

AUGUST 2011

SECURING CONTINUED ACCESS TO NHS SERVICES

1. When a provider of NHS-funded services becomes financially and/or clinically unsustainable, there must be a legal framework that provides effective safeguards to protect patients' and taxpayers' interests.
2. However, the current framework is not comprehensive and lacks an effective mechanism to improve poor quality and inefficient services and that is why it must be modernised.
3. The listening exercise demonstrated widespread support for the principles of establishing a transparent framework: focused on securing patients' access to essential services and avoiding "bail outs" for poor services at the taxpayer's expense.
4. Therefore, the Government is proposing an effective framework that ends the culture and practice of hidden "bail outs" and gets the right incentives into the NHS, whilst securing continued access to essential services.
5. So following the listening exercise we will look to amend the Bill accordingly - building on the current arrangements - to:
 - **Protect patients' interests:** Patients must be able to get the services they need and those services must continue to be high quality – meeting the essential safety and quality registration requirements monitored by the Care Quality Commission and relevant clinical guidelines issued by NICE;
 - **Ensure doctors and nurses take the lead:** Clinical commissioning groups would take the lead to secure continued access to essential NHS services, overseen by the NHS Commissioning Board;
 - **Ensure proactive action is taken:** Monitor, as regulator, will support commissioners by regulating proactively to prevent providers taking actions that could significantly undermine their continued ability to deliver essential NHS services;
 - **An evolutionary approach:** The previous Government's "unsustainable provider" regime to support the continuity of essential

services provided by Foundation Trusts (FTs) established under the Health Act 2009, would be maintained and significantly improved. As part of this evolutionary approach, NHS trusts would continue to be governed by the existing 2009 Health Act until they achieve FT status;

- **Make the clinical case for change:** Where services become unsustainable in their current form, proposed solutions would be driven by the clinical case for change; agreed by clinical commissioning groups and developed through consultation with the broader clinical community, the local Health and Wellbeing Boards, Local HealthWatch and the public; and
 - **Ensure decisions are taken locally, not top down and democratic accountability is maintained:** Local authorities would have scrutiny of all service changes.
6. To ensure continued access to NHS services, swift action can be taken in a number of ways, including: the opportunity to modify the tariff price a provider is paid if they can prove the price they get is not appropriate for their service provision; requiring a provider to appoint turnaround experts to help them when in financial difficulties; and ultimately, as a last resort if a FT is still in trouble, a *continuity administrator* would take control of the provider's affairs and work with commissioners to secure continued access to essential services for patients.
7. These proposals would ensure a **fair, transparent and comprehensive framework** that protects both patients' and taxpayers' interests, by proactively supporting the continuity of services, whilst avoiding rewards for failure or "bail outs" for poor quality and/or inefficient providers.

Further information:

- Government amendments handed to the Public Bill Office, 31st August
- 'Securing continued access to NHS services: technical annex'
- 'Briefing notes on Government amendments to the Health and Social Care Bill: Report stage (Commons)'