

Competition and integration

Discussion document

Health and Social Care Act

Since 1991, when the introduction of the purchaser-provider split established the internal NHS market, the direction of travel for the NHS has been towards greater competition between organisations as a means of improving quality and value for money. Reinforced throughout the 2000s with the widening of patient choice, competition law found its way into the NHS with the introduction of the 2012 Health and Social Care Act, with the assertion that this would improve the quality of care and support integration between services and organisations.

“There is emerging evidence of the benefits of competition in the NHS. Where there is competition and choice of hospital provider it leads to better outcomes, satisfaction for patients and better hospital management.”

Department of Health¹

“Patients tell us they want more choice and control over their health and care; it’s something they increasingly expect from a modernised NHS.”

The Health and Social Care Act 2012²

The 2012 Health and Social Care Act replaced Primary Care Trusts with a new type of commissioning organisation, the clinical commissioning group (alongside NHS England which also had extensive commissioning responsibilities, particularly for specialist services), and required these to advertise and competitively tender for many, though not all, contracts. The Act also granted Monitor, the body responsible for authorising, monitoring and regulating NHS foundation trusts, additional powers to prevent anti-competitive or potentially anti-competitive behaviour.

“Monitor will address anti-competitive or potentially anti-competitive behaviour in the provision of health care services, set or regulate prices and support commissioners in ensuring the continuity of services.

The Health and Social Care Act 2012³

1. Department of Health, Factsheet C4 - Choice and Competition
2. Health and Social Care Act 2012
3. Ibid

Five Year Forward View and Next Steps

Just two and a half years after the introduction of the 2012 Health and Social Care Act, NHS England set out its view on the development of the NHS in England. This document, called the Five Year Forward View, set out the triple aim for the NHS of improving health and wellbeing, transforming quality of care delivery, and ensuring sustainable finances.⁴ Notably, the document made no mention of competition, signalling a clear change in direction for the NHS with emphasis increasingly placed on integration, collaboration and partnership-working.

“This ‘Forward View’ sets out a clear direction for the NHS – showing why change is needed and what it will look like. Some of what is needed can be brought about by the NHS itself. Other actions require new partnerships with local communities, local authorities and employers.”

Five Year Forward View⁵

In order to realise these ambitions, and building on pre-existing work around the country, the Five Year Forward View also outlined a set of new care models, the development of which it was felt would ensure that services were better integrated and patient experience and care improved. The models included multi-specialty community providers and primary and acute care systems.

Concurrent planning guidance mandated NHS organisations to take forward the vision of the Five Year Forward View through the development of a place-based, five-year Sustainability and Transformation Plan (STP), which later became Sustainability and Transformation Partnerships.⁶ The development of new models of care formed a core part of many of these plans.

The goals of the Five Year Forward View were subsequently reiterated in the Next Steps on the Five Year Forward View.

“We now want to accelerate this way of working to more of the country, through partnerships of care providers and commissioners in an area (Sustainability and Transformation Partnerships).”

Next Steps on the Five Year Forward View⁷

“Our aim is to use the next several years to make the biggest national move to integrated care of any major western country.”

Next Steps on the Five Year Forward View⁸

4. NHS England, Five Year Forward View

5. NHS England, Five Year Forward View

6. NHS England, Delivering the Forward View: Planning guidance 2016/17 - 2020/21

7. NHS England, Next Steps on the Five Year Forward View

8. Ibid.

Reflecting the shift towards greater collaboration and partnership working, Monitor and the Trust Development Authority were also brought together as NHS Improvement in 2015, with Simon Stevens stating that ***"this sets the stage for much greater alignment between the commissioning and system leadership work of NHS England and the new improvement and oversight function of NHS provider trusts."***⁹

Challenges

It is now increasingly recognised that the integration of NHS services and the development of new provider organisational models such as 'chains', and therein, the development of new models of care, sits uneasily alongside primary legislation that mandates the need for NHS services to be procured through competitive tender.

"Shifts in policy emphasis and reorganisations which promote competition within the NHS, such as the move from primary care trusts to clinical commissioning groups in 2013 and the Health and Social Care Act 2012 have complicated the path to integration"

National Audit Office¹⁰

"I think we will see less competition as a result of the integrated care changes that we are supporting and advocating. We do that, however, within a framework of not just UK law but European law"

Simon Stevens, NHSE England¹¹

"At some point in time, there will be benefit, I suspect, in taking a look at whether or not, in the light of where care integration has evolved, there might be a different statutory construction, but the fact is that we are compliant with the framework as it exists and are collectively using our best endeavours to do the right thing for patients."

Simon Stevens, NHSE England¹²

9. National Health Executive, Monitor and TDA merged and renamed 'NHS Improvement'

10. National Audit Office, Health and social care integration

11. House of Commons, Health and Social Care Committee, Oral evidence: Integrated care: organisations, partnerships and systems, HC 650

12. Ibid

Particular concerns relate to the need for NHS organisations to balance often conflicting organisational and system-wide priorities, what regulation looks like in this context, and the extent to which the commissioning of new care models on single long-term contracts undermines patient choice and competition and exposes the NHS to privatisation. This last point has provided the basis of two legal challenges launched against Health Secretary Jeremy Hunt and NHS England.¹³

“As well as being undemocratic, NHS England’s proposed changes to how NHS services are priced and paid for would undermine the NHS as a comprehensive health service for all who have a clinical need for it. They are about enabling moves to a cut-price, bargain basement NHS that uses the same business model as the USA’s limited state-funded health insurance system that provides a restricted range of healthcare for people who are too poor or too old to pay for private health insurance.”

Joanne Land, 999 Call for the NHS¹⁴

“Confusion still reigns over how the requirement to competitively tender can co-exist with the new care models. How can new and complex integrated provider partnerships be nurtured when they might have to go through a lengthy tendering process, and with no guarantee that they’d be awarded the contract?”

Sally Al-Zaidy, The Health Foundation¹⁵

Key questions for organisations to consider

- Has partnership and collaboration really replaced competition and what does this mean for new models of care?
- Is competition law really a blocker to integration or do the problems lie in relationships and the absence of a genuinely shared strategic vision?
- What is role of individual Boards and directors in developing new models of care?

13. The Guardian, NHS England faces first legal challenge to plans for health shake-up

14. Ibid.

15. Al-Zaidy, Sally, NHS competition policy and the EU