

It is hoped that this information (developed by the GPC Senior Counsel) clarifies some issues that have been raised relating to practice membership of CCGs and contractual obligations and the government's proposals for Local Enhanced Services in England.

Practice membership of CCGs

It was part of the negotiated settlement in 2011–12, that GP practices in England would, as part of their contract, be a member of a clinical commissioning group, in the context of the abolition of Primary Care Trusts. The wording in the negotiated letter of agreement last year was:

CCG Membership

NHS Employers and GPC negotiators have agreed in principle that subject to the successful passage of the Health and Social Care Bill all GP practices in England would be contractually required to be a member of a CCG.

The GPC Negotiators were explicit and rejected any proposal to broaden this beyond the technical fact that GP practices will be members of a local CCG. This position was reiterated at the commencement of this year's negotiations.

The wording in the Act

The Health and Social Care Act stipulates that all practices in England must be a member of a CCG (Clause 28). Concerns have been raised in particular about Section (d) of Clause 128:

'(d) for requiring a relevant contractor, in doing anything pursuant to the contract, to act with a view to enabling the clinical commissioning group to which it belongs to discharge its functions (including its obligation to act in accordance with its constitution).'

GPC have sought legal advice on this section. The CCG's main function is to provide or commission secondary care in a particular locality. The legal advice is that this section merely ensures that when a commissioning decision has been made - as is currently the case with PCTs - it is adhered to by practices in a spirit of cooperation and so as not to prevent or thwart a CCG from performing its functions. In the view of the GPC lawyer, this is entirely reasonable and is consistent with the current relationship between practices and PCTs. The 'obligation to act in accordance with its constitution' (in brackets) refers to the CCG's obligation to act in accordance with its constitution.

The GPC has repeatedly reiterated that CCGs should have no role in the commissioning or administration of primary care contracts and will not be able to interfere in the contractual duties of practices. The latest information from the NHS Commissioning Board 'Securing Excellence in Primary Care' does state that the NHSCB's Local Area Teams (LATs) will liaise with CCGs regarding practice performance, but CCGs will have no role in performance management or have any contractual sanctions to apply to practices.

The Act also states that CCGs are accountable to practices. The constitution is an important lever for practices to use to hold their CCG to account. If a practice is to enable a CCG to act in accordance with its constitution, then it is vital that practices ensure they are happy with the content of that constitution. The GPC has serious concerns that some CCG constitutions have included clauses relating to performance management of practices and penalties to impose on practices. Practices have a responsibility to engage with the LMC and make a stand against these types of clauses, as otherwise they will be bound by them going forward. The GPC has repeatedly emphasised this point to GPs and LMCs, in communications and guidance. An email to all GPs emphasising the latest GPC constitution guidance is being sent this week.

The secondary legislation, which will include regulations governing commissioning and procurement processes and the commissioning responsibilities of the NHSCB, is expected shortly (Parliament rises on 18 July and it had been indicated that some secondary legislation would appear before then). GPC, along with other BMA representatives, have been feeding into discussions with the DH and NHSCB in advance of secondary legislation, and have consistently reiterated the position that the NHSCB should have sole responsibility for contract management. The BMA will be lobbying on the secondary legislation when it appears.

Local Enhanced Services

The NHSCB's proposal is that from April 2013 the NHSCB and CCGs will be able to commission services currently commissioned as Local Enhanced Services. These will be commissioned via the standard NHS contract. This does not necessarily require an AQP approach. The GPC have arranged an urgent meeting with the NHSCB and will naturally raise objections and concerns in keeping with the views expressed by the committee. We will update you accordingly on this matter.