25 April 2013

Direct payments for healthcare: A consultation on updated policy for regulations

1. The Royal College of General Practitioners (RCGP) welcomes the opportunity to respond to the Department of Health's consultation on direct payments for healthcare.

2. The Royal College of General Practitioners is the largest membership organisation in the United Kingdom solely for GPs. Founded in 1952, it has over 46,000 members who are committed to improving patient care, developing their own skills and promoting general practice as a discipline. We are an independent professional body with enormous expertise in patient-centred generalist clinical care. Through our General Practice Foundation, established by the RCGP in 2009, we maintain close links with other professionals working in General Practice, such as practice managers, nurses and physician assistants.

3. We gratefully acknowledge the contributions of the RCGP Centre for Commissioning and RCGP representatives on the Personal Health Budgets Task and Finish group in formulating this response.

Our response

Annex B - Proposals for changes to direct payments for healthcare policy
Question 1. Do you agree that these are the right criteria to be used to determine eligibility for a personal health budget? Should they be prescribed in regulations?

4. The RCGP agrees that decisions for offering personal health budgets should be taken by CCGs at a local level and broadly agrees with the proposed criteria for determining eligibility.

5. In our view, eligibility for personal health budgets should be based on the level of health need and not on diagnosis, and must be firmly rooted in the adoption of a care planning approach. The care planning process must form the context for decisions about how personal health budgets are allocated, with patients being asked to agree the outcomes of their care plan and the way in which their budget should be utilised to support these.

6. With regard to eligibility for direct payments in particular, CCGs should have the right to refuse direct payments, where there is good reason to believe that the individual will not adhere to what has been agreed through their care plan.

7. The RCGP agrees that deciding whether the benefit of having a direct payment for healthcare outweighs any additional costs is complex and will vary depending on an individual's needs and the local circumstance. We urge the Government to take a slow and gradual approach to the roll-out of direct payments to enable learning from the pilot sites and the 'go further faster' areas to inform guidance for CCGs.

8. We would like to see clear and comprehensive guidance for commissioners, doctors and health and social care professionals that evolves and is updated when new information or knowledge become available – and we are keen to be involved in the development of this guidance.

9. In our view, the guidance should go beyond simply the question of eligibility and not be limited in scope to the direct payment mechanism. Alongside the areas suggested in the consultation, we would like the guidance to include: key principles to help inform CCGs about how to deliver a personal health budget; possible criteria for taking decisions on what treatments and services can be included within a personal health budget (see also our response to Q3 below); and methodologies for setting personal health budgets.

10. With regard to whether the criteria set out in the consultation document should be prescribed in regulations, we would like to sound a note of caution about transcribing the wording of the condition set out in 39 b) into regulations. Although we agree that this is a sound and sensible principle, we are concerned that if commissioners are obliged to ensure that the potential benefits of a direct payment outweigh the costs in every case,
the process of approving direct payments could become complex and difficult - particularly as at present there is no established method for deciding whether payments offer value for money. We agree that commissioners should have regard to the need to ensure value for money, but we suggest that further thought is given to the wording of the regulation.

11. Similarly, while the considerations set out at the top of p.14 of the consultation document are sensible, caution should be exercised before enshrining these principles in guidance that is intended to be mandatory, in order to ensure that the decision-making process by CCGs is not unnecessarily lengthy.

**Question 2. Do you agree with our proposal to separate out clauses in respect of children and adults who lack capacity? Are there any other capacity related issues you would like to see addressed?**

12. We agree with the proposals to separate clauses in respect of children and adults who lack capacity, in order to make the regulations consistent with other health legislation.

13. There are no other capacity related issues that we would like to see addressed at this stage.

**Question 3. Do you agree that personal health budgets should not be allowed to be spent on the services listed above? Are there any other services which should be excluded?**

14. We agree that the services listed should be excluded from personal health budget spending. In particular, we strongly support the government’s exclusion of general practice, emergency care, operations and prescription from the scope of personal health budgets.

15. It is essential that each CCG has a clearly defined set of criteria for taking decisions on what treatments and services can be included within a personal health budget, and possible approaches to establishing these should be included within the guidance for commissioners (please see also our discussion of guidance in Q1 above). These criteria must be clearly understood by patients, clinicians and brokers alike, and commissioners should also be required to put in place an established process for resolving disputes concerning the application of these criteria.

16. Possible criteria include:
• proposed treatments and activities must be clearly linked to the health outcomes set out in the patient’s care plan;

• while approval should not be withheld on the grounds that there is no evidence of clinical effectiveness, there should be reason to believe that the proposed treatment or service could be beneficial to the health of the individual concerned;

• approval should not be given to services or treatments where there is evidence to suggest that they will be harmful to the patient;

• personal health budgets should not be used to pay for treatments that the NHS would not normally fund because a decision has been taken by NICE or an equivalent body that they are not a cost-effective use of NHS resources.

Question 4. Do you agree that the list of information, support and advice that patients are entitled to ask their CCG or the Board for should be supplemented with the items above?

17. We welcome these additions to the list of information that may be provided to a patient by their CCG or the Board. In particular, we believe that it is vital for commissioners to inform patients about the amount of money that will be in their budget, how the figure has been arrived at, and how to request that it is reviewed. Regarding the latter point, we note that the consultation document states whether and how it can be reviewed. We believe that all recipients should have the right to a review of the amount of money in their budget – and this right should be enshrined in the regulations.

18. We agree that it should be good practice to provide potential recipients with as much information as possible about services that can be purchased using personal health budgets, as well as information and support throughout the process. It is important that all information is kept up-to-date and, where possible, outlines the range of different providers available to patients.

Question 5. Do you agree that there should be the option of paying one-off direct payments for healthcare into an individual’s personal bank account?

19. We agree that there should be the option of paying one-off direct payments for healthcare into an individual’s personal bank account, provided that there is no good reason to believe that they will not adhere to what has been agreed through their care plan.
20. While direct payments can offer benefits to some patients, it is important to recognise that they will not suit everyone. There are obvious risks around misspending or mismanagement of funds, whether wilful or otherwise. Consequently, the RCGP recommends that, as has been the case with the personal health budget pilots, CCGs should have the flexibility to refuse direct payments, including one-off direct payments, where objective grounds exist for doing so.

21. For those patients that do receive one off direct payments into their personal bank accounts (as opposed to into a separate bank account set up specifically for the purpose), it is vital that adequate support systems are put in place to ensure that the process works successfully and payments are accounted for. For example, it is important to make clear that recipients are not permitted to use private means to ‘top up’ one-off direct payments, and to ensure that this rule is adhered to by individuals. (Please see also our response to Q8 below).

**Question 6. Do you agree that local authorities should be included in the scope of the regulations for direct payments for healthcare and public health?**

22. The RCGP strongly supports greater integration of care around patient needs and across the boundary between health and social care, we are therefore supportive of enabling local authorities to fund direct payments for public health services which have transferred across to them as part of the implementation of the Health and Social Care Act 2012.

**Question 7. What are your views on friends or family members being paid for managing complex or large healthcare packages? How should this be defined, for example should it be linked to the size of the direct payment?**

23. It would clearly not be appropriate for everyone managing direct payments to be paid for their activities. However, we think that this should be an option that is available to CCGs or the Board, with the suitability of potential recipients to be assessed on a case by case basis.

24. We are concerned about the potential for misuse of this policy – for example family members may be incentivised to take on the task of managing complex care packages when they are not competent to do so. The assessment process by CCGs or the Board must therefore be rigorous, with recipients subject to regular review. We also suggest that roll-out should be gradual, to enable further learning from different areas in order to develop best practice guidelines.
25. With regard to defining eligibility, we believe that this should be approached on a case by case basis. It may be helpful to establish a minimum size of direct payment to qualify for eligibility. We would welcome more detailed proposals as to how this could work.

Annex C - Areas of the direct payments for healthcare policy set in the regulations that we propose keeping the same

Question 8. Do you agree that these regulations should remain the same? If not, what would you like to see changed?

26. The RCGP particularly welcomes the commitment to ensure that direct payments for healthcare are sufficient to meet in full the cost of the services identified in an individual’s care plan, as set out in regulation 16. We believe that the methodology for setting personal health budgets should be unambiguously based on the principle of the provision of services according to health need, free at the point of use.

27. We would like confirmation that the rules that have been in operation for the pilot schemes regarding ‘top up’ payments will also apply under the new regulations. These rules prohibit individuals from topping up personal health budgets with their own private funds, and we strongly believe that this policy should remain unchanged.

Question 9. Are there other areas that you would wish to see in regulations? If so, what are they?

28. We do not wish to see any other areas in regulations at this stage.

29. However, in order to promote integrated care, we would like to see included in guidance for CCGs a provision relating to the exchange of information between healthcare providers and GPs. We would like thought to be given to how best to ensure that providers of personal health budgets share relevant information with the patient’s GP (subject to the patient’s consent), so that the patient’s healthcare record can be kept up to date.

30. We would also welcome further clarification, set out in guidance, as to who will be responsible for: developing the patient’s care plan; reviewing the care plan; and keeping track of payments for personal health budgets. These are all potentially time-consuming areas that may cause delays in the process of allocating and implementing personal health budgets. We would recommend that thought is given to greater mention of the voluntary sector’s role in assisting in these areas.
Question 10. Could the proposals have any perceived or potential impact on equality including people sharing protected characteristics under the Equality Act 2010?

31. Alongside increased choice and empowerment, personal health budgets also have the effect of shifting responsibility and risk from the NHS and onto the individual. Without appropriate support, there is a danger that some groups of patients may prove less able than others to cope with this, potentially leading to increased inequalities. This is particularly likely to be an issue for older people, those who are more vulnerable, and for patients with direct payments.

32. The introduction of personal health budgets may also lead to increased scope for the emergence of postcode lotteries between different areas. This could arise, for example, as a result of differences in the budget-setting methodologies adopted, or in decisions taken regarding what treatments and services personal health budgets can be used to purchase. Clear and comprehensive guidance for commissioners, doctors and health and social care professionals is therefore vital (please see also our response to Q1 above).

33. Patients could also be disadvantaged if their budget runs out prior to the end of its allocated span, for instance because their needs have changed, or simply because of the inherent difficulties of establishing a budget formula that accurately reflects need. This risk is likely to be greatest for patients who are least inclined or able to argue the case for their budget to be increased.

We thank you again for the opportunity to respond to this consultation and we look forward to ongoing dialogue with the Department of Health as personal health budgets are rolled out. Please do not hesitate to contact me if you have any questions about our response.

Yours faithfully,

Professor Amanda Howe MA Med MD FRCGP

Honorary Secretary of Council