The likely legislative requirements

TECHNICAL APPENDIX 1

September 2011

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The proposed detailed content and process for authorisation is shaped by the likely legislative requirements. These requirements are currently under scrutiny by Parliament and therefore this section seeks to highlight what is currently being considered, as this may help emerging clinical commissioning groups (CCGs), supported by PCT clusters and SHA clusters, prepare more effectively for the future. However, we cannot pre-judge the Parliamentary process.

Once the relevant legislation comes into force, emerging CCGs will be able to apply to the NHS Commissioning Board to be established as statutory bodies. Our working assumption is that the Board will come into being between July and October 2012, and at that point would be in a position to start making decisions on initial applications.

If the Board is satisfied as to the full range of matters set out below, it must grant the application without any conditions.

This essentially means that from April 2013, when PCTs are due to be dissolved, the CCG in question could take on its full statutory responsibilities. We describe this as 'full authorisation'. Legally this is described as 'established without conditions'.

If the Board is not fully satisfied as to the matters set out below, it may grant an 'initial application' placing conditions that the Board (or another CCG) will carry out some functions on the group's behalf. We describe this as 'authorisation with conditions'. Legally this is described as 'established with conditions'.

If necessary, the NHS Commissioning Board could grant an 'initial application' but arrange for the Board to carry out ***all*** the commissioning functions of the group from April 2013, until such time as the group was ready and willing to take on these functions. We describe this as a 'shadow' CCG. Legally this is described as 'established with conditions'.

Subject to the legislation currently before Parliament, as amended following the Government's response to the NHS Future Forum, the specific areas that the Board is likely to be required to consider are that:

- The constitution is appropriate and complies with the requirements of the Bill, including that CCGs have a name that uses the NHS brand and demonstrates a clear link to their locality;
- The geographical area is appropriate;
- The person proposed by the CCG to become the accountable officer is suitable;
- Each of the members is or will be a primary medical services provider on the date that the CCG would be established;
- Appropriate arrangements are in place to ensure the CCG will be able to discharge its functions; and
- Arrangements are in place to ensure the CCG will have a governing body which satisfies the legislative requirements and is otherwise appropriate.

Other matters may be added to this list by regulations.

In addition, the legislation before Parliament, as amended following the Government's response to the NHS Future Forum, sets out duties for each CCG. These include duties in relation to:

- Exercising its functions effectively, efficiently and economically;
- Ensuring that expenditure and use of resources do not exceed the limits set by the NHS Commissioning Board;
- Exercising its functions with a view to seeking continuous improvement in quality of services for patients and in outcomes, with particular regard to clinical effectiveness, safety and patient experience;
- Assisting and supporting the NHS Commissioning Board in securing continuous improvement in the quality of primary medical services;
- Having regard, in the exercise of its functions, to the need to reduce inequalities between patients with respect to their ability to access health services and with respect to the outcomes achieved for them;
- Promoting the involvement of patients, their carers and representatives in decisions about the provision of health services to patients;
- Acting with a view to enabling patients to make choices about their care;
- Obtaining advice from a wide range of health professionals;
- Involving the public in the planning of commissioning arrangements and in developing, considering and making decisions on any proposals for changes in commissioning arrangements that would have an impact on service delivery or the range of services available;
- Cooperating with relevant local authorities, including preparing Joint Strategic Needs Assessments and participating in local health and wellbeing boards;
- Exercising its functions with a view to securing that health services are provided in an integrated way, where the CCG considers that this would improve the quality of services, or reduce inequalities;
- Promoting innovation in the provision of health services;
- Having regard to the need to promote research on matters relevant to the health service, and the use of evidence obtained from research;
- Acting with a view to securing that health services are provided in a way which promotes the NHS Constitution, and to promote awareness of the NHS Constitution among patients, staff and the public;
- Adhering to requirements when commissioning services in relation to good procurement, the promotion of choice and the prevention of anti-competitive behaviour that works against patients' interests; and
- Preparing an annual commissioning plan for each financial year and an annual report after the end of the financial year.

The authorisation process will also need to reflect a number of further commitments, not least those set out in the Government's response to the NHS Future Forum. These include:

- Demonstrating that CCGs have robust arrangements for involving a range of professionals in the development and design of local services;
- Clinical senates supporting the NHS Commissioning Board in authorising CCGs to take on their responsibilities; and
- The NHS Commissioning Board seeking the views of emerging health and wellbeing boards prior to establishing any CCG.

In the NHS Future Forum listening exercise, concerns were expressed about how CCGs would take responsibility for unregistered populations and how they would work with health and wellbeing boards for the benefit of a clear population. This document sets out the proposed criteria so that emerging CCGs are in a position to make sensible decisions about their configurations at an early stage.

The Health and Social Care Bill sets out that every CCG will have a defined geographic area and:

- Work in partnership with the relevant local authorities and health and wellbeing boards for that area;
- Be responsible for people who are usually resident within the area and are not registered with any GP practice; and
- Regulations will provide that a CCG is responsible for commissioning emergency care for everyone present in that area.

In many instances registered patients will not all be drawn from a common geographic area. Indeed, the Government has indicated that it wishes people to have greater flexibility to register, if they wish, with a GP practice outside the area where they live. Additionally, for elective care and potentially other services, patients may choose to receive their treatment from a wide range of providers. However, this is only a small part of commissioning. Ensuring coordinated cohesive services for patients who are treated locally is the key role.

The NHS Commissioning Board will have to satisfy itself that the CCG is able to discharge these functions effectively. As indicated in the White Paper consultation response, we do not see how a CCG can function effectively if the GP practices in a CCG are drawn from a widely dispersed geographic area. The Government's response to the NHS Future Forum goes further, stating that "*in order to achieve coherence, a significant majority of the registered patients that a CCG is responsible for will have to live within the CCG's boundaries*".

These geographic areas must not overlap and must together make up the whole of the geography of England. This means, for instance, that there can be no ambiguity about which CCG is responsible for a patient who is not registered with a GP practice.

As well as effective commissioning, clear geographic boundaries also enable financial allocations to be made[1], map epidemiological and population data, and determine relationships with providers and other commissioners. This is not possible without a coherent, simple geographical boundary.

We propose the following principles should inform the geography shape/boundary of CCGs:

- Each CCG must have a defined geographical area, which must not be overly convoluted;
- A CCG must be able to commission emergency care effectively for all those within its agreed geographical area and must be able to work effectively with the local authority and health and wellbeing board for that geographic area to improve population health outcomes and improve integration of health and social care;
- A CCG's boundaries can cross local authority boundaries only if the CCG can demonstrate a clear rationale for doing so. If a CCG has a significant minority of registered patients living in a different area, it could still be invited to be a member of that area's health and wellbeing board;
- The GP practices that make up the CCG should not be drawn from a widely dispersed area;
- The significant majority of a CCG's registered patients should be within the CCG's defined geographical boundary;
- CCGs can set up collaborative arrangements to support effective commissioning across a wider geographical area, but each CCG will remain accountable for commissioning emergency care, commissioning services for unregistered patients within their geographical area and for commissioning services for all their registered patients; and
- CCGs should be able to give confidence that they can discharge their duties appropriately within the running cost envelope. This will mean that smaller CCGs, whose central governance mechanisms will take up a much greater percentage of their overall envelope, will need to show how they will have sufficient residual running cost resource to cover all their commissioning functions, even if shared or brought in from commissioning support organisations.

1. Allocations to CCGs will be made on the basis of weighted capitation. Knowing geographic boundaries will be crucial to allow account to be taken of unregistered populations and to help determine the most appropriate weights for factors such as deprivation.

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