NHS England

Our Ref: 35B. RR. 20140318
Your Ref:

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BY EMAIL.

Dr Steve Kell and
Dr Amanda Doyle,
Co-Chairs NHSCC Leadership Group

18 March 2014

Dear Steve and Amanda,

Re: CCG financial concerns and reflection on Ways of Working

Thank you for your letter of 7th March 2014 expressing the concerns of CCGs in relation to payment of legacy provisions, specifically around historical continuing health care payments. You also raised issues of how the matter was being handled. It was helpful to discuss this with you in more detail at our meeting on 11th March.

I will deal with the material issue first. You raised the risk sharing pool for CHC (continuing healthcare) payments itself to cover the payment of legacy provisions. Continuing healthcare is the overall responsibility of CCGs. The legal liability for legacy provisions were included in transfer orders put in place by DH prior to 1st April 2013. I note from your letter that your members feel strongly that the 2011/12 operating framework stated that legacy debt would not be passed on. I am advised however that this specified debt prior to 2011/12 and related more specifically to over-spends being carried forward. Legacy balances have in fact been passed to the NHS. It is clear that there has been some confusion about this which has not helped matters.

In December 2013, the board of NHS England agreed allocations to CCGs and included £250 million allocated on a fair shares basis to CCGs to cover the estimated payments in 2014/15 for legacy provisions. This was documented in the paper that went to the Board. I am advised that under treasury accounting regulations the payment of legacy provisions count against the NHS budget only when they are actually paid. Therefore any provisions made in prior years are not available under treasury accounting to cover these commitments. The total provision in PCT accounts was £800million, with the majority of this related to CHC legacy provisions. It is anticipated it will take several years to agree these claims so there will be significant sums paid out for the next two or three years. In 2013/14 payments of £88million have been managed in year by NHS England

on behalf of CCGs. However in 2014/15 NHS England has allocated all funds out to CCGs so this arrangement will not be possible.

The risk sharing pool has been put in place to avoid disproportionate payments having to be borne by a CCG in any one year. This enables CCGs to manage this risk better and also mitigates what would have been complicated accounting and financial reporting issues. The risk sharing pool has been allocated on a fair shares basis in line with how the £250 million was allocated to CCGs.

Your letter outlines that some CCGs consider this is paying twice and, whilst I appreciate why CCGs may have to come to this, there are some very specific accountancy rules that have impacted. Effectively provisions do not count against the NHS budget under treasury accounting rules and it is only when the payments are made. The utilisation of the provision held in NHS England's balance sheet will not fund these legacy payments as the treasury do not recognise provisions when made only when paid.

It is coincidental that this high level of payments has occurred at the same time new organisations have been set up. In the last regime the treasury accounting rules were able to be managed at a DH level as they were much smaller in nature. This spike in high value claims means that the NHS need to make specific arrangements to be able to make these payments and remain within allocated budgets and the mandate sum.

Whilst this may not directly assuage the concerns raised by your members, it does I hope explain the background.

The second issue you raised was the handling of this matter, and at our meeting last week we accepted the criticism that NHS England had not appropriately engaged or communicated on this issue. You will know that our intent at all times is to work with you and your members to have an open and productive relationship which can support both CCGs and NHS England in commissioning effectively for the populations we serve.

To avoid this happening again, we plan to establish an NHS Commissioning Assembly Finance Reference Group, where all matters of this nature could be aired and discussed, as equal partners. I believe this will help ensure we engage with CCGs in a timely fashion on issues that may affect CCGs, and enable greater transparency in our decision making. Paul Baumann, Chief Financial Officer, NHS England, has offered to chair this group, and his team will be happy to work with you on identifying a co-chair.

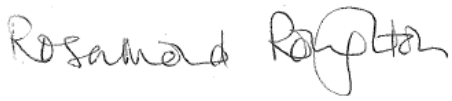
This group will have an important role in considering issues and providing advice and guidance on how we might collectively approach them. This will be helpful to us all when matters like CHC legacy payments arise and better align to our shared approach to 'Ways of Working'. Your letter outlines that you are keen to work with NHS England on the specific issue of CHC legacy and other issues to reach a collaborative conclusion. Members of NHS Clinical Commissioners have previously been part of the NHS Commissioning Assembly finance working group on allocations, including members of the NHS Clinical Commissioners Leadership Group, and we will ensure the invitation to the reference group is

extended to them. Please do advise if there are any further colleagues you would like to put forward to join the group.

Finally I wanted to acknowledge the more recent publication of guidance by NHS England relating to 'Dispute Resolution Process between Commissioners and Providers for the 2014/15 Contracting Process'. I recognise that this too has caused concern in the CCG community. We will provide you with the background to this publication and clarify issues in relation to content, publication and communication this week.

I do hope this response is helpful and will be keen to consider progress on this issue when we meet again in April 2014. As I said at the meeting, we are absolutely committed to working with you to put the "Ways of Working" into practice, and we will continue to listen from you and your members on how we can continue to improve our relationship.

Yours Sincerely,



Rosamond Roughton
National Director: Commissioning Development