Parliamentary brief
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BMA

Assisted Dying Bill

House of Keys
Tuesday 7 May

About the BMA

The BMA (British Medical Association) is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

Key points

Policy position: The BMA represents doctors and medical students from across the UK who hold a wide range of views on physician-assisted dying. In September 2021, the BMA's annual policy-making conference (the Annual Representative Meeting (ARM)) voted to adopt a neutral position on whether the law should be changed to permit physician-assisted dying; this means that the BMA neither supports nor opposes a change in the law.

Most recently, the BMA's Medical Ethics Committee has undertaken a significant piece of work to determine how we can best protect and represent our members in response to legislative proposals to permit assisted dying – within the context of our neutral position on whether the law should change. The views arising from this work have been approved by the four BMA Councils across the UK and are highlighted in this briefing. **In this briefing we have only commented on those issues that fall within that piece of work.**

Member survey: In October 2020, the BMA published the results of an all-member survey on physician-assisted dying.[1] This piece of member research is one of the largest surveys of medical professional opinion on physician-assisted dying ever conducted and provided invaluable insights into our wider membership's views on the matter. It was one of a number of factors that informed the policy-making vote at our 2021 ARM.

Amendments

The following commentary on amendments proposed to the Bill should not be interpreted as BMA support for, or opposition to, a change in the law on assisted dying – as highlighted above, we hold a neutral stance on this fundamental issue. We do, however, believe the amendments highlighted below would improve the legislation.

Clause 2 – Commencement

The BMA supports Amendment number 5 which would require a professional regulatory regime to be put in place before the Act comes into operation. The BMA believes that an independent and transparent system of oversight, monitoring and regulation of any assisted dying service is

[1] The survey was conducted on our behalf by Kantar, an independent research organisation. The results of our survey can be viewed here: www.bma.org.uk/advice-and-support/ethics/end-of-life/physician-assisted-dying/physician-assisted-dying-survey

essential, to ensure appropriate standard-setting, quality assurance and to maintain public confidence.

New clause after clause 8 – Intention to participate

The BMA supports Amendment 60 which would introduce an 'opt-in' system for health professionals, such that only those who have notified the Department of Health and Social Care of their intention to carry out assisted dying, and have received the appropriate guidance and training, can carry out any of the roles set out in the Act.

From the information we have gathered about other jurisdictions, it appears that *in practice* assisted dying is usually only provided by those who positively choose to participate, even though it is not explicitly presented in this way. Making this explicit in the legislation would provide reassurance to both doctors and patients. From our members' perspective, if assisted dying were to be legalised, having an opt-in model would:

- give doctors the greatest amount of choice about whether, and if so the extent to which, they were involved;
- provide reassurance to those doctors who did not want to participate that they would not face pressure to do so;
- ensure that those who wanted to participate had the proper training and experience to do so;
- make it easy for patients seeking assisted dying to identify a doctor willing to help them; and
- make the service easier to audit, which would help to build confidence and maintain trust.

Clause 9 – Assisted dying not to be initiated by health care professionals

The BMA supports Amendment 61 which would remove the Bill's current prohibition on health professionals initiating discussions with patients and replaces it with a requirement for guidance and training to assist health professionals in preparing for discussions with patients about the range of options available to them including, where appropriate, the provision of assisted dying.

The BMA believes that doctors should be able to talk to patients about all reasonable and legally available options. They should be trusted to use their professional judgement to decide when a discussion about assisted dying would be appropriate, taking their cue from the patient, as they do on all other issues. It would set a dangerous precedent to legislate for what doctors can, and cannot, say to patients.

From a patient perspective, it cannot be assumed that all eligible patients would be aware that assisted dying might be an option for them and there is a risk that a prohibition may impact disproportionately on some minority groups who have unequal access to information. Such a prohibition would also create uncertainty and legal risks for doctors. It may not always be clear, for example, whether a patient is asking about assisted dying – such as if a patient asks about the options open to them – leaving doctors at risk of inadvertently breaking the law.

Clauses 12 – Codes of practice and 13 – Monitoring

The BMA supports Amendments 76 and 80 which would introduce a system for routinely reviewing all assisted deaths. Such reviews would ensure that the correct process was followed and also to identify learning points to improve the management of cases. Review committees are common in countries that have legalised assisted dying.

Additional views

In addition to the issues raised above, the BMA also believes the following considerations would be important if the law were to change.

A right to refuse to carry out activities directly related to assisted dying for any reason, not just on grounds of conscience

We are aware from our survey that some doctors do not oppose the legalisation of assisted dying but would not want to participate themselves – these doctors would not be covered by a standard conscientious objection clause. The BMA, therefore, believes that, if assisted dying were legalised, doctors should be able to refuse to carry out any activities that are directly related to assisted dying (such as assessing capacity, or determining life-expectancy, specifically to assess eligibility for assisted dying) for reasons of conscience or for any other reason.

Protection from discrimination and abuse

Through the work we have undertaken with our members, it is clear that some doctors are concerned about how their decision to participate, or not to participate, if physician-assisted dying were legalised, might impact on them both personally and professionally. For that reason, in the event of legislation, the BMA would want to see specific provisions in the legislation making it unlawful to discriminate against, or cause detriment to, any doctor on the basis of their decision to either participate, or not participate, in assisted dying. We would also wish to see provision for safe access zones that could be invoked should the need arise, to protect staff and patients from harassment and/or abuse.

Assisted dying as a separate service

If assisted dying were legalised, the BMA does not believe that it should be integrated into existing care pathways (whereby a patient's GP, oncologist or palliative care doctor would, at the patient's request, provide assisted dying as part of the standard care and treatment they provide). In the BMA's view, assisted dying should be arranged, but not necessarily delivered, through a separate service that would accept referrals from other professionals and/or self-referrals. (This does not necessarily mean separate from the NHS.) Doctors who wanted to do so could still assist their own patients, but this would be arranged, and potentially managed, through a different pathway. In our view, this would be better for doctors and for patients and would help to ensure consistency, and facilitate oversight, research and audit of the service.

An official body to provide information for patients

We would support the establishment of an official body (with legal accountability) to provide factual information to patients about the range of options available to them, so that they can make informed decisions. This would ensure that doctors who did not wish, or did not feel confident, to provide information to patients about assisted dying had somewhere they could direct patients to, in the knowledge that they would receive accurate and objective information. It would also ensure that patients who may meet the eligibility criteria would be able to access the information they need without the requirement to go through their doctor and would have support to navigate the process.

Adequate funding and equitable access

Any assisted dying service would need to be adequately funded and resourced so that funding and workforce are not diverted from other, already overstretched, healthcare services. If assisted dying were legalised, it should be available to all those who meet the eligibility criteria on an equitable basis.

For more information about the BMA's work on physician-assisted dying, please visit our website: www.bma.org.uk/PAD