NHS Providers

Wholly owned subsidiaries in the NHS

In recent months a number of trusts have faced criticism over proposals to establish wholly owned subsidiary companies. This article explains what these companies are and why trusts are setting them up.

What is a wholly owned subsidiary?

NHS trusts and foundation trusts are able to set up new private companies to employ staff and run services. Typically the trust will own 100% of the company's shares, but the organisation will act as a separate legal entity. Although the firm will have separate accounts, profits are paid back to the trust. Trusts retain control over the organisation, and in some instances will have executive representation on the company's board.

The freedom to set up companies in this way was first given to foundation trusts when they were established in 2003. Although it is harder for NHS trusts to establish a subsidiary, several are now actively pursuing it. There are at least 19 trusts that have established such companies.

Trusts tend to set up companies for non clinical services, such as estates, facilities management (e.g. catering and cleaning) and procurement, but some have also been used to manage outpatient pharmacy services. Usually existing staff will transfer over into the new subsidiary company, but will retain their current terms and conditions. The company over time may begin to develop more innovative and dynamic approaches to running services than could not have been possible otherwise, and may even begin to provide services beyond their host trust. There are examples of trust subsidiaries looking to expand into other sectors, for instance supplying catering to social care or estates services to schools.

Why are trusts pursuing them?

Media and political scrutiny of this model has intensified in recent months, but many wholly owned subsidiaries have been operating in the NHS since 2010. Nevertheless it is true a greater number of trusts have been developing proposals for their own companies over the last 18 months. There are a number of reasons why this has happened, but as ever in the NHS, a lot of this comes down to local factors.

Setting up a wholly owned subsidiary can make good business sense. Some sceptics believe this comes down to simple VAT savings. An existing loophole allows these companies to avoid VAT charges for their services. Many trusts will have built these savings into their proposals, however this will generally only form one of part of a business case. On the whole, in setting up a wholly owned subsidiary trusts can avoid lengthy and costly tendering processes for outsourcing.

Many trusts expect their subsidiary will generate additional income by providing services beyond the trust. Others point to ability to offer more competitive rates of employment to parts of the workforce they traditionally struggle to recruit and retain. Many of those leading current estates and facilities departments talk of the benefits of focused leadership under a wholly owned subsidiary. Separate boards can provide the strategic oversight some of these non-clinical areas have historically lacked.

Some trusts are even pursuing the wholly owned subsidiary company to facilitate greater integration, particularly with primary care. Traditionally GPs have resisted full integration with trusts because they want to retain ownership of their businesses and work in an organisation solely focused on primary care. By joining a wholly owned subsidiary company, GPs can sit on the company board, and so keep their self-determination, while the whole health system benefits from integrated care and back office consolidation.

Why do people have problems with them?

Opposition to wholly owned subsidiaries has stemmed primarily from unions and also the Labour Party. Many trusts have been threatened with industrial action from staff who do not wish to transfer into the new wholly owned subsidiary company.

Some staff are concerned their existing terms and conditions may be under threat when they transfer to the new company. But under the Transfer of Undertakings (Protection of Employment) regulations (TUPE) staff are protected from any changes. Trusts are taking varying approaches to the terms and conditions of new employees – many are offering the same terms and conditions to new staff, and several are offering rates above the national Agenda for Change salaries to better attract staff.

Other critics claim the rise in the number of wholly owned subsidiary companies represents privatisation through the back door. It is worth remembering however that these companies are wholly owned by the NHS, and generally represent a cost-efficient alternative to outsourcing arrangements. Many trusts speak of their plans to bring outsourced services into their subsidiary, or replace the private sector suppliers completely in certain services.

There have also been suggestions that the whole concept is just a tax avoidance scheme. The Department of Health and Social Care has been clear that trusts should never set up such companies based only on VAT savings. But as discussed previously, there are many reasons why trusts are pursuing this model.

What does this mean for the sector?

The recent attention given to the wholly owned subsidiary model has emphasised the need for proper Board due diligence ahead of any decision making. All options for future service provision need to be examined. Governors should seek assurance that the following considerations have been made:

1. Firstly, staff and their union representatives need to be properly engaged on proposals throughout the process.

2. Secondly, trust leaders need to be clear that the decision to set up a company is based on more than just VAT savings.
3. Finally, there needs to be assurance that governance structures are well developed and appropriate for the chosen model.

The approach isn't risk free, but with the necessary planning and proper engagement, trusts can begin to reap the rewards of these new and innovative organisational models.

Contact info section

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