

preparing for gp commissioning



the questions you need to ask

The publication of *Liberating the NHS* confirms that GP commissioning will soon become a reality. This is a radical reform that will require a new way of working throughout the health service. It will impact directly on you.

Although nothing is set in stone yet, the best time to start planning for these changes is now. At Mills & Reeve we believe that there are 12 important legal questions that you need to ask yourself in order to start preparing. These are questions that our health experts can help you to answer.

The questions

How will GP consortia organise themselves?

Current proposals suggest that GP consortia are likely to be statutory public bodies. For early implementers, the structure will either be a contractual arrangement between practices or a private entity such as a company, partnership, charity or form of social enterprise. Whilst waiting for direction, GPs could set up as a committee of the PCT.

How will you manage the transition?

A future NHS Commissioning Board will hold GP consortia to account. Until then, early implementers will be accountable to their PCT. This may be through GP consortia representatives on a PCT sub-committee with clear terms of reference, or through a robust contract between a GP consortium and the PCT.

Who will be accountable?

Robust accountability will be central to GP commissioning if it is to get through Parliament. Until a framework is developed, it will be essential that suitable governance arrangements are put in place.

How will procurement work?

Even if GP consortia remain private sector bodies, they will be bound by public procurement rules. Patient choice and the contestability agenda will remain and stimulating a provider market will be important to improving patient outcomes. This means GP consortia will need to rapidly develop or source procurement skills.

What about provider contracts?

A number of provider contracts are very large in terms of value and complexity. Understanding how they operate, contract negotiation and how to performance manage such contracts will be an important part of commissioning.

What are the information issues?

Strict information governance is likely to extend to GP consortia. This will have resource implications, particularly in relation to data protection and freedom of information.

Will TUPE apply?

It is unclear whether PCT staff will transfer to GP consortia. If they do, will TUPE principles apply? This could be complex and fraught with difficulty.

Will pension arrangements remain the same?

Until the organisational structure of GP consortia is clarified, it is uncertain whether staff will be able to access the NHS pension scheme.

What will GP consortia legal responsibilities be?

A range of legal obligations will apply to GP consortia, for example a statutory duty to engage the public and patients in commissioning decisions. Understanding the full range of responsibilities of GP consortia and robust decision making processes will be key.

get in touch



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(Legal 500)

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(Legal 500)

“Mills & Reeve LLP’s ‘highly responsive and personal’ practice offers ‘clear and concise advice, and a helpful perspective from a commercial standpoint’.”

(Legal 500)

Won't this increase the postcode lottery?

An increased number of commissioning bodies increases the likelihood of different approaches to prioritisation of treatments. Patients may go to court if they are denied a treatment that is available elsewhere. Robust evidence on where collaborative working is appropriate and when it is not will be key to minimising legal risk.

Who owns the real estate?

As PCTs are going to be disbanded within the next three years, what will happen to property? What requirements will GP consortia have for accommodation? Who will take over the management of leases with providers? What will happen to the PCT share in LIFT companies, particularly when the main occupier of properties owned by LIFT companies are GPs?

How will risk and reward be shared?

To what extent will GP consortia take on responsibility for risk? What flexibilities will be put in place to enable GP consortia to innovate? How will the proposed “quality premium” operate and will it offer sufficient reward for outcomes?

The answers you need

The Mills & Reeve GP commissioning team can provide you with the answers you need in these uncertain times.

Our lawyers understand the NHS and have extensive commissioning expertise. We have supported our health clients on every NHS reorganisation for the last 25 years and have already worked with early implementers to put in place structures and contracts for transferring hard budgets for commissioning. We can help you prepare, stay informed and ensure you're ready for the change that is coming.

We have created a senior inter-disciplinary team led by Gill, Fiona and Jonathan to guide you through the challenging and exciting times ahead. These experts are available now for consultation. Please contact any of the team for an initial free discussion. We know we can help.

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