



Seven day services and the workforce

This article focuses on the steps that need to be considered to prepare the NHS workforce for seven day working.

In a post -"Keogh" world, few if anyone doubt the benefits of a seven day service. Looked at another way – the Keogh standard, that all emergency patients shall be reviewed by a consultant within 14 hours, suggests that a move towards seven day services is not merely desirable but inevitable. The challenge then is how to introduce relevant seven day service provision which will maximise the benefits to patients and organisations whilst simultaneously working within current resource levels and in large part with staff with existing contracts.

Changing working patterns

Much of the early discussion of changes to working arrangements has focussed on consultants and in particular, the existing constraints on weekend working contained in the standard consultant contract which does not permit the employer to compel a consultant to work outside core hours except in emergencies (with the concept of an emergency being narrowly defined – see para 6, Schedule 3). Some acute trusts to date have taken what might be described as an "inclusive approach" to the scope of these terms (for example by defining all acute work as inherently of an emergency nature or else requiring consultants to undertake resident on-call duties) but there is little doubt that this approach is open to challenge and a plain interpretation of the contract clearly makes the consultant body a potential brake on such change.

The focus on consultants also runs the risk of ignoring the problems caused by a need to have an entire network of clinical and support staff to facilitate an extended service. Whilst some groups of staff (e.g. nurses, junior doctors, HCAs etc) are familiar with and contracted to shift and weekend working, what of other specialists (e.g. phlebotomists, pharmacists etc)? Any seven day service also has to be aligned to community services, since there is no point in achieving targets by using seven day services, only to discharge patients into a vacuum.

Changing contracts

An employer is faced with a number of options other than the option of standing still. At one end of the scale, an employer may take the stance that the position is already covered by the contracts in place and they don't need any amendment. At the other end of the scale, they may decide to dismiss staff and re-engage them on new terms and conditions if contractual changes cannot be negotiated and agreed.

The "inclusive" approach appears to be the least disruptive, but in truth, it is rarely the case that existing contracts will be drafted with sufficient flexibility to allow for that approach. What's more, any ambiguity would be interpreted in favour of those seeking to avoid change. It is therefore much more realistic to assume that in order to achieve the required changes, trusts will either have to negotiate changes or failing that, will need to dismiss and re-engage.

In Capsticks' experience, some trust boards are understandably nervous about any discussions with unions or staff representatives which involve dismissal as an option. Whilst the challenges presented by Francis and Keogh are not a charter to simply dismiss and reengage, it is right to say that if negotiations to agree contractual services fail, an Employment Tribunal is likely to accept that the need to introduce changes constitutes the "pressing business need" which is required to establish "some other substantial reason" justifying dismissal. The key is to ensure that a potentially fair reason for dismissal is not rendered unfair by a failure to follow proper consultation, process, or obligations in relation to collective redundancies. Indeed, if followed carefully, the change of contractual terms may turn out to be one of the less challenging aspects of the process.

The wider picture

So – if changes to contractual terms are not necessarily a blocker to change, what about the wider scope of changes which may be required? Trusts will need to consider, for example, the fact that a move to resourcing over a seven day period will have an impact in other areas – e.g. increased use of equipment and other resources, wear and tear on buildings and estates, greater energy consumption and so on.

The changes must, of course, also be considered in the context of an NHS which is increasingly expected to do “more for less”. One of the Pathfinder Trusts involved in the move to seven day working has estimated that it will need an additional 24 WTE consultants to backfill the weekday work that will not in time be covered by consultants moving to work on weekends.

Another option is to consider which services are actually required on a seven day basis. Patients may think that routine elective surgery on a seven day service model may be more convenient for them, but is it really necessary? Can a trust, for example, consider provision over six days, leaving Sundays relatively untouched? That may be a way of negotiating changes in focussed areas of need (which may be easier to “sell” to staff), and maintaining standards of care and patient outcomes, whilst still meeting the Keogh objectives.

Finally, if staff “on the ground” are working across seven days, what about the leadership? One Pathfinder Trust has taken the decision that moving to provide services over more than five days required that its Board too, should be required to work over six days in order to show solidarity with those now required to work at weekends.

Conclusion

Trusts will need to assess the requirements of their own local health economy, in order to identify what services are needed and when, and will need to have the end in mind at the beginning regarding what the “new” service will look like. Many staff are already fully aware of the need to meet the demands of the Keogh review and a properly considered programme of consultation and change means that keeping staff “on side” may be smoother than anticipated.

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