

What is the future of commissioning within the NHS?

Discussion document

“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 View¹

Published just two years after the 2012 Health and Social Care Act, NHS England’s Five Year Forward View made the case for significant transformation to the way in which health and social care is commissioned and delivered, arguing that in order to ensure the sustainability of the NHS, “*increasingly we need to manage systems... – not just organisations.*”² In doing so, it shifted the focus of health policy away from competition to collaboration.

Subsequent planning guidance has reaffirmed this, mandating that NHS organisations take forward the vision of the Five Year Forward View, one of partnership and integration, through the development of place-based, five-year Sustainability and Transformation Plans (STP). These plans set out how local leaders will improve quality and develop new models of care; improve health and wellbeing; and improve the efficiency of services

It is envisaged that, in time, STPs will evolve into Accountable/Integrated Care Systems³ (ACS/ICS) which in turn may become full Accountable/Integrated Care Organisations (ACO).⁴ Simon Stevens has even spoken about the potential for some regions to create “the NHS equivalent of combined authorities.”⁵

“...in many ways these models weaken the ‘internal market’, or purchaser–provider split, to allow integrated and joined-up care. We want to encourage this because it will improve the quality of care, meaning less resources are used up in complex contract negotiations.”

Jeremy Hunt, Secretary of State for Health⁶

However, this approach has its detractors and many struggle to see how such a transition can be realised within the confines of the 2012 Health and Social Care Act, claiming that current proposals amount to “radical and substantial” change, which undermines competition law by blurring the lines between commissioner and provider.⁷

1) NHS England, Five Year Forward View

2) Ibid.

3) The King’s Fund state that “ICSs have evolved from STPs and take the lead in planning and commissioning care for their populations and providing system leadership. They bring together NHS providers and commissioners and local authorities to work in partnership in improving health and care in their area.”

4) The King’s Fund state that “ACOs are established when commissioners award a long-term contract to a single organisation to provide a range of health and care services to a defined population following a competitive procurement. This organisation may subcontract with other providers to deliver the contract.”

5) West, David, Stevens floats ‘combined authorities’ for the NHS

6) Hunt, Jeremy, I share Stephen Hawking’s passion for the NHS. But he is wrong on our policy

7) Thomas, Rebecca, High Court told ACOs will unlawfully ‘usurp’ CCG powers

8) Ibid.

Certainly, this has been the basis of recent legal challenges which have argued that:

“An ACO [taking] most decisions about resource allocations and the design of care is ultra vires, which means ACOs [would be] usurping [the] functions of clinical commissioning groups”⁸

and,

“The distinguishing features of an ACO, are not integrated care, it is a single organisation holding the majority of a health budget for a defined population for 10 years [and] will be responsible for the health and care of those populations for the duration of those years...What would be left [for CCGs] would be a role of monitoring and regulation which is very far from what the act envisaged.”⁹

Although it is unlikely that such disputes will ultimately alter the direction of travel for the NHS and the government has recently signalled it is open to revising the Act to remove barriers to integration, they do raise serious questions around what the future of commissioning looks like.

What is the future of commissioning in the NHS?

“After 25 years, it feels like the concept of commissioning in the NHS is at a crossroads. Questions over its effectiveness, structure and value for money abound, as do questions about the effectiveness of the internal market. Sustainability and transformation partnerships, new care models and accountable care organisations and systems all challenge the concept of a separate commissioning structure and the long standing 'purchaser-provider split'.”

Saffron Cordery, NHS Providers¹⁰

“I certainly see a blurring of the traditional roles of commissioner and provider ahead. Historically commissioners have bought specified units of service... Increasingly they will be analysing their populations, stratifying according to risk and setting outcomes-based measures ... allocating providers block sums to deliver those outcomes.”

Nick Moberly, Chief Executive, King's College Hospital¹¹

9) Thomas, Rebecca, High Court told ACOs will unlawfully 'usurp' CCG powers

10) NHS Providers, Where next for commissioning

11) Ibid.

“So I think it is a problem that a typical NHS clinical commissioning group negotiates and monitors over 200 different legal contracts with other, different, parts of the NHS. It is too bureaucratic, inhibits joined up care, and takes money and people away from the front line. So where legislation is making it harder for professionals from different parts of the NHS and different local authorities to work together – we should be prepared to change it.”

Theresa May, Prime Minister¹²

Whilst the transformation described in the Five Year Forward View has the potential to dramatically alter the landscape of the NHS, little detail has emerged about the implications of any change for commissioners.

This lack of certainty has led some to speculate that the future of commissioning will no longer entail detailed contract specification, negotiation and monitoring or the routine use of tendering, with focus, instead placed on defining and measuring outcomes and introducing long-term capitated budgets.¹³ This, it is suggested, will reduce transaction costs and release resource to allow NHS organisations to focus on what really matters – improving health and care.¹⁴ Research by NHS Clinical Commissioners also reveals that there remains a strong belief that healthcare commissioning should continue to be clinically led, operate at a larger scale than at present, retain its purchasing function and remain accountable to the local population.¹⁵

Although the Government has recently stated a willingness to revisit legislation if it significantly inhibits integration, it is as yet unclear whether this will happen.¹⁶ Therefore, NHS organisations will steep need to operate within the confines of the 2012 Health and Social Care Act. This makes clear that CCGs will always retain legal responsibility for their statutory functions and that these can never be delegated.¹⁷ However, it does contain provisions with for CCGs to contract / purchase some of the routine transactional elements to be delivered through emergent new models of care.¹⁸ NHS England has also talked of CCGs aligning themselves with STP footprints. Both of these steps, it has been argued, would allow CCGs to look upwards and outwards and focus much more on the strategic elements of their role which include:

- CCGs operating across larger footprints as strategic health commissioners using STPs as a key vehicle for delivery
- integration of healthcare commissioning with local authorities
- developing an accountable care system
- developing integrated delivery models such as accountable care organisations¹⁹

Key questions for organisations to consider

Does the division between strategic and tactical commissioning make sense and if so, what activities fall into each category?

If ICOs are to take on tactical commissioning what does this imply for their governance?

Is strategic commissioning more than just scale?

12) PM speech on the NHS: 18 June 2018

13) Ham, Chris, Is strategic commissioning the future for the NHS?

14) Ibid.

15) NHS Clinical Commissioners, Steering towards strategic commissioning

16) PM speech on the NHS: 18 June 2018

17) Health and Social Care Act 2012

18) Ibid.

19) NHS Clinical Commissioners, Steering towards strategic commissioning