

CCG merger

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Over the last couple of years, many CCGs have been looking at how they can strengthen and formalise their collaborative working arrangements with neighbouring CCGs. As part of this process, there has been an increase in CCGs who are considering a formal merger. This trend has gathered further pace in light of the publication of the NHS Long Term Plan and the very clear statement that the expectation is that there will be a reduction in the number of CCGs, with the general position being a single CCG for each ICS area. The need for CCGs to achieve greater efficiencies is also driving an increased interest in more formal collaboration arrangements, including mergers.

In April this year NHS England published updated guidance for those CCGs applying to change their constitution, merge or be dissolved. This guidance updates and replaces the earlier versions issued by NHS England. The legal requirements for a CCG merger are set out in the NHS Act 2006 (as amended) (Act) and in regulations issued under the Act, the National Health Service (Clinical Commissioning Groups) Regulations 2012 (CCG Regulations), as follows:

- Coterminosity with local authorities;
- Clinically-led;
- Financial management; and
- Arrangements with other CCGs.

As there has been no change to these statutory requirements, in many ways the updated guidance remains very similar to the earlier guidance that applied in terms of the formal steps for seeking merger approval. However, there are a number of key differences in terms of the additional factors that NHS England considers when assessing a merger application, as follows:

- The practical lessons that have been learned from mergers that have been carried out to date have been incorporated. For instance, it is recommended that a PMO is established, recognising that a merger is a significant change process;
- The link between implementing the LTP and merging is made clear, with this being the first in the list of the criteria that NHS England will consider when deciding whether to approve a proposed merger (Alignment with (or within) the local STP/ICS);
- The requirement for coterminosity with local authorities includes a requirement that CCGs have/will put in place suitable arrangements with local authorities to support integration at 'place' level (population of between 250,000 and 500,000), again reflecting the policy detail around ICSs;
- There is greater emphasis on evidencing appropriate integrated commissioning capacity and capability, with this including ability to develop 'population health management, new financial and contractual approaches that encourage integration, and developing place-based partnerships';
- Although there has always been an expectation that any merger would build on an established track record of joint working, there is a clear expectation that this is the case and that the CCGs can 'where possible...show how collaboration and joint working to date has contributed to cost savings' (emphasis in original);

- Although references to members ‘voting’ on any proposed merger have been removed, the guidance appropriately emphasises that each CCG must be able to demonstrate that it has “*engaged with, and seriously considered the views of their GP member practices....The merger application must record the level of support and the prevailing views of each CCG’s member practices...and the existing CCGs’ observations on those views*”. In practice, in order to satisfy these requirements some degree of voting will be required, in order to evidence the level of support. The same requirements apply in relation to engaging with relevant local Healthwatch.

At Browne Jacobson we have advised on the majority of CCG mergers that have been approved, including the merger of the Birmingham and Solihull CCGs, which resulted in the creation of the biggest CCG in England. We are also experienced on advising on related aspects, including developing a Constitution and corporate governance framework for the new CCG, and on ensuring that any merger appropriately supports the emerging ICS arrangements. The same team who advise on CCG mergers also drafted the new model CCG Constitution and have many years of experience in advising CCGs and working alongside NHS England on matters relating to CCG constitutions.

Contact



Charlotte Harpin

Partner

charlotte.harpin@brownejacobson.com

+44 (0)330 045 2405

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