30 May 2012

Dear Colleagues

CCG Constitutions – Helpful Checklist

We have been approached by a number of CCGs who have identified issues and concerns related to draft CCG Constitutions which they are being encouraged to sign up to as a prerequisite of CCG Authorisation. This letter provides guidance on what is acceptable and appropriate, identifies issues which should not be included as well as risks for CCGs, and also provides the latest guidance from the BMA’s General Practitioners Committee and a process by which queries and concerns may be addressed.

CCG Constitutions – things to consider

The following reflects the requirements of the 2012 Act, and also the principle that a Constitution should be a working document which may be referred to as need arises, and should not incorporate extraneous detail which can be more appropriately provided elsewhere (including as limited appendices to a constitution). A clinical commissioning group must have a constitution, which specifies:

- Name of the clinical commissioning group
- Members of the group, eligibility, voting arrangements
- Geographical area of the group
- CCG aims
- Board members, terms of office
- Arrangements to amend Constitution
- Internal structures, committees
- Roles, responsibilities
- Electoral and appointments processes, including role of LMC, and confirmation of LMC as observer on CCG Governing Body.

CCG Constitutions – things to avoid

CCG Constitutions will provide the framework through which CCGs operate as statutory organisations. It is therefore essential that these are acceptable and appropriate, and do not either expose CCGs to unacceptable risk, or impose conditions which inappropriately prevent CCGs from operating as effective commissioning organisations. The following summarises potential risks, and also highlights areas where CCGs and member Practices should raise concerns, and insist on draft Constitutions being amended:

- Do not be pressurised by your Cluster into agreeing something which is inappropriate, on the basis that failure to do so may jeopardise your progress through authorisation.
- CCG Constitutions need to be ‘signed up to’ (i.e. acceptable) by all GPs, as a requirement of authorisation; this does not mean that GPs individually need to sign the document.
- Constitutions should not include any inclusion/acceptance criteria or processes.
- Constitution should not include exclusion criteria linked to criteria/process for removing practices. Termination arrangements should be specified (based on national guidance), there should not be local performance management/escalation procedures.
• Constitution should not specify (QIPP) targets, nor sanctions for non-achievement
• Constitutions should not identify/presume performance management role for CCGs

The Act indicates that the following additional information should be included, although this may be included as appendices:

• Working with other agencies, including LMC, requirement for CCGs to engage with their local LMC as statutory representative of the profession.
• Responsibilities of member practices; responsibilities of the CCG to its members, including any inter-practice agreement(s)
• Dispute procedures, process by which practices can raise grievances with CCG
• Arrangements made by the clinical commissioning group for the discharge of its functions (including its functions in determining the terms and conditions of its employees).
• Arrangements for the appointment of committees or sub-committees of the clinical commissioning group, and for any such committees to consist of or include persons other than members or employees of the clinical commissioning group.
• Arrangements for any functions of the clinical commissioning group to be exercised on its behalf by any of its members or employees, its governing body, or a committee or sub-committee of the group.
• Procedure to be followed by the clinical commissioning group in making decisions.
• Arrangements made by the clinical commissioning group for securing that there is transparency about the decisions of the group and the manner in which they are made.
• Process through which CCG secures effective participation by each member of the clinical commissioning group in the exercise of the group’s functions.

**Governing bodies of clinical commissioning groups**

• Arrangements made by the clinical commissioning group for the discharge of the functions of its governing body, including;
• appointment of the audit committee and remuneration committee of the governing body, and
• may include provision for the appointment of other committees or sub-committees of the governing body.
• Provision for meetings of governing bodies to be open to the public, except where the clinical commissioning group considers that it would not be in the public interest to permit members of the public to attend a meeting or part of a meeting.
• **BMA guidance strongly indicates that CCG Constitutions should include a commitment for the CCG to engage with the LMC as local statutory representative of the profession.**

You may have already committed to working with the NHS CB model Constitution. It is not a requirement of authorisation that you use that document which has not yet been approved by lawyers. You may be aware that the BMA have identified a number of concerns in respect to it. “Although the model constitution is helpful in some respects, the document is far too detailed to function as a template constitution. Huge sections of the model constitution are devoted to quotes and references to the Health and Social Care Act, which is confusing and unnecessarily burdensome in the context of a comprehensible template. This makes it unduly difficult to convert into a working practical document. In addition, and importantly, the model constitution completely omits any role or involvement of LMCs.”

In addition to the advice included in this letter, we are also pleased to commend the updated CCG Constitution which has been produced by the most senior BMA Law barrister, and reflects latest guidance.
This constitution is being used by a number of CCGs already, and has been provided through Londonwide LMCs. The draft Constitution is supported by a training and advice package, and we are able, where appropriate, to obtain specialist legal advice on specific issues.

The BMA Law Constitution will be future-proofed, is provided as part of an ongoing commitment, and will also have access to ongoing support and training. If you require a copy please contact either myself (gcairns@lmc.org.uk) or Leah Benson (lbenson@lmc.org.uk)

However, where it will not be possible to obtain a detailed legal opinion on the detail of every CCG Constitution, please contact me on 020 7387 2034 ext 248 or email me at gcairns@lmc.org.uk if you think we can be of help to you.

Our wish is to work with CCGs to get it right first time, and as part of our approach we would be happy to meet with CCGs to discuss local issues, including difficulties in ensuring that your Constitution is fit for purpose. Notwithstanding the above Londonwide LMC advice is that if you have concerns which are not addressed, if you are not happy with the process for agreeing your Constitution, then it is not in your interest to sign.

We look forward to working with you.

Yours sincerely

Greg Cairns
Director of Primary Care Strategy