Department of Health

FACTSHEET 10

The Care Bill – market oversight and provider failure

"Everyone who receives care and support wants to know they will be protected if the company in charge of their care goes bust"

Norman Lamb, Minister of State – Care Services

This factsheet describes how the Bill will introduce a regime to oversee the financial stability of the most hard-to-replace care providers, and to ensure people's care is not interrupted if any of these providers fail. It also describes the responsibilities of a local authority if a local care provider fails.

What happens when a care provider fails?

There is a diverse market for care services in England. Public, private and voluntary sector organisations can all provide these services. As in any market, from time to time some providers leave the market, sometimes because they have failed financially. Their care services may be sold or taken over by another care provider. This process is normally managed in an orderly way that does not cause disruptions for the people receiving care.

What is the problem with the current system?

When a large, national or specialist care provider fails, it may have an impact on several different local authorities. This might create problems for people receiving care from that provider if the situation is not well-managed. When a provider that provides care to many people fails, a local authority might find it difficult to provide any necessary, alternative care arrangements.

There is currently not a formal system in place for checking how well a care provider is managing its own finances. This means there is no 'early warning' that a problem might be coming, nor anything in place to help resolve the problems it may cause people. The failure of a large care provider, Southern Cross, in 2010 highlighted these issues. It is unacceptable for care users to be left without the services they need. The interruption of care services, or the worry that this might happen, can affect the wellbeing of care users. It can place stress on them, their families, friends and carers.

What does the Bill do?

Firstly, the Bill imposes clear legal responsibilities on local authorities where a care provider fails. The current law dates back to 1948, when care was provided and managed very differently. There are now many large care providers that span several local authority areas. A diverse number of public, private and voluntary sector organisations have grown to provide good quality care to the population. The Bill makes it clear that local authorities have a temporary duty to ensure that the needs of people in either residential care (care homes) or receiving care in their own home continue to be met if a provider fails. Local authorities will have a responsibility towards all people receiving care. This is regardless of whether they pay for it themselves or whether the local authority pays for it.

Secondly, the Bill will establish that the Care Quality Commission (CQC) – the independent regulator for health and care services in England – will also become the regulator for “hard-to-replace” care providers. To decide which providers it will oversee, criteria will be established on things such as the number of people the provider cares for. The Bill will also give the CQC the authority to request that a provider who they judge to be in financial difficulty develops sustainability plans and, where needed, arranges an independent business review. This may help the care provider to remain financially sustainable, so that the care it provides to people is not disrupted.

Finally, the Bill will give the CQC the power to request information from any care provider they think is likely to fail. The CQC will share this information with relevant local authorities to help minimise the negative effects of the provider failing, and to ensure a smooth process that provides continuing care to individuals.