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Crunch time looms as experts and medical professionals speak out against new NHS Privatisation Regulations

CAROLINE MOLLOY 3 April 2013

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It is hard to overstate the implications for the general public of the NHS privatisation regulations going through parliament as we speak. Caroline Molloy speaks to a range of experts about their fears for what these regulations will mean in practice and why everyone should be very, very worried.

Even as many NHS reforms 'go live', the government is facing a fresh storm of protest – and a looming parliamentary battle - over its new NHS privatisation regulations. The regulations – made under [Section 75](#) of the Health & Social Care Act 2012 - are seen to very precisely put competition at the heart of the NHS and bring in privatisation on an unprecedented scale. If not overturned, the widespread view is that regulations will force commissioners to open up to private sector competition any part of the NHS that companies are interested in, with very few exceptions. Local health decision makers will be able to do little or nothing to protect local NHS hospitals which could be starved of funds as a result of losing their services.

What do the regulations do? In brief terms, *the regulations require all NHS services to be put out to competition unless the commissioners can prove there is only one provider capable of delivering them. Such decisions could be exposed to costly legal challenges.*

These measures are seen to explicitly contradict repeated ministerial promises that "it would be for commissioners to decide when to use competition" and that there was "absolutely nothing in the Act that promotes or permits the transfer of NHS activities to the private sector".

Just before Easter, Lord Phil Hunt laid down a rarely used 'fatal motion' in the Lords, ensuring the regulations will be the subject of a parliamentary battle this month with a debate and vote on the 24th April. The key House of Lords scrutiny committee has also issued a highly damning report on the regulations and drawn the matter to the House's attention (read extracts [here](#)). Regulations can be struck down by either House and campaigners are calling on parliament to ensure they are revoked.

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The first draft of these regulations was hastily [re-written](#) following an outcry from health professionals and campaigners last month, but the revised regulations appear little different to most observers (read David Lock QC's opinion on the revised regulations [here](#)).

We spoke to a broad array of health professionals, campaigners, and academic experts who are today speaking out about regulations they widely perceive to be disastrous:

Lord Philip Hunt, Deputy Leader of the Opposition, House of Lords: "Parliament was assured that clinicians would be under no legal obligation to create new markets. The regulations being debated in Parliament provide no such re-assurance. They will promote and permit privatisation and extend competition into every quarter of the NHS regardless of patients interests. The Lords reported that many NHS professional institutions believe that the regulations make competition the default approach, whilst imposing a burden of proof on commissioners wishing to restrict competition. Indeed, there is a real risk that it will be the courts rather than doctors who will decide the extent of competition and the tendering of services."

"The public will never forgive the governing parties for undermining one of the nation's most popular service. Let's hope that enough Tory and particularly Lib Dem peers understand their wider responsibility and support my motion to kill off the regulations."

Clare Gerada, Chair of the Royal College of General Practitioners: "The NHS has delivered what no other health service has managed: universal accessible high quality care at a cost far less than comparable health services. The new reforms of which these regulations are a key part remove the legal framework for a universal, publically provided, publically managed, publically planned, democratically accountable health service."

Lord David Owen: "The Department appears to be making two contradictory arguments – that these regulations change little, and yet that they are urgently needed for the new Clinical Commissioning Groups to do their job of making decisions about local health services. The House of Lords committee wondered 'if there is "no difference in substance" to the existing procurement regime guidance, why these Regulations are needed at all... [Many responses] suggested that the Department should revoke the original Regulations and conduct further consultations before introducing new legislation. We sympathise with that view... we are firmly of the view that the Department has allowed insufficient time to set this system up properly and enable thorough scrutiny...'"

"The basic choice for Peers is, do we support our own scrutiny procedure? Or do we continue to allow the government to make changes to the NHS, without proper consultations, democratic authorisation and on specious grounds of urgency? For two years, far reaching and fundamental reforms, which only ideologues want, are being pushed through on arguments which are misleading at best and bogus at worst. These regulations in their present form will lead only to turmoil and fragmentation, and should now be withdrawn or annulled."

Dr Charles West, GP and former Liberal Democrat Parliamentary Candidate: "The government has tried to pull the wool over our eyes. Both versions of the regulations issued in the last few weeks will drive the NHS towards open market competition with inevitable fragmentation of services and an ever increasing role for private companies in the business of the NHS. These regulations are a betrayal of promises given over and over again by ministers. As we have seen in the last week with the NHS 111 telephone number, insisting on the NHS putting contracts out to tender is a recipe for chaos."

"I hope that when Liberal Democrats in parliament realise that they have been misled by promises that the government either cannot or will not deliver, they will reconsider whether the whole Lansley project for breaking up the NHS is such a good idea."

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Professor John Ashton, President-elect, Faculty of Public Health: "I am seriously concerned that new regulations are coming into force despite clear failures in the democratic process and lack of time for adequate Parliamentary scrutiny, as highlighted by the House of Lords scrutiny committee. Despite government denials, expert legal opinion is that the regulations, even as revised, will make it obligatory for the new market structures, the CCGs, to put all services including NHS hospitals out to tender in the market place. Hence the government's statement, that competition will only be forced on the NHS when CCGs decide that running a competition is in the interests of patients, is just wrong. It could only be made by someone who has not read the regulations, has read them and not understood their effect, or has read them and understood their effect but is wilfully repeating the official line. The Department should revoke the original regulations and conduct further consultations before introducing new legislation."

Frances O'Grady, TUC General Secretary: "These regulations are a recipe for disaster and a blatant attempt to fast-track privatisation in the NHS. People should not be taken in by the government's warm words on co-operation and integration. What ministers are doing is here is opening up our NHS to countless private providers and putting ridiculous demands on commissioning groups to prove that only one provider can deliver a service."

"These regulations will force commissioners to put services out to tender, even if they want to support a local NHS provider that is already providing a good service for patients. The regulations will mean time and money is wasted on contracting and transaction processes, management consultants and lawyers fees instead of on patient care."

"The government has broken the promises they made in Parliament that it would be up to doctors to decide whether, when and how to use competition."

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break-up of a truly national, coordinated health service. Integrated care will become an impossibility, as the lawyers advise us that the only safe route is competitive tendering. CCGs who care about what is best for patients will be caught in an impossible position, under pressure to stick to their guns and say to the NHS predators, "we'll see you in court" – but with little money to defend themselves against such risks. We must force Jeremy Hunt to back down."

Peter Fisher, President, NHS Consultants' Association: "A good working relationship between hospital specialists and general practitioners is essential for effective and sensitive patient care. This relationship has already been damaged by the introduction of market systems - it would be impossible to maintain in circumstances where every hospital service has to be put out to competitive tender. The tendering process would put an enormous financial burden on hospitals. The private companies have far more experience and resources to dedicate to win tenders, placing the NHS at a serious disadvantage. Losing some of its core services will have a serious destabilising effect on local hospitals, and this would be seen as the responsibility of the general practitioners, leading to a breakdown of relationships with both their patients and their hospital colleagues."

David Lock QC: "The changes between the first and second version of the Regulations will not materially affect the impact of these Regulations in practice. These Regulations play fast and loose with the NHS by turning it into a giant experiment for those committed to a certain right wing ideology. They still mean that a CCG can only avoid a tender process if there is only one possible provider for the service, not if it is in the interests of patients to avoid the delay and disruption of a

tender process.

There has been an active debate on the effect of these Regulations since the second version was published. As far as I can see the government has convinced no one in the NHS that the new regulations are a good thing for the NHS or that they deliver on the promises made by Ministers to Parliament. The radical changes proposed in these regulations have no support whatsoever on the ground. That is normally the point at which governments recognise reality and go back to the drawing board. We shall see over the coming weeks whether Conservative and Liberal Democrat parliamentarians think they know more about the NHS than those who deliver the services on a daily basis"

Jos Bell, Save Lewisham Hospital campaign: *"If the Section 75 regulations continue unchanged, CCGs may be forced against their will and better judgement to put all services out to tender. This will further compromise the sustainability of Lewisham Hospital – already under threat from the government's plan to demolish 60% of the site – and of many other hospitals around the country. Fewer patients will find that their package of care continues through their local hospital - which will impact both on their healthcare, and on the economic viability of highly valued local hospitals."*

Christine McAnea, Unison Head of Health: *"These regulations show the true extent of what makes Health and Social Care Act the most damaging piece of legislation ever aimed at the NHS."*

"The government should rewrite the regulations to make it clear that, as a minimum, competition is not compulsory and nor is it an end in itself. This latest debacle highlight the mess the government is in - even as many of the changes 'go live'. UNISON remembers only too well the 2011 "pause" in the legislation that led to very little actual change in the direction of this costly and damaging overhaul."

Dr Ron Singer, Chair, Medical Practitioners Union, doctors' section of Unite the Union: *"The fact that Lord Hunt has focused on the regulations under section 75 of the HSCA is very important. The government's plans to privatise the NHS will be opposed at every step. Representing GPs, I know that many on CCGs and in practices resent the way the government has portrayed these changes as giving GPs and nurses the power to design local services. In fact laws and regulations will restrict their ability to provide local, appropriate services. Government language of patient choice and improving services is merely code for cuts and privatisation of both the provision of services and indeed the commissioning process itself. The NHS is too important to all of us to let any group of politicians give it away to private profiteers."*

Dr Lucy Reynolds, health policy analyst: *"These regulations will lock us into the "privatisation ratchet": if they are applied to the NHS they will gradually privatise it, within a legal framework that would permanently block later renationalisation by triggering huge compensation entitlements for ejected companies. They can enforce these financial claims through UK and EU Courts against our government. Once NHS privatisation takes hold, we can evade such costs and renationalise it only by leaving the EU and the World Trade Organisation. If we allow this privatisation to go through as planned, the only beneficiaries will be UKIP."*

The new system will make it easy for foreign corporations as well as home-grown outsourcers and private equity groups like Circle to cherry-pick contracts for whatever NHS services they wish. David Cameron tasked Oliver Letwin (still an MP) with supervising the NHS reform that implements his 1988 [privatisation plan](#). Our rulers have become far too close to the City of London and its clientele of expansionist transnationals. Their betrayal is in part driven by Cameron's desire to cement an [US-EU trade treaty](#) which will require the "harmonisation" of EU legal frameworks, financing and organisation of all European national public services with the legal and organisational frameworks of the US private sector. We need an exemption from this lock-in to the US economy of the type that Canada has fought for and won if we are to save the NHS from commercial pillage and destruction."

(read a full response from Lucy [here](#))

John Lister, London Health Emergency: *"The regulations represent the cutting edge of the knife slicing the NHS up into a fragmented, competitive market. The last time a Conservative government opened up NHS services to competitive tender, in the mid 1980s, it brought a disastrous collapse in standards as cleaning, catering, and laundry were handed out to a variety of companies, many of them newly formed to cash in. New companies slashed the workforce, broke up the ward teams and effectively casualised hospital cleaning, triggering a rise in hospital acquired infections including the superbug MRSA, blighting hospitals for over 20 years.*

Now a similar drive to privatise threatens to open up clinical services to "any qualified provider" in a minimally regulated market, at a time of massive financial squeeze on the NHS. This seems likely to worsen fragmentation, drive down standards and lead to the further demoralisation and loss of skilled health professionals and support staff. The regulations were separated from the Bill in the hopes of avoiding proper parliamentary scrutiny. Peers and MPs should now scrutinise them and reject them to minimise the damage done to the NHS by the HSC Act."

Oliver Huitson, co-editor, openDemocracy: *Like the wider NHS reform they underpin, these privatisation regulations combine democratic insult with institutional injury. Both parliament and the public have been given explicit assurances by ministers which seem to have been broken. Commissioners and senior health professionals simply do not appear to know with any certainty what their obligations are or which actions will see them facing costly legal challenge. This is wholly a consequence of the Coalition's refusal to acknowledge openly what their regulations are imposing. To do so would not only highlight, once again, the duplicity with which this privatisation has been pursued but it would lay before the public the reality of what they have done: the NHS is now a commercial market, not a public service. The Coalition's disdain for democratic process has been quite extraordinary.*

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