
STATUTORY INSTRUMENTS

2012 No. 1631

**The National Health Service (Clinical
Commissioning Groups) Regulations 2012**

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Clinical Commissioning Groups) Regulations 2012, and come into force immediately after the commencement of section 25 of the Health and Social Care Act 2012.

(2) In these Regulations—

“the 2006 Act” means the National Health Service Act 2006,

“the Board” means the National Health Service Commissioning Board⁽¹⁾,

“CCG” means clinical commissioning group⁽²⁾, or (in relation to an application for the establishment of a clinical commissioning group) means the proposed clinical commissioning group,

“financial year”, in relation to a CCG, includes the period which begins on the day a CCG is established and ends on the following 31st March⁽³⁾.

CCG membership requirement

2.—(1) For the purposes of section 14A(3) and (4) of the 2006 Act⁽⁴⁾ (meaning of “provider of primary medical services”) the prescribed description of primary medical services is: essential primary medical services to registered patients during core hours.

(2) In paragraph (1)—

“core hours” means—

(a) the period beginning at 8 a.m. and ending at 6.30 p.m. on any day from Monday to Friday except Good Friday, Christmas Day or any day specified or proclaimed as a bank holiday in England and Wales pursuant to section 1 of the Banking and Financial Dealings Act 1971⁽⁵⁾, or

(b) (in the case of primary medical services arrangements) the period defined as core hours in those arrangements;

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- (1) The National Health Service Commissioning Board is established by section 1H of the 2006 Act. Section 1H is inserted by section 9(1) of the 2012 Act.
- (2) A clinical commissioning group is a body established under section 14D of the 2006 Act. Section 14D is inserted by section 25(1) of the 2012 Act. *See also* section 1I of the 2006 Act, inserted by section 10 of the 2012 Act.
- (3) This extends the definition of “financial year” in section 275(1) of the 2006 Act.
- (4) Section 14A(3) of the 2006 Act provides that for the purposes of Chapter A2 of the 2006 Act, a “provider of primary medical services” is a person who is a party to an arrangement mentioned in paragraph (a), (b) or (c) of section 14A(4) of that Act to provide, or for the provision of, primary medical services of a prescribed description. Chapter A2, including section 14A, is inserted by section 25(1) of the 2012 Act.
- (5) 1971 c. 80.

“essential primary medical services” means the services described in regulation 15(3), (5), (6) and (8) of the National Health Service (General Medical Services Contracts) Regulations 2004(6) (essential services);

“registered patient” means—

- (a) a person who is recorded by the Board as being on the provider’s list of patients, or
- (b) a person whom the provider has accepted for inclusion on its list of patients (whether or not notification of that acceptance has been received by the Board) and who has not been the subject of a notification by the Board to the provider as having ceased to be on that list.

(3) In paragraph (b) of the definition of “core hours” in paragraph (2), “primary medical services arrangements” means—

- (a) until the date on which section 34 of the Health and Social Care Act 2012(7) (which abolishes Primary Care Trusts) comes into force, arrangements made by a Primary Care Trust under section 83(2)(b) of the 2006 Act (primary medical services),
- (b) on and after that date, arrangements previously made under section 83(2)(b) of the 2006 Act which continue to have effect, and arrangements made by the Board under section 83(2) of the 2006 Act.

(4) In the definition of “registered patient” in paragraph (2), until the date on which section 34 of the Health and Social Care Act 2012 comes into force, references to “the Board” are to be construed as references to “a Primary Care Trust”.

Basic requirements as to CCG names

- 3.—(1) The name of a CCG must include each of the elements specified in regulations 4, 5 and 6.
- (2) The name must not include anything else.
- (3) Where the CCG is not yet established, the proposed name must not be so similar to that of an established CCG that the two could be confused.
- (4) Where the CCG is already established, but wishes to change its name, the proposed name must not be so similar to that of another established CCG that the two could be confused.

The NHS element of a CCG name

- 4. The name must begin with “NHS” in capital letters.

The geographical reference element of a CCG name

- 5.—(1) The name must include a geographical reference.
- (2) This must appear immediately after the NHS element specified in regulation 4.
- (3) The geographical reference must fairly and accurately represent the area specified in the CCG’s constitution.
- (4) The geographical reference must be to either or both of the following (and in the case of each sub-paragraph may be to more than one of the things mentioned)—
 - (a) a place, geographical feature or area which is named on a map in general circulation, or which has a name in common usage in the area specified in the CCG’s constitution;

(6) [S.I. 2004/291](#), to which there are amendments not relevant to these Regulations.

(7) Paragraph 30(2) of Schedule 4 to the 2012 Act substitutes subsections (1) and (2) of section 83 of the 2006 Act in consequence of the abolition of Primary Care Trusts.

- (b) a centre of population (such as a village, town or city), an administrative area (such as a county or other local authority area) or an electoral district (whether Parliamentary or local authority).
- (5) If more than one reference is chosen from paragraph (4), they may be linked as appropriate by a word such as “and” or “with”.
- (6) The geographical reference may also incorporate—
 - (a) compass references mentioned in paragraph (7),
 - (b) other descriptive or qualifying terms supplementing or refining the reference (or references) chosen from paragraph (4), and
 - (c) any necessary punctuation.
- (7) The compass references referred to in paragraph (6)(a) are: North, East, South, West, North-East, North-West, South-East and South-West, or any of those in the “Northern” (etc.) form.

The Clinical Commissioning Group element of a CCG name

- 6. The name must end with the words “Clinical Commissioning Group”.

Factors relating to the granting of applications for establishment or merger of CCGs

- 7.—(1) This regulation applies in relation to—
 - (a) an application under section 14B of the 2006 Act for the establishment of a CCG, and
 - (b) an application under section 14G of the 2006 Act for the dissolution of two or more CCGs and for the establishment of another one.
- (2) Schedule 1 sets out, in paragraph 2, factors to be taken into account by the Board when deciding whether it is satisfied as to the matters mentioned in subsection (2) of section 14C of the 2006 Act, including that subsection as applied by section 14G(4) (which relate to the determination of applications for the establishment of a CCG or the merger of two or more of them).
- (3) Each factor refers at the end to one or more paragraphs of section 14C(2), and the Board must take the factor into account in relation to each of those paragraphs.
- (4) Nothing prevents the Board from—
 - (a) taking a factor into account, if relevant, in relation to other paragraphs of section 14C(2), or
 - (b) taking into account anything else which is relevant.

Conditional establishment of CCG

- 8.—(1) This regulation applies where the Board is not satisfied as to the matters mentioned in section 14C(2) of the 2006 Act in relation to a particular initial application⁽⁸⁾.
- (2) The Board may nevertheless grant the initial application.
- (3) The Board may impose conditions on the grant of the application.
- (4) The conditions must be designed to address the respects in which the Board was not satisfied as to the matters mentioned in section 14C(2) of the 2006 Act.
- (5) The Board may—
 - (a) direct the CCG established under section 14D of the 2006 Act on the grant of an initial application not to exercise any functions specified in the direction;
 - (b) give directions to the CCG about the exercise of any of its functions.

⁽⁸⁾ “Initial application” is defined in paragraph 1(3) of Schedule 6 to the 2012 Act.

(6) The Board must keep under review any conditions imposed and any directions given by virtue of this regulation.

(7) The Board may—

- (a) vary or remove any conditions imposed;
- (b) vary or revoke any directions given.

(8) If the Board gives a direction by virtue of paragraph (5)(a), the Board may—

- (a) exercise any functions specified in the direction on behalf of the CCG;
- (b) arrange for another CCG to exercise those functions on behalf of the CCG.

(9) Before deciding whether to pursue either of the two alternatives set out in paragraph (8), or which one of them to pursue, the Board must take into account the following factors—

- (a) whether the exercise by the Board itself of the functions in question would be the most effective way for the functions to be exercised;
- (b) the capability and capacity of any other CCG with which arrangements might be made by virtue of paragraph (8)(b);
- (c) the willingness of the other CCG to exercise the functions in question.

(10) If the CCG is failing, or has failed, to comply with any conditions imposed by virtue of this regulation, the Board may dissolve the CCG under section 14Z21(7) of the 2006 Act⁽⁹⁾.

Variation of CCG constitution and dissolution of CCG: factors etc.

9.—(1) This regulation applies if a CCG applies to the Board—

- (a) under section 14E of the 2006 Act, to vary its constitution, or
- (b) under section 14H of the 2006 Act, for the group to be dissolved.

(2) Schedule 2 sets out factors which the Board must take into account when determining whether to grant an application under section 14E.

(3) Schedule 3 sets out factors which the Board must take into account when determining whether to grant an application under section 14H.

(4) Nothing prevents the Board from taking into account anything else which is relevant.

(5) The Board may refuse an application under section 14H if it is not satisfied as to the matters mentioned in section 14C(2) of the 2006 Act in relation to any related application under section 14B or 14E⁽¹⁰⁾.

Procedure

10.—(1) The procedure adopted by the Board for dealing with applications under sections 14B, 14E, 14G and 14H of the 2006 Act must be such as to allow for communication between the Board and the applicant or applicants at all stages before the Board's determination, with a view to making it possible—

- (a) for clarifications to be provided either to the Board or to the applicant or applicants on any matter related to the application, and
- (b) where appropriate, for the applicant or applicants to adjust the application in the light of communications with the Board.

(2) The Board must publish the procedure that it adopts for dealing with such applications.

⁽⁹⁾ Section 14Z21 is inserted into the 2006 Act by section 26 of the 2012 Act.

⁽¹⁰⁾ See regulation 10(11) and (12) for provision about the procedure where there are related applications.

- (3) The procedure need not be the same for all the types of application.
- (4) An application must include the reasons for making it.
- (5) The Board must acknowledge an application within the period of two weeks beginning with the date on which the Board receives it.
- (6) The Board must notify the applicant or applicants of its determination in writing and must give reasons for it.
- (7) The notification must include a statement that the Board will not review the determination and that neither the 2006 Act nor the Health and Social Care Act 2012 provides for any appeal against it.
- (8) If (under regulation 8(3)) the Board decides to impose conditions on the grant of an initial application under section 14B of the 2006 Act, it must also—
 - (a) notify the CCG in writing how the conditions relate to the matters mentioned in section 14C(2),
 - (b) notify the CCG in writing how the Board proposes to support the CCG in addressing the respects in which the Board was not satisfied as to those matters, and
 - (c) publish the conditions and a statement of how they relate to the matters mentioned in section 14C(2).
- (9) Paragraph (10) applies if the Board receives an application under section 14E, 14G or 14H of the 2006 Act and thinks that granting it would have a significant effect on the amounts allotted or to be allotted under section 223G of that Act (expenditure of CCGs to be met out of public funds) to the CCG, or to any other CCG which would be affected by granting the application.
- (10) If the Board thinks that its duties under sections 1H and 14A(1) and (2) of the 2006 Act make it preferable to defer determination of the application, the Board may defer determination of the application until not later than the end of the financial year in which it was received, or the end of the period of six months beginning on the date it was received, whichever is later.
- (11) Paragraph (12) applies if the Board receives an application under section 14E or 14H of the 2006 Act (the “main application”), but is aware that any other CCG is to make a related application under section 14B or 14E (the “related application”).
- (12) If the Board thinks that its duties under sections 1H and 14A(1) and (2) of the 2006 Act make it preferable to determine the related application (or applications) together with the main application, the Board may defer determination of the main application until the Board has received all the related applications.

Membership of CCG governing body

- 11.**—(1) A CCG’s governing body must have at least six members (including its chair and deputy chair(**11**)).
- (2) The CCG’s accountable officer is to be a member of its governing body.
 - (3) The membership of the governing body must also include, at least, one each of the following—
 - (a) an employee of the CCG who has a professional qualification in accountancy and the expertise or experience to lead the financial management of the CCG,
 - (b) a registered nurse, other than one who falls within regulation 12(1),
 - (c) an individual who is a secondary care specialist, other than one who falls within regulation 12(1),
 - (d) a lay person(**12**) who is qualified for membership by virtue of regulation 12(3),

(11) See regulation 13.

(12) “Lay person” is defined in section 14N(6) of the 2006 Act.

(e) another lay person who is qualified for membership by virtue of regulation 12(4).

(4) Each member of the governing body (other than the accountable officer) is to be appointed by the CCG for a term to be determined by the CCG(13).

(5) The individual described at paragraph (3)(a) is to be known as the CCG’s Chief Finance Officer; if the governing body’s membership includes two or more individuals of that description, the CCG must designate one of them as the Chief Finance Officer.

(6) In paragraph (3)(c) (and in regulation 12(1)), “secondary care specialist” means a registered medical practitioner who is, or has been at any time in the period of 10 years ending with the date of the individual’s appointment to the governing body, an individual who fulfils (or fulfilled) all the following conditions—

- (a) the individual’s name is included in the Specialist Register kept by the General Medical Council under section 34D of the Medical Act 1983(14), or the individual is eligible to be included in that Register by virtue of the scheme referred to in subsection (2)(b) of that section;
- (b) the individual holds a post as an NHS consultant or in a medical specialty in the armed forces;
- (c) the individual’s name is not included in the General Practitioner Register kept by the General Medical Council under section 34C of the Medical Act 1983(15).

(7) In paragraph (6)(b)—

“armed forces” means the naval, military or air forces of the Crown, and includes the reserve forces within the meaning of section 1(2) of the Reserve Forces Act 1996(16) (power to maintain reserve forces);

“NHS consultant” has the meaning given by section 55(1) of the Medical Act 1983(17).

Membership: supplementary

12.—(1) A registered nurse or a secondary care specialist falls within this paragraph if such a person is an employee or member (including shareholder) of, or a partner in, any of the following—

- (a) a person who is a provider of primary medical services for the purposes of Chapter A2 of the 2006 Act(18),
- (b) a body which provides any relevant service to a person for whom the CCG has responsibility(19).

(2) In paragraph (1)(b), “relevant service” means a service provided as part of the health service pursuant to arrangements made by the CCG in the exercise of its functions, other than either of the following—

- (a) a service provided as a result of arrangements made pursuant to the person’s exercise of a choice about where to receive the service;
- (b) a specialist service provided pursuant to a special arrangement made by the CCG in the person’s particular case.

(13) A CCG’s accountable officer is appointed by the National Health Service Commissioning Board under paragraph 12(2) of Schedule 1A to the 2006 Act. Schedule 1A is inserted by section 25(2) of, and Schedule 2 to, the 2012 Act.

(14) 1983 c. 54. Section 34D was inserted by S.I. 2010/234.

(15) Section 34C was inserted by S.I. 2010/234.

(16) 1996 c. 14.

(17) Section 55(1) was so re-numbered by S.I. 1996/1591, and the definition of “NHS consultant” was inserted by S.I. 2010/234.

(18) Chapter A2 is inserted by section 25(1) of the 2012 Act. The definition of “provider of primary medical services” is in section 14A(3) and (4) of the 2006 Act and regulation 2 of these Regulations.

(19) Subsection (1A), and regulations made under subsections (1B) and (1D), of section 3 of the 2006 Act provide for the persons for whom a CCG has responsibility. Those subsections of section 3 are inserted by section 13(3) of the 2012 Act.

(3) The lay person mentioned in regulation 11(3)(d) must have qualifications, expertise or experience such as to enable the person to express informed views about financial management and audit matters.

(4) The lay person mentioned in regulation 11(3)(e) must be a person who has knowledge about the area specified in the CCG's constitution such as to enable the person to express informed views about the discharge of the CCG's functions.

(5) Individuals of the descriptions set out in Schedule 4 are not to be lay persons for the purposes of section 14N of the 2006 Act.

(6) Individuals of the descriptions set out in Schedule 5 are disqualified from membership of a CCG's governing body.

Chair and deputy chair of governing body

13.—(1) A CCG's governing body must have a chair and a deputy chair, to be appointed by the CCG for a term to be determined by the CCG.

(2) The following are disqualified from being chair—

- (a) the CCG's accountable officer,
- (b) any person of a description set out in regulation 11(3)(a), (b), (c) or (d) as read with regulation 12(1), (2) and (3).

(3) If the chair is a health care professional within the meaning of section 14N of the 2006 Act, all members of the governing body other than lay persons are disqualified from being deputy chair.

(4) Subject to paragraph (3), nothing prevents—

- (a) the re-appointment of a chair or a deputy chair whose term of office has come to an end, or
- (b) a person's appointment as either chair or deputy chair following a term of office as the other.

Audit committee

14.—(1) The audit committee of a CCG's governing body must have a chair, to be appointed by the CCG for a term to be determined by the CCG.

(2) The chair must be a lay person who has qualifications, expertise or experience such as to enable the person to express informed views about financial management and audit matters.

(3) The following are disqualified from membership of a CCG's audit committee—

- (a) the chair of the CCG's governing body,
- (b) the CCG's Chief Finance Officer.

Remuneration committee

15.—(1) The remuneration committee of a CCG's governing body must have a chair, to be appointed by the CCG for a term to be determined by the CCG.

(2) All members of the governing body other than lay persons are disqualified from being chair.

Transparency

16.—(1) A CCG's governing body must publish papers considered at meetings of its governing body, except where the governing body considers that it would not be in the public interest to do so in relation to a particular paper or part of a paper.

(2) Subject to paragraphs (3) and (4), a CCG's governing body must publish the following information relating to determinations made under subsection (3)(a) and (b) of section 14L of the 2006 Act (which relates to remuneration, fees and allowances, including allowances payable under certain pension schemes)—

(a) in relation to each senior employee of the CCG, any determination of the employee's salary or of any travelling and other allowances payable to the employee, including any allowances payable under a pension scheme established under paragraph 11(4) of Schedule 1A to the 2006 Act;

(b) any recommendation of the remuneration committee in relation to any such determination.

(3) Information as to the determination of a senior employee's salary need specify only a band of £5,000 into which the salary determined falls.

(4) The governing body must not publish any information referred to in paragraph (2) if the governing body considers that it would not be in the public interest to publish it.

(5) In paragraph (2)(a), "senior employee" means an employee who has authority over or responsibility for directing or controlling the exercise of the CCG's functions.

Signed by authority of the Secretary of State for Health.

21st June 2012

Earl Howe
Parliamentary Under-Secretary of State,
Department of Health