Patient Choice

The Department of Health's response to the Cooperation and Competition Panel's report on patient choice

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Patient Choice

In July 2011 the Cooperation and Competition Panel (CCP) reported on the implementation of patient choice of any willing (now qualified) provider in elective services. The CCP's recommendations are set out below followed by the Department of Health's response.

Recommendation 1: Commissioners review their existing practices in relation to restrictions on patient choice and competition, and take steps to bring themselves into compliance with the Principles and Rules.

The Department agrees that commissioners should ensure that their practices are in line with the Principles and Rules for Cooperation and Competition (PRCC). Primary Care Trusts (PCTs) should review their practices in light of the CCP's report and the Department's response. Ministers have asked the NHS Chief Executive for further advice on how best to ensure that PCTs continue to comply with the PRCC in 2012/13.

Recommendation 2: Commissioners be required to approve any such restrictions at Board level, and annually publish (eg as part of their annual report or statement of commissioning intentions) details of any restrictions on patient choice they have adopted, the underlying rationale for the restriction, an analysis of its impact and terms of the restriction, including the period for which it will operate.

Compliance with the PRCC is the responsibility of PCT Boards and the Department agrees that any decisions that would restrict patient choice of provider for elective services must be approved at that level and involve the relevant subcommittee of the PCT Board, where established, to ensure the engagement of emerging clinical commissioning groups. Any such decisions should be taken transparently and published annually, including the rationale, impact and period of operation.

Recommendation 3: Commissioners also be required to:

a. publish the approach they have adopted to Activity Planning with providers in their locality; and

b. when imposing waiting time requirements on providers, publish on the home page of their website clear information about the minimum waiting time imposed by the PCT on each provider.

PCTs have an important role in managing demand for services and are required to operate within their financial allocations reflecting the finite resources of the NHS. However, the Department considers that the activity schedules in the NHS Standard Acute Contract should

not be used as a mechanism to constrain patient choice and cap activity. The Department also considers that decisions on appropriate referrals should be made by clinicians in the local NHS in line with the best clinical evidence. PCTs should ensure all patients are seen on the basis of clinical need which in itself means there is no justification for the use of minimum waits (that one or more providers are required to comply with) that do not take account of health care needs of individual patients. Prior approval schemes can be important to ensure that treatments are within agreed clinical pathways. Where such schemes are used they should be transparent, non-discriminatory and should not be used to restrict patient choice of provider.

PCTs will be required to take this into account in their activity planning for the next financial year. PCTs currently imposing such minimum waits, activity caps, and inappropriate constraints on elective activity should have ceased these as soon as possible and in any case no later than 31 March 2012. No PCT should introduce such measures during 2011/12. Further guidance on the use of the NHS Standard Acute Contract in 2012/13 will be provided in light of the CCP's recommendations.

The CCP also identified impacts on patient choice in relation to the range of routine elective services providers were given the opportunity to deliver. The CCP concluded that these concerns had been resolved in nearly all cases and this follows the successful transition of providers from the extended choice network to locally held NHS standard contracts. PCTs should ensure that transparent and objective criteria, that do not discriminate unfairly, are used when taking decisions on which providers can apply to qualify to provider elective services under the Any Qualified Provider model. PCTs should also take account of the CCP's recommendations in the NHS Wiltshire and Circle case.

Recommendation 4: Strategic Health Authorities, and in future the National Commissioning Board, implement oversight arrangements to ensure that commissioners are not restricting patient choice and competition in routine elective care against patients' and taxpayers' interests.

The Department agrees that SHAs, in the transition period, should continue to have oversight of the PRCC locally and the requirement for PCTs to comply with the PRCC as previously set out in the NHS Operating Framework. SHAs are expected to note the Department's response to the CCP's recommendations and ensure that they are implemented by commissioners locally

The Health and Social Care Bill, subject to its passage through Parliament, sets out an effective system of sectoral regulation and this includes the provision for the Secretary of State to set out requirements of commissioners in secondary legislation to protect and promote patient choice and prohibitions on anti-competitive behaviour that is not in patients' interests. Compliance by commissioners would therefore be a legal requirement. It would be for Monitor to enforce the regulations. The NHS Commissioning Board would also be able to use its interventional powers if a Clinical Commissioning Group (CCG) has failed, is failing, or at significant risk of failing, to discharge any of its functions.

Recommendation 5: the Department of Health:

a. requires commissioners to ensure that Referral Management Centres implement the Choose and Book system effectively and share with all local providers the scripts and any other communications used by Referral Management Centre staff when referring patients to a provider for routine elective care; and

b. requires commissioners to copy to all local providers any information they supply to GPs concerning providers.

The Department agrees that PCTs should ensure that effective mechanisms for offering patients choice of provider are in place. The Choose & Book system is an effective way of achieving this and the Department strongly encourages it is used to benefit patients. The Department also agrees that there should be transparency in relation to the referral scripts and other communications used to help guide patients in their decisions about their routine elective care. Commissioners should make this information available to providers if requested. In addition, information sent to GPs which is likely have an impact on referrals for routine elective care to particular providers should be shared with those providers likely to be affected.

Recommendation 6: the Department of Health, in the light of the CCP findings regarding payment arrangements takes action to ensure that SHAs and commissioners are implementing Payment by Results in accordance with the Code of Conduct for Payment by Results and national guidance, including ensuring that commissioners publish the details of any locally adopted variations to the national tariff.

The Department agrees that prices need to be set transparently. We will consider reinforcing the requirement to implement Payment by Results in accordance with national guidance through the Operating Framework. The Department also agrees that locally agreed variations to the national tariff should be published in 2012/13. The Health and Social Care Bill would provide that, in the future, where a variation is agreed the commissioner must maintain and publish a written statement of the variation.

Recommendation 7: the Department of Health, in developing accreditation arrangements for future commissioners, requires that commissioners demonstrate to the National Commissioning Board an understanding of the policies and rules concerning patient choice and competition, and a commitment to complying with their obligations under these policies and rules. Compliance with the policies and rules concerning patient choice and competition should also be made a condition of continued accreditation.

We agree that during the authorisation process aspirant CCGs should demonstrate that arrangements will be in place to ensure an understanding and delivery of requirements in

relation to choice and good procurement practice (for example), in line with existing system rules. These would be reflected in the regulations that would apply to CCGs on these matters in the future. Once authorised, CCGs would be legally required to comply with the regulations.

Recommendation 8: the Department of Health reviews the rationale for the Activity Planning provisions in the Standard Acute Contract, and if these provisions remain necessary assess whether amendments could be made to make these provisions less susceptible to being used to restrict patient choice and competition.

The Department considers that the Activity Planning provisions in the Standard Acute Contract do remain necessary but recognises that they could be misused. The development of the 2012/13 Standard Acute Contract will take into account the CCP's findings and seek to ensure that abuses are less possible whilst maintaining routine payment process to minimise transaction and administrative costs.

Recommendation 9: the Department of Health reviews the way in which the Market Forces Factor is incorporated into the tariff for routine elective care, and assesses whether the incentives that the current arrangements create for PCTs to restrict patient choice are outweighed by other considerations.

The Department agrees that it is not in patients' interests for commissioners to restrict choice of provider on the basis of their relative costs resulting from the Market Forces Factor. The Department will consider making this clear through further guidance eg the NHS Operating Framework. In addition, the Department expects that Monitor and the NHS Commissioning Board will review arrangements such as Market Forces Factor and their operation as part of the development of NHS Tariff from 2013/14.