14 January 2015

CQC regulatory fees from April 2016

ABOUT NHS PROVIDERS

NHS Providers is the membership organisation and trade association for the NHS acute, ambulance, community and mental health services that treat patients and service users in the NHS. We have over 220 members – more than 90% of all NHS foundation trusts and aspirant trusts – who collectively account for £65 billion of annual expenditure and employ more than 928,000 staff.

INTRODUCTION

NHS Providers welcomes the opportunity to respond to this consultation on behalf of our members. CQC has made significant progress in implementing a new regulatory regime and inspection model for quality of care over the last three years. It has now inspected over 60 per cent of NHS foundation trusts and trusts and is in a position to review and adapt its operating model to ensure it is responsive to changing context in the NHS, adds value and is sustainable in the long term. Our response to this consultation is made in the light of CQC's ongoing engagement with providers and the forthcoming consultation on its strategy for 2016-21[1], as well as the Department of Health consultation on proposals for bringing CQC's comprehensive inspections within the scope of its fee raising power.

THE FINANCIAL CONTEXT

Given the financial environment in which NHS foundation trusts and trusts and the wider health and care sector are currently operating, our members find the proposed increase in fees of up to 75 per cent for an individual NHS provider unrealistic.

NHS foundation trusts and trusts are currently reporting the highest collective net deficit in their history. The combined net deficit for the sector is expected to hit £2.2bn by the close of this financial year[2]. The recent spending review provided a degree of relief for the NHS foundation trust and trust sector, but the recent planning guidance sets out a significant 'ask' of providers in the year ahead and for the rest of this parliament, including returning to financial balance, meeting constitutional access and quality standards, moving to new and more integrated care models and delivering seven day services. In addition, the indirect impact of cuts to the budgets of Health Education England and Public Health England and further cuts to local authority budgets threaten to undermine the potential benefits of the settlement for the provider sector. The crisis in social care provision is growing, and social care colleagues have warned that the shortfall will not be made up by the provisions in the spending review for a two per cent "social care precept".

Colleagues within primary and social care have shared with CQC their concerns about the impact that the proposals to increase fees could have on their sectors, including the potential closure of some services or indeed, whole providers. The potential impact of the fee increase upon service users, both in terms of the availability of primary and social care services, and in terms of the impact upon other services, including those provided by our members, is therefore substantial. If GP practices and care homes are forced to close due to the increased financial pressures upon them, we will inevitably see more patients coming to hospitals when they would be better cared for elsewhere. This will challenge the sector in its efforts to move to the new and more preventative care models to which government has committed in the *Five year forward view*.

CQC proposes moving to full cost recovery over two or four years. Based on current projections of its operating budget included in the consultation document, in 2016/17 this would amount to an average fee increase across all bands of £34,637 or £64,944, depending which option is adopted. This is equivalent to every NHS foundation trust and trust losing one senior nurse (band 6

[1] Our response to CQC's strategy engagement document, *Building on strong foundations,* is available at https://nhsproviders.org/media/1533/nhs-providers-response-cqc-building-on-strong-foundations-november-2015.pdf
[2] https://nhsproviders.org/resource-library/briefings/q2-201516-finances

or 7) or two senior nurses, in the case of the two-year trajectory. Clearly, this would not be in line with CQC's stated aim to ensure health and social care services provide people with safe, effective, compassionate, high-quality care.

In this context, it is imperative that CQC continues to evaluate its efficiency and effectiveness, considers the value of all its activities moving forwards, identifies opportunities to streamline those activities where appropriate, and demonstrates the value for money it provides.

CONTINUOUS IMPROVEMENT OF THE INSPECTION MODEL

The implementation of a new regulatory regime and comprehensive inspection model in an ambitious three-year timescale has been a significant achievement. Our members recognise the benefits of inspection in terms of helping them to clarify strengths, weaknesses and areas for improvement and to target their improvement work[3]. However, they have also consistently raised concerns about the long-term sustainability of the current model; whether inspections are risk based and appropriately focussed, particularly for mental health and community services; whether the number of inspectors onsite adds value; the consistency of judgements; duplication between the activities of the different regulators; and the financial burden and opportunity cost that preparing for and hosting an inspection represents.

The development of CQC's five year strategy therefore provides a timely opportunity to consider these issues and seek to reduce the burden and improve the effectiveness of the model as it evolves. NHS Improvement is currently developing its own operating model, which presents a further opportunity for the regulators to consider the overall burden which their regimes, taken together, represent for providers and how they might work together to minimise it. We welcome the fact that CQC is considering a move to a more tailored and responsive approach to inspection. NHS providers will be pleased to work with CQC to ensure any such changes maximise the value of the inspection process for providers and the public. It will also be imperative in the current financial context that CQC seeks to reduce the financial burden of its model upon providers across all sectors, and uses the development of its five year strategy as an opportunity to identify areas where it can appropriately make efficiencies and streamline its approach.

It is therefore disappointing that CQC is making decisions about fee increases while its new strategy is still in such an early stage of development. The assumptions about fee levels upon which this consultation is based have been made before opportunities for CQC to increase its efficiency and streamline its model have been fully explored. This means that providers must respond to the consultation with insufficient information about what the fee levels will actually be, and with little information as to how CQC is seeking to reduce the burden its model places upon those it regulates. This also has implications for all providers' ability to plan for fee increases. We also note that, as signalled in last year's consultation, CQC intends in due course to move to charging separate fees for registration and varying conditions, which would bring down fees for providers overall. It would be helpful if CQC published some efficiency modelling to illustrate how it is considering it might reduce the costs and increase the sustainability of its model for future years.

MOVING TO FULL COST RECOVERY

The Department of Health and HMT require CQC to move to recover full chargeable costs from fees within a defined period, and the Department of Health has proposed four years as the maximum time period within which to do this. However, we have noted the recent consultation published by the Department of Health which makes it clear that CQC only has power to raise fees relating to registration requirements under current regulations, rather than for its whole comprehensive inspection model. We therefore believe that consulting on the trajectory for moving to full cost recovery pre-empts the outcome of this separate consultation. We therefore urge the Department of Health and CQC to pause its current pursuit of full cost recovery until it has properly consulted with the sector on this proposal.

We will be responding separately to the Department of Health consultation, setting out our position on the overall policy of moving to full cost recovery and whether this is appropriate. It is important for CQC to note that if a larger proportion of its costs is met by the providers it regulates through fees, the nature of its relationship with the sector will shift as a result as providers

[3] https://nhsproviders.org/resource-library/reports/maximising-the-value-from-the-regulatory-approach

effectively become a form of 'client' for a paid service. CQC must bear this in mind while consulting on its forthcoming five year strategy and longer term aims. CQC will increasingly need to demonstrate to those it regulates that it is undertaking evaluations of its value and effectiveness on a continuing basis. CQC must fully consider this and steps should be taken to ensure that the balance of its accountability to patients, the public, providers and government takes account of this.

If the Department of Health and CQC continue to pursue full cost recovery following the Department of Health consultation, we urge CQC to take any decisions about fees in close conjunction with the development of its strategy, bearing in mind any potential changes to the inspection model, and therefore reductions to CQC's costs, which this may entail. CQC should avoid confirming the amounts of its fees for this and future years until the consultation on its strategy for 2016-21 has been completed and the feedback analysed.

IMPACT OF CONSULTATION PROPOSALS

Given the significant cost burden that the proposed options would represent for providers in all the sectors CQC regulates, we are disappointed that the draft regulatory impact assessment included with this consultation does not explore the impact the increases would have on the NHS provider sector. The impact on CQC is explored in much more detail, with the assessment of the impact on providers limited to the amount of the fee increase each type of provider would incur. There is also no consideration within the impact assessment of the opportunity cost moving to full cost recovery over two or four years would represent and what this may mean for patients and service users.

It is important to note that based on current projections of its operating budget, if CQC moves to full cost recovery over two years, this would amount to an additional fees cost in 2016/17 of £16 million across the NHS foundation trust and trust sector. This is a significant sum in the current financial environment, particularly when considered alongside the increases for other sectors such as primary care, in which the proposed increase would be up to seven times the current fees for some providers.

To minimise the impact of any increase in fees on providers' financial sustainability, CQC should work with its national partners to explore how any increases might be taken into account through the national payment systems, for example, through the national tariff.

CONSULTATION QUESTIONS

1. *In setting fees for 2016/17, which of the two options for achieving full chargeable cost recovery would you prefer CQC to adopt:*

- *Option 1 – recovery of the fees amount over two years between 2016-2018, as set out in Annex A, or*
- *Option 2 – recovery of the fees amount over four years between 2016-2020, as set out in Annex B?*

We are not persuaded of the case for full cost recovery. However, if the Department of Health and CQC continue to pursue this model, of the two options presented in the consultation, NHS Providers would prefer CQC to adopt option 2, for the reasons outlined above. Providers are operating in an extremely constrained financial environment and the longest possible trajectory to full cost recovery would be the most appropriate. CQC acknowledges in its draft regulatory impact assessment that option 1"raises the possibility that some sectors will be overcharged in the second year and the likelihood that there will need to be adjustments to fees in the following years". Our members would find it difficult to accept CQC taking such a step before it has demonstrated its value for money and the steps it is already taking to make efficiencies and minimise the burden its model places on providers..

2. *Would you prefer CQC to adopt another option for setting fees for 2016/17? For example:*

- *A different option for how and when CQC should achieve full chargeable cost recovery.*
- *A different option on how we divide fees between different types of provider.*

Please explain what option you recommend to CQC and your reasons for proposing this.

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Our strong preference is for CQC to freeze its trajectory to full cost recovery until the Department of Health has concluded its consultation on CQC's fee raising power and has fully considered, in collaboration with the sector, whether it is appropriate to move to full cost recovery given the impact this would have on the relationship between a quality regulator and those it regulates. Fees for 2016/17 should therefore be held at their current levels to allow these steps to take place first.

3. *Do you agree with our proposal to maintain full chargeable cost recovery levels for the dental sector by decreasing their fees in 2017/18?*
   Not applicable.

CONCLUSION

Our members are operating in an extremely challenging financial environment, in which it is essential that funding devolved to the frontline delivers maximum value for patients and service users. We therefore welcome the work that CQC is undertaking to improve and refine its operating model. In setting its five year strategy, and through its work to evaluate its value for money, CQC should do all it can to consider any scope for efficiencies within its model, and to streamline its approach and scale back its activities where it is safe to do so. This will mean CQC will need to:

- Make efficiencies wherever possible.
- Continue to evaluate its value for money on an ongoing basis. We have welcomed CQC's commitment to evaluate the effectiveness of its operating model to date and look forward to the outcome of the next stage in this process, which will include undertaking a cost-benefit analysis and in-depth case studies with providers. We trust that this work will help identify opportunities for CQC to maximise the value of its activities.
- Where possible, avoid taking on new responsibilities or rolling out new activities the cost of which would fall to providers.
- Closely coordinate its activities with those of its fellow regulators, in order to reduce duplication and undue burden on providers.
- Consider the value of its existing activities and how to streamline them where appropriate. This will include exploring making its inspections more responsive and tailored, in line with the *Building on strong foundations* document. This is particularly important in the light of the recruitment difficulties CQC has experienced to date, the difficulties it may experience in retaining staff in the future, and the possible implications for its ability to resource its current model.
- Consider how it might reduce the financial burden its model places on primary and social care providers, to avoid the risk of closures in those sectors and the negative impact this would have upon patients and service users.

It is only by maintaining these key considerations at every point in the process that CQC will be able to ensure fees in future years can be kept to a minimum and allow health and social care providers to devote maximum resources to delivering safe, effective, compassionate, high-quality patient care.