

HEALTH AND WELLBEING BOARD

12 MARCH 2015

REPRESENTATION BY THE HWB ON THE NHS MEDWAY CCG PRIMARY CARE COMMISSIONING COMMITTEE

Report from: Neil Davies, Chief Executive

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Summary

This report invites the HWB to nominate a member to represent the Board on the NHS Medway CCG Primary Care Commissioning Committee. Under his delegated authority from full Council the Chief Executive will then formally arrange the appointment of the nominated Board member.

1. Budget and Policy Framework

- 1.1 The Health and Wellbeing Board has been invited to appoint a Board member to serve on the NHS Medway CCG Primary Care Commissioning Committee. The appointment of Councillors to outside bodies is generally a matter for full Council. The Chief Executive has a delegation to arrange the appointment of Councillors to outside bodies, in consultation with Group Whips, to fill casual vacancies and make new appointments during the year. The Chief Executive also has a delegation to arrange the appointment of officers to outside bodies.

2. Request from NHS Medway CCG to the Council for Health and Wellbeing Board (HWB) representation on the Primary Care Commissioning Committee

- 2.1 NHS England is giving CCGs the opportunity to assume greater power and influence over the commissioning of primary medical care from April 2015. Primary care co-commissioning is one of a series of changes set out in the NHS Five Year Forward View. Each CCG may choose between the following three models of co-commissioning:
- delegated commissioning arrangements where the CCG takes full responsibility for commissioning GP services, including budgets, contractual performance management and complaints
 - joint commissioning where a CCG or group of CCGs form a Committee with their NHS England team to make joint decisions about GP services
 - greater involvement in primary care commissioning but with no decision-making functions.

- 2.2 NHS Medway CCG has submitted a proposal to undertake joint commissioning which requires the establishment of a local CCG Primary Care Commissioning Committee to exercise expanded primary medical care commissioning functions in conjunction with NHS England South East. As set out in Appendix A the role of the Committee will be to carry out the functions with the NHSE Sub Region relating to the commissioning of primary medical services under Section 83 of the NHS Act 2006 except those relating to individual GP performance management, which have been reserved to NHS England. This includes the following activities which fall within the range of responsibilities of the Committee:
- GMS, PMS and APMS contracts (including the design of PMS and APMS contracts, monitoring of contracts, taking contractual action such as issuing branch/remedial notices, and removing a contract);
 - Newly designed enhanced services (“Local Enhanced Services” and “Directed Enhanced Services”);
 - Design of local incentive schemes as an alternative to the Quality Outcomes Framework (QOF);
 - Decision making on whether to establish new GP practices in an area;
 - Approving practice mergers; and
 - Making decisions on “discretionary” payment (e.g., returner/retainer schemes)
- 2.3 In particular the CCG has advised that Primary Care are responsible for supporting and delivering various public health programmes with a view to preventing ill health, better diagnosis and improved treatment of long term conditions. The CCG has stated that fielding a HWB representative, who has knowledge of these issues and general practice, will provide a mechanism for the HWB and Council to provide challenge together with the opportunity to strengthen joint working between the organisations represented at the Committee.
- 2.4 The proposed membership of the NHS Medway CCG Primary Care Commissioning Committee includes a lay member for Public and Patient Involvement as Chair, a Lay Member for Governance as the Deputy Chair, , the Chief Clinical Accountable Officer, the Chief Operating Officer and Company Secretary and any other Governing Body Elected GP Member or Clinical Adviser. The CCG will be inviting Healthwatch Medway to attend in a non-voting capacity and has invited the Medway HWB to nominate a representative to attend as a member of the Committee with full voting rights. The request for Council representation on the new Committee states that the view of NHS England South East and NHS Medway CCG is that the HWB representative on the Committee should be a full voting member to achieve the fullest extent of collaboration and input.
- 2.5 However, the HWB is asked to note that NHS England guidance, “Next Steps towards primary care co-commissioning”, published in November 2014, says it is a matter for area teams and CCGs to agree the full membership of their Joint Committees. The guidance says in the interests of transparency and the

mitigation of conflicts of interest, a local Healthwatch representative and a local authority representative from the local HWB will have the right to attend the Joint Committee as non-voting attendees. This guidance was echoed in a letter from NHS England to local authority Chief Executives and HWB Chairmen dated 18 December 2014 which stated that CCGs must issue a standing invitation to the local HWB to appoint representatives to attend Primary Care Commissioning Committee meetings, including where appropriate, for items where the public is excluded from a particular item or meeting for reasons of confidentiality. The letter advised that those representatives would not form part of the membership of the Committee (emphasis added) and that whilst HWBs are under no obligation to nominate a representative it is considered there would be significant mutual benefits from their involvement. For example it would support alignment in decision-making across the local health and social care system.

- 2.6 In December 2014 NHS England published statutory guidance for CCGs on Conflicts of Interests which goes further, stating that a standing invitation must be made to the CCG's local Healthwatch and Health and Wellbeing Board to appoint representatives to attend Commissioning Committee meetings, including, where appropriate, for items where the public is excluded from a particular item or meeting for reasons of confidentiality. The guidance says these representatives would not form part of the membership of the Committee.
- 2.7 It is important that local arrangements are consistent with national guidance. Therefore the HWB is advised to nominate a member of the Board to attend meetings of the NHS Medway Primary Care Commissioning Committee as a non-voting participant at this stage. The HWB representative will need to be aware of the potential for conflicts of interest to arise and take appropriate action in each case. For example where the CCG and NHS England are considering any reconfigurations of primary care arrangements which might give rise to a counter-view from the local authority.
- 2.8 The Board is also recommended to request an annual report on the activities and decisions of the Primary Care Commissioning Committee to ensure that appropriate lines of accountability between the HWB representative attending the PCC Committee and the HWB are in place. This will enable regular review of the arrangements in the light of emerging best practice or new guidance.

3. Risk management

- 3.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk
Conflicts of interest arising for the HWB representative on the CCG Primary Care Commissioning (PCC) Committee	Conflicts of interest may arise between the role of the HWB representative on the PCC Committee and their role as an elected Councillor or paid officer of the Council. For example where the Council may disagree with proposed changes to primary care provision.	The HWB representative on the PCC Committee will be non-voting and will ensure they identify and declare any conflicts of interest arising and take appropriate action in each case.

4. Financial and legal implications

- 4.1 There are no financial implications arising from this report.
- 4.2 Section 13Z of the National Health Service Act 2006 provides that NHS England's functions may be exercised jointly with a CCG and also provides that arrangements made under that section may be on such terms and conditions as may be agreed between NHS England and the CCG. NHS England South East and NHS Medway CCG have agreed they will exercise primary care co-commissioning functions jointly through committees-in-common.
- 4.3 NHSE Managing Conflicts of Interest: Statutory Guidance for CCGs states that where decisions are to be taken by a CCG's governing body, care must be taken not to include a person who is disqualified from governing body membership. Schedule 5 to the National Health Service (Clinical Commissioning Groups) Regulations 2012 provides that local authority members are disqualified, as are individuals who, by arrangement with the CCG, provide it with any service or facility in order to support the CCG in discharging its commissioning functions. This disqualification could extend to the officers who are members of the HWB since "commissioning functions" of a CCG are defined as the functions of a Group in arranging for the provision of health services as part of the health service. These legislative provisions strengthen the argument for the HWB representative on the PCC Committee to be non-voting participants.
- 4.4 Participation by a representative of the HWB who is a Councillor at meetings of the CCG Primary Care Commissioning Committee will not extend to committing the Council to any course of action unless this falls within the terms of reference of the HWB and has been authorised by the Board in advance. If the representative of the HWB is an officer of the Council they will be able to make commitments on behalf of the local authority insofar as these fall within the terms of reference of the Board and any delegated authority they have from the Council and from the Leader/Cabinet.
- 4.5 While the HWB has no legal obligation to nominate a representative to the committee, it may do so. If HWB does nominate a representative, that representative should be invited to attend committee meetings. The representative will not be a member of the committee and will have no voting rights. It would therefore be lawful and proper for the HWB to nominate a representative without voting rights in accordance with the recommendations in this report.

5. Recommendations

- 5.1 To agree to a request for representation by the Medway HWB on the NHS Medway CCG Primary Care Commissioning Committee subject to participation being on a non-voting basis.
- 5.2 To nominate a member of the Board to fulfil this role and recommend the Chief Executive to arrange the appointment of the nominated HWB member to the Committee for the remainder of the Municipal Year 2014/15 (unless the nominee is an officer in which case the term of office will be until the first meeting of the HWB in the municipal year 2015/16)
- 5.3 To agree that HWB representation on the Primary Care Commissioning Committee should be reviewed and a nomination agreed by the HWB at its first meeting in each municipal year, noting there may be a hiatus in representation if the representative is a Councillor who is not re-appointed to the Board at the Annual Council meeting.
- 5.4 To request an annual report to the Board on the activities and decisions of the Primary Care Commissioning Committee to ensure that appropriate lines of accountability between the Committee and the HWB representative are in place.

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Background papers

Next steps towards primary care co-commissioning – published by NHS England in November 2014

NHSE Managing Conflicts of Interest: Statutory Guidance for CCGs – published December 2104