PARLIAMENTARY BRIEFING: Debate on The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (SI 2013/500).

**Purpose of this briefing:** Lord Hunt of King’s Heath has tabled a motion to annul The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (SI 2013/500), with a debate scheduled to take place on 24 April. The Regulations set the rules for how Clinical Commissioning Groups (CCGs) should commission NHS services.

This briefing from Help the Hospices, Marie Curie, National Voices, Sue Ryder and Together for Short Lives provides members of the House of Lords with details of our concerns about the Regulations, and what we believe will be their unintended negative impact on charitable providers of NHS healthcare such as hospices.

**Our concerns, in brief, are:**

1. **The Regulations as they are currently worded will mean that competitive tendering could become mandatory in all but the most exceptional circumstances.**
2. **Given the burden of having to put each individual service out for tender, CCGs will tend to bundle services together to put out for contract, as currently happens in local government.**
3. **If contracts are bundled, then this could put them out of reach of voluntary sector providers who are, by their nature, providers of specialised care.**
4. **If voluntary sector providers are forced out of the market then this could have a negative impact on patients and the communities they live in, as voluntary sector providers add value by using charitably raised funds for patient care.**

We know that the Government wants the voluntary sector to have a greater involvement in delivering NHS services. The unintended consequence of this piece of secondary legislation is that voluntary sector providers may have fewer opportunities to provide NHS services, to the detriment of patients and their families.

We ask that the Lords take this into consideration when they debate and vote on the motion relating to The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (SI 2013/500) on 24 April.

**Our Detailed Concerns with the Regulations:**

1. **We think that the Regulations as they are currently worded could lead to mandatory use of competitive tendering by CCGs in all but the most exceptional circumstances.**

We know that the Government does not intend for this to happen, as it has made clear on several occasions when the Health and Social Care Bill was making its way through Parliament. However, the Regulations do not reflect this intent.

The problem hinges around the use of the word ‘capable’ in Section 5 of the Regulations, which state that CCGs may award a new contract to a single provider without advertising if they are satisfied that there are no other providers capable of delivering the service.
In the Impact Assessment for the Regulations, the Department of Health has taken a broad view of the word ‘capable’. A provider might be the only capable provider because it offers the highest standards of clinical safety, or because it can establish and provide the service more swiftly than others.

We suspect, however, that ‘capable’ will be interpreted narrowly to mean only that a provider is able to provide the service within the budget set out by the commissioner. This means that:

- There will be few if any services where there is only one capable provider.
- Providers will feel confident to regularly challenge CCGs’ commissioning decisions.
- Without legal cover to award contracts without advertising, CCGs will simply put all services out to competitive tender to avoid challenge.

2. **We think that, given the administrative and financial burden of having to place each individual service out for tender, CCGs will tend to bundle services when contracting.**

We are not against competition and support a mixed economy in healthcare, particularly where it serves patient interest. However, the Regulations as currently worded will likely lead to all contracts being tendered. This will place huge administrative and financial burdens on CCGs, who will likely seek to bundle contracts to reduce the financial and administrative impact of competitive tendering. This is what currently happens in local government, where competitive tendering is mandatory.

We are already seeing this happen, with Cambridgeshire and Peterborough CCG, for example – currently, they have put out for expressions of interest for a £1bn contract where all services related to older people have been bundled together. ¹

3. **If contracts are bundled, then they are out of reach of voluntary sector providers who are, by their nature, specialist providers of care.**

If the majority of contracts are bundled, this will start to force voluntary providers out of the market. Voluntary providers are by and large specialised providers who are governed by charitable objectives. Even the largest charitable providers would struggle to justify the resource and the risk needed to bid for large, bundled contracts, especially if most of the contracts were for services outside of their specialism. For small organisations, like independent hospices this would be impossible.

In some instances this will lead to voluntary sector providers being forced out of the market. Some would be able to survive by offering reduced services using their charitable funds alone, but many would lose their NHS income.

4. **If the voluntary sector is forced out of the market then this will have a negative impact on patients and families and also the communities in which they live.**

Ultimately, the loss of voluntary sector providers would lead to:

- Loss of specialism: voluntary providers deliver niche services, but they do it well.

• Loss of added value: many providers match or beat the funding they receive from the NHS in charitably raised funds and they use this money to enhance the care they offer, conduct cutting edge research, and investing in local communities.
• Added cost to the NHS, who would have to meet the gap left by charitable funding.

We know that the Government does not want to exclude voluntary sector providers from delivering NHS services. The Prime Minister and members of the Cabinet have repeatedly stated they want voluntary providers to play a vital role in the newly reformed NHS.

However, the unintended consequences of wholesale competition is that it could lead to a diminishing of voluntary sector participation. We fear this will lead to a loss of specialist services and skills that will ultimately lead to poorer care for patients and their families.

We ask that the Lords bear this in mind when they debate and vote on the motion relating to The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (SI 2013/500) on 24 April.

About Help the Hospices:

Help the Hospices is the UK charity supporting hospices and championing hospice care. As the national membership charity for 218 local hospices across the UK, we work with them, and other organisations, to advocate for and raise awareness of hospice care, promote and support clinical excellence and support those providing hospice care.

About the Marie Curie Cancer Care:

Marie Curie provides care to terminally ill people and their families across the UK, both through our hospices and nurses providing care directly in patient’s own homes. We facilitate one of the largest palliative and end of life care research programmes in the UK. We use the findings to deliver practical improvements in care and support and to campaign on behalf of terminally ill people, their carers, and their families.

About National Voices:

National Voices is the national coalition of health and social care charities in England. We work together to strengthen the voice of patients, service users, carers, their families and the voluntary organisations that work for them.

We have more than 150 members with 130 charity members and 20 professional and associate members. Our broad membership covers a diverse range of health conditions and communities and connects with the experiences of millions of people.

About Sue Ryder:

Sue Ryder is a charitable provider of health and social care services across the UK. We provide specialist neurological and palliative care in a range of environments including community and home-based care delivery alongside our seven hospices and six neurological care centres. We work across communities with patients, their families, commissioners, GPs and other health and social care professionals.
About Together For Short Lives:

Together for Short Lives is the leading UK charity for all children with life-threatening and life-limiting conditions and all those who support, love and care for them. We support families, professionals and services, including children’s hospices.

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