



Accounting and auditing for NHS charities

The legal requirements

Background

In February 2012, the Charity Commission published guidance¹ for NHS charities which included, among other things, a section on the legal requirements in relation to accounting and auditing NHS charities.

Since it was first issued, the guidance has been substantially revised but the section on accounting and auditing has not. The Charity Commission asked the HFMA's Charitable Funds Special Interest Group to review and update the guidance for them.

This document is the revised and updated accounting and auditing section. While every care had been taken in the preparation of this briefing, the HFMA cannot in any circumstances accept responsibility for errors or omissions, and are not responsible for any loss occasioned to any person or organisation acting or refraining from action as a result of any material in it.

This briefing has been developed under the direction of the HFMA's Charitable Funds Special Interest Group – we are grateful to all committee members who provided comments as it was developed.

The short answer

Trustees of NHS charities must prepare their trustees' annual report and accounts within the charity accounting framework, as set out in the Statement of Recommended Practice (SORP).

The audit arrangements for NHS charities are complicated by the fact that they are different depending on the trustee arrangements.

¹ www.gov.uk/government/publications/nhs-charities-guidance

In more detail

Introduction

NHS charities, in common with all registered charities, are required to prepare their trustees' annual report and accounts in accordance with Part 8 of the Charities Act 2011 and the regulations made thereunder. Where accounts are prepared on an accruals basis the regulations require the charities' SORP to be followed.

For accounts prepared on or after 1 January 2016, the charities SORP which must be followed is the one which applies Financial Reporting Standard (FRS 102)² as amended by the SORP update bulletin 1³.

Example accounts

The HFMA, in consultation with the Charity Commission, has published an example trustees annual report and accounts⁴.

Accounting regulations that affect NHS charities

NHS charities must prepare their accounts in accordance with the same legislation as all other charities. For those above the threshold for receipts and payments accounts, this means they have to prepare their accounts in accordance with the FRS 102 SORP.

The current accounting regulations which affect NHS charities can be found on the UK legislation website⁵. In common with other registered charities, the relevant regulations for NHS Charities are Charities (Accounts and Reports) Regulations 2008 (SI 2008 No. 629)⁶.

The current 2008 regulations have yet to be updated to reflect recent changes in charity accounting. This is an issue insofar as the regulations refer to the 2005 SORP which was withdrawn when UK accounting changed to new Financial Reporting Standards effective from 1 January 2015. It is anticipated that at some future date the regulations will be updated for the FRS 102 SORP but until then the Charity Commission's guidance *CC15d - Charity reporting and accounting - the essentials*⁷ provides helpful guidance. The example annual report and accounts referred to above also include the appropriate disclosures.

NHS trustees have up to 10 months from the end of the financial year to prepare and submit their annual report and accounts to the Charity Commission. Early filing is recommended.

NHS charities with a corporate trustee (or, to 1 April 2018, trustees appointed by the Secretary of State) are classified as public sector bodies by the Office of National Statistics (ONS). This means that they are consolidated into the relevant Government department's accounts. In England, this is the Department of Health's annual accounts. The summarisation forms used by NHS Improvement to consolidate NHS trust and foundation trust accounts also collect information in relation to NHS charities. In Wales, the information is collected via the summarisation schedules as well.

Where possible the summarisation schedules will be prepared using year-end information but can include estimates where the NHS charity accounts have not been prepared/ finalised by the NHS submission deadline (usually early June following the 31 March year-end). This information is not audited.

² <http://charitiessorp.org/>

³ <http://www.charitiessorp.org/media/642756/frs102-bulletin-1.pdf>

⁴ www.hfma.org.uk/publications/details/example-charity-annual-report-and-accounts-2016-17

⁵ www.legislation.gov.uk/

⁶ www.legislation.gov.uk/ukxi/2008/629/contents/made

⁷ www.gov.uk/government/publications/charity-reporting-and-accounting-the-essentials-november-2016-cc15d

The consolidation in the national accounts occurs whether or not the NHS charity is consolidated with the corporate trustee's accounts (see next section). The appropriate manual for accounts and submission guidance for the NHS body should be referred to for guidance on the consolidation of the NHS charity with the NHS body's accounts as well as the submission of information for the national consolidation.

Consolidation of accounts with those of a linked NHS body

The accounts of NHS charities which have a corporate trustee may need to be consolidated into their NHS body's corporate accounts. The HFMA has produced a briefing⁸ which sets out the reasons that consolidation may be necessary.

Audit position

English NHS charities with a corporate trustee which is an NHS trust or a CCG

Section 149 of the Charities Act 2011 requires that the accounts of **all** NHS charities are to be subject to some form of scrutiny, usually an audit. NHS charities must have an audit unless the appointed auditor agrees that an independent examination is appropriate. The audit and independent examination thresholds that apply are set out in the Commission's guidance *CC15d - Charity reporting and accounting - the essentials*⁹. The threshold below which an independent examination is not required does not apply to NHS charities – they must have an audit or independent examination.

Provision for the audit of NHS charities is made in s149 of the Charities Act 2011. The corporate trustee of an NHS charity must appoint the auditor or independent examiner. This means that the board of the NHS body must meet in its capacity as corporate trustee to make the appointment. The appointment of an auditor/ independent examiner to the NHS charity is a separate appointment to the auditor appointment to the corporate trustee NHS body. The same auditor does not have to be used for both appointments.

The qualifications for appointment to an NHS charity are set out in s149 of the Charities Act 2011 (rather than the qualifications set out in s144 of the Charities Act 2011) as follows:

2. a person who:
 - a) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006
 - b) is eligible for appointment as a local auditor (see Part 4 of the Local Audit and Accountability Act 2014) or
 - c) is a member of a body for the time being specified in regulations under section 154 and is under the rules of that body eligible for appointment as auditor of the charity.

This means that the auditor must be a member of one or more of the following bodies:

- a) the Institute of Chartered Accountants in England and Wales
- b) the Institute of Chartered Accountants of Scotland
- c) the Association of Chartered Certified Accountants
- d) the Chartered Institute of Public Finance and Accountancy
- e) the Institute of Chartered Accountants in Ireland
- f) any other body of accountants established in the United Kingdom and for the time being approved by the Secretary of State for the purposes of this section.

If the NHS charity's income is below the audit threshold, then the decision as to whether to have an audit or an independent examination lies with the corporate trustee. If the trustee elects for an

⁸ www.hfma.org.uk/publications/details/guidance-on-the-consolidation-of-nhs-charities

⁹ For accounting periods ending on or after 31 March 2015 an audit is required when the charity's gross income is above £1m or its total assets are more than £3.26m and its gross income is above £250,000.

independent examination, then the person appointed must be one of those listed as eligible in appendix 5 of the Charity Commission's guidance *CC32 Independent examination of charity accounts: directions and guidance for examination*¹⁰.

Welsh NHS charities with a corporate trustee

In the case of a Welsh NHS charity, the Auditor General for Wales ('AGW') is the auditor or independent examiner by statute. Provision for the Auditor General for Wales to act as auditor or independent examiner of Welsh NHS Charities is made in section 150 of the Charities Act 2011. This requires the Auditor General to audit or examine as appropriate, depending on the charity's level of income and gross assets, any such financial statements submitted to him.

NHS Charities with a corporate trustee which is a foundation trust

Charities administered by NHS foundation trust corporate trustees fall within the same audit and examination regime as all other charities and should refer to Charity Commission's guidance *CC15d - Charity reporting and accounting - the essentials*.

The corporate trustee of an NHS charity must appoint the auditor or independent examiner. This means that the board of the NHS body must meet in its capacity as corporate trustee to make the appointment. The appointment of an auditor/ independent examiner to the NHS charity is a separate appointment to the auditor appointment to the corporate trustee NHS body. The same auditor does not have to be used for both appointments.

Where the charity is below the audit threshold, an independent examination can be performed instead. The requirements for appointing an independent examiner are as described above.

Where the charity is subject to an audit, the auditor must be qualified as a Companies Act auditor (a responsible individual) so auditors who are eligible to audit NHS foundation trusts under section 144(2)(b) may not be eligible to audit the NHS charity associated with it.

This is likely to affect auditors who are qualified with CIPFA as CIPFA does not register auditors¹¹. If an NHS foundation trust wishes to appoint a CIPFA qualified auditor or another auditor who does not fall within the categories listed at s144 of the Charities Act 2011, then it will normally require an audit dispensation from the Charity Commission unless the auditor is also already qualified as a Companies Act auditor.

NHS Charities with special trustees and individually appointed trustees

From 1 April 2018, once the NHS (Charitable Trusts Etc.) Act 2016 comes into force these trustee arrangements will no longer exist.

Until then, the audit arrangements for special trustees and all individually appointed trustees, except those appointed to funds attached to NHS foundation trusts under s51, are the same as for those NHS charitable funds which have an NHS trust or CCG as its corporate trustee.

Section 51 trustees follow the same arrangements as for those NHS charities which have an NHS foundation trust as its corporate trustee.

When an NHS trust becomes an NHS foundation trust any individually appointed trustees (under paragraph 10 of Schedule 4 to the NHS Act 2006) automatically become s51 trustees. If foundation trust status is granted part way through a financial year, then the audit arrangements should remain unchanged until the end of that financial year.

¹⁰ www.gov.uk/government/uploads/system/uploads/attachment_data/file/641957/CC32_-_Independent_Examination_of_Charity_Accounts-Sept_2017_v1.1.pdf

¹¹ www.gov.uk/become-a-registered-auditor