HFMA introductory guide to NHS finance

Chapter 9: How the NHS is regulated

Chapter 9. How the NHS is regulated

Overview

This chapter describes how the NHS is regulated and scrutinised by NHS England, the Care Quality Commission, the National Audit Office and local authorities.

9.1 Introduction

NHS organisations are subject to regulation and inspection from a wide range of bodies that are independent of government and the NHS. These include many national agencies and organisations linked to the many different professions involved in the delivery of healthcare, ranging from the Royal Colleges and the General Medical Council to HM Revenue and Customs.

In an environment where delivering high quality services and performance through the effective use of public funds is essential, the role of these bodies and their impact on an organisation's reputation and morale cannot be underestimated. It is essential therefore that NHS organisations, and the systems they are a part of, are aware of the approach and requirements of each regulatory body. Also, appropriate mechanisms must be in place to facilitate the assessment process and respond to any recommendations or advice that is issued.

This chapter focuses on the approach of those bodies that have a direct impact on NHS organisations in terms of their finance and governance arrangements: NHS England, the Care Quality Commission (CQC)[147], the National Audit Office (NAO)[148], and local authorities.

9.2 NHS England

The regulation of integrated care systems (ICSs) by NHS England is set out in the *NHS oversight framework*[149].

The *NHS oversight framework* outlines the approach NHS England takes to oversee organisational performance and support the alignment of priorities for ICSs and the organisations within them. It identifies where ICSs and NHS organisations may benefit from, or require, support to meet the standards required of them.

The statutory roles and responsibilities of NHS England in relation to commissioners and providers remain unchanged, as do the accountabilities of individual organisations. However, they are applied in the context of five key principles, that reflect the focus on system performance.

Oversight is characterised by five key principles:

- working with and through integrated care boards (ICBs), wherever possible, to tackle problems
- a greater emphasis on system performance and quality of care outcomes, alongside the contributions of individual healthcare providers and commissioners to system goals
- matching accountability for results with improvement support, as appropriate

[147] Care Quality Commission, *About us,* 2024
[148] National Audit Office, *About us,* 2024
[149] NHS England, *NHS oversight framework,* November 2023

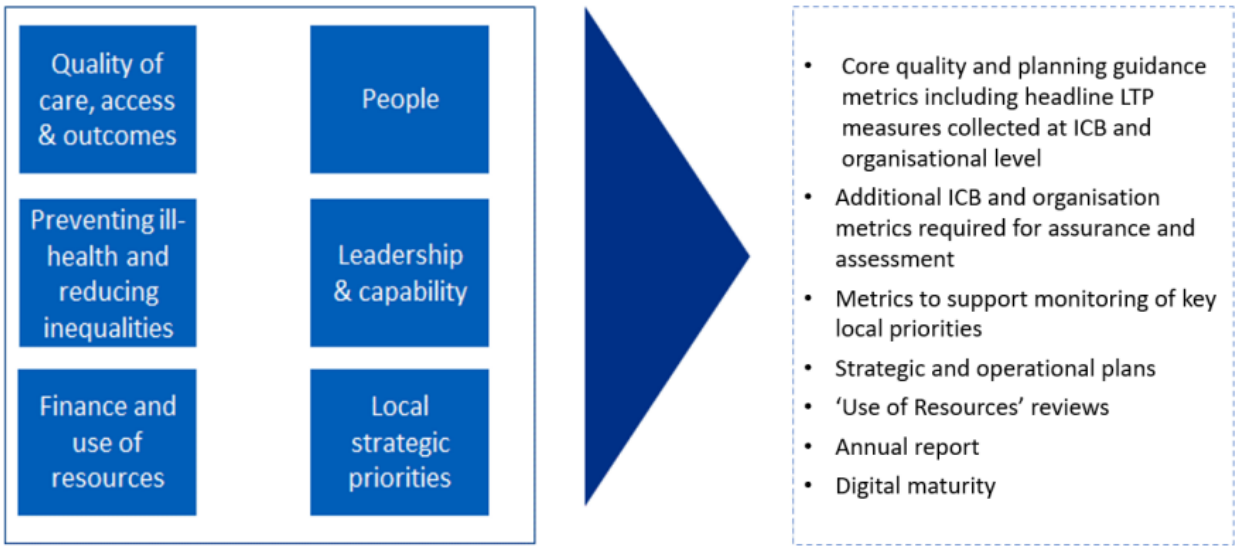
- autonomy for ICBs and NHS providers as the default position
- compassionate leadership behaviours that underpin all oversight interactions.

Regional teams support ICBs to take on greater collaborative responsibility for their use of NHS resources, quality of care and population health, with oversight arrangements for ICSs reflecting their performance and relative maturity. ICBs will be increasingly involved in the oversight and support of the organisations in their system, in partnership with NHS England.

Measuring performance and identifying support needs

The oversight framework is built around five national themes, with a single set of metrics[150] across trusts and ICBs. This remains the current guidance. A sixth theme covers local strategic priorities and recognises that each ICB is operating in a unique set of circumstances. The themes are set out below:

Key themes for the oversight framework



NHS England regional teams use data from the metrics and local information and insight to identify where commissioners and providers may need support. The metrics for oversight and assessment purposes include the headline measures described in the *NHS long term plan implementation framework*[151] (LTP) against which the success of the NHS is assessed.

Ongoing monitoring assesses current performance and trends to ensure early identification of emerging issues or concerns. The regional team allocates ICBs and trusts to one of four segments, as shown below:

Levels of support

	Segment description	Support needs
1	Consistently high performing	No specific support needs

[150] NHS England, *NHS oversight metrics for 2022/23,* June 2022
[151] NHS England, *NHS long-term plan implementation framework*, June 2019

2	On a development journey (default segment)	Flexible support, targeted to address specific issues
3	Significant support needs	Bespoke mandated support
4	Very serious, complex issues	Mandated intensive support through the recovery support programme

NHS enforcement guidance

NHS England has statutory accountability for Integrated Care Boards (ICBs) and for NHS providers (trusts and foundation trusts). The NHS enforcement guidance[152] sets out how NHS England will use the powers it has where intervention is deemed necessary and sits alongside the oversight framework.

It is intended that a collaborative approach would be taken between NHS England, ICBs and providers, in keeping with the general operating principles pf partnership working.

Mandated support

Mandated support applies when an ICB or trust has serious problems and where there are concerns that the existing leadership cannot make the necessary improvements without support. It involves the use of enforcement powers.

Two levels of mandated support are set out within the *NHS oversight framework*:

- support led and co-ordinated by NHS England regional teams
- intensive support agreed with the regional teams but delivered through the national recovery support programme.

Mandated support will be delivered within the system context and local system partners are expected to be involved where there are links into the ICS for the cause or solution of the need for support.

Recovery support programme

The recovery support programme is system oriented and focuses on the underlying drivers of the problems. Inclusion in the programme is time limited with clear exit criteria.

An experienced system improvement director will be appointed to support the ICB or trust to develop an improvement plan with an indicative timeline for recovery. In addition, NHS England will consider whether there are any wider structural issues that impact the organisation's ability to operate effectively.

Use of resources assessments

The *Use of resources framework*[153] was developed in conjunction with the CQC and a use of resources assessment is published alongside the quality ratings for each provider. Use of resource assessments were paused during the Covid-19 pandemic and are currently being reviewed[154].

Regional NHS England teams periodically undertake assessments of providers to understand how effectively they are using resources to provide high-quality, efficient and sustainable care for patients.

---

[152] NHS England, *NHS enforcement guidance*, Updated December 2023
[153] Care Quality Commission and NHS Improvement, *Use of resources: assessment framework*, August 2017
[154] Care Quality Commission, *Use of resources: NHS trusts*, December 2022

This includes considering how well providers are meeting financial controls, how financially sustainable they are and how efficiently they use their workforce, clinical and operational services.

Use of resources assessments, prior to being paused, were based on five key lines of enquiry.

Key lines of enquiry for the use of resources assessment

Use of resources area	Key lines of enquiry
Clinical services	How well is the trust using its resources to provide clinical services that operate as productively as possible and thereby maximise patient benefit?
People	How effectively is the trust using its workforce to maximise patient benefit and provide high quality care?
Clinical support services	How effectively is the trust using its clinical support services to deliver high quality, sustainable services for patients?
Corporate services, procurement, estates and facilities	How effectively is the trust managing its corporate services, procurement, estates and facilities to maximise productivity to the benefit of patients?
Finance	How effectively is the trust managing its financial resources to deliver high quality, sustainable services for patients?

9.3 Care Quality Commission

The Care Quality Commission (CQC) is the independent regulator of health and adult social care in England. Its purpose is to 'make sure health and social care services provide people with safe, effective, compassionate, high-quality care' and to encourage care services to improve. Its remit covers:

- NHS providers
- adult social care providers
- independent healthcare providers
- dentists
- private ambulances
- NHS out-of-hours services (that are not GP practices)
- GPs and NHS walk-in centres (that do not provide out of hours services).

The CQC has four core functions:

- to register those who apply to them to provide health and adult social care services
- to use information and data to monitor services and then carry out expert inspections, making a judgement of each service and giving an overall rating
- to ask providers to improve where poor care is found (inadequate or requires improvement) and to enforce this if necessary

- to provide an independent voice on the state of health and adult social care in England, helping to share learning and encourage continuous improvement across the sector.

When the CQC registers and inspects services, it uses a single assessment framework[155] across all sectors, service types and providers. The latest updated assessment framework is now being rolled out across all regions[156] and involves:

- ratings and asking five key questions (set out below)
- assessing the extent that those being inspected live up to the commitments set out in the quality statements; the statements link directly to regulations
- compiling evidence across the same six categories – for example, feedback from patients, staff and leaders.

The five key questions[157] asked of every service are:

- is the service safe – are people protected from abuse and avoidable harm?
- is the service effective – is the care provided based on the best possible evidence, achieve good outcomes and promote a good quality of life?
- is the service caring – do staff involve and treat people with compassion, kindness, dignity and respect?
- is the service responsive to people's needs– are services organised so that they meet people's needs?
- is the service well-led[158] – does the leadership, management and governance of the organisation assure the delivery of high-quality person-centred care, support learning and innovation, and promote an open and fair culture?

The CQC has identified six evidence categories[159] to ensure the assessments are structured and consistent. These are:

- People's experience of health and care services
- Feedback from staff and leaders
- Feedback from partners
- Observation
- Processes
- Outcomes

Although the six categories remain consistent across all sectors, the CQC will prioritise the categories dependent on the sector[160].

Registration

When registering with the CQC, providers must demonstrate that they meet the CQC's fundamental standards of care (see below), as well as the fit and proper persons requirements for board directors and equivalents. Registration effectively represents a licence to operate.

[155] Care Quality Commission, *Our new approach to assessment*, January 2024
[156] Care Quality Commission, *Our new assessment approach: update December 2023*, December 2023

[158] Care Quality Commission, *Guidance for NHS trusts and foundation trusts: assessing the well-led key question,* April 2024
[159] Care Quality Commission, *Evidence categories*, February 2024
[160] Care Quality Commission, *Evidence categories for sector groups*, February 2024

CQC fundamental standards of care

Person-centred care – you must have care or treatment that is tailored to you and meets your needs and preferences.

Dignity and respect – you must be treated with dignity and respect at all times while you're receiving care and treatment. This includes making sure:

- you have privacy when you need and want it
- everybody is treated as equals
- you are given any support you need to help you remain independent and involved in your local community.

Consent – you (or anybody legally acting on your behalf) must give your consent before any care or treatment is given to you.

Safety – you must not be given unsafe care or treatment or be put at risk of harm that could be avoided. Providers must assess the risks to your health and safety during any care or treatment and make sure their staff have the qualifications, competence, skills and experience to keep you safe.

Safeguarding from abuse – you must not suffer any form of abuse or improper treatment while receiving care. This includes:

- neglect
- degrading treatment
- unnecessary or disproportionate restraint
- inappropriate limits on your freedom.

Food and drink – you must have enough to eat and drink to keep you in good health while you receive care and treatment.

Premises and equipment – the places where you receive care and treatment and the equipment used in it must be clean, suitable and looked after properly. The equipment used in your care and treatment must also be secure and used properly.

Complaints – you must be able to complain about your care and treatment. The provider of your care must have a system in place so they can handle and respond to your complaint. They must investigate it thoroughly and take action if problems are identified.

Good governance – the provider of your care must have plans that ensure they can meet these standards. They must have effective governance and systems to check on the quality and safety of care. These must help the service improve and reduce any risks to your health, safety and welfare.

Staffing – the provider of your care must have enough suitably qualified, competent and experienced staff to make sure they can meet these standards. Their staff must be given the support, training and supervision they need to help them do their job.

Fit and proper staff – the provider of your care must only employ people who can provide care and treatment appropriate to their role. They must have strong recruitment procedures in place and carry out relevant checks such as on applicants' criminal records and work history.

Duty of candour – the provider of your care must be open and transparent with you about your care and treatment. Should something go wrong, they must tell you what has happened, provide support and apologise.

Display of ratings – the provider of your care must display their CQC rating in a place where you can see it. They must also include this information on their website and make our latest report on their service available to you.

Monitoring and inspection regime

Once a provider has been registered, it must demonstrate on an ongoing basis that it is meeting the fundamental standards of care.

The CQC uses several statements against which to assess the commitment to delivering high-quality person-centred care of providers, commissioners and system leaders. Known as quality statements, they link directly to the regulations set out in the Health and Care Act 2008 (Regulated Activities) Regulations 2014. To support inspections, information and data is gathered from a range of sources including from people using care, providers and partners.

The CQC inspection teams include inspectors, specialist advisors (experts such as senior NHS doctors), and experts-by-experience (people who have personal experience of using a service or caring for someone who has).

An assessment can come at any time, depending on the evidence collected or information received – for example, through whistleblowing concerns or safeguarding reports.

Inspection reports and ratings

The CQC publishes a report after each inspection, that in most cases includes ratings, providing an overall judgement of the quality of care.

CQC ratings

- outstanding: the service is performing exceptionally well
- good: the service is performing well and meeting our expectations
- requires improvement: the service is not performing as well as it should, and we have told the service how it must improve
- inadequate: the service is performing badly, and we've taken action against the person or organisation that runs it.

Concerns, complaints and whistleblowing

The CQC also gathers information about concerns raised by people using services and staff in three main ways:

- encouraging people and staff to make contact through its website and phone line, and providing opportunities to share concerns with inspectors during visits
- asking national and local partners to share concerns, complaints and whistleblowing information
- requesting information about concerns, complaints and whistleblowing from providers.

9.4 National Audit Office

The National Audit Office (NAO)[161] plays an important role in NHS governance as it scrutinises public spending for Parliament. It does this in two main ways:

- conducting financial audits of all government departments and agencies and many other public bodies – this includes the Department of Health and Social Care (DHSC) and its' arm's length bodies
- reporting to Parliament on whether government departments and other bodies have used public money efficiently, effectively and with economy.

The results of NAO reports focused on the DHSC can in turn have an impact at the local level.

The NAO is responsible for the Code of Audit Practice. The Local Audit and Accountability Act 2014 (the Act) makes the NAO's Comptroller and Auditor General (C&AG) responsible for the preparation, publication and maintenance of the Code. The Code sets out what local auditors are required to do to fulfil their statutory responsibilities under the Act. The Act also gives the C&AG power to issue statutory guidance, to which local external auditors are required to 'have regard', when carrying out their work.

When auditing the DHSC and its arm's length bodies (ALBs) accounts, the NAO obtains assurance from the work carried out by auditors on the underlying accounts of individual NHS providers and NHS commissioners.

9.5 Local authorities

Since January 2003, local authorities with social services responsibilities have been able to establish committees of councillors to provide overview and scrutiny of local NHS bodies by virtue of powers set out in section 38 of the Local Government Act 2000[162]. The aim is to secure health improvement for local communities by encouraging authorities to look beyond their own service responsibilities to issues of wider concern to local people.

This is achieved by giving democratically elected representatives the right to scrutinise how local health services are provided and developed for their constituents. This scrutiny role was extended by the Health and Social Care Act 2012 to cover any provider of NHS funded services. Local authorities also play a key role in public health and health improvement – see chapter 8 for details.

9.6 Other external bodies

There is a wide range of other organisations with an interest in health that can affect governance arrangements. These include:

- professional bodies on both the clinical and managerial side. These organisations often have their own codes of conduct and disciplinary regimes that apply to their members - for example, the Royal Colleges and other independent audit and assurance bodies that provide an assurance to NHS organisations
- other government departments and agencies - for example, the Department for Levelling Up, Housing and Communities. Some of these, such as the Health and Safety Executive, can have a significant impact on the operation of a trust
- non-departmental public bodies, independent and local organisations - for example, local HealthWatch

[161] National Audit office, *About us*, 2024
[162] UK Government, Local Government Act 2000

- representative bodies - for example, the British Medical Association, the NHS Confederation and UNISON
- think tanks and research organisations – for example, the King's Fund, the Health Foundation and the Nuffield Trust
- the public – NHS organisations are required to engage with the public and conduct meaningful consultations.

Key learning points

- NHS organisations must be aware of the approach and requirements of all relevant regulatory and inspection agencies.
- NHS England regulates NHS providers and commissioners as systems, using the NHS oversight framework with the emphasis on system performance.
- The CQC regulates providers of healthcare services via a system of registration and compliance with fundamental standards of care.
- The NAO conducts financial audits of all government departments including the Department of Health and Social Care and its ALBs.
- Local authorities have a scrutiny role that extends to all providers of NHS funded services.

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. It also highlights online learning courses that are available. The directory of resources can be found here.