

**WIGAN BOROUGH CLINICAL COMMISSIONING GROUP
GOVERNING BODY**

Tuesday, 25 June 2013 1.30 pm

Wigan Borough CCG Boardroom - Wigan Life Centre

AGENDA

Agenda Item		Time	Presenter	Pages/ Verbal	Action Required
1.	Chairman's Welcome	1.30 pm			
2.	Apologies for Absence				
3.	Declarations of Interest				
	(Individuals will declare any interest that they have, in relation to a decision to be made in the exercise of the commissioning functions of WBCCG, in writing to the governing body, as soon as they are aware of it and in any event no later than 28 days after becoming aware)				
4.	Minutes of Previous WBCCG Governing Body Meeting held on 28 May 2013	1.35 pm			Approve
5.	Actions/Decisions Log from Previous WBCCG Governing Body Meeting	1.40 pm		1 - 2	
6.	Questions from Members of the Public	1.45 pm			
7.	Key Messages	1.50 pm			Information
7.1	Chair's Key Messages		Tim Dalton	Verbal Report	

	7.2	Chief Officer's Key Messages		Trish Anderson	Verbal Report	
8.	New Business Items		2.00 pm			
	8.1	Procedures for CCG Constitution Changes		Julie Southworth	3 - 20	Approve
	8.2	Health and Safety Policy		Julie Southworth	21 - 76	Approve
Finance						
	8.3	Finance Update		Mike Tate	77 - 86	Receive
	8.4	QIPP Report		Mike Tate	87 - 94	Receive
	8.5	Performance Update		Mike Tate	95 - 110	Receive
9.	Current Business Items - Committee Updates		2.30 pm			
	9.1	Chairperson's Report - Clinical Governance Committee		Ashok Atrey	111 - 116	Receive
	9.2	Chairperson's Report - Corporate Governance Committee		Tony Ellis	117 - 122	Receive
	9.3	Chairperson's Report - Finance and Performance Committee		Frank Costello	123 - 124	Receive
	9.4	Chairperson's Report - Service design and Implementation Committee		Pete Marwick	125 - 128	Receive
10.	Locality Updates					
	10.1	Atherleigh - May 2013		Deepak Trivedi	To Follow	Receive
	10.2	Patient Focus - May 2013		Mohan Kumar	129 - 132	Receive
	10.3	TABA - May 2013		Ashok Atrey	133 - 134	Receive
	10.4	WCC - May 2013		Tony Ellis	135 - 138	Receive
	10.5	North Wigan - May 2013		Pete Marwick	139 - 142	Receive
	10.6	United League Consortium - May 2103		Sanjay Wahie	143 - 146	Receive
11.	Any Other Business (To be accepted at the Chair's discretion)					

12.	Date and time of next meeting				
	Tuesday 23 July at 13.30 Room 17, Wigan Life centre				

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Actions from Part 1 of the WBCCG Governing Body Meeting held on Tuesday 28th May 2013

Item	Description	Action By
8.2	<ul style="list-style-type: none"> • Response to Mid Staffordshire NHS Foundation Trust Public Inquiry: Francis Assurance/Action Plan to be brought to the July Governing Body. • MK pointed out that the response did not appear to include Primary Care and that a unified response should be made. SF agreed that the NHS England Local Area Team (LA) should be consulted before finalising the response. 	<p>SF</p> <p>SF</p>

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MEETING: Governing Body

Item Number: 8.1

DATE: 25 June 2013

REPORT TITLE:	Procedures for CCG Constitution Changes
REPORT AUTHOR:	Tim Collins, Assistant Director of Governance
PRESENTED BY:	Julie Southworth, Director of Quality & Safety
RECOMMENDATIONS/DECISION REQUIRED:	To approve the change to the CCG's Constitution on recommendation from the Corporate Governance Committee
<p>EXECUTIVE SUMMARY</p> <p>Guidance was issued by NHS England on 24 May 2013 (copy attached) around the procedures for making changes to CCG Constitutions. The changes will be approved by NHS England twice each year on 1 June and 1 November following application from CCGs which should be subsequent to Governing Body approval. Due to the timing of the guidance the first deadline has been relaxed to 28 June to allow CCGs to process any changes since authorisation.</p> <p>David Nicholson wrote to all CCGs on 2 May 2013 (Gateway 00053, copy attached) encouraging CCGs to include a statement in their constitutions that specifically references the right of members or employees to make a protected disclosure. The suggested wording was: <i>"The CCG recognises and confirms that nothing in or referred to in this constitution (including in relation to the issue of any press release or other public statement or disclosure) will prevent or inhibit the making of any protected disclosure (as defined in the Employment Rights Act 1996, as amended by the Public Interest Disclosure Act 1998) by any member of the CCG, any member of its governing body, any member of any of its committees or sub-committees or the committees or sub-committees of its governing body, or any employee of the group or of any of its members, nor will it affect the rights of any worker (as defined in that Act) under that Act."</i></p> <p>CCGs were also encouraged to: <i>"formally present an explicit minute at a public governing body meeting clarifying expectations and seeking formal adoption of the statement above."</i></p> <p>The Governing Body is asked to approve the above amendment to the Constitution on recommendation from the Corporate Governance Committee made at its meeting on 11 June 2013.</p>	
FURTHER ACTION REQUIRED:	None

Procedures for
clinical
commissioning
group constitution
change, merger or
dissolution



NHS England INFORMATION READER BOX**Directorate**

Medical	Operations	Patients and Information
Nursing	Policy	Commissioning Development
Finance	Human Resources	

Publications Gateway Reference: 00128

Document Purpose	Guidance
Document Name	Procedures for clinical commissioning group constitution change, merger and dissolution
Author	NHS England
Publication Date	24th May 2013
Target Audience	CCG Clinical Leaders, CCG Chief Officers
Additional Circulation List	NHS England Regional Directors, NHS England Area Directors
Description	The purpose of this guidance is to set out the procedures to be followed by clinical commissioning groups (CCGs) and NHS England in the circumstances of a CCG wishing to apply to NHS England to make changes to its constitution or to dissolve or two or more CCGs wishing to apply to merge.
Cross Reference	Model constitution framework for clinical commissioning groups
Superseded Docs (if applicable)	N/A
Action Required	N/A
Timing / Deadlines (if applicable)	N/A
Contact Details for further information	CCGs should contact their Regional Director of Operations and Delivery

Document Status

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Procedures for clinical commissioning group constitution change, merger and dissolution

First published: May 2013

Prepared by: Operations Directorate, NHS England

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Introduction

The purpose of this guidance is to set out the procedures to be followed by clinical commissioning groups (CCGs) and NHS England in the circumstances of a CCG wishing to apply to NHS England to make changes to its constitution or to dissolve or two or more CCGs wishing to apply to merge.

The procedures in this note set out the application processes to be followed by CCGs and by NHS England in considering the request.

This guidance sets out NHS England's procedure and how it is underpinned by the requirements of the National Health Service Act 2006 (as amended) and by relevant regulations.

Under the Health and Social Care Act 2012, the NHS Commissioning Board¹ has powers to make transfers of property and staff in connection with variation, merger, or dissolution. The use of these powers is included in the scope of these procedures.

NHS England has separate powers which allow it to vary a CCG's area or membership without an application from the CCG. The application of this power is out of scope of the procedures outlined in this note. In all cases CCGs considering changes to constitutions under these procedures are advised to discuss their applications with NHS England at an early stage.

Equality statement

NHS England has a duty to have regard to the need to reduce health inequalities in access to health services and health outcomes achieved as enshrined in the Health and Social Care Act 2012. NHS England is committed to ensuring equality of access and non-discrimination, irrespective of age, gender, disability (including learning disability), gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) or sexual orientation.

In carrying out its functions, NHS England will have due regard to the different needs of protected equality groups, in line with the Equality Act 2010. This document is compliant with the NHS Constitution and the Human Rights Act 1998. This applies to all activities for which they are responsible, including policy development, review and implementation.

¹ The NHS Commissioning Board operates under the name of NHS England and will be referred to as such throughout this document.

Procedure to agree a change to a CCG constitution

Background

Every CCG must have a constitution. This is a key document for each clinical commissioning group that sets out various matters including the arrangements that it has made to discharge its functions and those of its governing body; its key processes for decision making, (including arrangements for ensuring openness and transparency in the decision making of the clinical commissioning group and its governing body) and arrangements for managing conflicts of interest.

NHS England must be satisfied that the constitution complies with the particular requirements of the NHS Act 2006 as amended by the Health and Social Care Act 2012 and is otherwise appropriate.

Section 14D of the NHS Act 2006 (as inserted by the Health and Social Care Act 2012) provides that where NHS England grants an application for establishment, a CCG is established and the proposed constitution has effect as the CCG's constitution. This means that it is the constitution assessed as part of CCG authorisation that is the constitution on which establishment is based. Any change to the constitution used at authorisation needs to be agreed with NHS England.

Section 14E of the NHS Act 2006 (as inserted by the Health and Social Care Act 2012) provides for applications for variation of constitutions. Under section 14E, a CCG may apply to NHS England to vary its constitution (including doing so by varying its area or its list of members). If NHS England grants the application, the variation to the constitution will come into effect.

Under section 14J, a CCG must publish its constitution. If the constitution is varied, whether on the request of the CCG or under the powers of NHS England, the CCG must publish the revised constitution. This should be done as soon as is reasonably practicable after the CCG receives the relevant approval or decision from NHS England. No requested changes can be acted upon until formal approval has been received.

Not all governance changes will require amendments to a CCG's constitution. However the Area Team should be notified of any significant changes, for example, to the leadership of the governing body. Where CCGs are wishing to make significant changes, such as a replacement chair of the governing body, any new member, should be subject to a selection process of equivalent rigor as the original member. This will ensure that the new member has the capability to fulfil the role.

Application process to be adopted

NHS England will consider applications for the variation of constitutions twice annually.

Submissions should be made to the relevant Regional Director of Operations and Delivery by:

- 1 June, or
- 1 November

Any application for variation which will change a CCG's boundary or its list of members, and therefore have potential impact on its financial allocation, must be made by the 1 June deadline so that the change can be reflected in the allocations for the following financial year.

NHS England will consider an emergency application for a variation outside of these timescales where the variation is essential to the CCG being able to undertake its functions lawfully and/or consequent on the dissolution of another CCG (on which see page 12).

The application should come from the CCG. The application should already have been discussed and agreed with CCG member practices and stakeholders should have already been consulted at the point of submission of the application.

The application should consist of:

- the reason why a variation is being sought,
- the proposed varied constitution with the amended clauses clearly signposted,
- assurance that member practices have agreed to the proposed change(s),
- assurance that stakeholders have been consulted if required,
- a self-certification by the Chair or Accountable Officer, on behalf of the CCG, that the revised constitution continues to meet the requirements of the Act,
- assurance that the CCG has considered the need for legal advice on the implications of the proposed changes, including whether advice has been sought, and
- a completed impact assessment of the changes, which should cover as a minimum the factors required to be considered by NHS England set out below.

NHS England may seek clarification or additional information as it is considering applications.

Consideration by NHS England of the proposed variation

The National Health Service (Clinical Commissioning Groups) Regulations 2012 (the Regulations) set out the factors which NHS England must consider when considering an application under this procedure. They are:

- that the constitution meets the requirements of legislation and is otherwise appropriate,
- that each of the members is a provider of primary medical services.
- that the area is appropriate (ie that there are no overlapping CCGs and no gaps),
- that the proposed Accountable Officer is appropriate,
- that the CCG has made appropriate arrangements to ensure it is able to discharge its functions,
- that it has made arrangements to ensure that its governing body is correctly constituted and otherwise appropriate,
- the likely impact of the requested variation on the persons for whom the CCG has responsibility – so the registered and resident population of the CCG,
- the likely impact on financial allocations of the CCG and any other CCG affected for the financial year in which the variation would take effect,
- the likely impact on NHS England's functions,
- the extent to which the CCG has sought the views of the following, what those views are, and how the CCG has taken them into account:
 - any unitary local authority and/or upper-tier county council whose area covers the whole or any part of the CCG's area;
 - any other CCG which would be affected; and
 - any other person or body which in the CCG's view might be affected by the variation requested,
- the extent to which the CCG has sought the views of patients and the public; what those views are; and how the CCG has taken them into account, and
- how often the CCG has applied for variations of the kind requested.

It is for the CCG to determine what information, in addition to the requirements set out in the previous section, should be submitted to help NHS England make a decision. NHS England is able to ask for clarification or additional information it requires at any stage. Additionally NHS England is able to consider any other material in making its decision which it considers relevant, not just the material submitted by the CCG. At all stages the procedure will involve communication between NHS England and the CCG.

NHS England will also assess, where relevant, whether the CCG(s) have ensured that appropriate plans are in place to maintain good information governance through the transition, in consultation with local IG Lead(s) – in

particular for:

- appropriate transfer or disposal of information assets, including manual records and electronic equipment
- physical audit of premises prior to release
- review of Data Protection Notification(s)
- revision to Fair Processing information.

NHS England will acknowledge all applications for variations within two weeks of receipt and will notify the CCG in writing of the outcome of its decision within 8 weeks.

If NHS England thinks that its statutory duties in relation to CCGs make it preferable for it to do so, it may:

- where granting the application would have a significant impact on allotments to the CCG in question or other CCGs, defer determination of the application until the later of the end of the financial year in which it was received and the date six months after it was received, or
- defer determination until it has received all related applications for establishment or variation from other CCGs.

There is no appeal or review process to NHS England's decision.

Procedure to agree a CCG merger

Background

Under section 14G of NHS Act 2006 (as inserted by the Health and Social Care Act 2012), two or more CCGs may apply to NHS England for those groups to be dissolved and another CCG to be established. In this procedure the merger is deemed to be by agreement.

The Regulations require that an application to merge should be considered with regard to the same factors that were used for establishment. These include:

- that the constitution meets the requirements of legislation and is otherwise appropriate,
 - that each of the members is (or will be on the date of the establishment of the new CCG) a provider of primary medical services,
 - that the area is appropriate (i.e. that there are no overlapping CCGs and no gaps,
 - that the proposed Accountable Officer is appropriate,
 - that the CCG has made appropriate arrangements to ensure it is able to discharge its functions, and
 - that it has made arrangements to ensure that its governing body is correctly constituted and otherwise appropriate.
- Further factors are set out in Schedule 1 to the Regulations.

Application process to be adopted

NHS England will consider applications for CCG mergers once annually. Applications should be made by 1 June, to take effect from 1 April the following year. This is to allow the impact on financial allocations to be calculated in time for them to apply for the next financial year. Submissions should be made to the relevant Regional Director of Operations and Delivery.

The application should come from all of the CCGs involved in the proposed merger. The application should already have been discussed and agreed with CCG member practices and stakeholders should have already been consulted at the point of submission of the application. A single application must be made by all the CCGs involved in the proposed merger.

Applications under section 14G must be accompanied by the following information:

- a copy of the proposed constitution of the CCG,

- the name of the person whom the CCG wishes NHS England to appoint as its Accountable Officer, and
- such other information as specified.

The applicants may, with the agreement of NHS England, modify the application or the proposed constitution at any time before NHS England determines the application. To do this the CCGs should notify in writing the Regional Director of Operations & Delivery considering the application of the intended modifications. Modifications must be received within the 8 week period in which NHS England will consider the application. If the proposed modification is substantial this may lead to an extension of the time required by NHS England to come to a decision. This will be agreed with the CCG.

Consideration by NHS England of the proposed merger

Sections 14C and section 14D(1) of NHS Act 2006 (as inserted by The Health and Social Care Act 2012) and Schedule 1 to the Regulations apply to applications for merger. Essentially this means that NHS England will use the same threshold for determining whether to approve a merger as it used to consider initial CCG authorisation, in order to be assured of the fitness of the proposed new CCG. In making this assessment NHS England will use the domains used for authorisation. These domains are set out fully in 'Clinical Commissioning Group Authorisation: Guide for Applicants'.

NHS England will acknowledge all applications for merger within two weeks of receipt and will notify the CCG in writing of the outcome of its decision within 8 weeks. In the event of merger, the assets and liabilities of the CCGs will also be merged.

If NHS England thinks that its statutory duties in relation to CCGs make it preferable for it to do so, and granting the application would have a significant impact on allotments to the CCGs in question or other CCGs, defer determination of the application until the later of the end of the financial year in which it was received and the date six months after it was received.

There is no appeal or review process to NHS England's decision.

Procedure to dissolve a CCG

Background

Section 14H of NHS Act 2006 (as inserted by the Health and Social Care Act 2012), provides that a CCG may apply to NHS England for the group to be dissolved.

The key factors NHS England must consider in relation to an application for dissolution are:

- the impact on the local population served by the CCG of proceeding with a dissolution,
- the financial implications of dissolution to both the CCG in question and other affected CCGs,
- the impact on NHS England's functions, and
- the stakeholder engagement the CCG has undertaken and how the CCG has taken the views of stakeholders into account.

Application process to be adopted

NHS England will consider applications for CCG dissolutions at any time in the year. This is because it needs to ensure that the entire population is covered by a functioning CCG at all times. Submissions should be made to the relevant Regional Director of Operations and Delivery.

The application should come from the CCG wishing to dissolve. The application should already have been discussed and agreed with CCG member practices and stakeholders should have already been consulted at the point of submission of the application.

Applications under section 14H must be accompanied by the following information:

- assurance that all member practices of the CCG have plans in place to join other CCGs, and
- confirmation that those other CCGs have been consulted and are content with the proposals for new members
- assurance that other stakeholders have been consulted.

CCGs receiving new practices as a result of a CCG dissolution should apply to vary their constitutions in tandem with the application for dissolution and to an agreed common timescale. These will be considered as an emergency application for variation.

Consideration by NHS England of the proposed dissolution

Regulation 9 applies to applications to dissolve a CCG. Schedule 3 to the Regulations sets out the factors to be taken into account. NHS England may also take into account any other information which it deems relevant. The factors that must be considered are as follows:

- the likely impact of the dissolution on population and patients of the CCG,
- the likely impact of the dissolution on financial allocations,
- the likely impact of the dissolution on NHS England's functions,
- the extent to which the CCG to be dissolved has sought the views of the following, what those views are, and how the CCG has taken them into account:
 - unitary local authorities and upper-tier county councils (within the meaning of paragraph 1(2) of Schedule 1) whose area coincides with, or includes the whole or any part of, the area specified in the CCG's constitution,
 - any other CCG which in the CCG's view would be affected by the dissolution, or
 - any other person or body which in the CCG's view might be affected by the dissolution, and
- the extent to which the CCG to be dissolved has sought the views of individuals to whom any relevant health services are being or may be provided, what those views are, and how the CCG has taken them into account.

Additionally, on receipt of an application for dissolution NHS England can consider the requirement to apply the failure regime under section 14Z21, and potential need for directions to support the carrying out of the CCG's functions in the period until the dissolution takes effect.

If only some member practices have agreed plans to move to other CCGs, NHS England will consider whether the residual practices can form a viable CCG. If necessary, NHS England will consider the use of its powers under 14F to vary the membership of a CCG. NHS England will consider this on a case by case basis and in discussion with the CCG.

NHS England may refuse an application for dissolution if it is not satisfied that the alternative CCGs would meet the same threshold as required for initial authorisation.

NHS England will acknowledge all applications for dissolution within two weeks of receipt and will notify the CCG in writing of the outcome of its decision within 8 weeks.

If NHS England thinks that its statutory duties in relation to CCGs make it preferable for it to do so, it may:

- where granting the application would have a significant impact on allotments to the CCG in question or other CCGs, defer determination of the application until the later of the end of the financial year in which it was received and the date six months after it was received, or
- defer determination until it has received all related applications for establishment or variation from other CCGs.

In the event of dissolution, the assets and liabilities of the CCG will transfer to the organisation(s) to which the practices within that CCG become members. The dissolving CCG will need to confirm the split of assets and liabilities across practice populations. Where there is a dispute regarding the transfer of assets or liabilities, NHS England will determine the proportions to be allocated to the receiving CCGs and may make a property transfer scheme as appropriate. In the event of CCG functions being taken over by NHS England (as a result of its intervention procedures), any assets and liabilities will be transferred to NHS England proportionate to the functions being discharged.

There is no appeal process to NHS England's decision.

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