Homecare Association

System Engagement Team
Systems, Integration and Reform
NHS Policy and Performance, DHSC
Quarry House, Quarry Hill
Leeds
LS2 7UE
[By e-mail]

25 October 2023

To whom it may concern

Re: Improving Integrated Commissioning in Health and Social Care – Section 75 Arrangements

We are writing to highlight some of the opportunities and risks raised with us by homecare providers during discussions about section 75 of the NHS Act (2006). We would be very happy to meet with you to discuss this area or clarify any of the points below.

70% of homecare is commissioned by the public sector and homecare services interact with GPs, hospitals, community nurses, allied health professionals and mental health services on a day to day basis. It is vital that health and social care services operate together effectively.

Opportunities

- Social care services know and understand people and their personal choices, preferences and family dynamics really well through seeing them every day. They are well placed to support NHS professionals with health interventions and knowing what will work for an individual. This experience needs to be recognised and **social care needs to be included as an equal partner in frontline multi-disciplinary teams.**
- Similarly, social care providers have a good understanding of what is happening in the community and will have suggestions about how to innovate, pursue preventative care and problem solve. They want to support the NHS effectively but they can't always find out how to make their voices heard. There is already **work underway to gather good practice for including**

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social care providers in ICS decision making and this needs to be implemented.

- Something as simple as **making it clear who in each ICS social care providers can talk to if they have a concern or idea could help**. ICSs are structured differently across the country and this is confusing, particularly where providers operate in multiple ICS areas. Consistency in structure can also be important.
- Many social care providers are passionate about keeping people as well as possible and there could be opportunities for **public health and social care to work together** to better support the people that they see everyday. There are budgetary pressures in both social care and public health but there could be savings in the long run if effective interventions are identified.
- Better Care Fund commissioners that are open to alternative types of care provision such as **live in care** may find that they are able to offer a wider range of support and discharge people from hospital to their own homes faster. Some commissioners are reluctant to use the full range of care at home services at present – sticking with visiting homecare – we'd like to see people offered a wider range of services.

Risks

- Some commissioners **don't understand the social care market dynamics.** At worst we are seeing commissioners commissioning care that requires more than a personal care CQC registration and would require that the company employ nurses from companies that are only registered for personal care and have no clinical staff. We are also seeing care being commissioned at rates which are less than the direct employment costs of delivery (see Appendix A) which incentivises cutting corners and creates a race to the bottom. This causes good, capable providers to exit the public sector part of the market completely. This has to stop.
- We are concerned that more frequent decisions to bring provision in-house in some parts of the country are based on **cost calculations which don't fully account for the cost of delivery** (for example, management overheads and pension costs might be obscured in public sector accounting). Providers would like to better understand how and why these decisions are being made and how they are affecting social care budgets and capacity overall.

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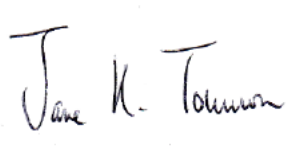
As mentioned, we would be happy to discuss this with you further. Please contact us at policy@homecareassociation.org.uk if you have any questions.

Yours sincerely



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Appendix A – Cost of care delivery

We have had reports of complex care being commissioned on behalf of the NHS at £17 or £18 per hour in parts of the country.

Our Minimum Price for Homecare outlines the necessary costs involved in offering a homecare service. If National Living Wage is paid then a care provider would need £17.97 to cover direct employment costs for the careworker (including pay for the time they are with the person, travel time, national insurance, training time, sick pay, mileage, holiday pay etc.).

Minimum Price for Homecare in England at the National Living Wage (2023-24)					Costs		
Careworker costs	Gross pay	Hourly rate for contact time	National Living Wage		£10.42	£12.58	£17.97
		Careworkers' travel time	20.68%	of hourly rate for contact time	£2.16		
	NI & pension	Employers' National Insurance	4.51%	of gross pay	£0.57	£0.94	
		Pension contribution	3.00%	of gross pay	£0.38		
	Other wage related on-costs	Holiday pay	11.25%	of gross pay, NI & pension	£1.52	£2.54	
		Training time	3.45%	of gross pay, NI & pension	£0.47		
		Sickness pay	3.80%	of gross pay, NI & pension	£0.51		
		Notice & suspension pay	0.30%	of gross pay, NI & pension	£0.04		
	Mileage	Travel reimbursement	£0.45 per mile for 4.25 miles per hour of contact time		£1.91	£1.91	
Gross margin	Business costs	Management & supervisors		Estimated fixed cost	£2.45	£6.98	£7.98
		Back-office staff		Estimated fixed cost	£1.22		
		Staff recruitment		Estimated fixed cost	£0.36		
		Training costs		Estimated fixed cost	£0.48		
		Regulatory fees		Estimated fixed cost for average-sized provider	£0.09		
		Rent, rates and utilities		Estimated fixed cost	£0.37		
		IT & telephony		Estimated fixed cost	£0.47		
		PPE and consumables		Estimated fixed cost	£0.59		
		Finance, legal & professional		Estimated fixed cost	£0.31		
		Insurance		Estimated fixed cost	£0.31		
		Other business overheads		Estimated fixed cost	£0.34		
	Profit	Profit/surplus/investment	4.00%	of careworker costs & business costs	£1.00	£1.00	
Total price based on the National Living Wage (2023-24)					£25.95	£25.95	£25.95

Care commissioned at this rate does not offer any contribution at all towards legitimate and necessary business costs (such as managers, back office staff, rent for the office, IT, telephony, PPE, insurance etc.)

It also does not recognise that complex care – which is often what the NHS commissions - requires higher levels of training and supervision to deliver.

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There is a risk that budgetary constraints drive commissioners to purchase homecare at rates which are not sustainable. This creates a race to the bottom. Some providers begin to offer services at a cost which is only sustainable through poor practices (for example, call clipping or not paying sick pay above the statutory requirement). This can drive providers who do try to provide good care out of the public sector part of the market.

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Department of Health & Social Care

Improving integrated commissioning in health and social care (section 75 of the NHS Act 2006)

Submitted online 25 October 2023

About you

In what capacity are you responding to this survey?

- An individual sharing my personal views and experiences
- An individual sharing my professional views
- On behalf of an organisation

Professionals and organisations

Which statement best applies to you? (optional)

- I am employed by an integrated care board
- I am employed by an NHS Trust or Foundation Trust
- I am employed by a primary care body for example, GP, pharmacist or dental practice
- I am employed by a non0NHS organisation that provides health services
- I am employed by a local authority or combined authority
- I am an elected representative for example a local councillor
- I am employed by a provider of social care services
- I am employed by a voluntary, a community or social enterprise (VSCE) organisation that provides health or care related services in its local area
- I am employed by a national representative body, for example, a medical royal college or the local government association
- I am employed by a nation-wide charity or campaigning organisation
- I am an academic or affiliated to a think tank
- Other

What is your job title? (optional)

Policy Specialist

What is the name of your organisation? (optional)

Homecare Association

Your name (optional)

Michelle Dumont

As part of this survey there are a few reasons we may require your email address:

- if you need to contact us about amending or deleting your response - the only way we can verify that it is your response is via your email address
- if you didn't have time to finish the survey, we can send you a reminder before it closes.

If you are responding on behalf of your organisation, please provide your organisational email address. Your email address will not be shared with anyone outside of the department.

Are you happy to share your email address with the Department of Health and Social Care?

Yes

What is your email address? (optional)

policy@homecareassociation.org.uk

Section 1: current section 75 partnership arrangements and impacts

This survey should be read in conjunction with the section 75 policy document. Please answer as many of the questions as possible with specific examples of how any changes may lead to improved care and consider services in relation to both adult and children's services. The following questions seek your views about the impact of arrangements made under section 75 of the NHS Act 2006.

In your experience, to what extent do you agree or disagree that the current section 75 partnership arrangements allow effective commissioning of NHS functions and local authority health related functions?

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Please explain your answer and provide specific examples. (optional)

The Homecare Association is a member-led professional association, with over 2,100 homecare provider members across the UK. Our members encompass the diversity of providers in the market: from small to large; predominantly state-funded to predominantly private-pay funded; generalist to specialist; live-in services to visiting services and from start-ups to mature businesses. Our mission is to ensure homecare is valued so all of us can live well at home and flourish within our communities. We use our trusted voice to work with others to shape homecare. We also provide hands-on support and practical tools for our members.

The main experience of social care providers with section 75 arrangements is via the Better Care Fund.

The fact that the arrangements are implemented in a variety of different ways over the country can lead to a feeling of things being ‘chaotic’; with providers spanning over multiple areas not being sure who they need to speak to about the opportunities and funding available; and commissioners lacking clarity about how to include providers in the process. We recommend further guidance is published to ensure consistency in this area.

As a consequence of this, the extent to which arrangements are effective is highly variable, which we explore further in our answer to the next question.

In your experience, to what extent do you agree or disagree that the use of section 75 arrangements supports closer integration and personalisation of health and care services?

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Please explain your answer and provide specific examples. (optional)

In some parts of the country, we have seen section 75 arrangements support integration. Anecdotally, we know that in some places, NHS staff have come together with social care to problem solve and have found joint solutions; Better Care Fund pooled budget arrangements facilitated this. For example, piloting or commissioning of joint hospital discharge, intermediate care, and end-of-life services. Social care staff were part of Multi-Disciplinary Teams, to ensure person-led care during significant life events.

In other places, we have seen situations where the social care sector’s input has not been sought or heard and the Better Care Fund has been spent on services which were not fully utilised and did not optimise joint working.

Our members have concerns about some commissioners working on Better Care Fund projects. For example, some worked on hospital discharge, and appeared not to understand the nature of complex homecare.

In particular, a different level of registration may be required to provide certain kinds of care.

Most homecare services are registered with the CQC to provide ‘personal care’ only.

Clinical tasks, or other complex support, may require registration for treatment of diseases, disorders, or injuries.

Complex homecare agencies may need to employ nurses to provide clinical oversight. Careworkers may require training and nurse approval to perform clinical tasks like catheter care, suction, or PEG feeding.

We have also had reports of commissioners seeking to purchase homecare for hospital discharge or Continuing Health Care packages at £17 or £18 per hour.

Such rates do not even cover direct staff costs at the legal minimum wage plus statutory employment on-costs. This leaves nothing to cover other costs of delivering homecare, such as training and supervision.

These rates are lower than the rates most local authorities would pay, despite the care being more complex.

Our minimum price for homecare for 2023/24 is £25.95 per hour. We consider this to be the lowest rate to cover minimum wage pay costs and other necessary overheads in order to operate a quality, sustainable service.

Complex care costs more than this because of the need for nurse oversight and advanced training and supervision of careworkers. Sometimes providers have felt pressurised to deliver care under such terms, even though this is not viable or safe. Attempting to commission services at £18 per hour shows a negligent lack of understanding of the sector.

Section 75 arrangements must support responsible commissioning.

Social care services can take on some functions which would previously have been healthcare functions. The commissioned services must have the correct registration, training, nursing support, and adequate funding.

The Better Care Fund was created to help people stay healthy and independent at home for longer.

The grant conditions for the Fund and the way it is being used are increasingly seen as prioritising support for the NHS and hospital activity, rather than prioritising support for people to access the right care, at the right place, at the right time – including social care in the community.

Integration of health and social care will only be effective if social care has parity of esteem and is treated as a partner, not only in delivery but also in problem solving issues affecting the health and social care system.

In your experience, to what extent do you agree or disagree that section 75 arrangements have led to demonstrable improvements to the health and care services delivered to local communities?

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Please explain your answer and provide any specific examples of section 75 arrangements that have led to improvements. (optional)

As explained above, we consider the approach to be highly variable across the country depending on how social care stakeholders are included in decision making and how the pooled budgets are used.

We would like to see best practice shared to ensure that there is a consistent approach that includes an adequate understanding of social care – the challenges, opportunities, costs and operational parameters of the sector.

Including social care in ICS systems is an important topic, as they are involved in the section 75 arrangements.

We previously worked with Care England and the Good Governance Institute to produce a report on the inclusion of Adult Social Care in ICSs.

Following this, DHSC produced a set of principles for Adult Social Care Engagement with ICSs. We would like to ensure the implementation of these principles.

Some ICS areas are making efforts to engage with providers. We've had positive feedback about adult social care engagement in North East London ICS, for example. Here, providers can offer views prior to decisions and have representation on Place Based Partnership Boards. In other areas, this doesn't seem to happen effectively.

An understanding of social care within ICS leadership can make all the difference.

Section 2: supporting further integration between health and social care

The following questions seek your views about strengthening joint working between health and local authority social care services.

In your experience, are there any barriers that hinder further use of section 75 partnership arrangements for adult and children's health and social care services in your area?

- Yes
- No
- Not sure

Please explain your answer and provide specific examples. (optional)

Social care providers often have difficulty identifying the source of constraints. These may include legislation, organisation, culture, funding, or policy decisions.

We are concerned that the funding in the Better Care Fund is prescribed into specified strands which can sometimes be restrictive to those developing strategic responses and difficult to understand for outsiders and those new to the sector.

From a business planning perspective, it is very difficult to develop service provision, innovate or invest in a service or make HR decisions when funding and contracts are made on a very short-term basis.

The sector finds it challenging to plan for system pressures because of short-term and last-minute grants.

Longer-term funding, which allows for more notice and more planning, would make a significant difference to the sector and the provision that could be offered.

Section 75 arrangements must be time-limited at present.

The allocation of grant funding in the budget process can lead to short-term thinking. We would welcome changing section 75 legislation or guidance to clarify that longer-term planning is to be encouraged.

Can you suggest any changes to section 75 partnership arrangements that would strengthen joint delivery of health and social care services in your area?

- Yes

- No
- Not sure

Please explain your answer and provide specific examples. (optional)

To repeat the points we have made above, changing section 75 arrangements to allow for (or even encourage) longer-term planning would be beneficial. Providers also need to plan and find it hard to do so when the timeframes and opportunities within NHS and ICS internal processes are opaque.

Including social care voices in ICSs is vital.

The legislation needs to support processes that promote understanding of the social care sector. Sharing knowledge of the operational landscape, market forces, costs, workforce, and the potential of social care is vital.

Including social care in Multi-Disciplinary Teams and other actions can improve support for people. This would follow from social care being understood and included at the strategic stage.

Section 3: widening the scope of section 75 of the NHS Act 2006 to bring in functions that are currently specifically excluded

The policy document that accompanies this survey lists the functions of NHS bodies that are currently specifically excluded by secondary legislation from section 75 arrangements. The following questions seek your view on widening the scope of section 75 to incorporate these functions currently excluded.

Do you think the scope of section 75 arrangements should be expanded to include emergency ambulance services?
Please note, patient transport services are currently within the scope of section 75 arrangements.

- Yes
- No
- Not sure

Please explain your answer and provide specific examples. (optional)

> We believe that those closely involved with the health sector are better suited to answer the following questions.
>
> It is important to care providers, and the people they support, that these services operate effectively. Social care providers are not aware of the legal basis and funding arrangements for these services, making it difficult to comment.

What are the benefits and risks of your suggested approach? (optional)

> We should balance efforts between integrating different parts of the health sector and integrating health with social care. We need both.

Functions relating to general surgery

Do you think the scope of section 75 arrangements should be expanded to include general surgery?

- Yes
- No
- Not sure

Please explain your answer and provide specific examples. (optional)

> As above

What are the benefits and risks of your suggested approach? (optional)

Functions relating to radiotherapy

Do you think the scope of section 75 arrangements should be expanded to include radiotherapy?

- Yes
- No
- Not sure

Please explain your answer and provide specific examples. (optional)

As above

What are the benefits and risks of your suggested approach? (optional)

Functions relating to termination of pregnancies

Do you think the scope of section 75 arrangements should be expanded to include termination of pregnancies?

- Yes
- No
- Not sure

Please explain your answer and provide specific examples. (optional)

As above

What are the benefits and risks of your suggested approach? (optional)

Functions relating to endoscopy

Do you think the scope of section 75 arrangements should be expanded to include endoscopy?

- Yes
- No
- Not sure

Please explain your answer and provide specific examples. (optional)

As above

What are the benefits and risks of your suggested approach? (optional)

Functions relating to Class 4 laser treatments

Do you think the scope of section 75 arrangements should be expanded to include use of Class 4 laser treatments?

- Yes
- No
- Not sure

Please explain your answer and provide specific examples. (optional)

As above

What are the benefits and risks of your suggested approach? (optional)

Functions relating to any other invasive treatments

Do you think the scope of section 75 arrangements should be expanded to include use of any other invasive treatments?

- Yes
- No
- Not sure

Please explain your answer and provide specific examples. (optional)

As above

What are the benefits and risks of your suggested approach? (optional)

Section 4: widening the scope of section 75 of the NHS Act 2006 to bring in functions not expressly excluded in secondary legislation

The policy document that accompanies this survey lists health related functions that are currently not within scope of section 75 and are not expressly excluded in secondary legislation. The following questions seek your view on widening the scope of section 75 to incorporate these functions.

Do you think the scope of section 75 arrangements should be expanded to include primary ophthalmic services (NHS opticians)?

- Yes
- No
- Not sure

Please explain your answer and provide specific examples. (optional)

As above

What are the benefits and risks of your suggested approach? (optional)

Do you think the scope of section 75 arrangements should be expanded to include primary dental care and complex dental surgeries under invasive surgery (NHS dentistry)?

- Yes

- No
- Not sure

Please explain your answer and provide specific examples. (optional)

As above

What are the benefits and risks of your suggested approach? (optional)

Do you think the scope of section 75 arrangements should be expanded to include pharmaceutical services?
Essential pharmaceutical services (as defined in s.126) and additional pharmaceutical services (advanced and enhanced services defined under s.127) are excluded currently.

- Yes
- No
- Not sure

Please explain your answer and provide specific examples. (optional)

As above

What are the benefits and risks of your suggested approach? (optional)

Section 5: widening the scope of section 75 of the NHS Act 2006 to incorporate protection of public health functions

The Secretary of State for Health and Social Care has the power to delegate to NHS bodies public health functions as to protection of public health under section 7A or 7B of the NHS Act 2006. Any such functions delegated are not currently within scope of section 75 arrangements. The following questions seek your view on widening the scope of section 75 to incorporate these functions.

From the following functions which, if any, do you think should be included in the section 75 arrangements? (Select all that apply)

- The conduct of research or such other steps as the Secretary of State considers appropriate for advancing knowledge and understanding
- Providing microbiological or other technical services (whether in laboratories or otherwise)
- Providing vaccination, immunisation or screening services
- Providing other services or facilities for the prevention, diagnosis or treatment of illness
- Providing training
- Providing information and advice
- Making available the services of any person or any facility
- None

Please explain your response with specific examples of how this could lead to improved care. (optional)

As with the healthcare functions listed previously, as long as they function well, how these functions are legally underpinned is not of direct concern to homecare providers; so we leave others to comment.

Please explain the risks and/or benefits of any changes and any mitigation that may reduce risks. (optional)

Our concern with all the proposals is that the NHS may see them as a route to redirect social care funds to health services.

Section 6: widening the scope of section 75 of the NHS Act 2006 to incorporate improvement of public health functions

The Secretary of State has the power to delegate to NHS bodies public health functions as to improvement of public health under section 7A or 7B of the NHS Act 2006. Any such functions delegated are not currently within scope of section 75 arrangements. The following questions seek your views on widening the range of organisations that can enter into arrangements under section 75.

From the following functions, which, if any, do you think should be included in the section 75 arrangements?

- Providing information and advice
- Providing services or a healthy living (whether by helping individuals to address behaviour that is detrimental to health or in any other way)
- Providing services or facilities for the prevention, diagnosis or treatment of illness
- Providing financial incentives to encourage individuals to adopt healthier lifestyles
- Providing assistance (including financial assistance) to help individuals to minimimse any risks to health arising from their accommodation or environment
- Providing or participating in the provision of training for persons working or seeking to work in the field of health improvement
- Making available the services of any person or any facilities
- None

Please explain your response with specific examples of how this could lead to improved care. (optional)

Many of the activities listed above as public health functions are also routine in social care. People in communities could benefit from the coordination of work and budgets between public health and social care in the community.

Homecare providers help with social connection, healthier eating, physical activity, and housing issues.

Combining homecare and public health to deliver community health and well-being services would be a big step forward.

Please explain the risks and/or benefits of any changes and any mitigation that may reduce risks. (optional)

Section 7: any other additional health related functions

Are there any other local authority health-related or NHS functions that you think should be included in section 75 arrangements?

- Yes
- No
- Not sure

Please provide examples of why or how this would improve care provided. (optional)

> Care providers witness unnecessary decline in people's health every day. They can see the pressure on the healthcare system and the strategic need to adopt preventative approaches.
>
> Some providers have suggested ways to support preventative healthcare initiatives, such as using pulse oximetry for COPD patients receiving social care. However, they haven't found the right channels to voice these ideas.
>
> All the functions listed so far are to do with the existing health service structure. We want clearer encouragement to use section 75, and funding, for innovative preventative services in social care. These need to work across health and social care. Social care can be part of the solution to how we problem solve in the future. Perhaps these merit a ‘function’ category of their own?
>
> We know also that some commissioners are more open to certain kinds of care provision than others.
>
> In some regions, for example, commissioners will arrange live-in homecare for hospital discharge support.
>
> Elsewhere, commissioners are not open to this. This doesn’t seem to be a legal restriction, however. It is cultural.

What are the risks or benefits of any suggested changes? (optional)

> Adding 'innovative preventative services' to the legislation may have risks. However, the benefits of success are clear.
>
> In some parts of the country, preventative care is being pursued through existing mechanisms anyway (Birmingham and Solihull ICS has been suggested as an example to us), but this is the exception rather than the rule. Explicitly including prevention in the legislation may make it more visible and encourage more widespread use.

Section 8: organisations that can enter into section 75 arrangements

The following questions seek your view on widening the scope of organisations that can enter into arrangements under section 75.

Do you think we should widen the range of organisations that can enter into section 75 arrangements beyond NHS bodies and local authorities?

- Yes
- No
- Not sure

Please specify which additional organisations, if any, you think should be included for adult and children's services and explain why. (optional) For example, housing, justice, education, VCSE and care providers.

We note that including care providers in section 75 arrangements is suggested but we are not clear what this would entail or how it would be managed.

Most care provision operates on a market basis currently. Consequently, there are multiple care providers in any given area. Care providers are commissioned in various ways through local authorities and the NHS. Including care providers on frameworks is usually managed through competitive procurement arrangements. We find it difficult to see how care providers could be directly included in section 75 arrangements without there needing to be some kind of competitive stage – and if this is the case then why not commission?

We would be interested to have a discussion with you about what is envisaged in terms of care providers entering into these arrangements, as we may not have fully understood from the limited information available in the consultation document. Please do contact us at policy@homecareassociation.org.uk.

Some members are observing a rise in in-house provision of reablement and/or homecare services.

We are concerned about some aspects of this, including that the costings for these services may appear lower but the true costs might be obscured because of the way that overheads, pension costs and other aspects are accounted for in the public sector.

It is important for us to recognise and engage the expertise from the independent sector in our strategic decision making.

If including care providers in section 75 arrangements means bringing care provision in-house; we think this merits a wider discussion as it will affect the market dynamics and choice and control of people drawing on services.

Please provide examples of why or how this would improve care provided. (optional)

As stated, it is difficult to comment without further information about how this might work.

Additional questions relating to widening the scope of organisations that can enter into section 75 arrangements

Do you think that combined authorities should be included as bodies that can enter into section 75 arrangements for both local authority health-related functions and NHS functions?

- Yes
- No
- Not sure

Please explain your answer and give examples with consideration of the risks or benefits. (optional)

We would like to see less fragmentation in approaches.

If combined authorities support this, it would be a positive development.

We don't have the expertise to comment on the organisational implications; local authority colleagues would be more knowledgeable.

Section 9: how section 75 arrangements work

The following questions seek your view on how section 75 arrangements work in practice, including partnership agreements, joint committees, and transparency and accountability arrangements.

Do you think any additional safeguards would be needed if we widened the scope of health-related functions?

- Yes
- No
- Not sure

Please explain your answer with examples and consideration of the risks, mitigation, and benefits. (optional)

As previously, we would want to ensure that the addition of further health-related functions does not mean a shift in focus away from health and social care working together (in terms of budget and organisational attention) towards a focus only on different parts of the health sector working together. Both are needed.

Social care must not be left behind and must be given parity. This is a concern in the sector because there is a feeling that the Better Care Fund has been shifting towards funding projects that are more NHS focused.

In terms of safeguards from the perspective of the health functions involved, this is not something we have sight of.

Do you think any additional safeguards would be needed if we widened the range of additional organisations?

- Yes
- No
- Not sure

Please explain your answer with examples and consideration of the risks, mitigation, and benefits. (optional)

We are primarily interested in the possibilities associated with integrating care providers (and possibly housing providers, where relevant to care – like extra care).

We feel that further thought would need to be given on how to include these providers in agreements, given that they operate on a market basis and, in most parts of the country, aren't geographically/patch based.

If this is being seriously considered we would like to discuss this with you further to understand how this would operate in a competitive market and interact with procurement policy.

We feel it is likely this would require different safeguards from those in place to govern arrangements purely between public sector bodies.

Do you think any additional safeguards would be needed if combined authorities could enter into section 75 arrangements for both local authority health-related functions and NHS functions?

- Yes
- No
- Not sure

Please explain your answer with examples and consideration of the risks, mitigation, and benefits. (optional)

Local authority colleagues would be better placed to answer.

Are there any changes we could make that would simplify the use of section 75 of the NHS Act 2006?

- Yes
- No
- Not sure

Please explain your answer and provide examples to support your response. (optional)

Our members often don't have direct experience of the legal mechanisms behind the use of section 75, so others are best placed to answer.

Additional questions relating to how section 75 arrangements work

Do you think we should introduce an explicit requirement for a section 75 partnership agreement to set out how it will lead to an improvement in the way the function is exercised?

- Yes
- No
- Not sure

Please explain your answer and provide some specific examples. (optional)

Whilst it is best for parties involved to be clear on this point, there is a risk that if this is specified in legislation this will create a tick box exercise in which the quality of the strategic statement and level of evidence and thinking behind it will be highly variable so it is not clear whether this would generate value.

What might be more important is the inclusion of stakeholders at appropriate points in the process and the transparency of why decisions have been made – there might be alternative ways to do this than an explicit requirement for the agreement text.

Further to this point – there are likely to be different views amongst interested parties about what constitutes an 'improvement' and it is important that these views are heard and considered at an appropriate stage in the process.

Do you think we should introduce an explicit requirement for a section 75 partnership agreement to set out how it will help to deliver the integrated care system's plans and strategies for the area in which it is situated?

- Yes
- No
- Not sure

Please explain your answer and provide some specific examples. (optional)

It is important that the right questions are asked at the right time, but it is also unhelpful if questions are asked to create a tick box exercise.

As above, we think that the focus on outcomes is what should be important.

Perhaps the ICS should set out how section 75 arrangements help it to deliver plans and strategies within those plans and strategies and not duplicate this in section 75 agreements?

Do you think we need to be clearer on the operation of section 75 joint committees, including membership and decisions that can be made?

- Yes
- No
- Not sure

Please explain your answer and provide some examples with consideration of the risks or benefits. (optional)

> We'd like to see guidance strongly and clearly encourage the inclusion of social care representatives (including, where appropriate considering conflicts of interest, social care provider representatives) where the arrangement being made is relevant to social care.

Do you think we should give clearer direction on the minimum outcomes, monitoring and reporting requirements that must be agreed, upon creation of a section 75 arrangement?

- Yes
- No
- Not sure

Please explain your answer and provide some examples. (optional)

> We think it is really important that clear outcomes are discussed, agreed and defined as part of the problem definition phase as early on in the process as possible and including all relevant stakeholders (including social care providers).
>
> We have heard concerns that sometimes time, resources and money have been spent restructuring provision without adequate strategic thought about outcomes and the result has wasted resources that are direly needed elsewhere. Outcomes then need to be monitored and if the initiative isn't delivering that must be addressed.

Additional questions relating to transparency, accountability and equalities impact

Do you think current arrangements for section 75 offer sufficient transparency and accountability?

- Yes
- No
- Not sure

Can you suggest ways we can strengthen these? (optional)

> As well as accountability for public money, and being clear how funding is used and whether it is effectively delivering the outcomes needed (as discussed above), our members will be interested in transparency about timescales and the inclusion of adult social care at appropriate points in the decision making process.
>
> Care providers struggle to identify decision-makers and communicate effectively in the current ICS setup. This can make it very difficult to develop services strategically to help meet population needs.
>
> There is also a lack of consistency across the country in terms of how things work in different ICSs. If each ICS could maintain a contact point with adult social care

providers who can inform them of section 75 processes and timescales, and if a national list of those contact points were maintained, that might be a helpful starting point, for example.

Please explain your answer and provide some examples and a consideration of the risks or benefits (optional)

In order to maintain a fair and competitive market, adult social care providers need to have the right opportunities to contribute at the right stages in a fair and transparent way that is open to all relevant parties.

There would be risks involved in affecting market dynamics if communication was poor and some relevant providers were excluded.

The benefits of providing greater transparency and advanced notice of opportunities could include more bids from a wider range of providers and a higher level of innovation.

Are there any equalities impacts that you are aware of (including positive impacts) that we need to consider with any changes to section 75 arrangements?

- Yes
- No
- Not sure

Please explain your answer and where possible provide some specific examples. (optional)

It isn't clear how directly the change in legislation will affect changes in service provision, which is where the most significant equalities implications are likely to lie.

Before you submit your response

We have a few questions we would like to ask to help us improve future consultations.

How satisfied are you with the consultation process? (optional)

- Very satisfied
- Satisfied
- Dissatisfied
- Very dissatisfied

How did you hear about the consultation? (optional)

- Social media
- Word of mouth (family, friend or colleague)
- Broadcast news (TV or radio)
- Newspaper (online or print)
- Trade magazine
- Received an email
- Direct communication from third sector organisation or regulatory organisation
- GOV.UK or other government website
- Website (non-government)

- Other

Do you think we could improve this process? (optional)