



Royal College of
General Practitioners

**Professor Clare Gerada MBE MOM FRCP FRCPsych FRCGP
Chair of Council**

Rt Hon the Earl Howe
Department of Health
Richmond House
79 Whitehall
London
SW1A 2NS

Thursday 28th February 2013

Dear Earl Howe,

I wish to express the Royal College of General Practitioners' concerns regarding the *National Health Service (Procurement, Patient Choice and Competition) Regulations 2013*, laid in Parliament last week.

These revolve in particular around regulation 5, which would seem to severely restrict the circumstances in which Clinical Commissioning Groups (CCGs) may decide not to expose services to competition, through either competitive tendering or the application of compulsory competition through use of any qualified provider (AQP) requirements.

On 27 January last year, you wrote to me:

"The Government's stated intention is that regulations under Clause 73 [now Clause 75] would give commissioners a full spectrum of options in the procurement of clinical services. It would be for commissioners to decide how to use these tools... These regulations would not set a presumption, either way, that services should be open to competition, or not open to competition. This approach would give commissioners flexibility in determining how best to discharge their duties, working within a framework of rules to ensure transparency and value for money. The onus would be on commissioners to act transparently and to be able to demonstrate the rationale for their decisions in terms of patient benefits. To emphasise, therefore, commissioners would decide if, when and how to use competition, as a means to an end, in improving services."

These principles were reflected in the Government's consultation *Securing Best Value for patients* published last August. According to this (in paragraph 1.9): *"It will also be for commissioners to decide how best to secure and improve... services. Commissioners can use a range of tools, including managing providers' performance, extending and varying contracts, widening choice of qualified provider, and tendering."* Similarly, in paragraph 2.22, it states: *"We have made it clear that commissioners have the flexibility to decide whether, where and how to extend choice or use competition as a means of improving NHS services."* It was these, and other similar statements, which formed the context for the RCGP's broad

support for the approach set out in the consultation document to the detailed design issues concerning the new commissioning framework for CCGs.

We were therefore concerned to discover that, rather than upholding the above, the content of the regulations themselves appears to constrain the ability of CCGs not to utilise competition only in a specified set of circumstances. These are in cases of extreme urgency, and where technical reasons or reasons connected with the protection of exclusive rights, the contract may be awarded only to one provider. In our view, this effectively amounts to a presumption in favour of the application of competition.

The problem is compounded by the very narrow nature of the exclusions in the definition of a "new contract", which could have the effect of rapidly requiring large swathes of the NHS to be exposed to competition. In order to attempt to gain clarification on this point, we last week sent a list of case study examples to your officials for their comments on how the regulations would apply. Please find these attached again for your information.

It is clear to us that, as they currently stand, the regulations will be interpreted by CCGs as requiring services to be put out to competition. This will have significant implications for local determination, stability of services and transaction costs (given that tendering is a very expensive undertaking).

As such, significant changes are required to the face of the regulations. I would accordingly urge you to **withdraw** the regulations in order to allow this to happen. I would also welcome the opportunity to meet with you to explore the concerns articulated in this letter and to discuss the Government's intended response.

Yours sincerely,



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