Government fights opposition to foundation hospitals

The government was under intense pressure to abandon its plans for NHS foundation hospitals as the *BMJ* went to press on the eve of a House of Commons vote.

The House of Lords voted on 6 November to remove all provisions concerning foundation hospitals from the Health and Social Care Bill, but ministers were anxious to see them reinstated. The vote was due to take place in the House of Commons on Wednesday, after the *BMJ* went to press.

Last Friday in a letter to Labour MPs the former health secretary Frank Dobson and David Hinchliffe, chairman of the Commons health committee, said that the committee believed that the proposal reintroduced into the NHS the "Tory idea" of setting hospital against hospital. "It also slams into reverse the long standing commitment to developing a primary care led NHS. That is why it is opposed by the Royal College of General Practitioners."

Owen Dyer *London*

Half of US doctors want national health insurance programme

A substantial proportion of US doctors supports government legislation to establish a national health insurance programme.

Researchers led by Dr Ronald Ackerman of the Indiana University School of Medicine, Indianapolis, Indiana, sampled 3250 doctors from the American Medical Association's physician masterfile, which is recognised as the most complete and accurate list of licensed physicians in the United States (*Annals of Internal Medicine* 2003;139:795-801).

All participants were sent the survey and asked to respond to 12 questions, including whether they support or oppose the idea

of governmental legislation to establish national health insurance and a national health insurance plan in which all health care is paid for by the federal government.

Sixty per cent of eligible participants returned the questionnaire. Forty nine per cent of physicians supported governmental legislation to establish national health insurance, and 40% opposed it. Twenty six per cent of all physicians supported a national health insurance plan in which all health care is paid for by the federal government.

Scott Gottlieb *New York*

Health authorities cannot force doctors to act against conscience

A health authority has no power to require psychiatrists to act in a way that conflicts with their conscientious professional judgment, the House of Lords ruled last week.

The law lords made their ruling in a case brought by a patient in Rampton Hospital whose conditional discharge was ordered by a mental health review tribunal but who remained in hospital because psychiatrists refused to supervise his treatment in the community.

The patient, named only as IH, argued that his continued detention between the tribunal's ruling and a decision by a new tribunal two years later that he should go on being detained breached his right to liberty under article 5 of the European convention on human rights.

IH, who was diagnosed with paranoid psychosis, was found not guilty of causing grievous bodily harm by reason of insanity in 1995 after severely mutilating his 3 year old son.

The law lords ruled that health authorities were not under an absolute duty to comply with tribunal conditions, but only to use their best endeavours, and they had no power to require psychiatrists to act in a way that conflicted with their conscientious professional judgment.

Clare Dyer *legal correspondent, BMJ*

Israel allows removal of sperm from dead men at wives' request

Judy Siegel-Itzkovich *Jerusalem*

Israel's attorney general, Elyakim Rubinstein, has issued formal regulations that will allow the removal of sperm from a man's body at the request of his wife or common law wife.

His decision results from a series of eight cases in which bereaved wives had filed urgent requests in the courts to allow their husbands' semen to be removed within hours of death so that it could be frozen and used to impregnate them. In all the cases the judges made a decision, in the absence of legislation, according to their individual understanding of the case.

Under the new regulations the woman, who may be a wife or common law wife, must obtain the permission of a court to use the frozen semen, and the regulations are such that her request is likely to be granted.

The new situation in Israel is in direct contrast to the situation in the United Kingdom, where the law says a man's sperm can be used after his death only if he had given clear permission for its use before he died. It was as a result of that law that Diane Blood had to fight to use her dead husband's sperm to become pregnant. The Court of Appeal ruled in 1997 that the taking and storing of semen from the unconscious Stephen Blood had been illegal but gave permission for her to be inseminated in another European country (*BMJ* 1997;314:461).

There are several reasons why the attorney general has issued his regulations. Having children has high importance in Judaism and in Israeli society. Most people—especially men—want their genes and name to be passed on.

Because sperm lose their motility within hours of a man's death, it will now be enough to get signatures from two senior doctors for sperm to be removed by suction. Permission for the procedure can be obtained when the man is in a coma or otherwise irreversibly incapacitated. If surgical removal is needed the wife and close relatives must approve, as when organs are removed for transplantation.

Although the dead man's parents can testify in court along with the widow and a social worker, the parents cannot petition for the semen to be removed, as they have no legal status as would be grandparents. Parents of soldiers who are not living with a woman would not be allowed to apply for semen removal for eventual use to produce a grandchild. Dr Mordechai Halperin, the health ministry's chief officer of medical ethics, said: "One would need a good reason to agree to the process, as the baby will be an orphan from the start, and this is not desirable."

Dr Halperin also said that it would be preferable for a woman not to seek having a baby after her husband's death, but if the man had expressed a favourable view when he was alive that his wife knew about, and she herself wanted to have his baby, this was ethically acceptable. If the man had never raised the topic, Dr Halperin added, the woman must testify that he would have wanted it.

Various legal and child welfare authorities objected to the new rules, arguing that women might be pressured have to bear and raise children against their will. □

Diane Blood with her children Liam, 4, and Joel, 7 months. Ms Blood had to go abroad to use her dead husband's sperm