Briefing on the integrated care board guide to developing a scheme of reservation and delegation

NHS England and NHS Improvement (NHSE/I) published a *Guide to developing a scheme of reservation and delegation* (SoRD) for integrated care boards (ICBs) on 27 October 2021. This short briefing summarises the new delegation powers expected to be conferred on ICBs in the Health and Care Bill, the likely content of the ICB's SoRD, and the next steps for ICBs to take when developing their SoRD. Please contact senior policy manager Georgia Butterworth (georgia.butterworth@nhsproviders.org) if you have any questions or comments.

Short summary

This guide is intended to support designate ICB chairs, chief executives and other board members (when in post) to develop the SoRD. While clinical commissioning groups are legally responsible for creating the SoRD, NHSE/I expects designate ICB appointments to lead its development in practice.

All ICBs are required to publish a SoRD by the time they are formally established as statutory bodies (expected to be on 1 April 2022). The designate ICB board will agree the final ICB constitution, SoRD and other documents (e.g. delegation agreements, section 75 agreements, etc). The SoRD should be reviewed in line with the final Health and Care Bill, and then published on the ICB website.

The guide includes a template SoRD, although NHSE/I states that there is no national model to define how ICBs should arrange how they exercise their functions and ICBs will want to design what works locally. NHSE/I does not have a role in approving the SoRD.

What delegations are enabled by the Health and Care Bill?

The Health and Care Bill will give ICBs statutory powers, functions and duties including (subject to the passage of legislation through parliament):

- The ability to delegate to a committee or sub-committee of the ICB board, or to an individual board member or employee.
- The flexibility to appoint individuals who are neither ICB employees nor board members to ICB committees and sub-committees.

- The power to agree with trusts and/or local authorities that they will exercise functions on behalf of the ICB or jointly with the ICB. This new power will be governed by secondary legislation and NHSE/I statutory guidance (both expected in March 2022).

The ICB board, regardless of any delegation arrangements it has made, remains legally accountable for the exercise of its functions.

What will the ICB's SoRD include?

The SoRD will set out the functions, powers and decisions of the ICB that are:

- Reserved to the ICB board itself (this is the default arrangement)
- Delegated to individuals (board members or employees)
- Delegated to committees and sub-committees that have been established by the ICB board
- Delegated to other statutory bodies using the boards new legal powers to delegate functions to another organisation or to a joint committee with another organisation
- Any functions that have been delegated to the ICB by other bodies e.g. NHSE/I primary care / specialised commissioning.

NHSE/I proposed next steps for developing an ICB SoRD

1 Agree principles for the delegation of functions with local partners and wider stakeholders. NHSE/I suggests these could include delegations being locally determined, evolutionary rather than revolutionary, and following the principle of subsidiarity. If the system is not ready to move to full delegation in April 2022, this ambition can still be articulated in the SoRD.

2 Explore and agree which functions might be undertaken where in the system. In line with the form follows function principle, system partners should agree which decisions should be reserved to the board, identify which decisions are specifically allocated to individuals and cannot be delegated further, and then consider options for delegating the exercise of other functions. NHSE/I suggests that many ICB functions will have greatest impact if one or more trusts (or provider collaboratives) or local authorities are involved (e.g. in an advisory capacity or through delegated responsibility).

Some functions e.g. specialised or ambulance commissioning, may need to be exercised at multi-ICS level. This will require collaborative arrangements to be put in place between two or more ICBs, with the most suitable likely to be a joint committee of ICBs or delegation to another ICB.

3 **Determine the most suitable governance arrangement and management structures.** There are several ways that ICBs can organise themselves to decide how to exercise their functions (as explored in the interim guidance on the functions and governance of ICBs), including:
   - an advisory group that has delegated responsibility to provide recommendations to the ICB.
   - a joint committee that enables ICBs to exercise their functions jointly with other statutory bodies.
   - an authorised employee or board member who is given the authority to formally take decisions.
   - delegations to another body e.g. to a local authority via a section 75 partnership arrangement or to a trust via a delegation agreement made under the new powers in the Bill.

4 **Prepare the SoRD and any other relevant documentation.** Having determined which functions will be exercised where, and through what governance arrangements, the ICB then needs to record this in the SoRD. If delegation arrangements change, the ICB board must update the SoRD.

5 **Ensure that all partners fully understand their responsibilities.** ICBs must publish a functions and governance map, and ICB board members must be clear about assurance processes.

NHS Providers view

This guide offers a welcome high-level overview of how delegated functions might work in a statutory ICS and what governance arrangements could support such delegations. Trusts and their system partners will welcome the flexibility afforded by NHSE/I and will embrace the opportunity to explore a range of options for delegation that suit their local circumstances, rather than having to adhere to a centrally mandated 'one size fits all' model. While some providers and their partners are eager to take on delegated functions and budgets, others will want to spend time embedding collaborative ways of working. This guidance reflects the significance of the shift from a purist commissioner/provider split, to a more complex set of arrangements with the potential for the delegation of important functions, and significant spend, to providers and provider collaborations. These are important decisions which must be based in co-production with providers and their partners. We therefore welcome NHSE/I supporting an evolutionary approach to delegation.

The list of suggested principles to underpin local discussions is a helpful starting point, with a particularly welcome emphasis on subsidiarity and streamlined decision-making. Ensuring that decisions are taken closest to the communities they affect, with the minimum level of bureaucracy needed, will allow ICBs to operate effectively and minimise any burden on trust leaders' time.

Considering who needs to have what sorts of influence in relation to the ICB's functions is a key issue for providers and their system partners. When considering delegation arrangements and who has decision-making powers, designate ICB boards must engage fully with constituent organisations including trusts. We look forward to continuing to work with NHSE/I on these arrangements, including the secondary legislation and statutory guidance.