

## Independent Sector Provision in the NHS revisited





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## Background and context

The role of ISPs ('independent sector providers') in delivering NHS services in the UK has increased following the passage of the Health and Social Care Act 2012. Regulations laid following the passage of the Act require CCG commissioners to put contracts valued over £75,000 to competitive tender, except where commissioners can demonstrate that they are 'satisfied' that there is only one qualified provider.<sup>1</sup> The Regulations also stipulate that 'any qualified provider' including ISPs, can bid for these contracts.

### Box 1: What is the 'independent sector'?

The definition of the independent sector is broad and often unclear. The definition used in this report includes the private sector, ISTCs (independent sector treatment centres) and social enterprises. This definition has been chosen, as it corresponds with the current DHSC (Department of Health and Social Care) data on the purchase of healthcare from non-NHS providers. It does not include the voluntary sector, charities or local authorities.

## Introduction

This paper is the latest in a growing body of BMA work which monitors the extent and impact of independent sector provision in the NHS in England. In 2016, the BMA report Independent Sector Provision of NHS healthcare highlighted the increasing role of ISPs and discussed the opinions and experiences of BMA members. In 2017, Hidden Figures revisited the extent of independent sector provision and found that spending on ISP was continuing to grow, most prevalently in community care. The report also found that CCGs who spend more on ISPs tend to receive worse performance ratings from NHS England.

In this paper, we draw together our previous work by providing an update on DHSC spending on ISPs, a breakdown of CCG spending on ISPs by sector and an update on BMA member views on the impact of independent sector provision.

Our research shows that:

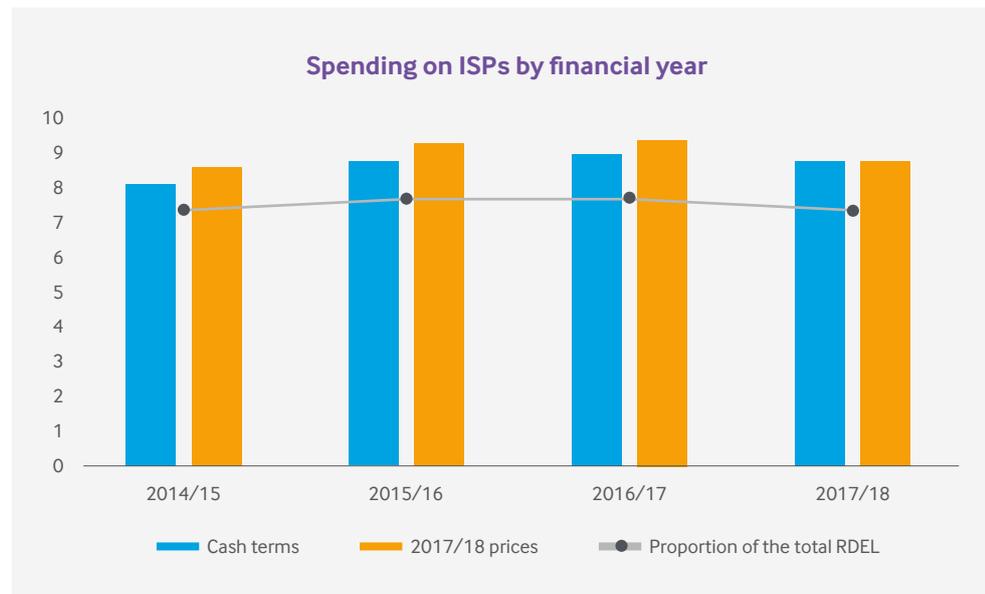
- Spending on ISPs, while slightly lower 2017/18 than in 2016/17, is still high, exceeding 7% of the NHS's budget for the fourth consecutive year
- From an FOI (Freedom of Information) request sent to CCGs, 40% of spending on ISPs was on continuing health care (social care funded by the NHS for patients with long-term complex health needs)
- A BMA survey found that 66.5 per cent of doctors who work in sectors with high independent sector provision felt that it has had a negative impact on the quality of service provision in those areas

## Spending on independent sector providers

### DHSC spending on ISPs has levelled off but remains high

According to the DHSC annual accounts, since 2014/15, the total amount spent on ISPs has grown by £0.7 billion or 8.7 per cent, from £8.01 billion in 2014/15 to £8.77 billion in 2017/18. As a proportion of total spending, spending on ISPs has fluctuated, rising from 7.3 per cent in 2014/15 to 7.7 per cent in the following two years, before falling back to 7.3 per cent in 2017/18.<sup>2</sup>

This indicates that spending on ISPs as a proportion of total spending seems to be stagnating. Nonetheless, spending on ISPs remains a significant proportion of NHS spending, totalling a cumulative £34.6 billion (or £35.9 billion in 2017/18 prices) since 2014/15.<sup>3</sup> It also remains to be seen whether this slight decrease represents an anomaly or a trend.



Due to changes to the definition of 'independent sector provider', year on year spending on ISPs cannot necessarily be compared 'like for like'. Per the Kings Fund, "It also appears that a change in the way the accounts were reported in 2013/14 (to include spending by foundation trusts on services to be provided by non-NHS providers) accounted for most of the increase in that year."<sup>4</sup> This makes it difficult to measure changes in the amount spent on ISPs with complete accuracy, so figures from before 2014/15 have been excluded. The BMA has repeatedly called for greater clarity and consistency in the collection of independent sector spending data to enable more accurate analysis of the extent of privatisation within the NHS in England.

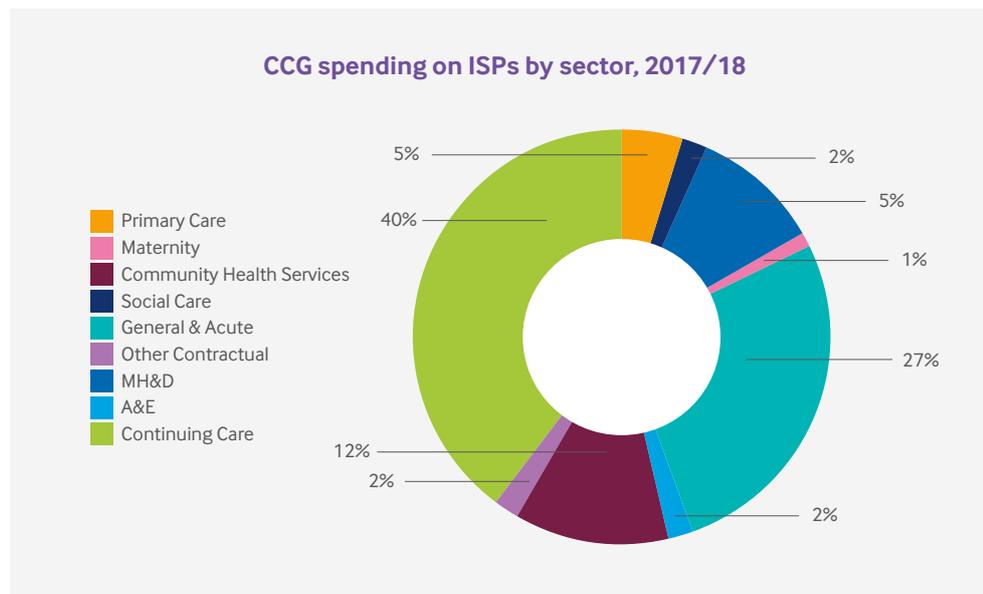
### CCG spending on ISPs by sector

Greater transparency and detail with regards to the collection of ISP spending data is also required. To date, the DHSC has neglected to publish a breakdown of spending on ISPs by sector i.e. the amount of NHS funds spent on ISPs which provide primary care, social care, mental health and learning disability services, maternity services, general and acute services, accident and emergency services, community health services, or continuing care.

In 2017 and 2018 the BMA attempted to obtain this information by submitting an FOI request to all CCGs requesting a breakdown of their spending on ISPs by sector. In 2017, only 24 CCGs provided a full break down of their spending. Based on the analysis of these responses, 44 per cent of total CCG spending in the independent sector was spent on community health services, 25 per cent was spent on general and acute services, 11 per cent was spent on mental health and learning disability services, 8 per cent was spent on social care, and 11 per cent was spent on primary care, accident and emergency services and 'other contractual services' combined.

In 2018, 88 CCGs responded to the FOI request. Continuing care accounted for the highest proportion of the spending (40 per cent of the total), 27 per cent was spent on general and acute services, 12 per cent on community health services, 10 per cent spent on mental health and learning disability services and the remaining 12 per cent spent on primary care, social care, maternity care, accident and emergency services and 'other contractual' services combined. It should be noted that only 31 CCGs responded both in 2016/17 and 2017/18, which limits comparability between years.

The inclusion of a new category (continuing care) means that very little can be inferred from a comparison between years, beyond the fact that CCGs continue to recategorize and redefine their spending. The BMA therefore repeats its call for greater transparency and consistency in how CCGs report their spending on non-NHS provision. It is worth noting, however, that in both years, the highest spends have been on continuing care and community care, both sectors heavily involved in the delivery of social care.



### Quality of care delivered by the independent sector

#### Doctors who work in area with higher ISP provision are more likely to report negative experiences

In mid-2018, the BMA surveyed doctors on their views on independent sector provision in their sector. Strikingly, doctors who work in clinical areas with higher independent sector provision were more likely to report that the independent sector was having a negative impact on the quality of service provision in the previous 12 months. For example: 66.5 per cent of doctors who work in community care (including continuing care), general and acute services, and mental health felt that independent sector provision has had a negative impact on quality of services provision in those areas.<sup>5</sup> More information on doctors' responses to our questions about independent sector provision can be found in Appendix 1.

#### CQC inspections of independent sector hospitals should be more rigorous

The BMA is pleased to note the CQC has conducted several consultations which request views on introducing quality ratings (following inspections) to more types of independent services and intends to begin inspecting and rating all independent doctors from April 2019.<sup>6</sup> The BMA has repeatedly called for the establishment of proper reporting requirements and consistent regulation of ISPs to enable patients and the public to gain a better understanding of the quality of care offered by those organisations.

A continuing focus on this is important, as in January 2018, CQC inspections revealed that two out of five (41 per cent) of independent sector hospitals in England require improvement in terms of safety, and 30 per cent require improvement in terms of leadership – by comparison, in 2018 those figures were 40 per cent and 24 per cent respectively at NHS acute trusts. That the standard of patient safety at independent sector hospitals broadly mirrors that at NHS trusts suggests that there should be appropriately similar amounts of scrutiny and oversight at both. These ratings apply to 13 independent hospitals, and not to all ISPs, many of which do not fall within the CQC's inspection regime.

### **Impact of independent sector provision on the NHS**

In addition to concerns surrounding the quality of care delivered by ISPs, the BMA has a number of concerns regarding the impact of contracts held with ISPs working in the NHS; primarily the cost to the NHS in the event of ISP contract failure.

As the BMA revealed in 2017, the NHS is heavily reliant on a small number of ISPs, each holding multiple high value contracts. As in 2016/17, in 2017/18 our FOI request found that BMI and Spire held the highest number of contracts; a combined total of 98 contracts. Although some are much larger, the average value of each BMI and Spire contract is between £1.3m and £1.5m.

While both BMI and Spire appear to be financially secure, there is an immense risk to the NHS in the event of their failure, due to the size and number of contracts these companies hold. The DHSC has previously warned of the risks associated with allowing ISPs to gain a significant market share, as the more contracts a company wins, the more severe the implications are for the NHS should that company fail to meet the terms of those contracts as the collapse of Carillion and current financial difficulties at Capita and Interserve demonstrate.

The BMA is also concerned that CCG commissioners are not properly equipped to manage high value contracts with ISPs. An investigation conducted by CHPI in 2015 found that fewer than half of CCGs who responded to an FOI request could say how many site visits had been made to the ISPs they had contracts with (which the thinktank contends should take place given the complexity of monitoring contracts for healthcare). Of those that responded, 39 had made fewer than ten visits and 22 had made none. The average number of ISP contracts per CCG was 90.<sup>7</sup>

In addition, 149 CCGs had imposed no financial penalties on ISPs to enforce the quality performance of their contracts, as provided for in the standard NHS contract, and 133 had issued no contract query notices. This raises many concerns around CCG commissioners' capacity to construct contracts to indemnify local services against the risks of providers failing to fulfil their obligations.

### **Ways in which the NHS can improve its relationship with the independent sector**

The BMA has proposed a number of other ways that private provision of NHS care could be safer and more transparent – please see the 2018 updated briefing on what progress has been made in implementing those measures.<sup>8</sup>

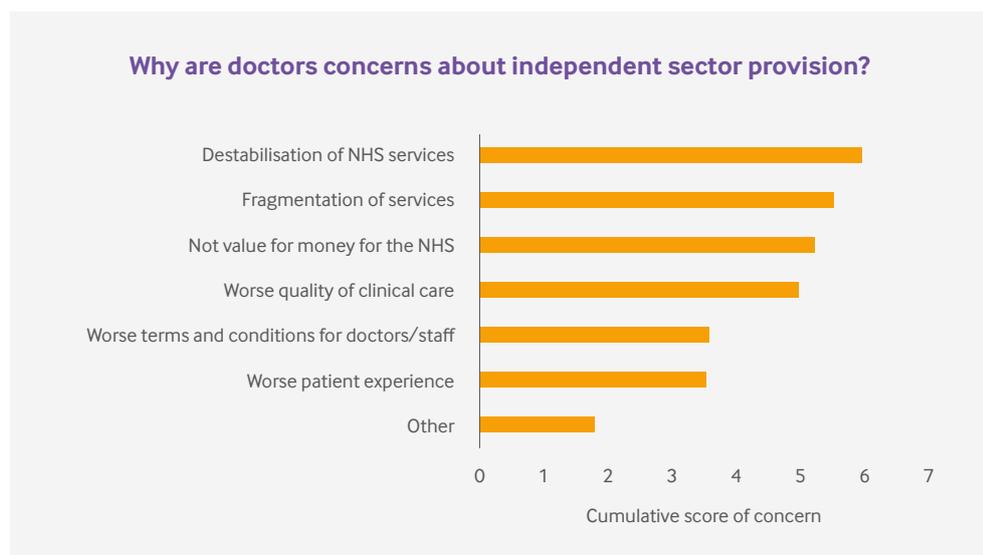
## APPENDIX 1

### Doctors' views on independent sector provision of NHS health care

In 2016, the BMA surveyed members to better understand their experiences and opinions of independent sector provision in the NHS. In 2018, we asked doctors the same questions again to measure changes in their opinions.

When surveyed in 2016, more than two thirds (67 per cent) of doctors surveyed were 'fairly' or 'very' uncomfortable with independent sector provision of NHS services. In 2018, the number of doctors who were 'concerned' by independent sector provision of NHS services was almost three quarters (73 per cent). While not strictly comparable due to a change in wording, these figures indicate that independent sector provision continues to be a large cause for concern for doctors.

In 2016, the most common reason for concern about independent sector provision was the destabilisation of NHS services; followed by concerns surrounding the fragmentation of NHS services. In 2018, these remained the primary concerns, closely followed by concern that independent sector provision represents worse value for money for the NHS and that the care provided by independent sector providers was of worse quality.



In 2018, respondents who were 'unconcerned' (6 per cent) by independent sector provision of NHS services felt this way primarily because they believed independent sector provision could reduce pressure on NHS services. The second reason given for a lack of concern was that independent sector provision offers increased choice for patients.

## References and further reading

- 1 The National Health Service (2013) (*Procurement, Patient Choice and Competition (No. 2) Regulations*).
- 2 UK Government (2018), *op cit*.
- 3 UK Government (2018), *op cit*.
- 4 The King's Fund (2015) [\*Is the NHS being privatised?\*](#)
- 5 This analysis is based on responses from 221 doctors total. As such the results should be considered with caution.
- 6 CQC (2018) [\*Response to consultation 3\*](#)
- 7 CHPI (2015) *The contracting NHS – can the NHS handle the outsourcing of clinical services?*
- 8 BMA (2018) *Privatisation and independent sector provision in the NHS*



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