PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT NATIONAL HEALTH SERVICE (NHS PAYMENT SCHEME - CONSULTATION) (NO. 2) REGULATIONS 2022

Monday 9 January 2023

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Friday 13 January 2023

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The Committee consisted of the following Members:

Chair: Sir Graham Brady

† Amesbury, Mike *(Weaver Vale)* (Lab)
† Baker, Duncan *(North Norfolk)* (Con)
† Blake, Olivia *(Sheffield, Hallam)* (Lab)
† Buckland, Sir Robert *(South Swindon)* (Con)
† Clark, Feryal *(Enfield North)* (Lab)
† Costa, Alberto *(South Leicestershire)* (Con)
† Crouch, Tracey *(Chatham and Aylesford)* (Con)
† Knight, Sir Greg *(East Yorkshire)* (Con)
† Mills, Nigel *(Amber Valley)* (Con)
† Osborne, Kate *(Jarrow)* (Lab)
Penning, Sir Mike *(Hemel Hempstead)* (Con)
† Quince, Will *(Minister of State, Department of Health and Social Care)*
† Smyth, Karin *(Bristol South)* (Lab)
† Solloway, Amanda *(Lord Commissioner of His Majesty's Treasury)*
† Wakeford, Christian *(Bury South)* (Lab)
† Whittingdale, Sir John *(Maldon)* (Con)
Whittome, Nadia *(Nottingham East)* (Lab)

Susie Smith, *Committee Clerk*

† attended the Committee

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[SIR GRAHAM BRADY *in the Chair*]

Draft National Health Service (NHS Payment Scheme—Consultation) (No. 2) Regulations 2022

4.30 pm

The Minister of State, Department of Health and Social Care (Will Quince): I beg to move,

That the Committee has considered the draft National Health Service (NHS Payment Scheme—Consultation) (No. 2) Regulations.

It is a great pleasure to serve under your chairmanship this afternoon, Sir Graham. Last year, the Government set out their ambitious health and care agenda through the Health and Care Act 2022, which established systems and structures to reform how health and adult social care work together. By introducing integrated care systems on a legislative basis, there was an opportunity to review and therefore tailor an integrated approach to how the financial frameworks in the NHS worked.

The Act replaces the NHS national tariff payment system with the NHS payment scheme by inserting new sections 114A to 114F into the Health and Social Care Act 2012. As with the tariff, the NHS payment scheme will set rules around how commissioners establish the amounts to pay providers for healthcare services for the NHS, but it will allow NHS England to have a more flexible approach in setting the rules. It does not set the amount of money available, but it intends to ensure that the resources available are used effectively and efficiently.

Before a new payment scheme can be published, NHS England has a duty under the 2012 Act to consult on the proposals for the new scheme. The consultation was as much a requirement with the tariff as it is with the new scheme. NHS England is required to consult each integrated care board, each relevant provider and other such persons it considers appropriate. It opened the consultation on the proposals for the 2023 to 2025 payment scheme on 23 December last year, and the consultation is scheduled to close on Friday 27 January. That brings me on to the purpose of these regulations, which is relevant to how those consulted respond and what it means for NHS England.

The regulations will set the required objection percentage thresholds for responses to the consultation at 66%, which will be reached if the requisite percentage of ICBs or providers object to the proposals. Laying these regulations is a relatively administrative process. The objection percentages are not changing compared with the previous consultations on the tariffs, so we are maintaining the status quo at 66%, which is a proportionate level to ensure that a qualified majority can require NHS England to reconsider its proposals, while minor objections will not stop it. I commend the regulations to the Committee.

4.33 pm

Feryal Clark (Enfield North) (Lab): It is a pleasure to serve under your chairmanship, Sir Graham. Ensuring that patients get the best quality care is in the interests of everyone, and the Labour party will always support measures that seek to achieve that. Although we have some reservations, we will not oppose the regulations today.

The proposed consultation is important because the NHS payment scheme will govern how billions of pounds of taxpayer money is spent. Quality of care and value for money should always be at the core of our health service's decision making. They are not alternative options or binary choices. They are both critical to the future of our NHS, so we need financial management in the health service to be able to deliver both in parallel. Given the urgency of the crisis affecting the NHS, action to deliver that must come at pace. We have seen during the pandemic what happens when the NHS strays from those principles, and we cannot allow such events to happen again.

The former tariff system, which the regulations form part of replacing, sought to deliver a more competitive environment to drive up quality and improve outcomes for patients, yet too often it was a rigid system that did not allow for the flexibility that individual commissioners needed. Giving local decision makers the tools that they need to improve services in their areas is vital to ensuring that the NHS meets the needs of patients where they are, not where the system thinks they should be.

It is because of that that a rigorous and effective consultation on changes is so important. Done properly, payment schemes can deliver a meaningful impact on patient outcomes. The payment-by-results incentives used by the last Labour Government made a significant impact on elective waiting lists. However, they are not appropriate in every case, and options must be carefully considered. Hon. Members will know that elective waiting lists are now at record levels. Given the reports of Ministers wanting to bring back the payment-by-results incentives in some form, I would be keen to hear from this Minister what plans they have to do that.

Getting these changes right through effective consultation is in the interests of everyone and, crucially, will ensure better outcomes for patients. I look forward to hearing from the Minister how the Government intend to deliver that.

4.36 pm

Karin Smyth (Bristol South) (Lab): It is a pleasure to serve under you, Sir Graham. I am always concerned when a Minister brings forward something that is seen as an administrative process; indeed, we should all be concerned when that happens.

As my hon. Friend the Member for Enfield North said, this matter is very important. I have a couple of questions. As my Front-Bench colleague said, PBR was introduced as part of a quality drive to incentivise the system—to make the system operate in certain ways. I served on the Committee that considered the Health and Care Bill as it progressed through this place last year. I asked the then Minister, the right hon. Member for Charnwood (Edward Argar), several times what system would replace PBR to incentivise the operators in the systems, or the trusts and so on, but no answer

came forward. It would be helpful to hear from this Minister, in his wrapping up on the admin process as part of the consultation—we know that was launched on 23 December, at the same time as planning guidance for the NHS, not giving the NHS managers, and so on, much time for a Christmas break—what the Government are thinking in terms of a system that will still incentivise quality of service and efficiency of taxpayers' money. So far, we do not know what that will be.

PBR ignored the operation, particularly, of community mental health services and primary care—it never operated for those. Not many mental health services, in particular, asked to be inside the tariff, in order to maximise their own income. Therefore, what in the system will support community, primary and mental health services to drive up quality and ensure that we have efficient use of money?

On the 66% threshold for consultation—I would recommend that figure for many referendums and consultations—will the Minister provide clarity about this point? If, for example, in my area of Bristol, North Somerset and South Gloucestershire, the providers disagreed with the proposals, but the ICB decided otherwise, would the providers make up the 66% differently from the ICBs? That was not clear in the Minister's comments. Trusts and trust chief executives, particularly, should be free to make a judgment on what works best for them. However, the drive of the 2022 Act—which I support—is about making the whole system use its money more efficiently, and that is where the Government now are, so can trusts in local ICB areas disagree with the recommendations of the ICBs? How is the 66% being calculated?

4.39 pm

Will Quince: I thank the hon. Member for Enfield North for her constructive comments and broad support. Several of the issues raised did not actually relate specifically to this debate. We are of course here to discuss the objection percentages. I am conscious that she would like to push further on items including payment by results, but I will just say—not wanting to test your patience, Sir Graham, given the strict parameters of this statutory instrument—that I would be very happy to write to her. Alternatively, there are health oral questions coming up. I stress that if there are proposals that relevant commissioners disagree with, I encourage them to make representations as part of the consultation, which is open until 27 January.

Let me turn specifically to why I believe the 66% is proportionate—I covered that in my opening speech. The 66% is made up of either integrated care boards or providers, and I will happily write to the hon. Member for Bristol South on that. I think the point that she was making was whether there is weighting towards an ICB versus a provider. Is that right?

Karin Smyth: To be clear, the two or three trusts in my patch could all object, but the ICB could support this. Do the trusts have to come within the totality, or will the trusts be counted separately, without getting too mathematical about it? Every trust in the country could oppose this, but the 44 ICBs could support it, for example, in extremis.

Will Quince: I thank the hon. Lady for clearing that up. I think the answer to the question is that if an integrated care board or a provider hits the 66%, that threshold is triggered.

Perhaps it would be helpful if I set out what would happen if the threshold is triggered. Unlike the previous scheme, where the Competition and Markets Authority would be involved, under the new proposals, if the objection threshold is reached, NHS England must discuss the objections with representatives of all organisations that objected. It is in the interests of both them and NHS England to reach a conclusion that is workable for both.

Following the discussion, NHS England must decide whether to amend the proposed payment scheme and reconsult on the amended payment scheme, or to proceed with the scheme, as published, that was consulted on. If it decides to proceed with publication, it must also publish a notice explaining its reasons for doing so and send a copy explaining with the notice to all organisations that objected and therefore met the threshold.

I thank Committee members for their contributions to today's debate, and I would be very happy to write to or meet any hon. Member who has further questions. I genuinely believe that the objection percentages that we have discussed strike the right balance in allowing real collaboration between NHS England and those that it is consulting on. I commend the regulations to the Committee.

Question put and agreed to.

4.42 pm

Committee rose.