



## Health and Care Bill briefing for supporters

*We Own It's supporters have sent almost 50,000 messages to Parliament asking for amendments to the Health and Care Bill to (1) ban employees of private health companies sitting on ICS boards and to (2) make NHS Trusts and Foundation Trusts the default providers of NHS services. This briefing outlines some of the main ways that the bill will change the NHS and how the House of Lords must amend the bill to protect our NHS.*

### **How will the bill change the NHS in England?**

- The Health and Care Bill will divide up the NHS in England into 42 geographically defined parts, each covering between 1 and 3 million people.
- These parts will be called Integrated Care Systems and will be overseen by a board (Integrated Care Boards - ICBs), bringing together providers, local authorities and officials.
- The duty to arrange for the provision of NHS services in the area covered by each ICS falls to the boards.

### **Why are we calling it an NHS Corporate Takeover Bill?**

- The bill mandates that each ICS board include a chair (appointed by NHS England), a chief executive appointed by the chair, and a representative each from NHS Trusts and local authorities. The bill allows this core group

to invite anyone they deem necessary to join the board, including private companies that deliver NHS services in their local areas.

- The bill repeals Section 75 of the 2012 Health and Social Care Act which required that virtually all contracts for clinical services should be put out for competition between all prospective providers, private or public. The British Medical Association (BMA), which represents doctors, argues that without replacing Section 75 with new rules to make the public sector (NHS Trusts and NHS Foundation Trusts) the default provider of NHS services, the bill opens the door to contracts being given out to private companies without scrutiny.

### **More on the two main problems we've identified with the bill -**

#### **Employees of private healthcare companies should not be allowed on Integrated Care Boards (ICBs):**

- NHS England [has stated](#) that "All members of the [ICB] will have shared corporate accountability for the delivery of the functions and duties of the ICS".
- If representatives of private companies are members of ICBs, sharing this accountability will conflict with the [legal duties of company directors](#), in particular, the duty to "act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole."
- Private company employees sitting on the boards commissioning NHS services, which those companies would, in some cases, also be eligible to deliver is an unmanageable conflict of interest.
- Creating a situation in which people who work for private health companies could sit on boards and committees that decide how NHS money is spent appears to legalise the Owen Paterson case in our NHS, whereby they could use their presence in an ICB to influence contracts being given to the private company they work for. The bill should prevent this possibility.

- A Virgin Care director has been given a seat on the shadow ICS board in Bath and North East Somerset, Swindon and Wiltshire.
- Until 2 months ago, the government denied that the bill would allow employees of private health companies to be members of ICBs, their committees and sub-committees. However, after much public pressure, they were forced to amend the bill to give the ICB chair or those appointing people to the boards the power to decide whether a prospective appointee's interests in private healthcare "undermine the independence of the health service".
- Among the problems with what the government has done is that it leaves the decision to a person's judgement instead of banning employees of private health companies on ICBs altogether.
- Also, while the interests of an individual private healthcare company might not undermine the independence of the whole health service given its size, they may well undermine the independence of a single ICS, which is much smaller by comparison.
- The government's amendment does not apply to the committees of the ICB. The bill as it stands does nothing to protect the independence of each ICS.

**NHS Trusts and Foundation Trusts should be the default providers of all NHS services:**

- [Section 75](#) of the 2012 Health and Social Care Act required local NHS organisations to initiate a competitive tendering process with regard to the procurement of goods and services involving all prospective providers, including private companies.
- The Health and Care Bill's Explanatory Notes indicate that the new procedures that ICBs will have to follow in procuring services - the Provider Selection Regime - going forward are still in development but that the goal is "to reduce the need for competitive tendering where it adds limited or no value."

- The British Medical Association has [called for an amendment](#) to replace Section 75 of the 2012 Act, to make public bodies (NHS Trusts and Foundation Trusts) the default providers of NHS care and competitively tender when public bodies cannot provide a service.
- Reducing competitive tendering without making sure that, as much as possible, public money is spent by public bodies (NHS Trusts and Foundation Trusts) could open the door to abuse of public money.
- There is a significant risk that we could see private sector individuals or companies with political connections receiving health service contracts without proper public scrutiny.
- The BBC catalogues cases of apparent cronyism in the awarding of Covid contracts [here](#). We could see a similar situation on an expanded and protracted scale if the bill is not amended to prevent it.
- And risks associated with reducing tendering without clear rules in the law are made worse by the fact that the bill also allows employees of private healthcare providers to be members of ICBs and committees, whose duty it is to commission NHS services.

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