

Parliamentary Briefing: Coronavirus Bill, House of Commons, Second Reading, 23 March 2020

NHS Providers is the membership organisation for the NHS hospital, mental health, community and ambulance services that treat patients and service users in the NHS. We help those NHS trusts and foundation trusts to deliver high-quality, patient-focused care by enabling them to learn from each other, acting as their public voice and helping shape the system in which they operate.

NHS Providers has all trusts in voluntary membership, collectively accounting for £84bn of annual expenditure and employing more than one million staff.

Overview of the Coronavirus Bill

Key points

- Coronavirus has presented the NHS with its biggest challenge in a generation, putting the system under an unprecedented level of strain at a time when demand for health and care services was already at an all time high. However while the scale of the challenge currently facing the NHS cannot be underestimated, the NHS is well placed to respond to the task ahead. The NHS has well-rehearsed emergency and business continuity plans in place, systems for prioritising how and where patients are treated during busy periods, and a national health service with highly skilled and well trained staff.
- We welcome the decisive measures outlined in the Coronavirus Bill, which will support the NHS as the pandemic progresses. We particularly welcome provisions which seek to support the staffing of the health and care workforce, ease the burden on frontline staff, both within the NHS and beyond, and support the NHS to work with local authority partners to help release capacity within the system.
- We are pleased that the government has listened to concerns from trust leaders that there needs to be a clear and quick path out of hospital for those patients who are medically fit. We therefore particularly welcome measures and funding to support the capacity of social care and other services in the community. In conjunction with the announcement that elective operations will be postponed from April 15th wherever possible, this could free up beds, space and staff so that care and treatment for those with the virus can be prioritised. This will help put the NHS in the best possible situation to handle an increase in demand due to the virus.

Key provisions in the Coronavirus Bill

The bill aims to achieve the following:

- Increase the number of health and social care workers available
- Ease the burden on frontline staff, both within the NHS and beyond
- Delay and slow the virus
- Manage the deceased with respect and dignity

Increasing the health and social care workforce

Emergency professional registration

Clause 2: Emergency registration of nurses and other health and care professionals

The bill will grant two healthcare regulators – the Nursing and Midwifery Council (NMC), and the Health and Care Professions Council (HCPC) – the ability to “carry out emergency regulation” of any professional under the purview by these bodies. The General Medical Council (GMC) already has similar powers, thereby removing the need to include a provision for emergency regulation of doctors in this bill.

Regulators will be able to use these powers as they see fit, as the bill provides a wide scope for the NMC and HCPC to apply emergency registration to people who “may reasonably be considered fit, proper and suitably experienced persons to be registered as members of the profession in question.”

These provisions are included to enable the NMC and HCPC to do two things:

- 1 Automatically re-register professionals who have recently retired or had their registration lapsed
- 2 Allow early registration of final year healthcare students

Impact of the provisions

These provisions are designed to increase the capacity of the health service to tackle the COVID-19 outbreak. The government has estimated that 10,600 non-medical professionals could return to the NHS, based on the assumption that 20% of NMC and HCPC registered professionals who have recently retired (in the past three years), will take up the offer to do so. There are no estimates provided for returning doctors, but the GMC would be drawing from a pool of 15,000 recently retired medics.

There are 28,100 final year students working to become nurses, midwives, paramedics and social workers, with a hope all would be interested in early registration.

The government admits that “the full costs and benefits for this option are difficult to quantify as there is currently no good estimate of how many professionals who are registered using these powers will carry through to deliver services and for how long.” However the introduction of this legislation, and practical plans to utilise these powers by regulators, are undoubtedly welcome in an environment where NHS staff capacity is greatly stretched and there are over 100,000 vacancies in the NHS in England alone.

Pensions

Clause 43: NHS pension schemes: suspension of restrictions on return to work: England and Wales

Similarly, provisions within the bill to suspend a range of regulations in each of the NHS pension schemes (1995, 2008, 2015), with the primary aim of removing barriers “which would prevent otherwise able retired healthcare workers from returning to work while continuing to receive their pension” are to be welcomed. These provisions will play a vital role in encouraging NHS staff around retirement age to remain in the service, and to encourage the return of those who have recently left at a time when they are most needed.

Easing the burden on frontline staff, both within the NHS and beyond

The bill contains provisions which aim to reduce the administrative burden on frontline staff. In order to do so, the legislation contains provisions to make changes to mental health and mental capacity legislation and relaxes requirements on both health services and local authorities to carry out assessments.

Mental health and mental capacity legislation

Clause 9: Temporary modification of mental health and mental capacity legislation

The bill contains provisions to enable the existing mental health legislation powers to detain and treat patients who need urgent treatment for a mental health disorder and are a risk to themselves or others, to be implemented using just one doctor’s opinion (rather than the current two). This will ensure that those who were a risk to themselves or others would still get the treatment they need, when fewer doctors are available to undertake this function. It will also temporarily allow extension or removal of time limits in mental health legislation to allow for greater flexibility where services are less able to respond. These temporary changes would be exercised only in the instance that staff numbers were severely adversely affected during the pandemic period and provide some flexibility to help support the continued safe running of services under the Mental Health Act.

The temporary changes proposed to mental health legislation should help to give services the support and flexibility to ensure those at risk to themselves or others still get the treatment, care and support they need in the event of extreme staffing pressures and service disruption. It is crucial these changes are clearly communicated to trusts and they have a clear understanding of when to use these flexibilities given there is likely to be local variation in the impact of COVID-19 across the country.

There is a certain amount of uncertainty about how these changes will impact on provision and the extent to which they may impact resources of the wider system, for example the police, if actioned.

There is also a question about whether these temporary changes to the management of the mental health act would be sufficient during a very severe outbreak. There are further temporary changes that could be considered to ensure patients and service users can still access the support they need. For example,

consultant nurses could temporarily be allowed to carry out assessments and checks, and agreements made by approved mental health professionals could be allowed retrospectively. Temporarily removing the requirement for CQC to organise second opinion appointed doctors and extending time periods for hearings and tribunals, or allowing tribunal decisions to be taken on the basis of electronic documents alone, are further measures that could also be considered. We would welcome further consideration of these proposals should the risks posed by coronavirus continue to escalate.

NHS and local authority care and support

Clause 13: NHS Continuing Healthcare assessments: England

The bill temporarily relaxes requirements on both health services and local authorities to carry out assessments with the broader aim to facilitate faster discharge from hospital settings into the community. These provisions seek to reduce burdens on staff working in the NHS and beyond, and in light of the increased pressure expected on teams where staff may need time off sick or to care for loved ones.

The provisions in the bill should be read alongside the newly-released [COVID-19 Hospital Discharge Service Requirements](#), which set out the discharge to assess approach expected from all NHS trusts, community interest companies and private care providers of acute, community beds and community health services and social care staff in England from 19 March 2020. They also cover discharge for commissioners of health and social care.

For the emergency period covering the height of the COVID-19 outbreak, NHS providers will be able to delay undertaking NHS continuing healthcare assessments of patients being discharged until the outbreak has ended. The government is keen that patients who can leave hospital do so, amidst the recognition that continuing healthcare assessments can be resource-intensive and delay discharge. To mitigate the impact on patients and their finances, individuals would continue to receive NHS-funded care pending their full assessment once the emergency period was over. At the height of the outbreak, and for the shortest amount of time possible, local authorities will also have the power to prioritise care in order to protect life without undertaking full Care Act compliant assessments. Local authorities will instead be able to prioritise their services to meet the most urgent and serious needs, even where the results do not meet everyone's assessed needs in full, or delay some assessments.

Local authorities would still be expected to do as much as they could to fulfil requirements to meet needs, and the duty of care towards an individual's risk of serious neglect or harm would remain. These powers would only be used if demand and workforce shortage were such that local authorities were at imminent risk of failing to fulfil their duties, and only while the emergency situation was ongoing. During this time the Secretary of State would have a power to direct local authorities to comply with government guidance on prioritising care, aiming to ensure that consistent principles were followed.

We expect these provisions, whereby the NHS both locally and nationally works with partners in local authorities and social care to ensure that as many medically fit patients as possible can be discharged with

care and support in place to significantly help release capacity in hospitals, freeing up 30,000 beds (around 30% of the total 100,000 beds in the system).

Delaying and slowing the virus

Events, gatherings and premises

Clause 50: Powers to issue directions relating to events, gatherings and premises

We understand that the government's objective is to slow the spread of the virus through restrictions on social contacts, which may mean preventing gatherings of people, postponing electoral events over the course of the year, closing schools, further or high education premises or childcare providers. We welcome these measures which will be vital in mitigating the risk to public health arising from such mass gatherings and slowing the rate of infection. These provisions would only be put in place for the period of time required to mitigate the effects of the COVID-19 pandemic.

Temporary closure of educational institutions and childcare premises

Clause 35: Temporary closure of educational institutions and childcare premises

Clause 36: Temporary continuity: education, training and childcare

The government has announced the indefinite closure of all educational institutions and childcare providers from Friday 20th March onwards as part of its wider strategy to minimise the spread of COVID -19. There are however exceptions to this arrangement to allow the provision of childcare for the children of key workers, including NHS staff and social and care workers.

This is a critically important measure in helping key NHS staff to continue working during a period of unprecedented pressure on the NHS. We cannot over emphasise the importance of protecting the health and wellbeing of the NHS and care workforce. This must be a foundation of the government's response both to protect hard working and committed public servants, and to sustain sufficient capacity within the NHS, and social care sector, to manage the fast rising demand from those who fall ill.

NHS Providers view

We welcome measures in this bill, which seek to ensure that the NHS is in the best possible place to handle an increase in demand caused by the Coronavirus pandemic. While the health service will be put under unprecedented levels of strain in the weeks and months to come, we believe the NHS has the systems, structures and workforce in place to be able to respond with the challenges it faces. The allocation of £2.9bn from the COVID-19 emergency fund to health and social care, and reassurances from both the Prime Minister and the Chancellor that the NHS will receive whatever it needs are similarly welcome.

We are particularly supportive of measures in this bill, and in other recent policy announcements, which seek to maintain the safety and wellbeing of frontline NHS staff on whom we will rely so heavily over the next few weeks. The NHS workforce is going above and beyond to respond to coronavirus and reports that some feel they are not getting the personal protective equipment they need to do their jobs safely are deeply worrying. Resolving this is a matter of urgency for NHS England and the Department of Health and Social Care to ensure that staff have the protective equipment they need and to ensure that vital supplies are reaching the frontline consistently in the right place at the right time, and we understand supplies have improved in recent days.

Trusts continue to prioritise the wellbeing and health of NHS staff. Beyond the more radical flexibilities included in this bill to enable the health and care workforce to be deployed as flexibly as possible, individual trusts are seeking to support their colleagues through a range of innovative measures including hardship funds, additional support for carers, and measures such as free parking for staff.

We are wholly supportive of efforts to increase testing capacity within the NHS. Recent reports that 25,000 tests a day will be carried out within the next few weeks, and that NHS staff will be given priority access to testing, whether they have symptoms or not are reassuring and vital in enabling staff who do not have the virus to return to the frontline as soon as possible to help patients.

Trusts are playing a central part to ensure that the health system is in the best possible position to respond to the pandemic. Alongside the government's call to action to industry with regards to increasing domestic production of ventilator capacity from approximately 8,000 to 12,000, trusts are enhancing their bed capacity with ventilation capabilities and training as many staff as possible to provide ventilation support.

Trusts are also working tirelessly to increase the number of intensive care beds should they be needed. While bed capacity currently stands at approximately 4,000, this number could be increased several fold if needed. The decision to cancel elective surgery from 15 April will enable trusts to convert theatres, resuscitation rooms and recovery areas into facilities for intensive care provision and to increase bed capacity.

In summary we hope that these measures will ensure the government, and the NHS, has the flexibilities it needs to manage the coronavirus outbreak as effectively as possible.