

## Response ID ANON-1JY9-S1S8-V

Submitted to **Implementing the NHS Long Term Plan - Proposals for possible changes to legislation**

Submitted on **2019-04-25 20:08:34**

### NHS Long Term Plan Legislation

**What is your name?**

**What is your name?:**

Susan Lloyd

**In what capacity are you responding?**

**In what capacity are you responding?:**

Professional representative body

**If you have selected 'Other', please specify::**

**Are you responding on behalf of an organisation?**

Yes

**If you have selected 'Yes', please tell us the organisation's name::**

The Faculty of Public Health

**What is your email address?**

**What is your email address?:**

LisaPlotkin@fph.org.uk

**Should the law be changed to prioritise integration and collaboration in the NHS through the changes we recommend?**

**Should the law be changed to prioritise integration and collaboration in the NHS through the changes we recommend? - Please select::**

Agree

**Would you like to continue to the optional questions and feedback?**

Yes

### NHS Long Term Plan Legislation

#### Promoting collaboration

**Promoting collaboration - Do you agree with our proposals to remove the Competition and Markets Authority's functions to review mergers involving NHS foundation trusts?:**

Agree

**Promoting collaboration - Do you agree with our proposals to remove NHS Improvement's powers to enforce competition?:**

Agree

**Promoting collaboration - Do you agree with our proposals to remove the need for contested National Tariff provisions or licence conditions to be referred to the CMA?:**

Agree

#### Getting better value for the NHS

**Getting better value for the NHS - Do you agree with our proposals to free up procurement rules including revoking section 75 of the Health and Social Care Act 2012 and giving NHS commissioners more freedom to determine when a procurement process is needed, subject to a new best value test?:**

Agree

#### Increasing the flexibility of national payment systems

**Increasing the flexibility of national payment systems - Do you agree with our proposals to increase the flexibility of the national NHS payments system?:**

Agree

#### Integrating care provision

**Integrating care provision - Do you agree that it should be possible to establish new NHS trusts to deliver integrated care?:**

Agree

### **Managing the NHS's resources better**

**Managing the NHS's resources better - Do you agree that there should be targeted powers to direct mergers or acquisitions involving NHS foundation trusts in specific circumstances where there is clear patient benefit?:**

**Managing the NHS's resources better - Do you agree that it should be possible to set annual capital spending limits for NHS foundation trusts?:**

### **Every part of the NHS working together**

**Every part of the NHS working together - Do you agree that CCGs and NHS providers should be able to create joint decision-making committees to support integrated care systems (ICSs)?:**

Neutral

**Every part of the NHS working together - Do you agree that the nurse and secondary care doctor on CCG governing bodies be able to come from local providers?:**

Neutral

**Every part of the NHS working together - Do you agree that there should be greater flexibility for CCGs and NHS providers to make joint appointments?:**

Strongly Agree

### **Shared responsibility for the NHS**

**Shared responsibility for the NHS - Do you agree that NHS commissioners and providers should have a shared duty to promote the 'triple aim' of better health for everyone, better care for all patients and to use NHS resources efficiently?:**

Strongly Agree

### **Planning our services together**

**Planning our services together - Do you agree that it should be easier for NHS England and CCGs to work together to commission care?:**

Strongly Agree

### **Joined-up national leadership**

b) provide flexibility for NHS England and NHS Improvement to work more closely together

**Joined-up national leadership: Do you agree that the Secretary of State should have power to transfer, or require delegation of, ALB functions to other ALBs, and create new functions of ALBs, with appropriate safeguards - Please select::**

Neutral

**Would you like to provide further feedback?**

Yes

## **NHS Long Term Plan Legislation**

### **Promoting collaboration**

#### **Promoting collaboration over competition:**

We support the removal of the CMA function to review mergers involving NHS Foundation trusts, and specifically the removal of its general duty to prevent anti-competitive behaviour. We believe that the market within health care is not a true competitive market, and that collaboration in health producers greater value for patients.

In our responses to questions below we outline the safeguards we consider important in this scenario.

### **Getting better value for the NHS**

#### **Getting better value for the NHS:**

We support getting better value for the NHS and agree with paragraphs 12 & 14, we highlight concerns and recommend safeguards. In actioning this we support the revoking of regulations made under section 75 of the Health and Social Care Act 2012. However, the Act only empowers government to require tendering, the requirement is imposed under secondary legislation – The National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013. In

order to deliver change for the population we consider that it is this Regulation which requires revoking.

We are concerned that the procurement process as described in paragraphs 12 and 14 poses risks to population health. The continued existence of the purchaser provider split means there would be no legal requirement to advertise/tender the ICP contracts. These contracts could potentially be for multi-million pounds and be long term. There will be no requirements for the contracts to be held by statutory NHS bodies, there is therefore a potential that private companies, as ICPs, could hold the contracts. The law as it is proposed allows this. We recommend this be considered during drafting of the legislation & appropriate governance mechanisms applied. We advise a clear measurable, population health focused definition of "best value". In order to be credible, we recommend that the "best value" test be developed from a robust evidence base. Currently the term is vague and potentially open to interpretation. We would like to see a definition of value put in place with associated population – focused measurable inputs and outputs.

### **Increasing the flexibility of national NHS payment systems**

#### **Increasing the flexibility of national NHS payment systems:**

We support the enabling of the national tariff to include prices for 'section 7A' public health services. It is our view that this underpins the values of prevention and reducing health inequalities embedded in the Long Term NHS Plan

### **Integrating care provision**

#### **Integrating care provision:**

#### **Managing the NHS's resources better**

#### **Managing the NHS's resources better:**

### **Every part of the NHS working together**

#### **Every part of the NHS working together:**

### **Shared responsibility for the NHS**

#### **Shared responsibility for the NHS:**

While we wholeheartedly support the concept of NHS organisations having shared responsibilities, we think the proposed 'triple aim' should be extended to include promotion of environmental sustainability. Since climate change and environmental degradation will impact adversely on the health of all, and the NHS is a major part of the UK economy accounting for over 6% of UK carbon emissions, and is required to reduce emissions in accordance with the Climate Change Act, it is incumbent on all NHS organisations to consider environmental sustainability, and carbon emissions in particular, in all strategic decision making.

The role of Director of Public Health (DPH) is set out in legislation mainly the NHS Act 2006 and the Health and Social Care Act 2012 – and related regulations. DPHs have a duty to protect and promote health across populations, duties include delivering prevention and reducing health inequalities. They promote public health through the full range of their business and are an influential source of trusted advice for their populations, the local NHS and everyone whose activity might affect, or be affected by, the health of the people in their area.

We advise that government explore public health being a statutory function across both Local Government and the NHS. To ensure the effective delivery of the prevention focus of the NHS Long Term Plan the Director of Public Health would benefit from being statutory function across both Local Government and the NHS to deliver the improvements in population outcomes with limited and diminishing public sector resources

We believe that all levels of NHS commissioning, integrated/joint health and care planning bodies and management should have available to it professionally qualified public health advice. To support integration of prevention and reduction of health inequalities public health expertise is required across partnerships and integrated care bodies.

### **Planning our services together**

**Planning our services together:**

We support enabling NHS England to jointly commission with CCGs the specific services currently commissioned under the section 7A agreement and recommend that this is delivered utilising public health expertise.

In principle joint commissioning arrangements between NHS England and CCGs adds value to services for patients. Integrated health and social care services would also benefit from joint commissioning with local authorities. The expertise for Section 7A agreement lies with local authorities in addition to NHS England. For this reason, due consideration and flexibility should be given to local ICS commissioning arrangements.

We support enabling groups of CCGs to collaborate to arrange services for their combined populations. Appropriate data management is essential to commission effectively at combined population level. We believe there should be a national template for data sharing agreements for ICS, for primary /secondary care data linkage, public and primary care data linkage and for academic /NHS/PHE data linkage which has a primary focus on sharing data to improve population health.

Local health and social care bodies seeking to share data for the public good would be better served by an integrated national system of information governance and data release, than the current patchwork of powers and procedures. We recommend that NHS England, NHS digital and DHSE reinforce the enabling power for NHS, Academic and public health bodies share and link data systems with the express purpose of improving the health of the population. GDPR and the Data Protection Act do not prevent this from happening, but in the face of some scandals and criminal management issues with data there is understandable public concern, and a level of risk aversion, from the responsible authorities which is costing lives and limiting efforts to prevent disease and disability.

**Joined up national leadership****Joined up national leadership:**

**Beyond what you've outlined above, are there any aspects of this engagement document you feel have an impact on equality considerations?**

**Beyond what you've outlined above, are there any aspects of this engagement document you feel have an impact on equality considerations?:**

**Other comments?****Other comments?:**

The Faculty of Public Health welcomes the new NHS Long-Term Plan, which has a focus on prevention throughout and is expected to increase investment in out-of-hospital care.

The long-term plan is right to stress that the NHS alone cannot deliver prevention and reduce health inequalities; we all have a role to play. In particular, local authorities have enormous potential to improve the public's health in concert with the NHS. Effective ICPs are created through partnership between the NHS, local authorities and others. To facilitate this true partnership approach, it is essential that the delayed social care green paper (England) is underpinned by the same values as the NHS Long Term Plan i.e. the importance of prevention and reduction of health inequalities.