

Briefing Bulletin No.5

Some reflective comments from Lockharts on the Health and Social Care Bill introduced into Parliament on the 19th January 2011

In line with the current vogue of rushing out information at the first available opportunity, if only to demonstrate an awareness of what is going on and “being on top of the subject”, a number of the recognised specialist lawyers in the health care field rushed out commentaries on the Health and Social Care Bill within hours of its introduction to Parliament. Unfortunately, a lot of the material put out is little more than a quickly drawn together précis of the main provisions.

At Lockharts we believe that a more reflective approach is appropriate; and one that seeks to identify some of the key issues which will affect GPs as they start working together in pathfinder consortia.

This note highlights four matters which we think deserve attention at this stage – risk, federating in order to commission some of the larger services, the extent of the transitional arrangements which will be made when PCTs hand over their functions, and the heralding of what will be a substantial, and the possibly worrying change, to practitioners’ terms of service.

Risk

The NHS Commissioning Board will establish risk-pooling arrangements with consortia, will issue guidance on financial risk management and intervene where there is a significant risk of failure. The Board and Monitor can also establish contingency funds to manage financial risk respectively for commissioners and providers. The reference here to providers is interesting in that providers of essential services may also be required to take part in risk-pooling arrangements so as to ensure that if a provider becomes financially unsustainable, Monitor will be able to step in and keep essential services running without cost recourse to the Department of Health.

The assumption of risk is clearly going to be a matter of considerable concern to all practitioners but it is difficult to plan ahead when the Commissioning Board will only be set up in shadow form as a Special Health Authority in 2011/2012 and will only assume relevant responsibilities on full establishment in April 2012. Lockharts believe, however, that pathfinders and putative consortia need to give early consideration to risk pooling arrangements where it is envisaged that the Board may well seek to establish very large areas so as better to cover the risks that are involved. It has to be remembered that the NHS is probably one of the largest risk carriers in Europe and any breaking up of the area carrying risk will inevitably lead to difficulties.

Federating

Lockharts believe that federating tasks across consortia need to be operated at a number of different levels ranging from almost certainly, risk sharing at the highest level down to obtaining relatively minor backroom services at the other end of the scale. Very possibly all consortia will wish to federate their requirements at the larger end of the spectrum and this suggests the need to develop a range of models. Lockharts are presently working on these and are discussing them with pathfinders and putative consortia.

Transitional costs

Although not previously set out, the impact assessments for the Health and Social Care Bill 2011, signed off by the Secretary of State on 18 January, contain some details of the transition costs that are

going to be incurred by PCTs. The costs total some £2.136m per PCT or, extrapolated, some £322m for the 151 PCTs in England. One item which is estimated to cost each PCT a sum of £950,000 will be the cost of setting up new IT systems and transferring the old ones to consortia. The costs of relocating staff from old to new premises are estimated at £55,000 per PCT and the cost of searching for new premises is estimated at £10,000 per consortia. A substantial reserve for double staff running costs is to be made in the sum of £653,000 per PCT and estate costs, assuming that 50% of the present PCT estate is vacated, will come in at a cool £400,000 per PCT. In discussions with pathfinders and putative consortia, Lockharts have found that very few practitioners have been aware, not only of these costs but of the implications and the fact, amongst other things, that they will have to set up new IT systems and transfer old information at the cost of the PCT.

Terms of service

Practitioners have known since the White Paper of 12 July that, in general practice, the Department will seek over time to establish a single contractual and funding model (Contract). What may not have been noticed however, so far, is that whilst at present the Secretary of State has a duty to secure improvement in the physical and mental health of the population and the protection, diagnosis and treatment of illness, this duty is now to be extended to secure "continuous improvement" in outcomes including the effectiveness of the services, the safety of the services and the quality of the experience undergone by patients. These obligations will be imposed on practitioners and many will no doubt express concern that a failure to continuously improve outcomes in these areas could result in the service of breach or remedial notices. The concerns will be particularly acute given the known difficulty of measuring patient experience.

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Lockharts will continue to monitor developments and to provide detailed analysis of what is going on and what will actually affect practitioners.

Enquires about this article or any other matter relating to the Health and Social Care Bill should be addressed in the first place to Andrew Lockhart-Mirams – alm@lockharts.co.uk.



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