NEWSLETTER
Issue 31 | August 2010

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Solicitors

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1. Editorial – The White Paper – latest developments

Not surprisingly, August has been a quiet month for the developments proposed in the GP commissioning arrangements and nothing new has appeared on the Department's website since 30 July, which was the Department's response to the comments on The Coalition: Our Programme for the Government on the NHS.

At PCT level there has, however, been a fair degree of activity and we know that many PCTs are planning "information" meetings for September. Whilst it is proposed that the GP commissioning consortia should start to shadow some of the PCTs' present commissioning activities in the period between now and 31 March 2011, Lockharts have a number of concerns that PCTs may seek to be overly prescriptive at these informational meetings, particularly with regard to identifying geographical boundaries for consortia across their area; given that there has to be complete geographical coverage of the whole of England.

Lockharts' view is that establishing units which can effectively work together is going to be a delicate process where considerable sensitivities will need to be taken on board and it is suggested that putative consortia should be hesitant to allow themselves to be overly directed at this stage.

Some of the sensitivities that will have to be taken on board will need to be reflected in the internal arrangements for consortia and these issues are very probably ones which need to be discussed privately before proposals are firmed up for PCT consideration.

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2. Government to scrap the Audit Commission

Eric Pickles, Communities and Local Government Secretary, has formally announced plans to disband the Audit Commission. Pickles wants a 'decentralised' audit regime, that will help local people judge the performance of councils and other public bodies. The move is aimed at 'passing power down to people and replacing bureaucratic accountability with democratic accountability'. The changes will save the taxpayer £50 million a year.

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The plans have been met with mixed reception. Amidst the anticipation of its potential benefits are concerns over the loss of certain discontinued functions of the Commission, which have proved to be beneficial.

Amongst the losses are the Commission's audit arm which audits NHS organisations at all levels. Its research arm has produced a number of important reports on health service finance and related issues.

Over the past three years, the Commission has run a major programme of work on Payment by Results (PbR) and the data underlying the system.

Its PbR bench marker was a winner in the 'excellence in the use of healthcare information management' section of last year's E-Health Insider Awards in association with BT.

Meanwhile, its reports on the poor quality of data underlying the system - and on the poor standard of clinical coding and record keeping underlying the data - may have contributed to reported improvements, with knock-on benefits for patient safety.

Over the past decade, the Commission has also published a number of reports on medication errors that have made the case for e-prescribing.

Some of the Audit Commission's work on data will presumably transfer to the new NHS Commissioning Board, which is given the job of setting IT and data standards in the NHS white paper, 'Liberating the NHS', or to the Information Centre, which is given the job of co-ordinating and publishing healthcare information.

It is less clear where its medication and patient safety work will go, since the government has already announced that it will be scrapping the National Patient Safety Agency as part of its bid to reduce the number of arms length bodies in the health service.

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3. NICE announces new quality standards

NICE has announced nine new quality standards that it will develop during 2010/11. These were referred to NICE from the Department of Health following advice from the National Quality Board (NQB).

NICE quality standards are produced collaboratively with the NHS and social care professionals, along with their partners and service users. They are derived from the best available evidence, usually NICE guidance or other sources that have been accredited by NHS evidence. The new quality standards are for the management of:

- Breast cancer
- Type 1 and 2 diabetes
- Chronic kidney disease
- End of life care
- Glaucoma
- Depression
- Chronic heart failure
- Alcohol dependence (treatment only, not primary prevention or causation)
- Chronic obstructive pulmonary disease (COPD)

Dr Fergus Macbeth, director of the NICE Centre for Clinical Practice states: 'I am pleased to announce that NICE will be developing these nine topics as quality standards. They will allow focus on outcomes of care, as well as patient experience and cost effectiveness'.

NICE is now also calling for new suggestions for indicators for the 2013/14 Quality and Outcomes Framework.

GPs are invited to submit suggestions for consideration by the NICE independent QOF Indicator Advisory Committee online via the NICE website.

The first phase opened on 23 August and runs until 20 September. When this four-week period closes each suggestion will be reviewed against criteria provided in the submission form and suitable suggestions for the QOF will be presented to an

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independent advisory committee to consider.

Dr Fergus Macbeth, said: 'We recognise the importance of making sure professional groups, patients and community and voluntary organisations have a clear opportunity to contribute to the development of indicators at every stage of the NICE process for QOF.

'For this reason, our topic suggestion facility will encourage anyone with an interest in health to make their opinion heard. We actively encourage any recommendations and look forward to considering them at the QOF advisory committee meeting in December 2010.'

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4. Equality Act 2010

The Equality Act 2010 will become law in October 2010. It replaces previous legislation (such as the Race Relations Act 1976 and the Disability Discrimination Act 1995) and ensures consistency in what you need to do to make your workplace a fair environment and to comply with the law.

The Equality Act 2010 covers the same groups that were protected by existing equality legislation – age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity – but extends some protections to groups not previously covered, and also strengthens particular aspects of equality law.

Some of the changes include the following:

- Indirect discrimination
- Associative discrimination
- Perceptive discrimination
- Harassment
- Harassment by a third party
- Victimisation
- Positive action
- Pre-employment health related checks (new restrictions)

As a result, you will need to review and change some of your policies and practices. If you require assistance in reviewing your policies and procedures please contact csd@lockharts.co.uk

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5. GPC to push for optional commissioning DES

GP negotiators will resist the Government's attempts to make commissioning responsibility part of the core GP contract, and will instead push for it to be offered as an optional enhanced service.

GPC leaders revealed this week that they have already begun preliminary dialogue with the Government over its plans, and will look to step up talks when the consultation on the white paper plans closes in October. But the stance appears to put the GPC on a collision course with ministers, who have pledged to write commissioning responsibility into the GP contract.

The Government made clear in its NHS white paper that all GPs will be expected to join commissioning consortiums when PCTs are abolished in 2013, and outlined plans to link 'a proportion of GP practice income to the outcomes that practices achieve collaboratively through commissioning consortia'. The far-reaching proposals would make all GPs contractually responsible for commissioning, and tie a proportion of their GMS income to the results of the consortia they belong to.

The white paper also contained plans to 'establish a single contractual and funding model' for GPs, and health secretary Andrew Lansley is on record as saying there will be 'a need for contractual changes with GPs.'

But GP negotiators stated this week they would be pushing hard for commissioning to be offered outside the core contract through a DES or locally negotiated LESs, to avoid it becoming compulsory for practices.

Dr Chaand Nagpaul, GPC negotiator and a GP in Stanmore, said the GPC was adamant that

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there was no need to 'tamper with the contract'.

He said: 'We would support incentivising practices to be involved in commissioning via an enhanced service. That is our position. We don't think there's any need to unpick the contract in order to achieve this.'

'It's too early to comment on how the detail might work. It could operate as a DES, but there may be local flexibilities.'

'What we'd want to negotiate is something practices would want to *sign up* to.'

Dr Nagpaul said the GPC accepted that all GPs would be required to join consortia under the plans, but warned the Government it risked repeating the failures of practice-based commissioning if it forced GPs to accept contractual responsibility for commissioning.

He said: 'The Government needs to learn the lesson of why PBC failed, it took too much of a stick-like approach. Making it compulsory would seem rather stick-like.'

Dr Brian Dunn, another UK-wide GPC negotiator and chair of GPC Northern Ireland, said developing an enhanced service would make it easier for the devolved nations to start commissioning without breaking up the UK contract.

'Rather than having commissioning as part of the core contract, it would be much more sensible to have an enhanced service for commissioning which could be used in the other countries if they wanted,' he said. Dr Julian Hall, a GP in Birmingham, said: 'The GPC should fight to protect our contract rather than merely accepting dictated change.'

A DH spokesperson said: 'We will be discussing with the BMA and other NHS partners the changes necessary to empower GPs to achieve improved outcomes for their patients.'

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6. APMS contracts

The Alma Road Primary Care Centre in Peterborough, Cambridgeshire, has been given six months' notice to close as the city's PCT looks to make savings.

APMS contracts contain a 'no cause' clause meaning PCTs can cancel the contract without giving any reason. Dr Rupert Bankart, medical director of 3Well Medical, the GP-led firm running the health centre, said many more GPs would face the same fate.

'This is probably the first time an APMS contractor has been issued with a termination notice for no cause. It's dawning on us that the implications of this are significant for GPs across the UK, if APMS is now the preferred model of contract.'

According to data from 2009, there are 173 practices in England that operate under APMS deals, which allow non-clinicians to hold the contracts.

The recent White Paper 'Liberating the NHS' signalled a move towards a single GP contract, which will include aspects of APMS.

It is hoped by closing the Alma Road clinic NHS Peterborough will save up to £800,000. It is claimed the clinic merely duplicates other local services and has underperformed in registering patients. During the initial development of the centres the BMA argued that they would be costly and surplus to requirements.

Dr Bankart, however, states the practice has shown many positive benefits. 'Its walk-in service operating at 140 per cent of the volume expected by the PCT, and a cost per head for registered patients lower than average for the area.' The practice also believes its late-night walk-in service has significantly reduced A&E admissions, although the PCT refutes this.

The GPs at 3Well Medical say they have little grounds for appeal legally because they were unable to remove the 'no cause' clause during tendering. They hope the support of patients, local councillors and GP consortia may help their cause.

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The DoH has said all major PCT decisions must be signed off by GP commissioners. A consultation on the closure runs until 29 October.

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7. New regulations for notification of infections

New regulations for the notification of infections in Wales have now come into force.

Doctors in Wales have a statutory duty to notify a 'proper officer' of the Local Authority of suspected cases of certain infectious diseases (notifiable diseases) and also cases where a patient is infected or contaminated (by chemicals or radiation for instance) in such a way that may cause significant harm to others.

These obligations also extend to the notification of suspected disease, infection or contamination in a person who has died.

A guidance document explaining the notification requirements on registered medical practitioners is available from the Welsh Assembly Government website.

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8. NHS ring fencing jeopardising health gains?

Ring-fencing the NHS budget could jeopardise public health gains and be a barrier to the integration of health and social care, a healthcare academic has said.

The argument was made by Professor David Hunter, professor of health policy and management at Durham University, during a debate with the King's Fund's chief economist John Appleby about whether ring-fencing the NHS budget was fair.

In the discussion, featured in the BMJ, Professor Hunter said the Government should not plough resources into treating patients who lead 'unhealthy lives' but instead should focus on prevention.

'If the NHS budget was not ring-fenced we could take public health and health inequalities seriously and ensure that resources are directed to where the pay-off will be highest,' he said.

'Securing integrated care across the health and social care interface is another longstanding battleground, with cost-shunting evident in both directions over many years. This is likely to get worse in future as a result of the public spending cuts and a ring fenced NHS budget.'

But Mr Appleby argued that the alternative to ring fencing would be 'too painful', outlining that if the NHS budget is not protected around £18bn of cuts would have to be made over coming years. He said this could be achieved through staff pay cuts, sacking all GPs and consultants, or abolishing the NHS in Scotland and Wales.

Mr Appleby said: 'None of these are very appealing, but it underlines just how hard it is going to be for non-protected services and what spreading the pain would actually entail.'

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9. Tax reductions for practices forming limited companies

Where practices have formed limited companies to separate certain parts of their practice from the core NHS practice e.g. essential services being provided to patients, they will from 1 April benefit from a reduction in the small companies tax rate which will drop to 20%.

Separate work carried out by a limited company outside the provision of NHS services is able to acquire a value for goodwill and if practices carry out any reasonable volume of such work it may be worth discussing with us the possible benefits of setting up a company. In the first instance contact alm@lockharts.co.uk

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10. Good news from HMRC

It has come to our attention that some taxpayers are receiving 'good news' phone calls supposedly from HMRC informing them of a tax refund due to them.

We are advising all our clients to beware of such calls. The fraudsters are posing as HMRC staff and asking for bank card details. They then attempt to take money from the account using the details provided. Victims risk having their bank accounts emptied and their personal details sold on to third parties.

This follows on from the email scam earlier in the year when taxpayers were asked to fill in an online form giving their bank details which resulted in them having money taken from their accounts illegally.

If you receive any suspicious calls supposedly from HMRC do not give them your personal details but inform them that all communication should be through your accountant.

As always, give your accountant a call if you have any concerns regarding the above.

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"Headed by Andrew Lockhart-Mirams, Lockharts advises over 1,800 GP practices, plus numerous dental practitioners, healthcare professionals and professional bodies throughout the country. The practice also helps to establish companies and LLPs tailored for the delivery of healthcare services"

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