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MEDICAL DIVISION
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Dear Sir/Madam

Health and Care Bill

I write on behalf of the Medical and Dental Defence Union of Scotland (MDDUS) to highlight the key points that we wish to bring to the attention of the Committee in relation to the Health and Care Bill.

MDDUS is a medical defence organisation that has been representing doctors and dentists, and more recently other health professionals, for nearly 120 years. We have more than 50,000 registered health professional members across the United Kingdom.

We are supportive of the Government's aims for the Health and Care Bill and welcome many of the measures it sets out, however there are a number of areas of concern for our members which we believe require further consultation and clarification in order to ensure that the Bill works in practice.

Over the past 18 months, we have been working to support our members in responding to the Covid-19 pandemic, which has brought severe disruption to the healthcare service and the workforce at its heart. Our members have worked tirelessly during the crisis to provide high quality care to their patients and will continue to face unprecedented pressure in the second half of 2021 due to the ongoing pandemic and the backlog of delayed clinical work.

It is imperative that the Government supports the health workforce as they continue to face the challenges and long-term impacts of Covid-19. We urge the Government to fully assess the implications of the proposals laid out in the Bill which have the ability to place additional burdens on the NHS and its staff at a time of already heightened pressure. In addition, the Government must continue to listen to the workforce to ensure the proposals best support the health service and the patients it cares for.

This letter sets out the views of MDDUS on the proposals in the Bill of most relevance to our members:

- The creation of a Health Services Safety Investigation Body
- Extension of powers to the Secretary of State to abolish, merge or delegate regulatory bodies

Health Services Safety Investigation Body

We welcome the establishment of a new independent Health Services Safety Investigation Body (HSSIB) as set out in Part 4 of the Bill, which will ensure lessons are learnt from patient safety incidents and thus improve the safety of healthcare services across England. We are supportive of the aims of the HSSIB in delivering independent, expert-led and high-quality investigations

and encouraging a culture of learning across the healthcare system, however there are some aspects relating to its investigational functions which are in need of clarification to ensure the Bill achieves its aims.

We particularly welcome measures introduced in Clause 94 establishing that HSSIB investigations and reports are expressly for the purpose of learning to improve safety, and not to assess or determine blame, civil or criminal liability, or whether action needs to be taken in respect of an individual by a regulatory body.

We support the creation of a 'safe space' approach to HSSIB investigations as established in Clause 106, prohibiting the unauthorised disclosure of protected material. We believe that this, alongside Clause 97 prohibiting the naming of individuals who provide information or evidence to the HSSIB, is crucial to encourage participants, including our members, to contribute fully and candidly to HSSIB investigations. In addition, the safe space is crucial in ensuring that investigations are thorough, and the public and medical professionals can have confidence in the HSSIB's conclusions and recommendations.

We are, however, concerned that Clause 107 establishing the exceptions to the prohibition on disclosure does not provide adequate detail, and at present is too wide ranging, discretionary and easily open to external applications for access. We therefore suggest that Healthcare Regulatory Bodies should be placed under an obligation to consult on and publish policy statements setting out the circumstances in which they would and would not seek access to data held within the safe space and that the HSSIB should be under an obligation to report annually on both the number and nature of requests for release of that data and how many have been agreed and refused.

It is vital that all healthcare staff feel confident to speak openly and play their full role in an investigation to ensure the best possible outcome for learning. For the safe space to work effectively, the Government must provide examples of where disclosure may take place and ensure beyond doubt that the safe space cannot be compromised unless in the most exceptional circumstances. We believe that robust provisions must be put in place to ensure there is clear and overriding public interest in any disclosure, and that the anonymity, safety and privacy of participants is respected without exception.

An area of particular concern is the introduction of powers for senior coroners to apply to the High Court to ask for material from HSSIB investigations to be disclosed. Given the statutory powers senior coroners already have to conduct independent inquiries into patient deaths, it is not clear why they should be granted exception, which risks undermining the principle of safe space.

For the HSSIB to work constructively and successfully, the Government must provide further statutory safeguards as well as reassurance and clarification on the operational detail on these proposals.

Power to abolish regulatory bodies

The Bill introduces broad enabling powers for the Secretary of State, for example, over arm's length bodies. Whilst we recognise that the creation of such powers is intended to enable the Secretary of State to respond more flexibly to rapidly changing circumstances, we believe further detail is needed on the scope of the new powers, the circumstances in which such powers may be used and the scrutiny procedures to review how they are used.

We are particularly concerned with the proposals laid out in Clause 123 which introduce powers to the Secretary of State to abolish, merge or delegate regulatory bodies, without providing due clarity on the circumstances in which this power could be used and the process and Parliamentary oversight involved in considering any individual proposal. In particular, we consider that the abolition of any regulator should follow an affirmative Parliamentary resolution, rather than the negative procedure.

We strongly believe that any changes to the regulatory framework must encourage better and faster decision making and greater fairness and consistency in the approaches taken by regulators. We urge the Government to make clear in the Bill that this proposal is intended as a piece of contingency planning in the event that future restructuring might be required, rather than powers that are likely to be used in the short-term.

It is crucial that the Government works with healthcare professionals and regulators to carefully consider this and other proposals to extend powers to the Secretary of State, and ensure the Bill lays out robust checks and balances over such powers.

Summary

In summary, MDDUS supports the proposal for a new independent Health Services Safety Investigation Body to foster an environment of learning and enhance patient safety. However, there is an urgent need for clarification of the exceptions for disclosure laid out in clause 107.

The Government must also ensure that proposals to enable the Secretary of State the power to abolish, merge or delegate regulatory bodies are accompanied by thorough checks and balances.

Should you have any questions or wish to discuss the points raised in further detail, please contact Sarah Higgins at shiggins@mddus.com or on 07795 367746.

Yours sincerely,

Dr John Holden