

## **Briefing note: Substantive Guidance on the Procurement, Patient Choice and Competition Regulations**

## About Monitor

Monitor is the sector regulator for health services in England. Our job is to protect and promote the interests of patients by ensuring that the whole sector works for their benefit.

## Briefing note

The Procurement, Patient Choice and Competition Regulations<sup>1</sup> are intended to enable commissioners to decide in individual cases how to secure services in the best interests of patients. It is for commissioners to decide what services to procure and how best to do this within the framework of the regulations. This includes deciding whether services could be improved by providing them in a more integrated way, by giving patients a choice of provider to go to, and/or by enabling providers to compete to provide services. Monitor's role is to ensure that commissioners have operated within the legal framework established by the regulations. Generally, Monitor will only act when we have received a complaint about an alleged breach of the regulations.

Competition should be employed where it serves the interests of patients, and is not an end in itself. The regulations do not impose competition on the NHS. No one will be forced to put services out to competitive tender and there are circumstances in which there might only be one capable provider of care. Commissioners need to make balanced judgments, taking account of a range of factors in the local circumstances – there is no 'one size fits all' approach. Our guidance makes clear that choice and competition are just some of the tools available to commissioners to drive up the quality and efficiency of care provision. They won't always be appropriate or the best levers, but it is right that commissioners should have the broadest set of tools available to them.

The regulations apply to the 211 clinical commissioning groups (CCGs) run by local GPs, and also to NHS England when it procures services. They set out principles that commissioners must follow as well as some specific requirements with which they must comply. They do not generally prescribe how commissioners should carry out their procurement activities in individual cases.

The principles commissioners should follow include:

- To secure the needs of patients who use services and to improve the quality and efficiency of those services, including through providing them in an integrated way;
- To act transparently and proportionately, and to treat providers in a non-discriminatory way;
- To procure services from providers that are most capable of delivering the overall objective and that provide best value for money; and
- To consider ways of improving services (including through services being provided in a more integrated way, enabling providers to compete and allowing patients to choose their provider).

Our guidance sets out the key questions that commissioners should ask themselves when they are procuring NHS health care services. Asking and satisfying themselves on these questions will help commissioners comply with the regulations.

Commissioners should ask themselves questions including:

- What are the needs of the health care service users we are responsible for?
- How good are current services? How can we improve them?
- How can we make sure that the services are provided in a more joined-up way with other services?
- Could services be improved by giving patients a choice of provider to go to and/or by enabling providers to compete to deliver services?
- How can we identify the most capable provider or providers of the services?
- Are our actions transparent? Do people know what decisions we are taking and the reasons why we are taking them?
- How can we make sure that providers have a fair opportunity to express their interest in providing services?
- Are there any conflicts between the interests in commissioning the services and providing them?
- Are our actions proportionate? Do they reflect the value, complexity and clinical risk associated with the services in question and are they consistent with our commissioning priorities?

All of these requirements are designed to make sure that commissioning decisions are fair, transparent and in the best interests of patients.

Over the last few months Monitor has worked closely with NHS England to produce this guidance to help commissioners understand the regulations and secure the best quality care for their patients. We also consulted widely with other health stakeholders including commissioners, providers and the Royal Colleges. We have also worked with NHS England to ensure that the guidance it will be issuing shortly to commissioners about the practical details of how to procure services well complements our guidance.

The guidance is contained in two documents: the first supports commissioners in procuring services within the law, while the second shows how we will uphold the rules to protect patients' interests.



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