Cities and Local Government Devolution Bill

House of Lords, Consideration of amendments
Tuesday 12 January 2016

The British Medical Association (BMA) is an apolitical professional association and independent trade union, representing doctors and medical students from all branches of medicine across the UK and supporting them to deliver the highest standards of patient care. We have a membership of over 160,000, which continues to grow each year.

Introduction
The Cities and Local Government Devolution Bill broadens the scope of powers that can be conferred on combined authorities. It provides for the Secretary of State to make orders devolving functions, including healthcare. In September 2015, 38 devolution proposals were put forward to government from areas across the UK. Successful proposals will be supported through the Cities and Local Government Devolution Bill which puts in place the legal framework that will make it simpler to devolve more powers.

Key points
- Clauses 7, 16 and 17 allow for the piecemeal transfer of healthcare commissioning responsibilities from clinical commissioning groups and NHS England to local government. The BMA is concerned about the impact this will have on the NHS, especially with regard to local variation in service levels, fair allocation of resources and the cross border impact of decisions.
- The BMA welcomes Clause 18 and 19, inserted by Peers during the Bill’s passage through the Lords, and expanded on by government amendments during further stages, which will ensure that responsibility for key regulatory and supervisory functions in healthcare would remain with the Secretary of State.
- The BMA believes that there should be a statutory duty upon the Secretary of State for Health to secure and provide universal healthcare and core national NHS standards should remain in place.
- This briefing also looks at the Greater Manchester devolution proposals, though notes that these arrangements precede the Bill, but believe they provide helpful context for the debate. The BMA recognises the potential benefits to patients of the integration of health and social care in Greater Manchester. However, we have a number of concerns which are set out below.

Devolving healthcare functions
Clause 7 of the Cities and Local Government Devolution Bill has significant implications for the NHS. The clause enables the Secretary of State to devolve to combined authorities any functions of a public authority. The government has confirmed that NHS bodies are seen as public authorities for the purposes of the Bill. The BMA recognises that local autonomy has always been an important part of the NHS. However, we are concerned about the implications of applying a piecemeal form of devolution to the health service and believe the issues, set out below, need to be properly addressed.

Fair funding
Devolution of healthcare functions will create a situation in which the same types of healthcare can be commissioned by different national and/or local bodies in different areas. This complexity could make fairness in the distribution of resources between areas more difficult to achieve. The BMA would like reassurance that any devolution of healthcare functions will take place only when there is a fair and
transparent mechanism for determining the resources that will be devolved to particular local bodies along with particular healthcare functions.

**Local variation in patient care**
The BMA is concerned about the impact of devolution on local variation in patient care. We believe there is potential for increased variation between areas in both the prioritisation of services and indeed the overall level of services provided. For example, we are concerned that some local authorities – faced with large cuts in their overall funding from central government – may shift funding away from health to social care in order to replace existing social care funding and free up funds for other purposes. We would also have concerns about the impact on patient care of any devolution of regulatory functions.

**Cross-border impact of devolved decisions**
The cross-border impact of devolved decisions on areas next to those with additional powers also needs to be considered, as acknowledged by the government paper, *The Implications of Devolution for England*, published in December 2014. The BMA is concerned that local bodies to which functions are devolved may not necessarily be democratically accountable to all patients in areas where those decisions will impact.

**Restrictions on the transfer of health functions**
Clauses 18 and 19, which was added via amendment in the Lords, and expanded on by government amendments at Commons committee stage, prevents the removal of the duties of the Secretary of State for Health. It also prevents the removal of regulatory functions from national bodies and ensures that transferred services adhere to existing accountabilities and national standards. The BMA believes that this clause provides important safeguards for the NHS and should remain in the Bill. In all cases of devolution, the Secretary of State should remain ultimately accountable to Parliament, and be responsible for setting out the standards, accountability and reporting arrangements within combined authority areas.

**Greater Manchester devolution**
The BMA notes that the arrangements in Greater Manchester precede the Cities and Local Government Devolution Bill but provides us with useful insight in to the likely actions for other areas seeking devolution which will be enabled by this legislation. The devolution deal to Greater Manchester provides an opportunity to integrate health and social care and has the potential to offer considerable benefits to patients through enabling patient centred and co-ordinated care. However, this re-organisation of the NHS has not been tested through consultation and the BMA has a number of concerns. The BMA has recently published a policy statement ‘Devolution, delegation and integration: health and social care in Greater Manchester’ which outlines our thoughts in depth.

**Consultation**
The BMA wants to ensure that doctors have the opportunity to play a part in shaping the future of health care in areas which opt for devolution. We were concerned at the lack of initial consultation ahead of the announcement of a Greater Manchester devolution deal although since then the BMA has had positive discussions with stakeholders and a high level of involvement. We look forward to ongoing engagement and would wish to see this replicated across other areas.

**Accountability and oversight of health spending decisions**
The BMA welcomes that the Memorandum of Understanding, between the Association of Greater Manchester Authorities, Greater Manchester Clinical Commissioning Groups, and NHS England, states that health services in Greater Manchester will continue to be subject to national regulatory mechanisms including the NHS mandate and NHS constitution. However, there has been no public discussion of the formal oversight of health and social care spending that will be in place prior to the election of a Mayor for Greater Manchester, due in 2017.
It also remains unclear what oversight the ‘interim’ mayor will have in the meantime over decisions taken by the Greater Manchester Strategic Health and Social Care Partnership Board or the Joint Commissioning Board and Overarching Provider Forum.

We also have concerns that the full integration of health and social care budgets and commissioning responsibility could lead to a dramatic increase in the proportion of NHS services being delivered by the private sector, as has been the trend in the provision of social care services in recent years, and that budgetary constraints may increase health inequalities. In addition, the current duties of Clinical Commissioning Groups around public involvement and consultation, set out in the Health and Social Care Act 2012, must not be undermined given that there are no equivalent duties on local authorities. Finally we would like to see safeguards in place, such as ring-fenced funding, to prevent the NHS suffering disproportionate cuts as a result of the continued underfunding of social care.

**Workforce**

The BMA would like to see close co-operation between Greater Manchester, Health Education England and other relevant stakeholders with regards to workforce planning. The development of new clinical roles spanning primary and secondary care may add complexity to national workforce planning. As such, the BMA is keen to ensure that substantive and timely workforce planning will be put in place and that the terms and conditions of NHS staff are protected.

**For further information, please contact:**

David Knowles, Senior Public Affairs Advisor
T: 020 7383 6520 | M: 07917 041 018 | E dknowles@bma.org.uk

**References**

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5 British Medical Association, *Devolution, delegation and integration: health and social care in Greater Manchester*, November 2015