

Jeremy Hunt must consult properly on accountable care organisations

Allyson M Pollock

Director, Institute of Health and Society, Newcastle University

Peter Roderick

Principal research associate, Institute of Health and Society, Newcastle University

The Secretary of State for Health, Jeremy Hunt, intends to change secondary legislation to enable US-style accountable care organisations (ACOs) to operate in England. He has consulted on technical changes to 12 regulations which would define ACOs and let them operate under contract. But so far, there has been no public consultation about whether the law and the NHS should undergo this major change.

ACOs were conceived in the US in an effort to stem rising healthcare costs caused by fee-for-service payments and Medicare fraud in a commercial system.^{1 2} They involve government and private insurers awarding large contracts to commercial providers to run and provide services. The evidence on quality improvement is contested, and at best mixed, while projected savings to federal budgets translated into a net loss in 2015 and spending may have increased.^{3 4}

NHS England (NHSE) says that it intends to consult on a standard model contract for ACOs in 2018. But if Hunt's changes are brought in before then, the legal framework would facilitate ACO contracts to be introduced before the public consultation. That consultation would then be too late to influence a major—and deeply worrying—reorganisation of health services, including what the government refers to as a “dissolution of the boundaries” between health and social care.

If ACOs are allowed to operate they can be give multi-billion pound health and social care budgets, including those for GPs and public health, for up to 10, or possibly 15, years.

The rationale for ACOs is the integration of health and social services, and reduction in the complexity and expense of the tendering process. That rationale has quietly extended to “dissolving” the boundaries between health and social care—a move that could have far reaching implications for the availability of free health services and which has not been publicly debated.

ACOs are not recognised in the UK, and there is no proposal to enact primary legislation, which would have to pass all parliamentary stages, to introduce them. The proposed changes to secondary legislation are presented as minor and technical, but the consultation Hunt has conducted told us next to nothing about them. They were even defined differently in different regulations.

Crucially ACOs will be non-NHS bodies, “designated” by NHSE, even though there is no statutory provision conferring such a function on NHSE. Behind the ACO it appears that there will be a network

¹ Fisher ES, Staiger DO, Bynum JPW, Gottlieb DJ. Creating accountable care organizations: the extended hospital. *Health Affairs* 2007;26(1):w44-w57

<http://www.healthaffairs.org/doi/abs/10.1377/hlthaff.26.1.w44>

² Patient Protection and Affordable Care Act 2010, section 3022, Medicare Shared Savings Program.

<https://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf>

³ Muhlestein D, Saunders R, McClellan M. Medicare Accountable Care Organization results for 2015: the journey to better quality and lower costs continues. *Health Affairs Blog*, 09 September 2016, available at: <http://www.healthaffairs.org/doi/10.1377/hblog20160909.056418/full/>

⁴ Douven R, McGuire TG, McWilliams M. Avoiding unintended incentives in ACO payment models. *Health Affairs* 2015;34(1): 143–149 <https://doi.org/10.1377/hlthaff.2014.0444>

of companies—such as large providers, sub contractors, insurance companies, and property companies—but the consultation is silent on ACO membership or their contractual relations. According to NHSE, ACOs will be in charge of allocating resources—effectively deciding which services are provided and to whom; which services are available free, through insurance or out-of-pocket payments; and which services are to be means tested. They can take over patients on GPs’ lists, and they can sub contract all “their” services.

The consultation failed to address many issues—why, for example, are ACOs necessary to achieve the stated policy objectives? No explanation was provided for why the powers already given by parliament to integrate services are insufficient to achieve the objectives. The consultation neither set out, nor called for, evidence on ACOs likely effect on outcomes and inequalities, or on the scope, range, entitlement, and access to services, which are especially important given the different funding and population bases for health and social services. The accountability rules an ACO would be subject to, including public rights of involvement in its decision making, were barely mentioned, and the governance and transparency rules not at all. Nothing was said about how the ACO would be prevented from walking away from the contract. The consultation was also silent on the applicability of freedom of information and human rights laws, and whether ACOs would be amenable to judicial review.

ACOs are being introduced at a time when the 207 clinical commissioning groups are increasingly merging and aligning with the 44 non-statutory Sustainability and Transformation Partnership “footprints” across England.⁵ STPs are now forming as virtual organisations, possibly to replace CCGs, thus making it easier to drive through £26 billion savings and associated cuts and closures, reducing the need for local public consultation.

Introducing ACOs is so fundamental that the proper way to do so would be for the proposals and their justification to be set out openly and clearly, as in a White Paper, and to invite wide public and professional responses—including in Scotland and Wales where the impact of ACOs is entirely unknown. It is of grave concern that this has not been done to date. It is still open to Jeremy Hunt to do so.

Competing interests: AMP is one of a number of proposed claimants who have written to the Secretary of State for Health to enforce the right to a full public consultation before any measures are taken to create ACOs. PR has assisted the proposed claimants. We have read and understood the BMJ Group policy on declaration of interests and declare the following interests: none

Article conceived, researched, drafted, and written by AP and PR.

⁵ Sustainability and Transformation Partnerships. NHS England <https://www.england.nhs.uk/stps/>