



17 December 2010

FOR IMMEDIATE RELEASE

Cooperation and Competition Panel (CCP) to conduct a sector review into the operation of the 'any willing provider' model of choice in elective NHS services

The CCP has been asked by the Department of Health and Monitor to conduct a study into the operation of the 'any willing provider' model of choice in acute elective NHS-funded healthcare services in the context of the *Principles and Rules for Cooperation and Competition* (Principles and Rules).

The CCP, Department of Health and Monitor have received informal complaints and expressions of concern from a number of providers – both NHS and independent sector - regarding alleged behaviour which is inconsistent with national Government policy on free choice of elective care and key provisions of the Principles and Rules. In particular, there have been complaints involving alleged discrimination between providers on the basis of ownership, and behaviour inconsistent with the promotion of patient choice, including choice of any willing provider.

The CCP has been asked to review the commissioning and contracting practices adopted by PCTs in respect of patients who are entitled to be offered a choice of provider for their first outpatient appointment. The CCP has also been asked to assess the consistency of PCT contracting practices in relation to national choice policy and the relevant provisions of the Principles and Rules. In conducting the study, the CCP has been asked to examine in particular:

- if PCTs are restricting choice and competition, e.g. by constraining the services providers can provide, attempting to set 'caps' on expenditure with providers, or dissuading GPs from referring to particular providers in ways that are inconsistent with the Principles and Rules; and
- whether different contract and payment terms are being offered which potentially discriminate between providers on the basis of ownership

The CCP has been asked to report by June 2011. An initial assessment will be published in February. The final report will be made public and form the basis of advice to the Department of Health and Monitor.

CCP Director Andrew Taylor commented:

"The CCP welcomes the opportunity to investigate these issues in the context of a focused study. We hope that the findings of such a review will be helpful in signalling the behaviours expected of commissioners in enabling an 'any willing provider model' for elective care, as well as bolstering provider confidence in fair competition and patient confidence in the operation of choice".

Health Minister Lord Howe commented:

"Choice and competition are important in driving up quality and efficiency in services for patients and the taxpayer. This review will help ensure that our commitment to giving patients greater choice is realised. It will also help inform the development of our proposals for the expanded operation of 'any willing provider' in the future. I look forward to receiving the Panel's initial advice early next year."



CO-OPERATION & COMPETITION PANEL
FOR NHS-FUNDED SERVICES

Dr David Bennett, Monitor's Chief Executive, commented:

"In asking the CCP to conduct this study, Monitor is keen to establish whether patients and taxpayers are getting the full benefit of choice and competition. Used effectively, competition can stimulate innovation and productivity and lead to improvements in quality. However, choice is a key element of this.

"Prompted by a number of complaints that choice and competition may be being restricted, Monitor and the Department of Health decided to commission this review in the interest of patients and taxpayers. I look forward to hearing the CCP's recommendations in due course."

ENDS

Notes to Editors:

1. More information on the work of the Cooperation and Competition Panel's (CCP) can be found on the CCP's website at www.ccp-panel.org.uk.
2. To assist in undertaking the study, the CCP will be writing to stakeholders for the purposes of gathering information. This will include Primary Care Trusts, General Practice, independent sector providers, NHS acute and mental health trusts, including NHS Foundation Trusts, and Strategic Health Authorities. Interested parties are also encouraged to submit evidence by email to: cases@ccp-panel.gsi.gov.uk. Initial submissions should be received by **31 January 2011**.
3. The agreed Terms of Reference, including the full timetable for the study, are attached.
4. The Principles and Rules for Cooperation and Competition form the basis of the Department of Health's policy of managing cooperation and competition in the NHS in a fair, consistent and transparent manner. The Principles and Rules aim to ensure the NHS comprises providers and commissioners who deliver the needs of their patients and populations, and that both providers and commissioners co-operate to foster patient choice and offer patients an experience of a seamless health service, regardless of organisational boundaries, whilst maintaining service continuity and sustainability. The role of the CCP is to provide independent advice on the application of the Principles and Rules, under sponsorship from the Department of Health and Monitor.
5. For inquiries about the Co-operation and Competition Panel contact Tom Frusher, Policy and Communications Director, on 0207 270 5442/07825 256 530 or visit www.ccp-panel.org.uk

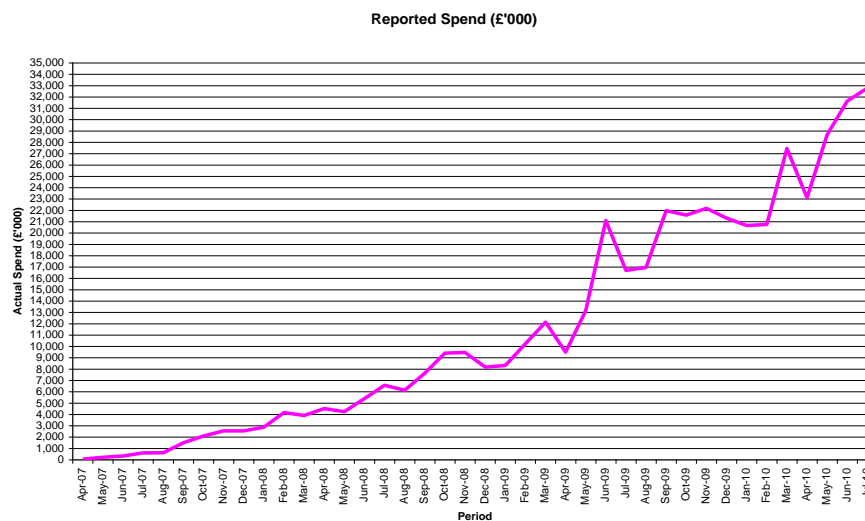


REVIEW BY THE CO-OPERATION & COMPETITION PANEL OF THE OPERATION OF 'ANY WILLING PROVIDER' FOR THE PROVISION OF ROUTINE ELECTIVE CARE UNDER 'FREE CHOICE'

TERMS OF REFERENCE

BACKGROUND:

1. 'Free Choice' of elective care was introduced in 2008, allowing patients requiring routine elective care to be treated by any willing provider who met NHS standards and price and held an Extended Choice Network (ECN) contract.
2. Choice is the key driver of effective competition in health care markets, which has been shown to improve patient outcomes and also the efficiency of patient care. Without choice, competition will not function well and the potential gains that it can deliver will be lost. This is the case whether choice is exercised by patients, or by commissioners on behalf of patients. It is therefore important that choice in the NHS is protected.
3. Since 2008 the Independent Sector (IS) providers have increasingly delivered care to patients. The graph below shows the reported spend on elective services delivered through the Extended Choice Network. The increase in the proportion of services delivered by the IS is either a consequence of patient choice or alternatively commissioning decisions.



4. The PCTs are currently undertaking a large amount of activity which may have a significant impact on plurality within the provider landscape. This activity includes how to address the issues associated with moving away from the ECN to standard contracts and that some Independent Sector Treatment Centre contracts are expiring.



5. In some circumstances there are real tensions between competition in and competition for relevant markets under an Any Willing Provider (AWP). The tensions for example arrive where an incumbent NHS provider is willing to undertake activity at a lower cost for a given volume but this would preclude patients from having any meaningful choice (and this may have detrimental effects on the quality of care that is delivered in any given health economy). The DH and Monitor want to ensure that the importance of choice is a key consideration in such circumstances and that other national rules (including those relating to tariff) are being complied with in such circumstances.
6. Since the early summer, the DH, Monitor and CCP have received expressions of concern from a range of providers concerning alleged behaviours which are inconsistent with national policy on Free Choice of elective care and key provisions of the Principles and Rules for Cooperation and Competition, for example, not discriminating between providers on the basis of ownership and promoting patient choice, including – where appropriate – choice of any willing provider.
7. The DH and Monitor consider that it is in the interests of patients and taxpayers to request that the CCP undertakes a market study into the operation of AWP for elective choice.

PURPOSE OF REVIEW

8. The purpose of this review is to:
 - (a) examine whether and how AWP is being implemented across England;
 - (b) identify any forms or patterns of behaviours that are inconsistent with the PRCC; and
 - (c) produce a report with any relevant recommendations to the DH and Monitor or guidance for the sector.
9. It is important to highlight that the purpose of this review is not to generate any specific cases for enforcement action and in its advice and recommendations the CCP will not seek to assess the compliance of individual organisations with the Principles and Rules but rather should focus on general issues related to practices which raise concerns.
10. In undertaking this study, the DH and Monitor are interested to know the extent and materiality of any problem that currently exists and to what extent this is caused by:
 - (a) PCTs restricting choice and competition, such as by constraining the services providers can provide, attempting to set 'caps' on expenditure with providers, or to dissuade GPs from referring to particular providers in ways that are inconsistent with the PRCC; and
 - (b) different contract and payment terms being offered which potentially discriminate between providers on the basis of ownership, such as payment at national tariff, and rules on follow-ups.



11. The review will potentially generate broader lessons to inform the roll-out of AWP to many other services by 2013 (subject to consultation) and bolster provider confidence in fair competition and patient confidence in the operation of choice.

SCOPE OF THE REVIEW

12. That the CCP be asked to review the commissioning and contracting practices being adopted by PCTs in 2010/11 in relation to enabling patients to be able to choose Any Willing Provider who meets NHS standards and price when referred for routine elective care in England, and consistency with national choice policy and guidance and the relevant provisions of the PRCC.

PROPORTIONALITY

13. The DH and Monitor have considered alternatives to this market study, but believe the concerns in this area warrant the study. The urgency of this study is also driven by the volume of activity that PCTs are currently undertaking in this contracting year.

TIMING

14. The timing of the review is set out below:

CCP publicly announces study and calls for submissions	17 December 2010
Deadline for initial submissions	31 January 2011
Initial Assessment published for comments	25 February 2011
Deadlines for comments on Initial Assessment	25 March 2011
Final study and recommendations published	June 2011