

## Statement from the Academy of Medical Royal Colleges

### Health and Social Care (Safety and Quality) Bill

At its meeting on 5 February the Council of the Academy of Medical Royal Colleges, which comprises the Presidents of all the Medical Royal Colleges in the UK, considered the Health and Social Care (Safety and Quality) Bill which is to receive its Second Reading in the House of Lords on 2 February.

The Council expressed considerable concern over Clause 1 of the Bill which seeks to secure that services provided in the carrying of regulated activities cause no avoidable harm. Colleges would obviously support the goal of no intended harm and applaud the intention of the Bill.

However there was a strong view that seeking to prescribe zero harm in legislation would be not only ineffective but would create unintended consequences. In particular it was felt that considerable time and effort would be diverted into trying to identify what might or might not be “avoidable harm” rather than addressing safety issues more fundamentally.

The Council had received a copy of the letter sent to Peers by the Health Foundation and members of the Berwick Advisory Group and the Academy endorsed the concerns expressed in the letter.

The Academy would therefore urge that Peers do not support the Clause as it stands or seek to amend in ways that would meet the concerns set out by the Health Foundation.



### **An urgent letter from members of the Berwick Advisory Group and the Health Foundation**

Dear Colleague,

We are writing to you in relation to the **Health and Social Care (Safety and Quality) Bill due for second reading in the House of Lords on 6 February 2015**. We are concerned about the potential impact of Clause 1 of the Bill that relates to avoidable harm, and we urge you to oppose it.

#### **About us**

The signatories of this letter were members of the Berwick Advisory Group. The group

was set up in 2014 at the request of the Prime Minister following the report of the Mid Staffordshire Public Inquiry. The group was asked to review patient safety in England and its report, *A promise to learn – a commitment to act*, was published in August 2014.

Dr Jo Bibby, one of the members of the group, is also Director of Strategy at the Health Foundation, an independent charity with a long track record of working in patient safety. Dr Bibby is signing the letter both as a member of the group, and on behalf of the Health Foundation.

## **About the Bill**

The Bill proposes new rules in relation to professional regulation, information sharing across organisations and avoidable harm to patients.

## **Our concerns**

Clause 1 of the Bill imposes a duty on the Secretary of State for Health to introduce regulations “to secure that services provided in the carrying on of regulated activities cause no avoidable harm”. Such harm could be caused directly or indirectly, but excludes harm that cannot be “reasonably avoided”.

It is our view that introducing such a duty would go against the evidence of what is possible in delivering safe health and care services. Health care associated harm is the scourge of every health care system in the world. In this regard, the NHS is not unique. Considerable progress has been made over the past two decades in reducing the causes of particular types of harm, ranging from hospital acquired infection to pressure ulcers.

There are some outstanding examples of organisations that have consistently reduced their levels of harm, both in the NHS and abroad. However, no health care organisation in the world, let alone an entire health care system, has ever eradicated avoidable harm. The best examples of harm reduction have come about through the intrinsic motivations and dedication of staff and senior leaders, rather than through legal or regulatory levers. The report of the Berwick Advisory Group concluded:

*“While “Zero Harm” is a bold and worthy aspiration, the scientifically correct goal is “continual reduction”. All in the NHS should understand that safety is a continually emerging property, and that the battle for safety is never “won”; rather, it is always in progress.”*

To legislate for ‘no avoidable harm’ would presume that we know all there is to know about harm and safety in health care. However, it wasn’t all that long ago that hospital acquired infection was simply seen as an unfortunate and inevitable side effect of health care. To introduce this new law would not be supportive of the Berwick Advisory Group’s key recommendation for “the NHS...to become, more than ever before, a system devoted to continual learning and improvement of patient care, top to bottom and end to end.”

Professor Charles Vincent’s influential report, *The measurement and monitoring of safety* (2013) concluded that it is not possible to understand how safe health care is by focusing solely on harm – the full picture also comes from understanding the hazards and risks that lead to harm. We fear that further focus on incidences of harm will absorb the resources and attention of providers and regulators, drawing time away from understanding risk and preventing harm, which has led to improvements in other safety critical industries.

The Bill excludes instances of avoidable harm that cannot be 'reasonably avoided'. However, to understand what can and cannot be reasonably avoided would require the necessary expertise, time, resource and culture across the NHS to diagnose the complex causes of harm. The current Inquiry by the Public Administration Select Committee exploring the need for an independent investigation branch in the NHS demonstrates that such skill and resource is currently lacking.

The Rt Hon Stephen Dorrell MP has suggested that the 290 recommendations of the Francis Inquiry actually boil down to just one – 'the culture of "doing the system's business" is pervasive in parts of the NHS and has to change.' The Government has responded by using the tools within its power - regulatory and legislative - to try and fix this cultural problem. We would recommend waiting to evaluate the impact of recent measures such as the duty of candour before introducing another law. Otherwise, there is a danger of creating a huge administrative burden on an unproven intervention at the expense of what we know works – supporting NHS leaders and staff to diagnose and tackle the risks in their services that lead to harm to patients.

### **Our recommendation**

There has been a concerted effort in recent months to make the NHS one of the most transparent health care systems in the world. We believe that any such efforts must begin with an honest conversation about what we can reasonably expect in terms of the affordability, quality and safety of our health and care services. We believe the "zero harm" clause falls foul of this test, and we urge you to oppose it.

Yours sincerely,

Jo Bibby, on behalf of the Health Foundation and as a member of the Berwick Advisory Group

#### *Berwick Advisory Group members:*

Maureen Bisognano, President and Chief Executive Officer of the Institute for Healthcare Improvement

Ian Callaghan, patient representative, National Service User Lead for My Shared Pathway

Sir David Dalton, Chief Executive, Salford Royal NHS Foundation Trust

Mary Dixon-Woods, Professor of Medical Sociology, University of Leicester

Jan Gould, patient representative, Asthma UK

Carol Haraden, Vice President, Institute for Healthcare Improvement

Jean Hartley, Professor of Public Leadership, the Open University

Elaine Inglesby-Burke, Executive Nurse Director and Deputy Chief Executive, Salford Royal NHS Foundation Trust

Jenny Leggot, Deputy Chief Executive, Director of Nursing, Midwifery and Operations, University Hospital NHS Trust

Jason Leitch, National Clinical Director, Scottish Government

James Reason, CBE, Professor Emeritus, University of Manchester

Lisa Richards-Everton, patient representative

Stephen Singleton, former NHS Medical Director and Chief Executive

Charles Vincent, Professor of Psychology, University of Oxford and Health Foundation Professorial Fellow