

Health and Social Care Bill update

On Monday 13 June, after a ten-week listening exercise, the NHS Future Forum handed its report with its recommendations regarding the reforms to the Government.

The Forum was established on 6 April 2011 as an independent panel to listen to concern from the public and from healthcare professionals and to feedback the response to the Government. It consisted of 45 individuals including frontline clinicians and healthcare managers and representatives and was headed by Professor Steve Field, immediate past Chairman of the Royal College of GPs. Members of the Forum attended over 200 listening events and meetings before drawing up a report listing sixteen recommendations for improving the Government's NHS modernisation plans including:

- scrapping the 2013 deadline and relaxing the pace of the changes;
- restating that the Secretary of State for Health will remain ultimately accountable for the NHS;
- including other healthcare professionals in making local commissioning decisions;
- reducing the emphasis on competition;
- replacing Monitor's duty to promote competition with a duty to focusing on improving patient choice;
- increasing the power of health and wellbeing boards with greater patient involvement;
- forcing all hospitals (even those run privately) and consortia boards to hold their meetings in public and publish their minutes;
- requiring all commissioning bodies to set up 'clinical senates';
- a requirement that the Secretary of State give a 'choice mandate' to the NHSCB setting out the boundaries of choice and competition;
- a new Citizens Panel, as part of HealthWatch England to report to Parliament on how well the mandate has been implemented and patients having a 'Right to Challenge' poor quality services and lack of choice.

As anticipated, the report was quickly followed the next day by the Government's response which accepted the core recommendations, and parts of the Bill are now to be recommitted to the House of Commons for further debate. In total there are to be 160 amendments to the legislation and it is not clear how long these will take to draft or debate. All this will have to happen before the Bill goes to the House of Lords where, despite the Forum recommendations, a rocky ride may still be expected.

Amendments to the Bill will focus on the role of the Secretary of State, clinical commissioning groups, the NHS commissioning board, the role of Monitor, foundation trusts, health and wellbeing boards and HealthWatch.

Of particular importance to GPs is the fact that GP consortia, to be renamed 'clinical commissioning groups' will be augmented with a least one nurse and one hospital consultant who will provide a wider input into clinical commissioning. Additionally the governing bodies of clinical commissioning groups will have lay members and meet in public in order to strengthen accountability. Monitor's core duty will be to protect and promote the interests of patients with new safeguards against cherry-picking, price competition and privatisation.

All commissioning groups will have to be established by April 2013 – there will be no two-tier system - however, where a group is not ready to commission, the NHSCB will commission on behalf of the shadow group.

One key issue which remains to be solved is that of commissioning group boundaries where there is an overlap between areas covered by the group and local authority, and thus the Health and Wellbeing Boards. This could mean GPs in one local authority working together in their clinical commissioning groups with GPs in other local authorities leading to a confusing, tiered approach to decision-making for patients in their 'local community'.

In addition to the significant financial conflict of interest many GPs may have arising from their involvement in private companies working in the NHS, there is also a conflict of interest between GPs' roles as commissioners and providers of services. This is yet another area which remains unclear and needs to be swiftly resolved before GP-led commissioning commences. In responding to the NHS Future Forum recommendations, Andrew Lansley stated earlier this week that consultants would have to come from an area other than the one in which they worked in, in order to avoid the occurrence of a conflict. However, consortiums may have difficulty finding a consultant who has no conflict of interest and it is likely that a consultant from outside the area will possess less knowledge or interest in the local health service meaning that this is a potential danger of losing localism at the expense of fair representation. Furthermore, consultants will be unable to commission where there is an issue as to whether or not it affects their hospital who is also their employer. It will, for example, be very difficult for there to be hospital input in areas where there is only one trust and it also potentially raises problems in densely populated urban areas where consultants may hold posts in various hospitals in adjoining areas.

Apart from the legislative changes noted above, the changes that were underway with SHAs, PCTs will continue as before. The NHSCB will be established by October 2012 to start to authorise commissioning groups but will only take on full responsibilities from April 2013. The choice of Any Qualified Provider arrangements will be phased in gradually from April 2012. There is an expectation that remaining NHS trusts will be authorised as foundation trusts by April 2014 but this may now happen later.

Of particular importance is that there is now to be a "safe and robust" transition for education and training. Details about this are to follow in the autumn.

Needless to say Lockharts continue to follow closely every development that comes forward and will be happy at any stage to talk to members of formed or putative commissioning groups about their structures and formation issues. In the first place please contact Andrew Lockhart-Miramis alm@lockharts.co.uk

~ooOoo~



Andrew Lockhart-Miramis

Andrew Lockhart-Miramis is a Senior Partner and leads the Healthcare Team at Lockharts Solicitors.

Date 23rd June 2011

Disclaimer

The content of this newsletter is only intended as information and should not be considered to be legal advice. Lockharts cannot be held liable for any loss caused by any act or omission as a result of the information in this newsletter.

Lockharts Solicitors
Tavistock House South
Tavistock Square
London WC1H 9LS
Tel: **+44 (0)20 7383 7111**
Fax: **+44 (0)20 7383 7117**
Email: csd@lockharts.co.uk
Web: www.lockharts.co.uk



"Recognised for its comprehensive understanding of the medical sector, the firm impresses clients with thorough partnership agreements for complex matters"



"Headed by Andrew Lockhart-Miramis, Lockharts advises over 1,800 GP practices, plus numerous dental practitioners, healthcare professionals and professional bodies throughout the country. The practice also helps to establish companies and LLPs tailored for the delivery of healthcare services"