Royal College of Nursing

Royal College of Nursing response to NHS England consultation on NHS Provider Selection Regime proposals.

With a membership of around 435,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

1. Overview

1.1. The NHS is currently consulting on proposals to remove existing procurement requirements and replace them with a new NHS provider selection regime. These proposals will give more flexibility to commissioners to use competitive tendering when it is necessary and in the public interest, rather than for every type of service procurement opportunity.

1.2. The RCN is broadly supportive of efforts and initiatives aimed at reducing bureaucracy and promoting collaboration not competition within the health and care system. We support proposals which would remove processes and practices which are time-consuming and do not have direct benefits for staff or patients. Procurement processes can be costly, and in some cases that money could be better utilised in other parts of service delivery.

1.3. There are several priorities which must be protected as the NHS adopts new processes for procurement:

1.3.1. **Pay, terms and conditions of staff:** The new procurement regime must not lead to any situation in which staff members receive poorer pay, terms and conditions than their existing arrangements. Many providers in the health system do not pay the equivalent of Agenda for Change, and commissioners should ensure they are working with employers to improve their offers to staff. This is particularly important in the context of the pandemic with regards to sick pay and other benefits.

1.3.2. **Staffing for safe and effective care:** Decisions about procurement should not impact staffing leadership, levels, skill mix or other workforce, training and development issues. Staffing decisions have

a significant impact upon patient safety, outcomes and experiences and should therefore not be compromised by decisions about contract holders or providers.

1.3.3. **Data reporting:** Currently, some independent sector providers are not subject to the same requirements for data collection, reporting or publication. Procurement processes should be mindful of this and not make decisions which are likely to weaken access to provider reporting or opportunities for scrutiny.

1.3.4. **Staff support during transition:** Steps should be taken to ensure that staff members have access to union representation throughout any reconfiguring of services. This should involve formal consultation with staff-side groups.

1.3.5. **Expertise of those delivering the service:** An area of concern in previous procurement regimes is that service contracts can be awarded to providers who have no expertise of delivering that type of healthcare provision. In the new regime we expect additional scrutiny to be made of the expertise of the prospective provider, including feedback from staff members. Procurement decision making processes should include safeguards to ensure that providers are able to demonstrate sufficient expertise in delivering the required services, and in managing clinical risk, and that concerns can be raised, and independent scrutiny provided. These safeguards may include:

- Setting minimum standards for key conditions.
- Ensuring appropriate expert clinical input to decision making.
- Ensuring effective consultation with both patient groups and advocates for vulnerable patient groups including children; patients with learning disabilities and the elderly

1.3.6. **Nursing leadership:** Decisions about procurement must not compromise nursing leadership roles, for example by merging or combining roles from multiple organisations. Nursing leadership roles are key to ensuring joined up patient pathways, achieving an overall focus on prevention and close alignment between health and care services. It is vital to ensure that nursing leadership roles are not diluted within ICSs and that key parts of the system such as public health, primary care and social care embed further leadership roles.

1.4. When NHSE/I originally proposed changes to the procurement processes we set out a number of considerations which should be made when determining best value. These considerations include:

- active review of relevant issues in making any decisions, with explicit regard to local population needs, patient outcomes and workforce issues;
- the delivery of high-quality nursing practice, and in the delivery of safe and effective care; • patient choice and patient safety;
- the likely impact on the workforce and their training and development requirements, and on any recruitment or retention strategies which are underway

1.5. We will continue to scrutinise guidance relating to the new procurement regime in order to assess any impact to pay, terms and conditions and staffing for safe and effective care.

2. Responses to consultation questions

2.1. Should it be possible for decision-making bodies (eg the clinical commissioning group (CCG), or, subject to legislation, statutory ICS) to decide to continue with an existing provider (eg an NHS community trust) without having to go through a competitive procurement process?

2.2. We are supportive of this proposal. We think this will bring benefits in terms of reducing bureaucracy. There are also benefits for staff and patients in maintaining existing provider arrangements; consistency is key to patient experience, outcomes and safety. It is important to reduce the uncertainty for providers and their staff.

2.3. Commissioners should continue to monitor contracts and be transparent about decision making in order to ensure that removing procurement requirements does not lead to reduced scrutiny of service delivery. Commissioners should also ensure that decisions not to competitively tender a service are based on substantial data about quality and service outcomes, as well as feedback from patients and staff.

2.4. Do you think there are situations where the regime should not apply/should apply differently, and for which we may need to create specific exemptions?

2.5. At this stage it is not possible to come up with an exhaustive list of situations where the regime should not apply or should apply different.

Commissioners should be open to hearing feedback from staff groups and patients to identify situations where the regime may need to be adjusted.

2.6. NHSE/I should also undertake evaluation and review of the programme to identify situations which commonly occur. This will help inform future iterations of national guidance for commissioners.

2.7. Do you agree with our proposals for a notice period?

2.8. While we do not take a specific view on the notice period, we note the importance of ensuring there is sufficient time to undertake necessary consultations with staff groups and trade union representation.

2.9. It will be important that trade deals made in future by the UK with other countries support and reinforce this regime, so we propose to work with government to ensure that the arranging of healthcare services by public bodies in England is not in scope of any future trade agreements. Do you agree?

2.10. We are supportive of the recommendation not to include the arranging of healthcare services by public bodies in England within the scope of future trade agreements.

2.11. It is also important to note that there are related elements of international relations and trade agreements which will impact upon the commissioning of services, for example, international recruitment of healthcare staff. It is vital that the UK Government continues to abide by international standards for recruitment and does not seek to undermine these through trade agreements.

2.12. Should the criteria for selecting providers cover: quality (safety effectiveness and experience of care) and innovation; integration and collaboration; value; inequalities, access and choice; service sustainability and social value?

2.13. We agree with the inclusion of these criteria. Additionally, selecting providers should be based upon consideration of:

2.13.1. Workforce: the pay, terms and conditions of staff members should be protected from any changes to provider arrangements. Selecting providers should not lead to any reduction of staffing levels, skill mix, opportunities for continuing professional development or access to

training. Commissioners should engage with staff groups and trade unions to mitigate any potential impact on staff.

2.13.2. Safeguarding: it is important to ensure that existing safeguarding protocols and processes are not compromised by changes to providers or service contracts. Many safeguarding issues will require consistency to ensure that individuals in need do not fall through the gaps.

2.13.3. Implications for the patient journey: In an increasingly integrated system, patient journeys through the system should be smoother with less fragmentation. When considering commissioning decisions, commissioners should ensure that they have assessed any potential or likely impact upon patient experience, safety, outcomes or journey.

2.14. Should all arrangements under this regime be made transparent on the basis that we propose?

2.15. Transparency relating to these arrangements is key to building trust and confidence amongst staff groups and patients. While we are supportive of the provisions set out in this consultation document relating to transparency and scrutiny, we expect that commissioners consult with relevant staff groups as part of the 'considerations and decisions' section of this new process.

2.16. Beyond what you have outlined above, are there any aspects of this engagement document that might: have an adverse impact on groups with protected characteristics as defined by the Equality Act 2010? widen health inequalities?

2.17. At this stage we have not identified anything which would have an adverse impact on groups with protected characteristics or health inequalities. However, it is vital that NHSE continues to monitor the implementation of these changes to assess for any adverse impact. This needs to include regular equality impact assessments. Findings of these assessments should be published to allow for wider scrutiny.

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About the Royal College of Nursing

The RCN is the voice of nursing across the UK and the largest professional union of nursing staff in the world.

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