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NHS Sheffield Clinical Commissioning Group

Detained Patients Project and the Community Enhancing Recovery Team

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Governing Body meeting

2 April 2015

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Is your report for Approval / Consideration / Noting

The purpose of this report is to allow Governing Body to approve a direct award of contract with a value of circa £4m per annum to Sheffield Health and Social Care NHS Foundation Trust (SHSCFT) to enable them to manage the care for patients:

a) Who are detained in an out-of-city placement under the Mental Health Act (section 3, 37, 45A, 47 or 48); and potentially

b) For patients currently not detained but who could (based on clinical opinion) end up being detained out-of-city without the intervention of the Community Enhancing Recovery Team (CERT).

Commissioning responsibility for a cohort of named patients (who meet part (a) of the above criteria) was devolved to SHSC on a non-recurrent pilot basis in 2014/15, and the CCG specifically needs to determine a way forward for commissioning arrangements for this client group in 2015/16.

Please note the purpose of this paper is **not** to seek a view on the clinical model. Issues pertaining to the scope of the CERT service have already been addressed via a clinician-to-clinician meeting which took place on 26th February 2015. The main outcome of that meeting was that the clinical model is in keeping with the CCG's commissioning intentions and should therefore be supported.

This paper is specifically to allow Governing Body to consider the issues involved in directly awarding this funding in light of the NHS (Procurement, Patient Choice and Competition) Regulations 2013.

Governing Body members should note that the current pilot (as noted above) will continue into 2015/16, pending formal decision.

Are there any Resource Implications (including Financial, Staffing etc.)?

The budget for 2015/16 is included in the financial plan

Audit Requirement

CCG Objectives

1. To improve patient experience and access to care.
2. To improve the quality and equality of healthcare in Sheffield.
3. To ensure there is a sustainable, affordable healthcare system in Sheffield.

Equality impact assessment

Have you carried out an Equality Impact Assessment and is it attached?
No. An equality impact assessment has not been undertaken.

PPE Activity

Although patients detained under the Mental Health Act do not have a legal right to patient choice (Page 65 '*Handbook to the NHS Constitution*' March 2013) the overarching clinical model has been shared with Healthwatch and the development will also be shared with members of Mental Health Partnership Board (MHPB), to ensure that members are kept abreast of developments in relation to the detained patient's pathway; and asked for their view as to how services should continue to be developed.

Recommendations

The Governing Body is asked to approve a direct award of contract to SHSCFT to commission or provide services for the client group covered in this paper with effect from April 2015; with due consideration to the requirements of the NHS (Procurement, Patient Choice and Competition) Regulations 2013.

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1. Introduction / Background

During 2014/15 the CCG devolved budgetary responsibility to SHSCFT for 32 named patients who were, at the beginning of the year, detained in an out-of-city placement. The budget for this was over £4m. The basis of the agreement was that if the Trust proactively worked with the 32 patients and changed the packages of care where appropriate, leading to some patients returning to Sheffield, then savings could be shared on a pre-agreed benefit share basis, taking into account the need to invest in the Community Enhancing Recovery Team (CERT).

The agreement was entered into non-recurrently and therefore treated as a pilot (by way of determining the proof of concept), with an explicit requirement to rebase the agreement every year (to account for the patients who have 'left' the list) should the pilot be continued. New patients have however been added in year and funding transferred accordingly. In addition, the agreement included specific reference to the fact that the Trust would establish a Community Enhancing Recovery Team (CERT), to enable a number of patients to return to Sheffield with enhanced community support. This was done at the Trusts risk, from within the overall devolved budget. The scope of the CERT service (including the type of service that should be commissioned in future) was discussed at the clinical meeting which took place on 26 February 2015. The outcome of that meeting was that the CERT is in keeping with the CCGs commissioning intentions, is an integral part of the Trusts acute care and rehabilitation programme and is therefore a service that we should support.

2. Rationale for Directly Awarding the Funding to SHSC

The NHS (Procurement, Patient Choice and Competition) Regulations 2013 are intended to enable commissioners to decide, in individual cases, how to secure services in the best interests of patients. The guidance clearly states that it is for CCGs to decide what services to procure and how best to do this. This includes deciding whether services could be improved by providing them in a more integrated way, by giving patients a choice of provider, and/or by enabling providers to compete to provide services.

Monitor's role is to ensure that commissioners have operated within the legal framework established by the regulations. Generally, Monitor will only act when they have received a complaint about an alleged breach of the regulations; and if the complaint is upheld they will normally instruct a CCG to tender the service that has been directly awarded.

The regulations are therefore fairly clear; competition should be employed where it serves the interests of patients, although it is not an end in itself. The regulations do

not impose competition on the NHS; therefore we are not duty bound to put services out to competitive tender, particularly where we feel there is only one provider capable of delivering a particular service. The Regulations therefore create a framework for procuring NHS health care services that is designed to ensure that commissioners secure high-quality, efficient services that meet the needs of patients. They also include requirements that are designed to protect patients' rights, set out in the NHS Constitution, to choose their health care provider and prohibit anti-competitive behaviour by commissioners unless this is in the interests of patients.

The regulations are structured as follows:

- Regulation 2 sets out the objective that commissioners must pursue whenever they procure NHS health care services. This objective is to secure the needs of patients who use the services and to improve the quality and efficiency of the services including through the services being provided in an integrated way (including with other health care services, health-related services or social care services).

- Regulation 3 sets out a number of general requirements that commissioners must comply with whenever they procure NHS health care services. Complying with these general requirements will help commissioners to achieve their overall objective in Regulation 2. Regulation 3 includes requirements:
  - To act transparently and proportionately, and to treat providers equally and in a non-discriminatory way;
  - To procure services from one or more providers that are most capable of delivering commissioners' overall objective and that provide best value for money;
  - To consider ways of improving services (including through services being provided in a more integrated way, enabling providers to compete and allowing patients to choose their provider); and
  - To maintain a record of how each contract awarded complies with commissioners' duties to exercise their functions effectively, efficiently and economically, and with a view to improving services and delivering more integrated care.

- Regulations 4 to 12 set out more specific requirements that commissioners must comply with. Complying with these requirements will help commissioners to comply with their overall objective in Regulation 2 and the general requirements in Regulation 3.

The rational for directly awarding this funding to SHSC is not dissimilar to that put forward in relation to Musculoskeletal (MSK) Services that was presented to Governing Body in April 2014. Governing Body will recall that legal advice received at the time confirmed that the CCG is within its rights to make a 'direct award' of contract, where we can clearly evidence that we have considered the requirements of the regulations and that the decision was in the best interest of patients. The Governing Body paper posed (and answered) a number of key questions by way of assurance that the decision to directly award was the right one. For the purposes of consistency, these same questions are considered (in context) in greater detail below:

Question 1

How the CCG has evaluated and identified the healthcare needs of the population (through health needs assessment, engagement of community, patients, clinicians and best practice).

The CCG is confident that through the devolvement of budgetary and commissioning responsibility to SHSC for this cohort of patients, both the quality and efficiency of patient care will be improved. This will be achieved through regular proactive reviews of every individual patient's needs; considering, where appropriate, options for how their needs can be met through the promotion of integration (for example by considering packages that include health and social care input) and via a recovery focused approach (which is in keeping with the CCGs aspirations).

So although a specific health needs assessment has not been undertaken, the devolved arrangement will ensure that the individual needs of patients are regularly reviewed to ensure that clinical best practice standards are upheld and that the needs of patients are being met in the most appropriate setting.

Question 2

How the CCG have taken a holistic view of the needs of healthcare users and ensured equitable access regarding different groups.

The holistic healthcare needs of individual patients will be addressed via the cyclical programme of reviews that forms part of the devolved arrangement. In addition, Care Programme Approach standards will also ensure that the wider needs of patients (and their family and carers) are also addressed.

There are no equity of access issues to note.

Question 3

Consideration to ensure sustainability of service.

The 'detained patient's pathway' is inextricably linked to a number of other care pathways. The CCG see this development as being part of a much wider aspiration to commission a wider pathway of care, incorporating preventative, acute (and rehabilitative) and aftercare services. By commissioning a prime contractor to do this will, it is planned, allow for greater flexibility of funding transferring between different services. This will promote the delivery of clinical best value across the system, rather than limiting it to specific areas.

SHSC has demonstrated that they are able to provide this service over the course of the last twelve months, which has established service capacity and a robust infrastructure. This is being managed by experienced and expert staff with extensive knowledge of the client group and their needs. Commissioning an alternative provider could potentially introduce a layer of complexity in managing care pathways, whereas the fluidity of care provision could be compromised through the creation of barriers between different providers.

Question 4

How working on an integrated basis has not prevented competition.

The CCG is confident that appointing SHSC as the prime contractor for this service will not prevent competition, given the plurality of providers that have been utilised during the last twelve months. Through assuming devolved responsibility, the Trust have continued to place patients in a variety of settings depending on clinical need.

Although the development of the CERT model has resulted in a 'new service' being developed (using the devolved funding), CERT is an integrated service which links a number of different elements of existing Trust core services. The fundamental aim of CERT is to bring patients back to Sheffield where it is in the patient's best interests to do so and by avoiding admissions where appropriate. The CCG is confident therefore that on that basis, SHSC are best placed to deliver the CERT approach, given the inextricable link with other Trust services (both community and inpatients).

Question 5

Evidence ongoing commitment to patient choice.

In terms of promoting patient choice, patients detained under the Mental Health Act do not have a legal right to choice (in the same way that those requiring emergency care for a physical illness do not have a right to choice) (page 65 '*Handbook to the NHS Constitution*' March 2013). Choice in mental health is restricted to the first outpatient appointment only.

Question 6

Taken into consideration any other potential providers and provide evidence of the objective process undertaken to identify the most capable provider, without going out to formal procurement. That the CCG has acted transparently, treating providers equally and in a non-discriminatory manner.

The devolved arrangement has not, in the last twelve months, resulted in a significant increase in the number of patients receiving services provided directly by SHSC, other than via CERT. SHSC have continued to use a range of other providers to allow continuity of appropriate care. SHSC do not have the capacity 'in house' to provide the specialist care needed for all patients in this client group.

The issue therefore is whether another provider, acting as a prime contractor, could undertake more effectively the case review/case management role for these patients on behalf of the CCG and interface with a range of specialist providers and with SHSC as the main provider of other mental health services in the city. The view of the CCG's mental health portfolio/contracting team is that SHSC are best placed to provide the service, given the experience and knowledge required to provide the case review/management aspects whilst at the same time seek to safely move patients within/across clinical pathways and services where appropriate; this will provide best value to the health and social care system in Sheffield in an integrated way.

An agreement similar to that operated in the pilot in 2014/15 can therefore be rolled forward to 2015/16 (and onwards) (pending Governing Body approval). This will ensure that SHSC '*deploy clinical expertise to review and improve the quality of the individual patient placements ensuring that patients are not only treated in the most appropriate setting, but also that Sheffield patients obtain regular scheduled high-quality reviews.*' This approach will ensure that the fundamental aim of the wider service is to continually improve the care of Sheffield patients and promote recovery.

3. Recommendation

Given that the outcomes of the clinical meeting were positive, and that the clinical view is that the CERT approach, as an integral element of the wider detained patients project, should be commissioned; the decision that Governing Body needs to take is whether this funding should be awarded directly to SHSC.

The overarching conclusion from our work is that given the integrated nature of the detained patient's pathway and the need for there to be robust links with other core commissioned services, SHSC are the best placed provider to deliver this service; given the pivotal role they play in the management of individual patient pathways.

The Governing Body is, therefore, asked to approve making a direct award of contract to SHSC to commission or provide services for the client group covered in this paper with effect from April 2015, with due consideration to the requirements of the NHS (Procurement, Patient Choice and Competition) Regulations 2013.

If Governing Body is in agreement to proceed, the next steps would be to finalise the agreement with SHSC and to reflect this in the 2015/16 contract.

Paper prepared by Jim Millns, Deputy Head of Contracting

On behalf of Julia Newton, Director of Finance

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