

# Independent Community Pharmacist Magazine

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## Pharmacy and the Law

# The Health and Social Care Bill enjoys a "natural break"

**Richard Hough**, a practitioner in pharmacy law, takes a look at the implications of the recently announced pause in proceedings on the Bill giving effect to the government's planned NHS reforms



The government's attempts to modernise and reform the National Health Service in England have run into trouble. On April 4, the Secretary of State for Health, Andrew Lansley, made a statement to the House of Commons regarding what he described as a "natural break" in the parliamentary progress of the Health and Social Care Bill 2011 through Parliament. In what many will view as a humiliating back-track, he stated that the purpose of the break was to "pause, listen and engage with all those who want the NHS to succeed". The Bill was placed before Parliament on January 19, 2011, after a 12 week consultation, during which one would assume that the government listened and engaged with the same interested parties to whom it now intends to listen. In fact, the initial consultation yielded more than 6,000 responses and resulted in a Bill, which, running to 367 pages, is the largest piece of health legislation since the creation of the NHS.

The Bill's five main themes are to: strengthen commissioning of NHS services; increase democratic accountability; liberate the provision of NHS services; strengthen NHS services; and reform health and care administrative bodies. Its key proposals include measures to:

1. Give GP commissioning consortia the task of commissioning the hospital and community services they consider appropriate for their patients. (The consortia would also have control over a budget of £80bn to pay for the commissioned services and would be accountable to the NHS Commissioning Board, which would be responsible for commissioning community pharmacy services and for setting national contracts and payment structures.)

2. Make the NHS more accountable to patients and the public by establishing HealthWatch England, a new independent body that can investigate patients' complaints and scrutinise the performance of local health providers.

3. Compel all hospitals in England to become foundation trust hospitals, and

therefore more independent of governmental control, which would allow them to increase their funding through increased provision of private healthcare.

4. Improve public health by establishing Public Health England, a new body to improve public health and reduce health inequalities.

5. Reduce waste, inefficiency and excess NHS bureaucracy by abolishing all of the 151 primary care trusts and the 10 strategic health authorities by 2011, cutting NHS management costs in half and reducing the number of arms-length bodies (ie, quangos).

**“Commissioning consortia will survive the pause; pharmacists should continue to engage with the pathfinder consortia”**

The government has argued that such changes to the NHS are necessary for its survival and claim that the radical changes it is seeking to implement build upon initiatives introduced by the previous Labour government. Undoubtedly, if the changes are implemented, patient choice will increase, the private sector will become an increasing part of the NHS and competition amongst providers will increase as doctors would be allowed to purchase care from "any willing provider" or, as the term has now been re-phrased, "any qualified provider".

### Laudable aims

The principles of putting patients at the heart of decision-making, giving health care providers greater autonomy, integrating health and social care and improving the nation's health are all laudable aims and many people will support them. However, since the Bill's

publication there has been disquiet, not only from those whose political ideology would perceive the Bill as a vehicle for privatisation of the NHS, but also with many voicing concerns that GPs may be ill-equipped with the skills and experience to handle large budgets. Others claim that substantial conflicts of interest could arise if GPs benefited from the decisions they take when commissioning services.

Opposition to the Bill has been building for many months, with doctors, nurses, administrators and politicians all expressing their concerns. One of the main concerns is that the government is trying to do too much too soon without proper testing of the proposed changes or debates and that GPs will not be ready to assume commissioning and budget responsibility by 2013.

### Private firms

Another concern is that the Bill would allow private health firms to get a stronger foothold in the NHS, which, in turn, could undermine local NHS hospitals if the private providers are allowed to treat only those patients who they consider to be the most profitable. The commissioning consortia will be separate legal entities, and it is feared that they will not be subject to the same degree of scrutiny and accountability as PCTs. This lack of transparency and accountability has led to calls for increased measures to be introduced to hold the commissioning consortia to account.

According to Sir David Nicholson, the NHS chief executive, who recently wrote to GP pathfinders and NHS managers across England, the five key developments which were due to take place in April, 2012, are now likely to take place no earlier than July, 2012. The areas which are likely to be delayed by at least three months as a result of the "natural break" include

1. The abolition of strategic health authorities
2. The NHS Commissioning Board's assumption of full statutory powers
3. Monitor assuming the first phase of its new powers as the independent economic regulator for all health and adult social care in England
4. The establishment of HealthWatch England (a committee of the Care Quality Commission)
5. The assumption of full powers by the NHS Trust Development authority (which will provide central support to enable remaining NHS trusts to become foundation trusts), Health Education England (which will provide

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sector-wide leadership for workforce planning, education and training), and Public Health England (which will lead health protection and set the overall outcomes framework for public health)

It is believed, however, that the pause in the progress of the Bill will not delay the decommissioning of responsibility from PCTs to GP consortia, which still remains on track to take place in April, 2013.

It is also understood that the break in the progress of the Bill will allow for the widening of consortia to include other stakeholders and health professionals, including pharmacists, and other experts from beyond the GP community including those practising in secondary care. In his statement to the Commons, Mr Lansley stressed the importance of "multi-professional working".

The Bill is too important to the coalition government to be prematurely consigned in its entirety to the legislative scrapheap and it is likely that the fundamental policy principles will remain in any future version of the Bill. Commissioning consortia will survive the pause and pharmacists should continue to engage with the pathfinder consortia. It is undeniably an interesting time for the Bill and it remains to be seen how the effects of political pressure will impact on the key pillars of NHS reform around which the government had hoped to build.

## Control of Entry

The delay in the Bill is not the only legislation affecting community pharmacists. The draft regulations governing the control of entry system based on pharmaceutical needs assessments (PNAs) have yet to be laid before Parliament, despite a widespread understanding that they would come into force on April 1, 2011. There is, therefore, still unsatisfactory uncertainty surrounding whether the exemptions to the control of entry arrangements, such as those for 100-hour pharmacies, will be abolished and whether control of entry will be based on PNAs. The Department of Health has recently issued a statement in which it stated that it was "considering carefully, the question of whether, and when, we should move to a system of NHS market entry aligned to local assessments of pharmaceutical need". The delay to the introduction of this legislation and the ensuing uncertainty it causes amongst contractors is wholly unwelcome.

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