

CABINET

14 APRIL 2015

SECTION 75 AGREEMENT WITH NHS ENGLAND FOR COMMISSIONING HIV SERVICES

Portfolio Holder: Councillor David Brake, Adult Services
Report from: Dr Alison Barnett, Director of Public Health
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Summary

This report asks Cabinet to agree to entering into a section 75 agreement with NHS England for the commissioning of HIV services. This will allow the council to commission an integrated sexual health service for Medway including provision of contraception and the diagnosis and treatment of sexually transmitted infections including HIV.

1. Budget and Policy Framework

- 1.1 The Health and Social Care Act 2012 gave upper tier local authorities responsibility for commissioning comprehensive sexual health services including contraception and the testing and treatment of sexually transmitted infections as part of their new public health duties. Responsibility for commissioning services for the treatment of Human Immunodeficiency Virus (HIV) remained with the NHS and is part of the specialist commissioning function of NHS England.
- 1.2 The Cabinet is asked to accept this report as an urgent item because the next Cabinet meeting is not scheduled to take place until mid June. Delaying the approval of the Section 75 agreement until then will cause a delay in the tender process for the commissioning of an integrated sexual health service, which in turn would leave the new premises for the delivery of these services unoccupied at the Council's expense.
- 1.3 A revised Forward Plan has been published in accordance with both Section 11 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) 2012 and Rule 17 (Special Urgency) of the Access to Information Rules as set out in the Constitution. The Chairman of the Health and Adult Social Care Overview and Scrutiny Committee has agreed that the proposed decision is urgent and cannot reasonably be deferred for the reasons set out above.

2. Background

- 2.1 Cabinet received a Gateway 1 paper on the procurement of sexual health services on 28 October 2014 (Cabinet decision 186/2014). This outlined the intention to procure an integrated sexual health service with the council commissioning services on behalf of NHS England.
- 2.2 Making it work: A guide to whole system commissioning for sexual health, reproductive health and HIV (Public Health England, March 2015) described the need to commission integrated services and for commissioners to collaborate to achieve this. In Medway the diagnosis and treatment of HIV are provided by a single provider, Medway NHS Foundation Trust.

3. Advice and analysis

- 3.1 A section 75 agreement with Medway Council as the lead commissioner would facilitate the commissioning of an integrated sexual health service through a single procurement process and contract.
- 3.2 Medway Council is responsible for commissioning the largest part of the service (circa 85%) so is best placed to be lead commissioner.

4. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
There is an additional burden on the Council to commission the integrated service	Additional work is required by council staff to commission the HIV treatment and care element of the service	The section 75 agreement will specify the responsibilities of NHS England to support the commissioning of the service.	D III

5. Consultation

- 5.1 Consultation with the public, providers and commissioners has supported the proposal to commission an integrated sexual health service.

6. Financial implications

- 6.1 The sexual health services for which the council is responsible will be funded through the public health grant.
- 6.2 NHS England will be responsible for providing funding for the HIV treatment and care costs of the service.

7. Legal implications

- 7.1 The Council has an obligation to provide a number of health service functions set out in section 2B of the NHS Act 2006 and the Local Authorities (Public Health functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013. Part 2 regulation 6 relates to sexual

health provision by the local authority. Local Authorities have been statutorily responsible for commissioning and delivering public services for sexual health since 1 April 2013.

- 7.2 Section 75 of the National Health Service Act 2006 allows local authorities and NHS bodies to enter into partnership arrangements to provide a more streamlined service and to pool resources, if such arrangements are likely to lead to an improvement in the way their functions are exercised. Section 75 of the Act permits the formation of a pooled budget made up of contributions by both parties out of which payments may be made towards expenditure incurred in the exercise of both prescribed functions of the NHS body and prescribed health-related functions of the local authority.
- 7.3 The decision to enter into a section 75 agreement is a decision for Cabinet. Cabinet may lawfully delegate this decision to the Director of Public Health in accordance with the recommendation below.

8. Recommendation

- 8.1 It is requested the Director of Public Health, in consultation with the Assistant Director, Legal and Corporate Services and the Portfolio Holder for Adult Services, is given delegated authority to negotiate the terms of the agreement and enter into to it on behalf of the Council.

9. Suggested reasons for decision(s)

- 9.1 A section 75 agreement with NHS England for Medway Council to commission HIV treatment and care services on their behalf will enable the commissioning of an integrated sexual health service for the residents of Medway.

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Background papers

None