

Northumberland, Tyne and Wear NHS Foundation Trust

Board of Directors Meeting

Meeting Date: 27 July 2016

Title and Author of Paper: Northumberland Memorandum of Understanding
John Lawlor, Chief Executive

Executive Lead: John Lawlor

Paper for Debate, Decision or Information: Decision

Key Points to Note:

NTW has been working with partners in Northumberland to consider and support the development of an Accountable Care Organisation.

The Board is asked to consider the attached Draft Memorandum of Understanding and decide as a Board whether it is appropriate for NTW to become a joint signatory.

Risks Highlighted to Board :

Currently the MOU sets out a commitment to work together. Any more substantive changes would be considered separately by the Board before any decisions were made.

Does this affect any Board Assurance Framework/Corporate Risks?

Please state Yes or No

If Yes please outline

See above

Equal Opportunities, Legal and Other Implications: none

Outcome Required:

Board members are asked to discuss this paper and decide on whether NTW should be a joint signatory to the draft MoU.

Link to Policies and Strategies:

DATE

2016

1. NHS NORTHUMBERLAND CLINICAL COMMISSIONING GROUP
2. NORTHUMBRIA HEALTHCARE NHS FOUNDATION TRUST
3. NORTHUMBERLAND, TYNE AND WEAR NHS FOUNDATION TRUST
4. NORTH EAST AMBULANCE SERVICE NHS FOUNDATION TRUST
5. NORTHUMBERLAND COUNTY COUNCIL
6. NEWCASTLE UPON TYNE HOSPITALS NHS FOUNDATION TRUST

**MEMORANDUM OF UNDERSTANDING
FOR THE DEVELOPMENT OF A NEW ACCOUNTABLE CARE ORGANISATION
COMMISSIONING MODEL**

No	Date	Version Number	Author
1	16/05/2016	1 – Draft 1(4) 16/05/16	RM
2			
3			
4			
5			
6			

Date:

2016

This Memorandum of Understanding (**MoU**) is made between:

1. **NHS NORTHUMBERLAND CLINICAL COMMISSIONING GROUP** of County Hall, Morpeth, NE61 2EF;
 2. **NORTHUMBRIA HEALTHCARE NHS FOUNDATION TRUST** of North Tyneside General Hospital, Rake Lane, North Shields NE29 8NH;
 3. **NORTHUMBERLAND, TYNE AND WEAR NHS FOUNDATION TRUST** of St. Nicholas Hospital, Jubilee Road, Gosforth, Newcastle Upon Tyne, Tyne and Wear, NE3 3XT;
 4. **NORTH EAST AMBULANCE SERVICE NHS FOUNDATION TRUST** of Bernicia House, Goldcrest Way, Newburn Riverside, Newcastle upon Tyne NE15 8NY;
 5. **NORTHUMBERLAND COUNTY COUNCIL** of County Hall, Morpeth, NE61 2EF; and
 6. **NEWCASTLE UPON TYNE HOSPITALS NHS FOUNDATION TRUST** of Freeman Hospital, Freeman Road, High Heaton, Newcastle upon Tyne, NE7 7DN
- (each a "**Party**" and together the "**Parties**").

RECITALS

1. The Five Year Forward View published in October 2014 (the "**Forward View**") sets out a clear goal that "the NHS will take decisive steps to break down the barriers in how care is provided between family doctors and hospitals, between physical and mental health, between health and social care."
2. In entering into and performing their obligations under this MoU, the Parties are working towards the implementation of an integrated care model which is comparable to those highlighted in the Forward View. In particular, this MoU is intended to support the parties' ongoing work towards the establishment of an accountable care organisation ("**ACO**") for Northumberland.
3. This MoU sets out the Northumberland ACO programme board's shared commitment to the ACO, what it means for organisations that want to be part of the ACO construct and what it means for those that do not want to be part of it.
4. The Parties will set out a timetable for the ACO development that incorporates the due diligence process as set out in this MoU and the intent that the ACO will become operational from April 2017.
5. All Parties acknowledge that there is further work to be completed to fully describe the concepts within the ACO (e.g. how will the capitated budget be calculated and how will risk and reward be calculated) and to meet the timetable.
6. The Parties are committed to ensuring that all communications relating to the ACO are easily understood and are transparent.

OPERATIVE PROVISIONS

1. Definitions and interpretation

- 1.1 In this MoU, capitalised words and expressions shall have the meanings given to them in this MoU.
- 1.2 In this MoU, unless the context requires otherwise, the following rules of construction shall apply:
 - 1.2.1 a reference to a “**Party**” is a reference to a party to this MoU and includes its personal representatives, successors or permitted assigns and a reference to “**Parties**” is a reference to all parties to this MoU;
 - 1.2.2 a reference to writing or written includes faxes and e-mails.

2. Purpose and effect of MoU

- 2.1 The Parties have agreed to work together on behalf of patients and the population of Northumberland to deliver the best possible experience and outcomes within the available resources for Northumberland. The aim is for the Parties to organise themselves around the needs of the Northumberland population rather than planning at an individual organisational level so as to deliver more integrated care for patients. The Parties wish to record the basis on which they will collaborate with each other in developing an ACO approach in this MoU.
- 2.2 This MoU sets out:
 - 2.2.1 The Parties’ commitment to the ACO Principles as organisations;
 - 2.2.2 what is expected of Parties who are to be part of the ACO;
 - 2.2.3 what is expected of Parties who are not to be part of the ACO; and
 - 2.2.4 what is expected from the due diligence process.
- 2.3 The Parties agree that, notwithstanding the good faith consideration that each Party has afforded the terms set out in this MoU, save as provided in paragraph 2.4 below, this MoU shall not be legally binding.
- 2.4 Paragraphs 10, 11 and 13 shall come into force from the date hereof and shall give rise to legally binding commitments between the Parties.
- 2.5 In addition to the MoU, the Parties will seek to agree the following additional documents to manage their relationships for confidentiality, conflicts of interest and sharing of information between themselves in more detail:
 - 2.5.1 a standalone confidentiality agreement;

- 2.5.2 a protocol to manage conflicts of interest; and/or
- 2.5.3 a protocol to manage the sharing of information in accordance with competition law requirements.

3. Commitments to the ACO Principles

- 3.1 The Parties agree to the following commitments in relation to the principles of the operation of an ACO in Northumberland.
- 3.2 The Parties intend that the ACO shall:
 - 3.2.1 seek to improve outcomes for the people of Northumberland, being as much about self-care as it is about health and care intervention. In the longer term, the Parties will aim to improve the health status of the population through the operation of the ACO;
 - 3.2.2 contribute to shaping sustainable services for the Parties, including monetary contributions, workforce, the system shape etc.;
 - 3.2.3 move care outside hospitals where appropriate;
 - 3.2.4 adopt the philosophy that an unplanned hospital episode is potentially a missed opportunity elsewhere in the system; and
 - 3.2.5 reflect mutual responsibility for system management and integrating care (the “**ACO Principles**”).

4. ACO Membership

- 4.1 The Parties intend that any organisation who is to be a member of the ACO structure shall:
 - 4.1.1 commit to the ACO Principles and the outcomes and ownership of the system success/failure. The Parties acknowledge that the delivery of health outcomes is the biggest determining factor for success of the ACO (in other words, the organisational success of each Party is not a determining factor in judging the success of the ACO);
 - 4.1.2 agree to move towards the adoption of a capitated budget and acknowledge that the Parties have a shared responsibility for the system-wide finances;
 - 4.1.3 commit to being part of the ACO at this stage and shall engage with further work to define the capitation arrangements;
 - 4.1.4 acknowledge that the consequence of a move to a capitation based budget is that each Party will have a share in the financial risk and reward; and
 - 4.1.5 agree to work towards developing how the principle of proportionality of impact and risk share will operate within the ACO governance and decision making.

5. Other ACO providers

- 5.1 The Parties accept that a number of organisations may not be appropriate to be or wish to be ACO members and consider that organisations that deliver services to the population of Northumberland who are not ACO members shall:
- 5.1.1 contribute to the health and wellbeing of the population through the delivery of their contracted services;
 - 5.1.2 acknowledge that the ACO shall determine the clinical strategy and direction and contracts are set to deliver the clinical strategy;
 - 5.1.3 have a voice in developing the clinical pathways as the ACO will need to harness the clinical expertise of all providers of services to the population of Northumberland; and
 - 5.1.4 acknowledge that in relation to commissioning arrangements, contracts with organisations outside the ACO membership could be separate from the capitated arrangements that operate for organisations within the ACO membership as set out in Paragraph 4 above.

6. Involvement of Primary Care

- 6.1 Whilst this MoU does not include providers of primary care services at this stage the Parties all acknowledge that primary care is a vital aspect in the creation of an effective ACO construct for Northumberland. The involvement of primary care representatives will be a key consideration and the Parties agree that representatives of primary care will be invited to consider their position under this MoU at such point as the providers of primary care services have agreed their operating structure to engage with the Parties in the ACO process.

7. Due Diligence

- 7.1 The Parties each commit in principle to operating as a member of the ACO and shall work through a due diligence process together during 2016/17 to assess the viability and detail of the ACO construct.
- 7.2 Any Parties who have not decided as to whether they intend to be an ACO member or to be a provider working outside of the ACO at the date of this MoU shall confirm their position to the other Parties as soon as practicable and thereafter undertake due diligence in an agreed process if they decide that they are committed to being a ACO member. The admission process for new members to the ACO will form part of an annual review cycle allowing for the entry of additional parties at later stages.
- 7.3 Parties that have decided not to be part of the ACO do not need to engage in the due

diligence process.

8. Term and Termination

- 8.1 This MoU shall commence on the date of signature by all the Parties, and shall expire on the earlier of the execution of a formal legally binding agreement between the Parties in connection with the delivery of the ACO or 31 March 2017.
- 8.2 Any Party may withdraw from this MoU by giving at least 30 calendar days notice in writing to the other Parties.

9. Variation

- 9.1 This MoU, may only be varied by written agreement of the Parties signed by, or on behalf of, each of the Parties.

10. Charges and liabilities

- 10.1 Except as otherwise provided, the Parties shall each bear their own costs and expenses incurred in complying with their obligations under this MoU including in respect of any losses or liabilities incurred due to their own or their employee's actions.
- 10.2 No Party intends that any other Party shall be liable for any loss it suffers as a result of this MoU.

11. No partnership

- 11.1 Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party as the agent of another Party, nor authorise any of the Parties to make or enter into any commitments for or on behalf of the other Parties.

12. Counterparts

- 12.1 This MoU may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this MoU, but all the counterparts shall together constitute the same agreement.
- 12.2 The expression "counterpart" shall include any executed copy of this MoU transmitted by fax or scanned into printable PDF, JPEG, or other agreed digital format and transmitted as an e-mail attachment.
- 12.3 No counterpart shall be effective until each Party has executed at least one counterpart.

13. Governing law and jurisdiction

- 13.1 This MoU shall be governed by and construed in accordance with English law and each Party agrees to submit to the exclusive jurisdiction of the courts of England.

We have signed this Memorandum of Understanding on the date written at the head of this memorandum.

SIGNED by)
Duly authorised to sign for and on) Authorised Signatory
behalf of) Title:
NHS NORTHUMBERLAND)
COMMISSIONING GROUP) DATE:

SIGNED by)
Duly authorised to sign for and on) Authorised Signatory
behalf of) Title:
NORTHUMBRIA HEALTHCARE NHS)
FOUNDATION TRUST) DATE:

SIGNED by)
Duly authorised to sign for and on) Authorised Signatory
behalf of) Title:
NORTHUMBERLAND, TYNE AND)
WEAR NHS FOUNDATION TRUST) DATE:

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Duly authorised to sign for and on) Authorised Signatory
behalf of) Title:

NORTH EAST AMBULANCE SERVICE)

NHS FOUNDATION TRUST)

DATE:

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Duly authorised to sign for and on)

Authorised Signatory

behalf of)

Title:

NORTHUMBERLAND COUNTY)

COUNCIL)

DATE:

SIGNED by)

Duly authorised to sign for and on)

Authorised Signatory

behalf of)

Title:

NEWCASTLE UPON TYNE HOSPITALS)

NHS FOUNDATION TRUST)

DATE:

