Integrated health and social care commissioning
Subject briefing April 2016

Overview

1. CCGs are responsible for commissioning NHS-funded health services and
   Local Authorities (LAs) are responsible for commissioning social care.

2. In many areas CCGs and LAs are exploring new ways of working together
   with the aim of integrating health and social care services through a more
   joined-up commissioning approach.

3. Some people have raised concerns that the current regulatory regimes
   relating to health and social care commissioning make it more difficult to
   achieve integration. However, it is not the case that the regime is inconsistent
   or a barrier to integration. This note clarifies the position regarding
   procurement regulations and health and social care commissioning.

Public Contract Regs 2015 apply to both NHS and social care services

4. The Public Contract Regs apply to both CCGs and LAs and are enforceable
   through the courts. They establish a regime to ensure transparency and equal
   treatment are at the heart of public procurement.

5. The Public Contract Regs 2015 applied to NHS-funded health care services
   from 18 April 2016. CCGs were given an additional year to prepare for the
   implementation of the regulations. As both CCGs and LAs now operate under
   the same Public Contract Regs there is nothing to prevent an integrated
   commissioning approach under these regulations.

Procurement, Patient Choice and Competition Regulations apply to NHS
services

6. Commissioners of NHS-funded services must also comply with the
   Procurement, Patient Choice and Competition Regulations which are
   overseen by NHS Improvement (Monitor).

7. The Public Contract Regs and the Procurement, Patient Choice and
   Competition Regulations do different things but sit alongside each other to
   provide a framework for commissioners to identify the best providers of care.

8. The Public Contract Regs contain a number of specific requirements (such as
   advertising an intention to award a contract in the OJEU) whereas the
   Procurement, Patient Choice and Commissioning Regulations set out broad
principles to help commissioners make good commissioning decisions that are in the interests of patients.

9. Commissioners have freedom under both to determine the appropriate procurement procedure to use when awarding a contract, provided they satisfy the principles of transparency and equal treatment of providers. The principles established by the Procurement, Patient Choice and Competition Regulations are reflected in the specific requirements of the Public Contract Regs.

10. This means CCGs can adopt integrated commissioning approaches with LAs and be fully compliant with the Procurement, Patient Choice and Competition Regulations and the Public Contract Regs.

The ‘Most Capable Provider’ approach

11. NHS Improvement is aware that some CCGs have adopted procurement approaches they refer to as “Most Capable Provider”. This typically involves working with a selected provider to develop a service specification and service model without using formal competitive tender processes. It is important to note that this term has been used to apply to many different types of processes – there is no single procurement approach recognised by NHS Improvement as “Most Capable Provider”.

12. CCGs and LAs have freedom to design appropriate processes that meet their commissioning objectives as long as they meet the minimum standards for transparency and equal treatment required by the rules. Any approach to
selecting providers that does this will secure good outcomes and be consistent with the relevant regulations.

May 2016