



Royal College of
General Practitioners

Dr Clare Gerada MBE MOM FRCP FRCPsych FRCGP
Chair of Council

Lord Goodlad
Chair, Secondary Legislation Scrutiny Committee
House of Lords
London
SW1A 0PW

Thursday 14 March 2013

Dear Lord Goodlad,

SI 2013/500 National Health Service (Procurement, Patient Choice and Competition) (No 2)

As Chair of the Royal College of General Practitioners (RCGP) I write with regard to the new version of the above regulations re-laid before Parliament on 11th March 2013.

As you know, the RCGP previously expressed concerns to the Committee that, contrary to assurances given by Ministers during the passage of the Act, these regulations would restrict the freedom of Clinical Commissioning Groups to decide not to put health services out to competitive tender. We therefore welcomed the Government's decision to revise and re-lay these regulations before Parliament.

Having looked closely at the new version of the regulations, we believe that whilst they are a step in the right direction, they do not go far enough in ensuring that commissioners are genuinely free to decide whether or not to expose services to competition. Our comments on the new version are as follows:

- We welcome the amendment made to Clause 2 (procurement objective) which now makes explicit reference to consideration being given to the integration of services in the definition of how commissioners of health care services must act.
- However, this change is, we believe, effectively negated by Clause 5. This still specifies that in order to let a contract for health services without competition commissioners must be: "satisfied that the services to which the contract relates are capable of being provided only by that provider". We remain concerned that this will give rise to circumstances in which CCGs feel they must put a service out to competitive tender because technically more than one provider is capable of delivering it, even if they feel it is not in the interests of patients to do so. Without clear evidence that there is genuinely only one provider that can deliver a service, it is likely that CCGs will err on the side of caution, effectively creating a presumption in favour of competition.
- We continue to have grave concerns about the broad definition of a "new contract" encapsulated within regulation 5(3), which appears likely to draw many existing services within the ambit of the regulations.

- The point has been made by Ministers (including during the debate in the House of Commons on 5th March) that these regulations mirror guidelines previously given to Primary Care Trusts (PCTs) in 2010. However, it should be noted that unlike these previous guidelines, the regulations currently laid before Parliament will have statutory force.
- We welcome the inclusion of a new Regulation 15(2) clarifying that “Monitor may not direct a relevant health body...to hold a competitive tender for a contract for the provision of health care services.” However, despite this clarification the possibility remains that decisions made by CCGs under Clause 5 could be subject to legal challenge.

Whilst we welcome the removal of some section of the original version of Clause 5, we believe that to ensure that CCGs will have the freedom to decide not to put services out to competitive tender, the whole of this Clause should be removed.

We recognise and value the commitment that the Government has made to listening to the concerns raised by a number of health bodies in relation to these regulations. Whilst we welcome some of the changes made in the new version of the regulations, we feel more work is needed to ensure they fully implement the commitments made by Ministers during the passage of the Act.

It should be up to commissioners to do what they feel is best for their patients, using their professional and clinical judgment.

The RCGP is grateful that the Committee took into account concerns we and others raised about the original regulations and reflected them in your 30th Report of 2012/13 Session. I would appreciate the Committee’s consideration of the above comments as you consider the new version of the regulations.

Yours sincerely,



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