Webinar on Section 75 Arrangements

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Supporting Documents

The following will be made available as embedded links when this presentation is circulated later:

- Bevan Brittan S75 Agreement Guidance
- CIPFA HMA BCF Guidance
- Governance Protocol
- CIPFA & HMA
- Webinar
- BCf S75 Legal
- Better Care Fund
- Information Governance Protocol
- Template
- Data Sharing

Previous Section 75 Webinar
| 01 | Introduction – Overview of Section 75 Arrangements |
| 02 | Commissioning Arrangements – Examples and pooling arrangements |
| 03 | Financial Risk Share – Models, risks and mitigations |
| 04 | Pooled Budget Hosting – Overview, concerns, agreements and timescales |
| 05 | Accounting – Overview, concerns, agreements and timescales |
| 06 | QA and Discussion – Joint control and provider relationships |
Introduction

Joe Nguyen, PPL
Overview

- Commissioning arrangements – who does what?
- Managing risks - what’s required
- Accounting
- Governance & accountability
- Pooled fund to hold minimum contribution (+)
1. Commissioning Arrangements

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The Commissioning Arrangements

- Not a formal requirement but a practical one

- Lead commissioning - A exercises B's functions

- Joint commissioning - A & B take their own decisions but the arrangements provide for co-ordination

- Implications for who holds contracts

- Joint commissioning can be through joint posts
Joint Commissioning Example

Delegation of functions/authority to officer members of the JCG who take separate decisions together

Joint commissioning group

LA decision

CCG decision

Local authority

CCG
Commissioning and Pooling Arrangements – Examples

Scenario 1 – LA host and lead Commissioner (Least likely due to timing and contractual changes. This would require a lead commissioning arrangement across all relevant BCF schemes)

Scenario 2 – LA host with CCG and LA remaining separate commissioners of their existing contracts (Most popular and least changes to contractual arrangements – Ideal for transition year)

Scenario 3 – Integrated commissioning. One or more funds held by a host – usually the LA. CCG and LA agree a joint/integrated commissioning group under which staff work together to commission, but each organisation is still making their own decisions. May involve supply of staff under S113 LGA 1972

LGA 1972

Involves supply of staff under S113 LGA 1972

BCF schemes

Arrangements – ideal for transition year

Scenario 3 – Integrated commissioning

Scenario 2 – LA host – with CCG

Scenario 1 – LA host – and lead commissioner (Least likely due to limiting Commissioning and Pooling Arrangements – Examples
2. Financial Risk Share

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Managing over and underspends

- Overspends pro rata to contribution
- Just and equitable
- Agreed proportions
- Commissioner carries risk

Who carries the risk - risk transfer to providers?

- Performance related elements
- Block contracts

Contributions

Financial Models
Financial Risks and Mitigation

- Prior due diligence
- Closed funds – when the money is spent that is it
- Is the service demand led or can it be controlled by eligibility
- NB Care Act changes here
- Accurate monitoring and reporting
Financial Risk Specific to Better Care

- Failure to perform against emergency admission reductions
- Failure to adequately support social care services - delayed discharge and reductions target
- Care Act implementation costs shortfall
- Community services failure
- Risks of success for acute providers – Will the loss of non elective income work for them
Mitigations

- Transfer performance risk in part to providers of out of hospital care?
- Potential use of outcomes based contracts
- Process to meet and manage what actually happens
- Use of reserves
3. Governance

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Governance Arrangements

- You will need to provide who oversees the delivery.
- How is that reported back to the partners?
- What level of oversight do the partners require?
- Relationship with any operational groups or structure.

Governance Arrangements
Governance Structures

- Who decides what
- Do you need a joint body?
- Joint officer group
- Single lead delegation
- Regulation 10 Committee
- HWB sub committee?

Relationship with the Health and Well being Board
What Needs to be Covered

- Decision making and escalation
- Reports on finance
- Contract management
- Scheme performance
- Wider issues

A role in managing disputes?
4. Pooled Budget Hosting

Paul Carey-Kent CIPFA
Basics

■ For CCGs' baseline BCF allocations, there must be an agreement under s75 of the NHS Act 2006, and this must involve the use of a pooled fund.
■ The pooled fund must have a host.
■ Additional "top up" funding from CCGs may take any form and can be in or out of the pooled fund.

HFMA/CIPFA's "Pooled budgets and the better care fund" is a valuable resource.

For CCGs' baseline BCF allocations, there must be an agreement under s75 of the NHS Act 2006, and this must involve the use of a pooled fund.
BCF Overview

Department of Health

£3.8bn DH DEL/Budget

The Permanent Secretary has accounting officer responsibility for duties to deliver health care, and for managing expenditure within DH Departmental Expenditure Limits.

£3.46bn ring-fenced CCG allocation

NHS England

Responsible for:
- Preparing audited accounts for health services
- Preparing audited accounts for NHS England (e.g. delivering DH's mandate)

DCLG

Responsible for distributing and overseeing Disabled Facilities Grant in line with MoU with Department of Health

£134m Social Care Capital Grant

CCGs

Responsible for:
- Standard upward assurance to NHS England (e.g. CCG Assurance, Financial and Activity Reporting, Delivery Dashboard etc.)

Local Authorities

Chief Executive has accounting officer responsibility for:
- Duties to deliver adult social care and
- Ensuring DFG and SC capital grant are spent in line with s.31 grant conditions

£220m Disabled Facilities Grant

Host body (either CCG or LA) is responsible for:
- Managing expenditure within DH Departmental Expenditure Limits
- Preparing audited accounts for health services

Pooled Budget Under Section 75 Agreement (NHS Act 2006)

Local Authorities

£220m Disabled Facilities Grant

Department of Health

£134m Social Care Capital Grant

CCGs

Allocations

£3.46bn ring-fenced CCG

NHS England

£220m Disabled Facilities Grant

Department of Health
DH and NHS England Concerns

- Cash management, drawings in advance of need
- Cash injected to pooled fund is not expenditure
- Cash balances recognised in the pool fund members' accounts, not the host's
- It seems likely that there will not have to be a physical flow of cash for there to be a pooled budget – but definitive guidance awaited
- Risk of different treatments, especially NHS providers
- Need to consolidate DH Group accounts, hence:
  - Intra-NHS balances and I&E must agree (Agreement of Balances – AoB)

Audit and assurance

- Definitions and guidance awaited
- Cash injected to pooled fund is not expenditure
- Cash management, drawings in need of advance of need

Consistency of accounting treatments between members and (especially) NHS providers
Hosting the Pooled Fund 1: Agreement

Consistent with understanding risks,
signed agreements to be clear on

■ Responsibilities, accountability and reporting (in-year and year-end)
■ Information flows and timescales – especially for CCG reporting duties
■ Contributions (inc non-financial) and accountability
■ VAT arrangements and metrics
■ Performance information and metrics

■ Ring-fencing of elements of the Pooled Funds – will some transactions be dealt with outside the Pooled Fund?

■ The control of expenditure by each party – essential for correct accounting
■ Audit arrangements and deadlines
■ The flow of financial information to providers

■ Appointment, role and powers of pool manager
■ Health and Wellbeing Board
■ Governance and the role of the Health and Wellbeing Board
■ Appointment, role and powers of pool manager

■ Ring-fencing of elements of the Pooled Funds – will some transactions be dealt with outside the Pooled Fund?
Hosting the Pooled Fund 2: Timescales

■ 75 agreements legally require quarterly reporting, but DH advise that this alone is unlikely to meet CCGs’ requirements.

■ CCGs and NHS providers need reliable data for:
  - Month 6 and 9 interim accounts exercises
  - Month 6 and 9 A&G exercises
  - Year end statutory accounts

■ The indicative 2015-16 timetable is:

  - Agreement of I&E and balances
  - M6: 16 Oct 2015 (Dr/Cr deadline)
  - M9: 15 Jan 2016 & 4 Feb 2016 (Dr/Cr and I&E agreement deadlines respectively)
  - M12: 11 Apr 2016 & 15 Apr 2016 (Dr/Cr and I&E agreement deadlines respectively)

■ Q3 Accounts
  - Draft submitted 23 April 2016
  - Audited submitted 27 May 2016

■ Draft submitted 21 Jan 2016
  - Year-end accounts
  - O3 Accounts

■ Draft and audited year-end statutory accounts, draft and interim accounts.

■ For month 6 and 9 A&G exercises, CCGs requirements require quarterly reporting, but DH advise that this alone is unlikely to meet.
5. Accounting

Paul Carey-Kent, CIPFA
Accounting

Consider arrangement in 2 stages

- Presumption is that members will be joint operators (under IFRS 11), having joint control over the pool.
- Consider arrangement in 2 stages

Then, consider the pool's relationship with providers

- Members cede control over controlling to one of their number – does that lead to members ceding to act only as agent?
- Then, consider the pool’s relationship with providers.
- Pool is not an entity: balances and transactions are memorandum only and are brought to account in members’ books.
- Host, acting as agent, does not have an accounting presence and again disappears from financial reporting.
- Members continue to exercise joint control over contracts/providers?
- Host, acting as agent, for members, does not have an accounting presence and again disappears from financial reporting.
- Members continue to exercise joint control over the pool.
- Members cede control over contracts/providers? Host continues to act only as agent.
- Members cede control over controlling to one of their number – does that lead to members cede control over controlling to one of their number – does that lead to members ceding to act only as agent?
Presenters

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David Owens, Bevan Brittan
Questions & Answers

Panel:
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