Health and Social Care Act 2012: an overview

The Health and Social Care Bill was introduced to Parliament on 19 January 2011 and received Royal Assent on 27 March 2012.

It was one of the most contentious pieces of legislation of this parliamentary session and aroused vehement opposition from professional organisations as it made its way through the legislative process due to the extensive reworking of the structure of the National Health Service in its 63 year history.

Summary of the Act

The Health and Social Care Act (the Act) is divided into twelve parts and is only relevant to England:

1. The health service in England including duties of the secretary of state for health and new commissioning arrangements.
2. Further provisions about public health including direction on the co-operation of bodies with functions relating to public health.
3. Regulation of health and adult social care services (specifically Monitor), competition issues, licensing, pricing, health special administration, and financial assistance in special administration cases.
4. NHS foundation trusts and NHS trusts.
5. Public involvement and local government relating to Healthwatch at both a national (England) and local level.
6. Primary care services.
7. Regulation of health and social care workers.
8. The National Institute for Health and Care Excellence (NICE), including a subtle name change from the National Institute for Health and Clinical Excellence.
9. Information relating to health and adult social care services.
10. Abolition of certain public bodies, for example, the Appointments Commission, the National Patient Safety Agency, and the Alcohol Education and Research Council.
11. Miscellaneous, including information relating to births and deaths, duties to cooperate, and supervised community treatment under the Mental Health Act 1983.
12. Final provisions, including financial provisions and commencement of a consultation with Scottish Ministers.

The Act is the most fundamental reorganisation of health and social care since the inception of the NHS. Below is a summary of the key stakeholders involved in the provision of healthcare in England.

Monitor

Monitor is the economic regulator of the NHS and all NHS funded services. Created under Part 3 of the Act, the organisation currently known as the Independent Regulator of NHS Foundation Trusts will continue to exist, but will be known as Monitor. The regulator’s main duty will be to ensure that NHS services are economic, efficient and effective - as well as maintaining or improving the quality of services.

Monitor’s role also includes reducing inequalities in both accessing and the outcomes of accessing NHS services.

All service providers within the NHS will be required to operate under licence provided by Monitor, unless specifically exempt. Exemption will not be given for the purpose of promoting competition. Monitor will work with the Office of Fair Trading (OFT) to address anti-competitive behaviour and will work with the NHS Commissioning Board to set out guidance on choice and competition.

Status of the Care Quality Commission

The already-established Care Quality Commission (CQC) is distinct from Monitor in that it focuses on quality, and works to ensure the maintenance of standards in health and social care practices. Following changes made through the Act, the CQC will licence NHS and adult social care providers with a view to keeping check on safety and quality levels.

Inspections will be carried out by the CQC in response to information that it receives through clinical commissioning groups (CCGs), Healthwatch England, and local Healthwatch. Healthwatch England is being established as a statutory committee of the CQC to act as a national consumer champion in relation to health and social care services. Healthwatch England will provide leadership and support to local Healthwatch whose role is to gather local views on services.

Foundation Trusts

The Act abolishes NHS trusts (Part 4, Section 179), which were established under the National Health Service Act 2006. In the summer of 2012, the NHS Trust Development Authority will be established (not included in the Act) whose role will be to provide oversight of NHS trusts following the abolition of strategic health authorities.
The Department of Health believes a majority of NHS trusts will have achieved foundation trust status by 2014.

Commissioning structures

One of the most contentious areas of the Act is the changes the Act makes to NHS commissioning structures.

Part 1 of the Act establishes the NHS Commissioning Board (Section 9) with the mandate of “arranging for the provision of services for the purposes of the health service in England”. Further provisions relating to the Board are contained within Section 23, which states at the start of each financial year, the health secretary must publish a document known as ‘the mandate’ within which the Board’s objectives are set. In setting the objectives the health secretary must consult with the Board itself, the Healthwatch England committee of the Care Quality Commission, and other appropriate persons.

The general duties of the Board include:

- Promoting the NHS constitution
- Improving the quality of services
- Promoting autonomy
- Reducing inequalities
- Promoting the involvement of each patient in decisions relating to the prevention or diagnosis of illness or their care
- Enabling patient choice in the services provided to them
- Promoting innovation in the provision of health services including through the provision of prizes at any stage of innovation, including research
- Promoting education and training
- Promoting the integration of health services on the basis that this will improve quality of services, and reduce inequalities in access and outcome of service access
- Regarding the impact of services in certain areas, namely commissioning decisions relating to border areas of Wales and Scotland
- Regarding variation in the provision of health services between the private and public sector

Section 10 establishes clinical commissioning groups (CCGs) which will be responsible for commissioning local services. The CCGs will hold budgets and be able to reinvest any savings they generate in patient care. The duties of CCGs reflect those of the NHS Commissioning Board.

CCGs will each have a governing body which must include ‘health care professionals of a prescribed description’, lay persons, and ‘individuals of any other description which is prescribed’. Strategic health authorities and Primary Care Trusts are abolished.

Section 14 of the Act details the ability of CCGs to make arrangements to work together. Such arrangements allow for the pooling of funds between commissioning groups and for payments to be made through the pooled funds for services.

CCGs must produce a plan for each financial year, which is open to comment from a relevant Health and Wellbeing Board to ensure that the CCG give due regard to each joint health and wellbeing strategy published by the Health and Wellbeing Board. CCGs must also publish annual reports detailing how it has discharged its functions in the previous financial year.

What are the next steps?

Before summer recess (17 July 2012):

- Government to lay regulations through secondary legislation establishing clinical commissioning groups (CCGs) and Healthwatch England.

Summer 2012:

- Government to consult on the mandate to the Commissioning Board, licensing under Part 3 of the Act (regulation of health and adult social care services), health special administration, and procedures for introducing fluoridation schemes.

October 2012:

- The NHS Commissioning Board and Healthwatch England operational.

Autumn 2012:

- Government to lay regulations through secondary legislation on the responsibilities of the Commissioning Board, and the public health functions of local authorities and local Healthwatch.
- Government to consult on the NHS Constitution.

Early 2013:

- Government to lay regulations through secondary legislation to implement Part 3 of the Act (Regulation of health and adult social care services).

1 April 2013:

- NHS Commissioning Board to take on a broad range of its functions.
Clinical commissioning groups (CCGs) to begin commissioning services.

Local Healthwatch established.

Strategic health authorities (SHAs) and primary care trusts (PCTs) abolished.

Public Health England established replacing the Health Protection Agency and National Treatment Agency for Drugs & Alcohol (both abolished).

Download an overview of the health and social care structures following the Act (PDF, 216KB)