHS England

NHS England will be officially called NHS England (currently its legal name is the NHS Commissioning Board).

Monitor and the Trust Development Authority (currently operating as the NHS Improvement part of NHS England and NHS Improvement) will cease to exist and their functions will be transferred to NHS England. Arrangements will be put in place to manage conflicts of interest where the merger of the three previous entities create them.

The Secretary of State will determine which specialised services should be commissioned by NHS England. The Secretary of State may also give NHS England directions as to the exercise of any of its functions.

The NHS England mandate will continue to be published but it can be published at any time and updated at any time – it will no longer be an annual mandate set ahead of the financial year. As a result, it will not include financial limits and NHS England will not be required to revise its business plan if the mandate is amended part way through the year. NHS England's annual report will describe the extent to which the objectives in the mandate have been met in that year.

NHS England will have a new power to provide financial assistance to any person providing healthcare services or exercising functions in relation to healthcare services.

The Secretary of State will be able to direct NHS England that an amount of its allocation is to be used for service integration (known as the better care fund). NHS England will then be able to direct that the ICBs use a designated amount of their allocation for service integration.

NHS England will have to ensure that the expenditure incurred by itself and the ICBs does not exceed the allocation for that year.

NHS England will also have to ensure that total capital resource and total revenue resource incurred by NHS England, ICBs, NHS trusts and NHS foundation trusts (excluding resource transferred between them) do not exceed the limits specified by the Secretary of State.

NHS trusts and NHS foundation trusts

NHS England will be required to prepare a consolidated set of provider accounts – the form and content of the accounts will be subject to direction by the Secretary of State. The consolidated accounts will be audited by the National Audit Office (NAO) and laid before Parliament.

NHS trusts

Section 179 of the Health and Social Care Act 2012 that was never enacted but allowed for the abolition of NHS trusts will be repealed. NHS providers will continue to be a mix of NHS trusts and NHS foundation trusts.

NHS trusts will have licences in the same way that NHS foundation trusts currently do. These will be automatically granted when the bill is enacted.

NHS England will have oversight of NHS trusts as well as providing them with support.

NHS trusts will continue to be required to break even year on year but will also have to meet financial objectives set by NHS England. Those objectives can apply to all trusts, a particular NHS trust or a particular group of NHS trusts (for example, all mental health NHS trusts).

NHS foundation trusts

NHS England can make an order imposing a limit on the capital expenditure of an NHS foundation trust. The order will be specific to the body and will be time limited.

The statutory requirements for the preparation of NHS foundation trusts' forward plans and their content have been removed to allow for NHS England to direct the content instead.

NHS foundation trusts will have a new power to work jointly with any other person.

Integration with local authorities

NHS England, ICBs, NHS trusts and NHS foundation trusts will be able to arrange for any of their functions to be exercised by, or jointly with, any other of these bodies as well as a local authority or a combined authority. This power will be subject to regulation.

Where these arrangements are in place, the function may be exercised by a joint committee. One of the bodies or the joint committee will also be able to establish and maintain a pooled fund.

All duties to promote autonomy will be repealed.

The bill will give NHS England the ability to publish guidance for NHS bodies about making joint appointments between NHS commissioners and providers or NHS bodies and local authorities. The explanatory notes say that this will ensure that there is a clear set of criteria for organisations to consider when making joint appointments as NHS bodies are required to have regard to the guidance when making joint appointments.

The Secretary of State may publish guidance in relation to the existing statutory requirements for co-operation between NHS bodies and between NHS bodies and local authorities. These requirements are set out in sections 72 and 82 of the NHS Act 2006 – currently the duty extends to some Welsh NHS bodies but the guidance will not apply to them.

The Community Care (Delayed Discharge) Act 2003 will be repealed.

The Care Quality Commission (CQC) will have a new duty to review local authority adult social care functions.

The Secretary of State's powers to give financial assistance in relation to the provision of health or social care services will be extended to private sector providers of social care services.

Changes affecting all NHS bodies

Procurement and competition

New regulations will set out how health care is to be procured. NHS England may publish guidance about compliance with the requirements imposed by the regulations.

The role of the Competition and Markets Authority (CMA) in the NHS will be much reduced, but NHS England will still be required to provide it with information. NHS trusts and NHS foundation trusts will be exempt from the merger legislation so the CMA will no longer review NHS body mergers.

The 'triple aim'

All NHS bodies (NHS England, ICBs, NHS trusts and NHS foundation trusts) will have a new statutory duty to 'have regard to wider effect of decisions'. When making decisions about the exercise of the body's functions, regard must be taken 'to all likely effects of the decision in relation to':

- the health and well-being of the people of England
- the quality of healthcare services provided to individuals in England
- efficient and sustainable use of resources.

NHS payment scheme

The national tariff will be replaced by the NHS payment scheme. NHS England will publish a document called the NHS payment scheme containing the rules for determining the price that is payable by a commissioner for the provision of health care services or public health functions. Both commissioners and providers must comply with the rules.

The rules may:

- specify prices
- amounts, formulae or other matters on which prices are to be determined
- provide for prices to be determined for or by reference to components or groups of services
- make different provision for different services or provision for some services and not others
- make different provision for the same service depending on different circumstances.

The rules may allow for or require local agreement of prices. NHS England will need to take into account the different costs incurred in providing services and differences between providers in order to ensure a fair level of pay.

Before publishing the rules, NHS England must undertake a consultation process (of at least 28 days) with all ICBs and provider bodies as well as any other person or body that is considered appropriate. There will be an objection process where more than a determined percentage of ICBs or providers object to the proposals.

The payment scheme will be able to be amended during the financial year for which it has effect unless the amendment is so significant as to require a new edition of the scheme.

NHS England will be able to publish a document that specifies how payment will be made for the cost of treatment of individuals outside of their 'home' ICB. The explanatory notes say:

'This provision would, for instance, enable NHS England to specify that, where a person uses an urgent care service commissioned by an integrated care board other than the integrated care board that is ordinarily responsible for that person's healthcare, the cost of that service is charged to the latter integrated care board. It could, for instance, decide that integrated care boards should be left to agree mutual arrangements for sharing costs where patients from a number of different integrated care boards use the same urgent care service.'

Information

The bill amends the existing powers to publish information standards. Information standards are defined as a standard in relation to publishing information. The Secretary of State and NHS England have powers to publish information standards. The Secretary of State must consult before laying draft regulations before Parliament. Standards must be reviewed from time to time.

The information standards may apply to the Secretary of State, NHS England, bodies that exercise functions in connection with the provision of health services or adult social care in England and any person registered to carry on a regulated activity (these are defined in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014[4] and include personal care as well as the provision of healthcare).

The person publishing the information standard can waive it – wholly, partially, generally or for a specified period of time.

The bill introduces new arrangements relating to the sharing of anonymous information for purposes related to the functions of health or adult social care bodies in England. In these circumstances, information, other than personal information, may be required to be shared with other public bodies whether the functions are being fulfilled by a public or private sector body. The information is only required to be shared if it is already in the form that does not identify an individual or allow an

[4] *The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014*

individual to be identified. There is no requirement to process information into a form where it can be shared.

The bill introduces a new requirement for NHS Digital (officially the Health and Social Care Information Centre) to have regard to the need to promote the effective and efficient planning, development and delivery of health services and of adult social care in England when exercising its functions. The explanatory note says that the effect of this is to place consideration of the benefit to the health and care system at the centre of NHS Digital's duties. The bill also amends NHS Digital's duties to clarify that it may only share information for the purpose connected with the provision of health care or adult social care or the promotion of health.

NHS Digital will be able to collect information from private sector providers of health services subject to the Data Protection Act 2018 and the UK GDPR. Commercially sensitive information is also excluded. The bill introduces enforcement arrangements for these new powers.

The bill inserts a new section to the Medicines and Medical Devices Act 2021 that means new regulations can be made in relation to a system of information in relation to medicines.

There will be a new offence in relation to information disclosure that could result in imprisonment and/or a fine.

Some of the new arrangements relating to information will also apply in the devolved nations.

Health Services Safety Investigations Board (HSSIB)

A new body will be established to investigate incidents that occur in England during the provision of health care services and have, or may have, implications for the safety of patients.

Other changes

There are many other legislative changes introduced by the bill, including:

- the inclusion of carers' and patients' representatives as people who must be consulted by NHS England when exercising its commissioning functions
- the repeal of the current power of the Secretary of State to make regulations about payments by NHS England in respect of quality
- the amendment of the current rules around patient choice to make it a requirement that patients can have choice with respect of the services provided to them
- a new duty for the Secretary of State to report on workforce systems every five years – the report will describe the system in place for assessing and meeting the workforce needs of the health service in England. NHS England and Health Education England (HEE) must assist with the preparation of this report
- the abolition of committees of HEE called local education and training boards
- the ability of the Secretary of State to require NHS bodies to exercise public health functions and stop those bodies from delegating those functions
- the arrangements for the regulation of health care and associated professions will be amended to allow for further changes to be made through secondary legislation. The bill also provides an updated list of the legislation that regulates professions. That list includes a new subsection that healthcare professions may include any group of workers – the explanatory notes indicated that this may include senior managers and leaders
- NHS bodies will be able to appoint medical examiners.

Food and drink and fluoridation

The bill includes new power for the Secretary of State to make regulations relating to food standards in hospitals. These standards may specify:

- nutritional standards that must be met by hospital food
- that certain descriptions of food and drink may not be provided or made available in hospital.

From 1 January 2023, there will be restrictions on the advertising of less healthy food and drink products between 5.30 am and 9.00 pm on television, on-demand programmes and on the internet.

Timeline

Once the bill is enacted, its requirements will come into force on a day specified in regulations other than the sections relating to advertising of less healthy food and drink.

About the HFMA

The Healthcare Financial Management Association (HFMA) is the professional body for finance staff in healthcare. For over 70 years, it has provided independent and objective advice to its members and the wider healthcare community. It is a charitable organisation that promotes best practice and innovation in financial management and governance across the UK health economy through its local and national networks.

The association also analyses and responds to national policy and aims to exert influence in shaping the wider healthcare agenda. It has particular interest in promoting the highest professional standards in financial management and governance and is keen to work with other organisations to promote approaches that really are 'fit for purpose' and effective.

The HFMA offers a range of qualifications in healthcare business and finance at undergraduate and postgraduate level and can provide a route to an MBA in healthcare finance. The qualifications are delivered through HFMA's Academy which was launched in 2017 and has already established strong learner and alumni networks.

HFMA

1 Temple Way, Bristol BS2 0BU

T 0117 929 4789

E info@hfma.org.uk

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HFMA is also a limited company registered in England and Wales, no 5787972. Registered office: 110 Rochester Row, Victoria, London SW1P 1JP

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