

**Consultation on The Draft National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) (Amendment) Regulations 2005:
Summary of Responses**

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1. This document provides background to the consultation; summarises responses; and sets out how introduction of the new regulations will affect commissioning practice. Consultation Document http://www.dh.gov.uk/Consultations/ClosedConsultations/ClosedConsultationsArticle/fs/en?CONTENT_ID=4114248&chk=bEHFO3.

Background

2. Primary care trusts and their counterparts in social services frequently commission long-term packages of care for adults with a diverse range of needs in care homes or independent hospitals in other PCT areas. These packages often need to be funded by both the NHS and social services and they tend to be costly packages of care.
3. Under current legislation, the responsible commissioner is the PCT where these specialist care homes and independent hospitals are located since most service users will be registered with a G.P in the local area. The amendments proposed by the Department of Health are to ensure that the costs of the care package do not fall solely on the host PCT.
4. The Department of Health published the Establishing the Responsible Commissioner guidance in October 2003 concerning the framework of responsibilities for commissioning an individual's care within the NHS. 2003 Guidance <http://www.dh.gov.uk/assetRoot/04/06/97/97/04069797.pdf>. As explained in this guidance, the PCT responsible for commissioning a patient's care is the one where the patient is registered with a G.P.
5. The 2003 guidance raised the possibility of amending the regulations governing packages of long-term care. At that time, the plan was to cover only packages of NHS continuing care which, prior to 1999, had been the responsibility of the health authority making the placement rather than the health authority where the person was registered with a G.P. Custom and practice within the NHS has been to also fund joint (NHS and social services) long-term packages of care for adults on a similar basis to NHS continuing care.

6. The consultation document contained draft regulations extending similar commissioning arrangements to these joint packages of care as applied to NHS continuing care. For the majority of primary care trusts, these changes in the regulations will serve to clarify the legal position in line with the way they are currently commissioning services and will ensure that all PCTs commission services consistently.

Services covered by new regulations

7. The new regulations cover provision of the following services, for those patients assessed as requiring continuing care at the time of placement:
 - Provision of accommodation in a care home or independent hospital located in the area of another primary care trust including board and other services, facilities and amenities;
 - Nursing care; and
 - Any other service planned to meet the patient's long-term health needs provided by one or more health service bodies.
8. The intention is that the provision of other services not covered by the new regulations will follow current commissioning rules and will be the responsibility of the PCT where the patient is registered with a G.P (normally the 'host' PCT).

Changing health needs

9. If the health needs of the patient, who is the subject of a placement, deteriorates or improves the following commissioning rules will apply. The 'placing' PCT will continue to be responsible for providing the accommodation and the services outlined above as long as the person is assessed as needing them, even if they cost more over time because of the patient's worsening condition or if the person moves to a different care home or independent hospital.

NHS funded nursing care

10. Paragraph 7 of the consultation document covered the position of patients receiving NHS funded nursing care only at the time of the placement. In these situations the 'normal commissioning rules' would apply, namely that 'the PCT associated with the G.P with whom the patient is registered' would be the responsible commissioner. It follows that, if a patient receiving continuing care recovered and the one NHS service remaining was NHS funded nursing care, then commissioning would follow G.P registration as it would for all those requiring this care alone. The normal commissioning rules would apply. Guidance on applying the new regulations will further expand on this point.

Children's services

11. The draft regulations were restricted in their effect to adults over the age of 18. However the consultation also included questions that specifically related to aspects of health and social care services for children to explore extending the regulations to include children's services.

Consultation responses

12. In total there were 63 responses to the consultation. 56 from Primary Care Trusts, Strategic Health Authorities and NHS Trusts and seven from other interested bodies (see Annex A).
13. The responses were overwhelmingly in favour of the amendments. The main benefits identified were:
 - (i) a simplification of the system that would reduce administration by minimising the area for dispute about which PCT should fund these high cost packages of care;
 - (ii) bringing the legal position in line with current commissioning practice for the majority of PCTs;
 - (iii) bringing fairness to the system and spreading the cost of this type of care;
 - (iv) encouraging PCTs to consider the local market for placements and closer working between PCTs and local authorities;
14. Some concerns were raised about the operation of the proposed new system:
 - (i) the need for proper consultation between the responsible PCT and the PCT where the care home or independent hospital located;
 - (ii) the process for undertaking care reviews and maintaining standards of care when a patient is placed outside the area of the commissioning PCT and who would be responsible for reviewing and monitoring;
 - (iii) the need for a disputes process that was transparent and accessible;
 - (iv) clarity over effective dates and the impact of the new regulations on existing placements.

Progress on introducing new regulations

15. The intention is for the draft amending regulations to be put before Parliament in 2006 with an effective date no earlier than 1 April 2006.

List of organisations that replied to the Consultation

Primary Care Trusts (PCTs)

Ashford
Barnsley
Bexley
Cambridge City
Central Liverpool
Central Cheshire
Chiltern and South Bucks
Chorley and South Ribble
Coventry
Croydon
Durham and Chester-le-Street
East Elmbridge Mid Surrey
East Kent
Enfield
Exeter
Gateshead
Gloucestershire
Hounslow
Isle of Wight
Islington
Langbaugh
Lincolnshire South West
Newark
North Nottinghamshire
Northampton
Northumberland
Pan Dorset
Plymouth
Redditch and Bromsgrove
Richmond
SE London
Southampton
Surrey
Swindon
Thames Valley
West Lincolnshire
Westminster
West Sussex
Yorkshire Wolds

Strategic Health Authorities

Avon and Gloucester
Dorset and Somerset
Durham and Tees Valley
Hampshire and Isle of Wight
Kent and Medway
South Yorkshire

NHS Trust

Northgate and Prudhoe
Oxleas
South London and Maudsley

Others

Age Concern
British Psychological Society
Guide Dogs
Parliamentary and Health Service Ombudsman
Royal College of General Practitioners
Royal College of Nursing
Royal College of Psychiatrists – Psychiatry of Learning Disability