



Extension to review of subsidiary companies

NHS Improvement consultation

Consultation

NHS Improvement issued a consultation which outlined proposals for a new framework that changes the way subsidiaries are reported to and approved by NHS Improvement.

The response was submitted in a survey on 17 October.

Question 4

Do you agree that all subsidiary proposals should be reported to NHS Improvement regardless of value? Please answer: Yes/No

If No, please provide further comments below

No.

The current transactions guidance already set out reporting and review criteria. This consultation suggests that the establishment of subsidiary companies is, in itself, of such a high risk that these criteria should be set to zero.

Our members are aware that the establishment of subsidiary companies can be controversial and are not without risk – in our recent briefing on financial and governance considerations when establishing subsidiaries, they identified many issues which should be considered when going through the process. We are aware that there are more which need to be included. However, we are not of the view that these transactions are any riskier than others which do not meet the reporting criteria.

We are also concerned that if the establishment of all subsidiaries is reportable then the burden of regulation will slow the whole process to a point at which it is unworkable.

Question 5

What criteria or threshold do you think should make the creation of a subsidiary a 'reportable' transaction?

Please outline your proposed criteria or thresholds below

We suggest that an additional criterion around the transfer of staff should be added to the existing criteria – percentage of staff divided by the total establishment (in numbers of staff rather than WTE or staff costs). The same reporting requirements of 5% and 10% could be retained.

We suggest that consideration is given to whether reputational risk should be added as a criterion for reporting the transaction. Clearly, it will not be possible to attach a numerical threshold to this. It would be similar to the requirement in Managing Public Money to seek Treasury approval for novel and contentious transactions but with a focus on reputation rather than financial implications. Members suggest that where a proposed subsidiary is small but is expected to undertake work which may be controversial, for example animal testing, then NHS Improvement may wish to know about it in advance.

We would welcome clarification of the reporting guidance:

- the current criteria are defined in terms of the assets or income gross assets of the trust. Where NHS bodies have already established subsidiaries and are operating as a group, clarification is required that this relates to the trust rather than the group
- it is not clear whether the definition of subsidiary companies includes joint ventures or not. It may be clearer to include words along the lines of 'and/or all forms of organisation required to be registered at Companies House'

Question 6

Do you agree that a 'material change' to a subsidiary should also be reported as a transaction? Please answer: Yes/No

If No, please provide further comments below

Yes.

Question 7

How do you think a 'material change' should be defined?

Please provide your comments below

One possibility is that the existing criteria should be retained, focused on the assets, income or staff related to the decision. For example, if it was agreed that a subsidiary would purchase an asset which is more than 10% of the gross assets of the trust, it should be reported. This should identify material transactions rather than the impact of incremental change.

However, there is a risk that relatively small and immaterial changes are identified where, for example, the trust has a smaller asset base. To avoid this, consideration should be given to also have a threshold which is a de minimis below which transactions do not need to be reported. This way, relatively small transactions will not be reported unless the de minimis is met.

Question 8

Do you agree that a panel review is an appropriate way to determine whether a proposal for a subsidiary should be classified as 'material' or 'significant' and reviewed accordingly?

Please answer: Yes/No

If you agree that a panel review is appropriate, what risk factors should the panel consider to determine whether the proposal is ‘material’ or ‘significant’?

If you do not agree, what do you consider is the appropriate way to determine this classification, e.g. set criteria?

Yes.

Subject to our response to question 4 above, we agree that a panel of experts should determine whether reportable transactions (which are by definition material) are significant.

We suggest that the risks set out in section 3 of the consultation are a good place to start. Additional risks to be considered include:

- have similar arrangements been established elsewhere or is this a novel approach to a problem?
- where the subsidiary is expected to generate income, has appropriate market research been undertaken so that the risks around the market for the subsidiary’s goods and services are understood?
- have members of the local health economy (STP) been engaged with the process to ensure that the impact on the local system has been understood?
- have the governance and accounting arrangements for the new subsidiary been considered during the development of the business plan?
- have arrangements been put in place for the subsidiary to access cash in the first few months of operation?

Question 9

Do you agree with the proposed make-up of the panel? Please answer: Yes/No

If you do not agree, who should be included on the panel?

Yes.

Question 10

What risk factors should the board certification cover?

Please provide details on the risk factors you think should be considered as part of a board certification

The risk factors set out in section 4 of the consultation seem to be an adequate starting place. We support the on-going review and development of the review and certification process. We suggest that these arrangements should be subject to on-going, rather than annual, review. NHS Improvement and the DHSC should review their own process each time that a subsidiary arrangement is taken through it to see if there the risk factors considered are appropriate.

The publication of the risk factors and any revisions to them will allow other trusts going through the process to learn from previous experience.

Contact

If you would like to discuss any of our comments in more detail please contact Debbie Paterson, policy and technical manager, debbie.paterson@hfma.org.uk