NHS
Thurrock
Clinical Commissioning Group

Locally Enhanced Services : Progress and Next Steps

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February 2014 Board

Progress:

Following Board endorsement of the process, the Enhanced Services Task Group met over July – October 2013 to review services currently commissioned under Locally Enhanced Services. Due to the transfer of PMS/GMS contracts to NHS E, Locally Enhanced Services need to be commissioned under an alternative contractual medium from 1st April 2014. The Task Group had a two phase process, a) to confirm the commissioning case/requirement for the existing range of services and b) propose a route for commissioning services. The outcome of this process was as follows;

	Re-commission	Proposed Route
Anticoagulation	Yes	Via AQP
CVD	No	Not applicable
Gonaderelin	Yes	Via AQP
Minor Injury	No	Not applicable
Phlebotomy	Yes	Via AQP
Secondary care wounds management	Yes	Via AQP
Vasectomy	Yes	Via AQP
24 hour BP monitoring	Yes	Via AQP

These recommendations were to be taken forward as an AQP procurement in November 2013, however, due to a number of issues including challenge from the LMC on the readiness of primary care to successfully complete a AQP process, this has been put on hold.

Feedback from the LMC:

The LMC are concerned regarding the ability of general practice to respond to this AQP. This would put at risk a sizable proportion of current general practice income (primarily a provider concern) but also could weaken patient pathways if the ultimate coverage of providers in the market place is more restricted than at present. The LMC commissioned BMA Law to provide an overview on the contestability commitments of CCGs.

The following is the feedback they received and subsequently shared with the CCGs;

Rules for CCGs:

CCGs are required to:-

- *Publish/advertise opportunities and contract awards;*
- *Establish qualifying criteria;*
- *Maintain strict record-keeping (particularly important if challenged);*
- *Manage Conflicts of Interest; and*
- *Prevent anti-competitive behaviour*

Obligations on CCGs:

- *CCGs will be encouraged to improve quality and efficiency of health services;*
- *Provide value for money;*
- *Will have to evaluate performance of existing providers; and*
- *Will require mechanisms in Contracts to address under performance e.g. termination clause if a provider is not delivering what is required*

Legislative Background:

- *Regulation 5 of the NHS Procurement Patient Choice and Competition Regulations 2013 (No.2) (the "Regulations") and s75 of the Health & Social Care Act (the "Act") aims to prevent anti-competitive behaviour and introduces transparent and fair procurement in secondary healthcare commissioning.*

- *A key condition of Regulation 5 is that it allows a CCG to award a contract to a single provider without going through a full tender process – but this is very much the exception to the rule.*
- *Regulation 5 in full:*
  "A relevant body may award a new contract for the provision of health care services for the purposes of the NHS to a single provider without advertising an intention to seek offers from providers in relation to that contract where the relevant body is satisfied that the services to which the contract relates are capable of being provided only by that provider"

When should a CCG put a service out to tender?

- *Normally when contracts are greater than £113,057 (the value throughout the life of the contract) a formal tender is required.*
  - *The tender needs to be advertised (usually via the CCG website); and*
  - *There is a requirement for a fair and transparent tender process as between tenderers. If a bidder asks a question, that question and the subsequent answer needs to be divulged to the rest of the bidding parties.*

Different ways for a CCG to tender

- *Single award under Regulation 5 (more detail below);*
- *Detailed "review" to identify most capable provider(s);*
  - *the CCG should indentify which provider(s) could offer the service at the best value and of the highest quality. The final report should be published on the website so all providers would be able to see how the decision was made; or*
- *Any Qualified Provider*
  - *CCGs may decide which services suitable for AQP;*
  - *applicants must meet a set of criteria which would be advertised on all relevant websites;*
  - *must be CQC registered;*
  - *no guaranteed income. A provider could be put in a pool of other providers, but there's no guarantee they'll be picked from this list; and*
  - *usually have to renew the application again after 3 years.*

When could a CCG not go out to tender and award a contract to an existing /single provider (Regulation 5 instances)?

- *Where <u>one</u> provider can supply the services, the CCG may be able to (in rare circumstances) award a contract to that single provider without going through the full, lengthy procurement process.*
- *For example, where a service in a locality is already being provided by a single provider and that provider is doing a good job (with high performance levels etc), there may be a good reason to keep the contract with that provider.*
- *However, the CCG is still under a duty to decide if there can be an improvement of quality and efficiency, and justify the decision not to tender.*
- *If the existing contract is coming to an end, the CCG may wish to extend it. If so, they need to justify the decision by reviewing the status quo and deciding if the service (including quality) can be improved? Is the existing service providing value for money?*
- *A full report would need to be compiled by the CCG before just automatically renewing the contract. If there potentially is another provider out there who could improve the service, value etc then the CCG should go out to full tender.*
- *Additionally, a CCG could award a contract to a single provider if there are complex health needs within the contract which require access to a wide range of health or health related services e.g. hospital.*

Benefits of a CCG keeping a contract with an existing provider/awarding a contract to a single provider:

- *Potentially avoids fragmentation, and provides integrated care in a seamless way. For example, only a hospital in a locality may be able to provide the full service. This makes things easier for the patient.*
- *A single provider may already have strong relationships with other organisations within the locality.*
- *However, any decision made by a CCG must be balanced against whether services could be improved by going to another provider. The Act gives Monitor wide ranging powers in its scrutiny of CCG decision making.*

Next Steps – options:

The CCG are required to make a decision on the options for the future commissioning of these services.

Three options were identified and presented to the Finance and Planning Meeting;

a) Continue with the AQP as planned
   Risks
   - Disruption to general practice
   - Potential loss of income to general practice
   - Could reduce coverage of the market place compared to current arrangement if practices are unsuccessful (or do not complete AQP process) and the number of other providers is limited

   Benefits
   - Low risk of challenge from other providers of service.
   - Could introduce more providers into the market and provide greater coverage of these services than current arrangement.

b) Award contracts to existing providers
   Risk

- Significant risk of challenge from other providers not given the opportunity to compete. FOI requests will make clear to all what process has been undertaken and leave the CCG exposed.
- Currently service provision is not universal across all areas and therefore this option runs the risk of some patients being underserved.

Benefits

- Continuation of service
- Stability for general practice

c) Award contracts to existing providers and undertake an AQP procurement

Risk

- Risk of challenge as part of the service would have been awarded without any procurement process.

Benefits

- Continuation of service
- Stability for general practice
- Opportunity to welcome other providers into the local market to meet current unmet need.

Recommendation

The Finance and Planning Group took into consideration the various risks and benefits of each option and on balance recommended option c, awarding contracts to existing providers (only where a practice is signed up to an enhanced service and on the current terms) whilst undertaking an AQP procurement. The AQP procurement would be undertaken within the first quarter of 2014/15 and repeated towards the end of the financial year.

The Board are requested to endorse this recommendation.