The King's Fund

Ideas that change health care

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Dear Sheldon

We welcome the opportunity to comment on the CMA guidance on the review of NHS mergers. In the aftermath of the Competition Commission's rejection of the proposed merger in Bournemouth and Poole we remain concerned that the application of competition law to NHS mergers and service reconfigurations may block or delay service changes that will benefit patients and are seen by providers and commissioners of the service as necessary and urgent. It is also critical that the process is clear, streamlined, and appropriate for a cash-limited, tax-funded system that is facing particular financial difficulties, minimising the costs to be borne by an already stretched system as it tries to make improvements for patients.
The NHS is used to taking a very different approach to organisational change, making service changes based on evidence that is less clear cut than that proposed by the CMA. Both the CMA and Monitor will need to give early, clear and unambiguous guidance to organisations about the types of information that will be necessary.

We agree that while there is often a very positive narrative in the NHS about the benefits of mergers and reconfigurations for patients, there is a poor track record either in providing evidence of those benefits or in making sure that they are realised. As the draft guidance recognises, there are many drivers for NHS mergers but in particular, merger has for many years been the "default" option to address financial failure in the NHS. We also agree with the CMA's assertion that some mergers may adversely affect patient interests, as they frequently fail to achieve their stated objectives.

We welcome the emphasis on Monitor's role in scrutinising and challenging the strategies of foundation trusts at an earlier stage, and expect that the CMA will give 'significant weight' to Monitor's advice, although we note that there is no appeals process if the CMA decides to reject that advice.

We are concerned that, while the TSA process is one of last resort, the application of competition law in these circumstances will add another layer of complexity and delay to an already difficult situation. Should the CMA overrule a merger proposal supported by the TSA and the Secretary of State on the grounds of competition, this would lead to more uncertainty for patients and staff. NHS services are required by law to be provided to a population, notwithstanding the exit of a provider, and we would urge the CMA to work closely with those responsible for the TSA process to ensure more confusion and delay is not added to the system.

Finally, there is a growing body of opinion that an NHS provider's problems cannot be solved in isolation. Wider systemic problems, shifts in policy, the legacy of complex financial relationships and the viability of clinical service models will require a whole system solution and perspective. Any solution needs to recognise this broader perspective and we hope that this can be taken account of by the CMA in its approach to NHS mergers.

Regards

Richard Murray
Director of Policy