HFMA introductory guide to NHS finance

Chapter 6: NHS finance – the role of clinical commissioning groups (and integrated care boards)

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Overview

This chapter looks at what clinical commissioning groups (CCGs) are, how they are structured and what they do with a focus on accountability, governance, and finance. To remind yourself of where CCGs sit in the NHS structure, look back at the diagram on page 13.

The *Health and Care Act 2022*[61] sets out the intention to establish statutory integrated care boards (ICBs) which will take on the functions of CCGs when the legislation is enacted on 1 July 2022. Until that time, CCGs are still the main local commissioning body. The roles, responsibilities and accountabilities described in this chapter will transfer to ICBs so the majority of content will remain relevant through the structural changes.

6.1 What are CCGs?

Constitution

CCGs are statutory bodies created by the *Health and Social Care Act 2012*[62] that cover the whole of England. They took over their statutory roles from 1 April 2013. To exist, a CCG must be authorised by NHS England and continue to comply with the terms of its authorisation.

In April 2020, there were 135 CCGs across England, following a number of mergers since their formation. This number reduced to 106 from April 2021. There will be 42 ICBs, meaning further mergers will take place. CCGs cover areas that are largely in line with upper tier or unitary local authority boundaries. Where this is not the case, and a CCG straddles more than one local authority, it must be for patient interest reasons. Legislation[63] allows for CCGs to merge or dissolve subject to NHS England approval.

Structure

In terms of their structure, each CCG is made up of members that are the GP practices within its area. They have a 'council of members' (on which all the constituent GP practices are represented) and a governing body; a chair, lay members, an 'accountable officer' (see below) and a chief finance officer (CFO). The council of members delegates functions to the governing body (or to its members/ employees, committees, or sub-committees).

The governing body is statutorily responsible for:

- 'ensuring that the group has appropriate arrangements in place to exercise its functions effectively, efficiently, and economically and in accordance with the group's principles of good governance (its main function)

[61] UK Parliament, *Health and Care Bill*, July 2021 – the Act was not available to reference at time of publication
[62] UK Government, *Health and Social Care Act 2012,* 2012
[63] UK Government, *Health and Social Care Act 2012 Section 25,* 2012

- determining the remuneration, fees, and other allowances payable to employees or other persons providing services to the group and the allowances payable under any pension scheme …
- approving any functions of the group that are specified in regulations
- other functions delegated to it by the CCG.64'

Although the accountable officer in a CCG is a senior leadership role, it is not the same as the chief executive in other NHS organisations and will often be filled by a clinical leader. It is for the CCG to nominate its accountable officer but he or she is formally appointed by NHS England and NHS Improvement. The role of the accountable officer is set out in NHS England and NHS Improvement guidance as[65]:

- being responsible for ensuring that the CCG fulfils its duties to exercise its functions effectively, efficiently, and economically thus ensuring improvement in the quality of services and the health of the local population whilst maintaining value for money
- ensuring that the regularity and propriety of expenditure is discharged at all times, and that arrangements are put in place to ensure that good practice is embodied and that safeguarding of funds is ensured through effective financial and management systems
- working closely with the chair of the governing body, ensuring that proper constitutional, governance, and development arrangements are put in place to assure the members (through the governing body) of the organisation's on-going capability and capacity to meet its duties and responsibilities (including arrangements for the on-going developments of its members and staff).

In the same guidance, the chief finance officer's role is described as:

- being the governing body's professional expert on finance and ensuring, through robust systems and processes, the regularity and propriety of expenditure is fully discharged
- making appropriate arrangements to support, monitor and report on the CCG's finances
- overseeing robust audit and governance arrangements leading to propriety in the use of the CCG's resources
- being able to advise the governing body on the effective, efficient, and economic use of the group's allocation, to remain within that allocation and deliver required financial targets and duties
- producing the financial statements for audit and publication in accordance with the statutory requirements to demonstrate effective stewardship of public money and accountability to NHS England and NHS Improvement.

Accountabilities

CCGs are accountable to NHS England and NHS Improvement for improving outcomes to patients and for getting the best possible value for money from the money they receive, and to the public and patients. The formal accountability link is from the CCG's accountable officer to NHS England and NHS Improvement's accountable officer but from the public/ patient viewpoint the key document is the CCG's written constitution. This document is a statutory requirement and must be available to the public.

A CCG's constitution sets out how it will meet its responsibilities and describes its governing principles, rules, and procedures.

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[64] NHS England, *NHS clinical commissioning group constitution,* September 2018
[65] NHS England, *Clinical commissioning group governing body members: role outlines, attributes and skills,* September 2016

As well as being a public document, the constitution must be adhered to by:

- the group's member practices
- the CCG's employees
- individuals working on behalf of the CCG
- anyone who is a member of the CCG's governing body, or any committees/ sub-committees established by the governing body.

A CCG's constitution must meet the requirements set out in the 2012 Act. CCGs must also adhere to the *Commissioning outcomes indicator set*[66] developed by the National Institute for Health and Care Excellence (NICE). This provides clear, comparative information about the quality of health services and associated health outcomes. NHS England and NHS Improvement uses this as part of its ongoing assessment process for CCGs – it will look at performance against the outcomes indicators and also assess how well CCGs are meeting their financial duties. NHS England and NHS Improvement uses the *NHS oversight framework*[67] to assess a CCG's overall performance. This annual assessment is required by law. The framework comprises a range of metrics across the five areas of the *NHS long term plan*[68]:

- new service models – including integrated primary care and community health services; acute emergency care and transfers of care; and personalisation and patient choice
- preventing ill health and reducing inequalities – including metrics around smoking, obesity and health inequalities
- quality of care and outcomes – including cancer services, mental health, planned care and long-term conditions
- leadership and workforce – including governance arrangements, staff engagement and equality
- finance and use of resources – including financial performance and the mental health investment standard.

If a CCG is unable to fulfil its duties effectively or there is a significant risk of failure, NHS England and NHS Improvement has powers to intervene. These powers range from telling a CCG how it should discharge its functions, known as 'direction', through to dissolving a CCG completely if it is failing over a period of time.

6.2 What CCGs do – roles and responsibilities

Commissioning

CCGs are responsible for agreeing the care that patients registered with their constituent practices need, negotiating contracts with healthcare providers and monitoring their implementation. They commission the majority of NHS services for their patients (ranging from less than 100,000 to just under 1,900,000 for an individual CCG) and are responsible for £89 billion of the £124 billion[69] NHS commissioning budget. Commissioning can take a number of forms.

Services commissioned directly by CCGs

- planned hospital care
- rehabilitative care

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66 NHS Digital, *CCG outcomes indicator set,* October 2020
67 NHS England and NHS Improvement, *NHS oversight framework for 2019/20,* January 2020
68 NHS England and NHS Improvement, *NHS long term plan,* January 2019
69 NHS England and NHS Improvement, *Board papers*, 26 March 2020

- maternity services
- urgent and emergency services, including ambulance and out-of-hours services (CCGs must also commission these services for anyone in their area although for some patients the costs will subsequently be charged to the CCG with which they are registered)
- community health services
- mental health services
- learning disabilities services
- abortion services
- infertility services
- continuing healthcare.

Personalised care

CCGs also have a role in the implementation, promotion, and expansion of personalised care, which may include personal health budgets or PHBs. Several groups of people have a legal right to a PHB[70] including patients eligible for continuing healthcare or children and young people's continuing care, and people eligible for section 117 after-care through the *Mental Health Act*. A PHB is an amount of money used to support a person's health and wellbeing needs, planned and agreed between the person and their local NHS team. PHBs allow individual patients to decide how to use the money that they are entitled to, to deliver the care they need. By enabling individuals to undertake the commissioning role themselves, they have more choice and control in how their long-term healthcare needs and outcomes are met.

Commissioning of primary care

CCGs may also be responsible for commissioning services provided by GPs. At present, CCGs are not responsible for commissioning other core primary care (i.e. services provided by dentists, community pharmacists and holders of ophthalmic contracts), national and regional specialised services and a number of other prescribed services including offender healthcare – these are commissioned by NHS England and NHS Improvement (see chapter 4).

Since April 2015, CCGs working with NHS England and NHS Improvement have been able to adopt one of the following 'co-commissioning' models[71]:

Co-commissioning

Through co-commissioning, CCGs are able to collaborate more closely with NHS England and NHS Improvement to ensure that decisions taken align with the objectives of the local health economy. CCGs can be involved in discussions around the full range of primary care including primary medical care, dental, eye health and community pharmacies. However, NHS England and NHS Improvement retains its statutory decision-making responsibilities.

Joint commissioning

Joint commissioning enables one or more CCGs to assume responsibility for jointly commissioning primary medical services with NHS England and NHS Improvement, through a joint committee or 'committees in common'. The joint committees can make decisions on all GP contracts and enhanced services, as well as other matters relating to GP practices. Joint commissioning arrangements exclude individual GP management.

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[70] NHS England and NHS Improvement, *Guidance on the legal rights to have personal health budgets and personal wheelchair budgets,* December 2019
[71] NHS England and NHS Improvement, *Next steps towards primary care co-commissioning*, 2014

Joint committees can discuss other areas of primary care, such as dental, community optometry and community pharmacies but have no decision-making powers. However, CCGs are able to commission local enhanced services from community pharmacy and optometry providers.

Delegated commissioning

Delegated commissioning allows CCGs to assume full responsibility for commissioning general practice services. Legally, NHS England and NHS Improvement retains the residual liability for the performance of primary medical care commissioning and will require assurance that its statutory functions are being discharged effectively.

A CCG will have a delegation agreement with NHS England and NHS Improvement which sets out the matters for which the CCG has decision-making responsibility.

It is anticipated that co-commissioning will be extended to other areas of primary care in the future. However, it is important to note that NHS England and NHS Improvement retains its statutory responsibilities in relation to commissioning primary care even where a CCG is operating under full delegated responsibility.

CCGs are responsible for managing GP prescribing – they meet the costs of prescriptions written by their member practices but not the associated dispensing fees.

Statutory duties

CCGs must also fulfil a number of other statutory duties which are grouped under four headings in the Department of Health and Social Care's guide *The functions of clinical commissioning groups*[72]:

CCG statutory duties

General – for example, to co-operate with other NHS bodies; to have regard to the NHS Constitution and guidance on commissioning issued by NHS England and NHS Improvement; to promote innovation in health service provision; to promote the involvement of patients.

Planning, agreeing, monitoring services – for example, to contribute to the JSNA (joint strategic needs assessment) and JHWS (joint health and wellbeing strategy) and to have regard to them; to prepare and publish a commissioning plan before the start of each financial year which sets out how the CCG will secure improvements in services and outcomes, reduce inequalities, involve patients and fulfil its financial duties; to comply with regulations relating to best practice in procurement/ patient choice and anti-competitive conduct.

NHS England and NHS Improvement issues financial planning guidance each year that establishes the 'business rules' for the financial position. Although not a statutory duty, adherence to these rules informs the CCG's 'risk rating'.

Finance – for example, to ensure the annual budget, revenue and capital limits and running cost allowance are not exceeded; to provide financial information to NHS England and NHS Improvement; to keep proper accounts and records; to use the prescribed banking service.

Governance – for example, to have a governing body and accountable officer; to have a published constitution; to publish an annual report; to maintain one or more publicly accessible registers of interest; to make arrangements for managing conflicts of interest.

The same guidance also identifies CCG powers under the same headings. In relation to finance and governance notable powers include the ability to:

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[72] Department of Health and Social Care, *The functions of clinical commissioning groups,* June 2012

- enter into partnership arrangements with local authorities (for example, pooled budgets and lead commissioning)
- enter into contracts to provide services
- act jointly with other CCGs, including pooling commissioning funds for lead/ joint commissioning
- make direct payments to patients (subject to regulations)73
- enter into externally financed development arrangements
- pay governing body members remuneration and travelling or other allowances.

For full details of a CCG's functions, duties and powers refer to the Department of Health and Social Care guide *The functions of clinical commissioning groups*.

Commissioning support units (CSUs)

Initially all CCGs had the option to obtain business support services – notably payroll, HR, finance, IT and communications services, from commissioning support units (CSUs) hosted by NHS England and NHS Improvement. Service level agreements (SLAs) set out what each party to the agreement expected and/ or required. Initial SLAs were in place until October 2014. NHS England and NHS Improvement subsequently ran a national procurement process to make commissioning support services available to CCGs and other commissioners of health and social care. This resulted in the lead provider framework (LPF).

In 2018, the LPF was replaced by the health systems support framework (HSSF)[74] to support the development of population health management and integrated systems. This framework is available for use by any public sector body engaged in the management or support of the health, care, or wellbeing of the population across the United Kingdom. CCGs can still purchase services from CSUs through this framework, but the emphasis is on services to support integrated care and digital transformation, with providers listed from across the public and private sector.

6.3 How CCGs are financed

CCGs receive funding for commissioning NHS services from NHS England and NHS Improvement. The main allocation is based on a formula that supports the aim of improving health outcomes and reducing inequalities. It takes account of the number of people registered with each GP as well as the sparsity of the local population. From 2019/20, the allocation formula has been updated[75] to recognise improved data for community services which shows that a different distribution is needed for some services. In addition, improvements have been made for mental health, learning disabilities and health inequalities. Work has also been undertaken to review allocation levels against targets, recognising that some CCGs have been over or underfunded through previous allocations. An adjustment is made to move CCGs towards their target allocation, in a sustainable way, usually over a number of years.

Part of a CCG's allocation must be put into a pooled budget with the relevant local authority designated as the better care fund (BCF). With CCGs required to work collaboratively with local authorities 'to make the most efficient and effective use of health and social care funding', the size and scale of pooled funds is set to increase over the coming years.

Within the CCG allocation is an identified amount for primary medical care. CCGs are required to support primary care networks through this allocation, with a schedule of payments attached to it.

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[73] See personalised care above
[74] NHS, *Health systems support framework*, accessed March 2021
[75] NHS, *Note on Clinical Commissioning Group (CCG) Allocations 2019/20-2023/24,* January 2019

There is also a separate running cost allowance that is based on the population served by each CCG's constituent practices adjusted to take account of the risk of inaccurate lists and unregistered people. This allowance must cover all CCG management costs including the costs of commissioning support services. CCGs are free to decide how best to use this allowance to carry out commissioning support activities and may choose to undertake some, or all, of these roles themselves. They also have the flexibility to use the money to buy in the services needed (for example, data analysis and contract monitoring) from external sources. As well as covering the costs directly associated with commissioning, the allowance covers the costs of the accountable officer, chief finance officer, internal and external audit, and counter fraud services. CCGs were required to reduce their running costs by 20% by 2020/21 as part of a wider reduction in administrative costs by NHS England and NHS Improvement. CCGs could decide how to deliver this efficiency locally and allocations were reduced accordingly.

6.4 The future of CCGs

The Department of Health and Social Care published their legislative proposals for the NHS on 11 February 2021, in the *Integration and innovation: working together to improve health and social care for all* white paper. The proposals build on the NHS long term plan and the subsequent *NHS's recommendations to Government and Parliament for an NHS bill*[76]. The proposals cover three key areas; working together and supporting integration; reducing bureaucracy; and enhancing public confidence and accountability.

The subsequent *Health and Care Act 2022* will establish statutory integrated care systems (ICSs). These will be made up of a statutory integrated care board (ICB) and an ICS health and care partnership. The two elements of the ICS recognise that it has two key, but separate, requirements upon it.

The ICB will be responsible for:

- developing a plan to meet the health needs of their population
- developing a capital plan for NHS providers within their geography
- securing the provision of health services to meet the needs of the system population.

It is intended that the allocative functions of CCGs become part of the ICB, recognising that it is important to provide stability of employment for staff and minimise uncertainty during times of change.

The creation of statutory ICBs will also allow NHS England to set financial allocations and other financial objectives at a system level. There will be a duty to meet the system financial objectives and deliver financial balance. NHS providers within the ICS will retain their current structures, governance, and organisational financial statutory duties but there will be a new duty to compel providers to have regard to the system financial objectives. The ICB will take on the commissioning functions of CCGs and their responsibilities in relation to oversight and scrutiny committees.

[76] NHS, *The NHS's recommendations to Government and Parliament for an NHS Bill*, September 2019

Key learning points

- CCGs are statutory bodies created by the *Health and Social Care Act 2012* that cover the whole of England.
- CCGs are responsible for agreeing the care that patients registered with their constituent practices need, negotiating contracts with healthcare providers and monitoring their implementation. They commission the majority of NHS services for their patients.
- CCGs are accountable to NHS England and NHS Improvement for improving outcomes to patients and for getting the best possible value for money from the money they receive, and to the public and patients.
- CCGs receive funding for commissioning NHS services from NHS England and NHS Improvement. The main allocation is based on a formula that supports the aim of improving health outcomes and reducing inequalities. It takes account of the number of people registered with each GP as well as the sparsity of the local population.
- CCGs will cease to exist after 1 July 2022, when integrated care boards (ICBs) are established.

Additional HFMA resources

The HFMA maintains a directory of resources which provides links to other HFMA outputs such as briefings and webinars across a range of subjects, including a section dedicated to commissioning that includes considerations for CCGs during the transition to ICBs. It also highlights e-learning courses that are available. The directory of resources can be found here.