

Health and Social Care Bill Scrutiny Committee

Submission from the Chartered Society of Physiotherapy (CSP)

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Introduction

This submission sets out the CSP's concerns at the revised proposals and new amendments to the Health and Social Care Bill ('the Bill') as it is re-committed in part to the public bill committee following the Government's response to the NHS Future Forum report. The CSP notes that the latest Government amendments to the Bill were only published three days before the oral evidence sessions of the Committee began. This has given little time for professional organisations and other stakeholders to consider the implications of these proposed amendments.

The CSP's concerns focus on four key areas: the role of the Secretary of State, competition, commissioning (including workforce planning), and the role of physiotherapists and other AHPs in decision-making and commissioning.

Background

The CSP is the professional, educational and trade union body for the UK's 50,000 Chartered physiotherapists, physiotherapy students and support workers.

Physiotherapists offer clinically effective and cost-efficient services for patients, across healthcare sectors and along the whole patient pathway, in the management of long term conditions, rehabilitation, return to work, mental health and public health. Physiotherapy enables people to move and function as well as they can, maximising quality of life, physical and mental health and well-being. Physiotherapists help keep people out of hospital and prevent re-admissions, and they promote the health benefits of regular physical activity. Physiotherapists use manual therapy, therapeutic exercise and rehabilitative approaches to restore, maintain and improve movement and activity, keeping people mobile, active and independent. Physiotherapy supports people across a wide range of areas including musculoskeletal disorders; many long-term conditions, such as stroke, MS, COPD, and Parkinson's Disease; cardiac and respiratory rehabilitation; children's disabilities; cancer; women's health; continence; obesity management; mental health; and falls prevention. Physiotherapy is founded on a strong evidence base, an evolving scope of practice, and clinical leadership.

Part 1, Clause 1.

The role of the Secretary of State, and maintaining NHS services 'free at the point of need'

1. The CSP notes that the government amendments do add a new clause giving the Secretary of State responsibility to 'promote a comprehensive health service'. However the wording of the 2006 National Health Service Act is still changed from the Secretary of State having to 'provide or secure the provision of services' to 'act with a view to securing the provision of services for the purposes of the health service in accordance with this Act'. Physiotherapists are concerned that Clause 9 of the Bill remains unchanged so that consortia not the Secretary of State must arrange for the provision of health services. Clause 10 says consortia must arrange for the provision of services 'it considers appropriate'. There is still no duty of comprehensiveness on consortia. This puts the delivery of health services increasingly distant from Parliamentary scrutiny.

2. The CSP is concerned that the proposed Health and Social Care Bill as it currently stands could undermine the comprehensive and free nature of NHS services. The CSP believes that it increases the likelihood of a 'postcode lottery of provision' with different consortia providing different services and different quality services. There is a real danger that decisions will be made on cost and not on clinical need. Open 'rationing' is already beginning to take place – for example some orthopaedic procedures and some physiotherapy services are already being cut despite the coalition Government pledge to protect frontline services.

3. The CSP believes that the Bill leaves the door open to charges being introduced for NHS services at a point in the future. As the Bill currently stands, although NHS services will be free at the point of use they clearly will not be free at the point of need. **The CSP would therefore like to see the principle that the NHS remain 'free at the point of need' enshrined in the legislation** and an explicit commitment built in to ensure that all services currently provided by and funded by the NHS will remain free of charge to patients.

Part 3 – Competition

4. The CSP remains seriously concerned that the Health and Social Care Bill - even when amended as the Government proposes - will drive increased open market competition in the NHS. The CSP believes the Bill - together with the expansion of the 'Any Qualified Provider' policy - will actually serve to strengthen the role of competition in the NHS. Physiotherapists are very concerned about the unintended negative consequences this could have on patient care.

5. The Bill – even with the current proposed amendments - will lead to the NHS becoming an open market for health care providers over time, starting with community services, and then moving on to secondary care. This will inevitably fragment pathways of care and could in fact limit the 'choices' for many older or vulnerable patients who may be unable to navigate a more complex system with little or no robust information about the track record or quality of new private providers. The Government has not conducted an analysis of the impact of this change in direction on the NHS. There is no evidence that this would be of greater benefit to patients – and significant evidence that it could have a negative impact on the quality of patient services.

5. We agree that the duty on Monitor to promote competition should be completely removed. The CSP is concerned that Monitor's remit still remains primarily as an economic regulator - contrary to the recommendation of the Future Forum. Monitor is still going to have concurrent powers under the Competition Act with the Office of Fair Trading. The CSP understands that this implies that there will be an extension of the applicability of EU competition law to providers of NHS services. Although Monitor's responsibility for 'promoting competition' has been removed, repeated references to 'preventing anti-competitive behaviour' have been added in. At present the Government's moves to balance competition with integration do not appear to be truly balanced and the CSP believes there is a disproportionate emphasis on competition. Monitor, the NHS Commissioning Board and consortia must secure that health services are 'provided in an integrated way' but there is no definition of 'integrated' and the CSP can see nothing added to the Bill on 'improving co-operation or collaboration'. The Future Forum recommended that Monitor should promote collaboration and integration as well as choice. **The CSP would like to see the Bill strengthened to place a clear duty on Monitor to promote integration when it is simply 'in the interests of patients'** and not only when it would 'reduce inequalities or improve quality'. There are clear benefits to securing better integration within healthcare, for example of all health services along the patient pathway as well as improving the integration between health and social care services. Physiotherapists can play an important role in delivering this.

6. The CSP believes that the Government's proposed changes to 'prevent competition for its own sake', will not in effect be adequate when the Government's clear intention is to bring in a far greater number of providers with the expansion of the 'Any Qualified Provider' policy from April 2012. The CSP is aware of at least one situation where the introduction of such a model has already increased the number of providers of musculoskeletal services for example to more than 15. The CSP believes that this must be confusing for patients and could create a constant 'churn' of providers who cannot remain in business without firm contracts for fixed periods of time or any certainty of a minimum volume of work. We believe this is a recipe for chronic instability in the delivery of health care.

7. There are a limited number of physiotherapy services already operating under an 'Any Qualified Provider' model in the UK As a result of the previous "Practice Based Commissioning" pilots. Physiotherapists working in those areas have contacted us with concerns about their own experiences of restrictions on or rationing of treatments (built into contracts) which are affecting the quality of their service and impacting on patient outcomes. This will also lead to greater fragmentation of patient care pathways with more confusion and less choice for patients (especially if patients' ability to self refer to physiotherapy is lost); less sharing of good practice and less effective workforce planning.

8. Furthermore, we do not believe the proposed changes to the Bill will completely prevent price competition. The CSP has deep concerns that price competition could easily result from the new competitive system proposed for the NHS, when combined with the references in the latest NHS Operating Framework to the 'opportunity for providers to offer services to commissioners at less than the published mandatory tariff price'.

9. The Government's response to the Future Forum stated that it would require commissioners to follow 'best value principles' when tendering for non-tariff services. There is no reflection of this promise in the Government's proposed amendments to the Bill. **The CSP would like to see a specific amendment to the Bill introduced to secure**

a duty on commissioning consortia to follow best value principles when commissioning or tendering for non-tariff services.

10. Furthermore the **CSP would like to see a duty on commissioning consortia to only introduce new providers or greater competition where there is evidence of a clinical need to do so** and evidence that increased competition will increase quality.

11. The CSP would also like an amendment introduced to actively prevent commissioning consortia from applying price criteria when commissioning new or existing services.

12. The Government has stated that 'Any Qualified Provider' models will only be implemented in areas where there is a national or local tariff; however, where there is a local tariff different prices could be set in different areas. We are concerned that over time, as commissioners from different areas talk to each other, this will result in a race to the bottom on price - the exact opposite of the Government's stated intention to improve quality and consistency of services for patients. This is of particular concern to us because there is currently no national tariff for physiotherapy services.

13. The CSP is concerned that the expansion of 'Any Qualified Provider' will also encourage a 'race to the bottom' on workforce terms and conditions of employment. **The CSP would like to see amendments to the Bill to ensure that decent and fair workforce standards as enshrined in the 'NHS staff passport' are incorporated into the contracts offered by all providers of NHS funded services.** The qualification process for 'Any Qualified Provider' must take account of the ability of a provider to support training, development and career pathways for the future workforce (such as providing student clinical placements) as well as the current workforce. Commissioners should be required to put in place arrangements for monitoring this as part of the overall performance management process.

Part 1 - Clinical advice and Commissioning

14. The CSP notes that the benefits of wider multi professional input into commissioning of services were recognised by both the Future Forum and the Government in its response to the Future Forum. However, the CSP is concerned that the Bill is still unclear and lacking in detail on exactly how a wide range of clinicians will input to decision making at **local** level. We believe that clinicians who know their local communities/populations and know their local health and social care services should be actively involved and represented on clinical senates and clinical commissioning consortia.

15. The CSP would like to see greater clarity about the range of clinicians to be represented on clinical senates and commissioning consortia. We believe the Bill needs to clearly set out the level of accountability between clinical senates and clinical commissioning consortia.

16. The CSP would also like to see stronger safeguards to avoid a potential conflict of interest from GPs in clinical commissioning groups being both providers and commissioners of services.

17. The CSP notes that the Future Forum report proposed that an explicit duty be set for the Secretary of State to 'maintain a system for professional education and training as part the comprehensive health service'. The CSP is concerned that the Bill is insufficiently specific on maintaining and planning for an adequate health workforce for the future. Local

level workforce planning and skills networks could lead to boom and bust in the supply of qualified professionals – like physiotherapists – in the future. A healthcare workforce for the future will need to be educated and trained – and all providers of services, whether they are NHS, independent or private providers – must contribute to the training of the future workforce. At present a lack of information about the non NHS workforce has been a major obstacle to developing comprehensive and effective workforce planning. Workforce planning should take account of needs across the whole health and wellbeing economy. The CSP believes that regional level co-ordination and national oversight must be maintained, and that this should be made explicit in the Bill. Use of the ‘Electronic staff record’ should include all staff employed by NHS employing organisations, and non NHS employers should be obliged to provide equivalent data.

Part 1 and Part 5 – The voice of physiotherapists and AHPs in clinical commissioning decisions.

18. While the CSP has welcomed the recent amended proposals to open up the commissioning process to a wider range of clinicians, we are disappointed that under the new proposals there will not be a mandatory voice for the Allied Health Professions (AHPs) on the clinical commissioning groups and other statutory bodies such as the NHS Commissioning Board.

19. Physiotherapists work across sectors and care pathways, providing the ‘bridge’ between hospital, primary and community care; and alongside their AHP colleagues, physiotherapists are central to the delivery of integrated care and keeping patients out of hospital, particularly through rehabilitation.

20. We believe that AHPs have a critical role in the commissioning and design of health and social care services. **The CSP would urge you to consider amending the Bill to ensure that AHPs have a clear voice on the NHS Commissioning Board, the Clinical Commissioning Groups, Clinical Senates and the Health and Wellbeing Boards.**

21. Physiotherapists could also make a key contribution to the drawing up of ‘Joint Health and Wellbeing Strategies’ and Joint Strategic Needs Assessments’ as physiotherapy makes a key contribution to public health as well as to the management and treatment of a wide range of health conditions.

22. The recent NHS staff tracking survey, carried out by the COI, found that almost half of NHS staff (49%) feel that the care the NHS delivers to patients will get worse over the next few years; and in a survey of CSP members in March 2011, 89% either agreed or strongly agreed that ‘patient care will suffer as a result of these changes to the NHS’.

23. We are keen to ensure that the appropriate safeguards are in place to protect against the unintended negative consequences of the NHS reforms on patient care.

The CSP be pleased to provide additional information or evidence to support our concerns to members of the public bill committee during this stage of scrutiny.



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For further information on anything contained in this submission or any aspect of The Chartered Society of Physiotherapy's work, please contact:

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