Self-regulation in the independent sector

Hospitals providing acute surgical and medical care in the independent sector are regulated with nursing homes through the Registered Homes Act 1984. That this legislation is inadequate is accepted within the sector, by Government, and the House of Commons Health Committee (1999a).

REGULATION OR SELF-REGULATION

No regulatory framework can ensure clinical outcomes — a point not lost on the Health Committee. However, it is outcome that matters to patient, family, clinician, hospital and any insurer or employer. Clinical governance is as important in the independent sector as in the public. A clinician must be fit to practice and the environment fit for purpose, whether it is a hospital, day-case centre, clinic or a doctor's private consulting room.

FAILURES IN GOVERNANCE

A number of independent hospitals, notably those in the BMI Healthcare group, have strong systems of governance in place. However, recent events in both the NHS and independent sector have demonstrated some isolated, infrequent but serious failures of governance. These failures, in both sectors, appear to arise from information not being passed on or acted upon.

A FAILURE OF PROCESS

The Health Committee found failings in the exchange of information about health-care professionals. There is a clear need to exchange information not only within the independent sector and within the NHS, but also between the NHS and the independent sector. These so-called 'alert systems' need to include not only hospitals, employers and regulatory bodies, but also the private medical insurers and provident associations. Insurers have their own individual systems of recognition of specialists for benefit purposes. The withdrawal or suspension of such recognition gives some measure of protection to insured persons, but not to those that self-pay. However, the insurers and even the General Medical Council (GMC) (House of Commons Health Committee, 1999b) are often not told of suspensions or loss of user privileges.

Clearly in any alert system appropriate safeguards have to be in place to ensure that information is accurate and that actions taken are appropriate, proportionate and open to challenge. Suspension by an NHS employer is a neutral act. However, it is likely to lead to suspension of admitting privileges at independent hospitals and recognition by insurers, which is likely to inflict financial loss. This is an area that will require more thorough consideration than that given by the Health Committee.

ADEQUACY OF STRUCTURES

At least within a hospital setting a practitioner's actions are likely to be observed. However, despite the endeavours of insurers, clinicians and managers, structures and processes are not always adequate. Sometimes medical advisory committees (MACs) have been limited in their scope to advising on the subject of user privileges. While this is an important function in terms of governance it has been rare for such decisions to be proactively reviewed.

As noted above many hospitals have been active in strengthening governance. Alongside this activity the major insurers, particularly PPP healthcare through its quality driven hospital network initiative, have been active in requiring hospitals to ensure adequate structures are in place which fully involve the MAC.

ADEQUACY OF PROCESSES

Effective clinical governance also requires systems in place to assess and manage the introduction of new technology — another area where MACs will need to be proactive. Many of the new treatments and technologies are adopted early in the independent sector, where the access to capital is perhaps easier. Insurers have placed various checks on the introduction of, for example, new interventional procedures, by requiring evidence of effectiveness and safety and evidence that the individual is competent to undertake the procedure.

Insurers have been criticized in some quarters for taking this action which it is argued stifles innovation. The Health Committee (1999a) has suggested that emerging technologies that pose significant risks to patients should be regulated and controlled through a moderator.

ADEQUACY OF INFORMATION

Clinicians must have appropriate information on which to make clinical decisions and advise patients. The Health Secretary's view that in future audit systems should be based on national risk stratified models is clearly correct. The collection of national data sets into registries will be necessary to achieve that. Those data will then need to be accessible to clinicians and their patients in clinically appropriate ways. It will also need to be available to the MAC if governance is to have any practical effect.

COMPLAINTS

Insurers are subject to regulation in the conduct of their business. There are requirements, for example, in respect

of solvency and a licensing system is in place. An insurer's claims administration is subject to formal internal complaints and conformance procedures, and may either be subject to independent arbitration or investigation by the Insurance Ombudsman. There is no equivalent mechanism for handling complaints about independent sector hospitals, general practitioners or specialists. This clearly needs addressing.

WHAT NEXT?

The key step is to shift from systems that deal with serious matters after a catastrophic outcome towards systems which enable early remedial action to be taken. Self-regulation is a privilege granted by society which creates a duty of care. The Health Committee (1999a) found some areas of the independent sector are outwith effective statutory regulatory control other than professional self-regulation. There is, for example, no regulatory oversight of outpatient clinics or a practitioner's own rooms. In some instances there is no statutory self-regulation in place at all.

Periodic review of a doctor's clinical practice linked to continued registration is now firmly on the GMC's agenda. The GMC's recognition that such a system has to include independent practice is both logical and necessary. A formal system, however, is as yet some years away.

To enable clinical governance to flourish there must be:

- Clarity of purpose
- Appropriate structure and function
- Shared understanding of roles and responsibilities.

The Private Practice Forum's (PPF) memorandum (Private Practice Forum, 1999) is an important statement of shared understanding between profession, management and insurers on these key issues. It provides a basis on which to develop further initiatives, for example, a code of conduct on specialists' charges. But the most significant event is the call from the Health Committee (1999a) for the PPF to be given statutory backing.

Sadly the Health Committee's proposal to link the inspection and regulation of acute units into the Commissions for Care Standards framework adds complexity where simplicity is required. It is essential to separate the regulation of the modern independent sector hospital from that of a nursing home. It seems that ministers in England recognize this (Staniforth, 1999). It would be simpler, as well as conceptually sound, to locate any independent acute sector regulator in England alongside the Commission for Health Improvement (CHI). However, ministers do not view CHI as a regulator. Any system of regulation must include the NHS private patient units (PPUs) and pay beds. Otherwise the NHS is both regulator, and a beneficiary from the generated profit. The independent sector will bear the costs of its own regulatory structure as must NHS PPUs. If PPUs do not carry regulatory costs they will trade with an unfair cost advantage.

There is a clear intent within the industry to achieve as much as possible while the government considers its next steps. What is clear is that by January 2000 the independent sector will have substantially implemented the PPF's memorandum. HM

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The views expressed in this editorial are those of the author and not necessarily those of PPP healthcare Ltd.

KEY POINTS

- The current regulatory framework is inadequate.
- The regulation of independent sector acute hospitals should be separated from that of nursing homes.
- NHS paybeds and private patient units (PPUs) should be subject to the same regulation as independent sector hospitals.
- Clinical governance is as important in the independent sector as in the public.
- Any statutory complaints mechanism should encompass independent sector hospitals, general practitioners and specialists.
- Alert systems need to include hospitals, employers, regulatory bodies, insurers and provident associations.

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