



EXECUTIVE MEMBER DECISION

REPORT OF: Executive Member for Health and Wellbeing

LEAD OFFICERS: Director of Public Health

DATE: 17th December 2019

PORTFOLIO/S AFFECTED: Health and Wellbeing (Please Select...)

WARD/S AFFECTED: All

SUBJECT: Updated Policy on 'Out of Area Tariff' sexual health service payments and cross charging arrangements.

1. EXECUTIVE SUMMARY

Local authorities have a statutory duty to ensure that comprehensive, open access, confidential sexual health services are available to all people, including non-residents. The Council meets this requirement through a block contract with Lancashire and South Cumbria Foundation Trust (LSCFT). Department of Health guidance states that arrangements for payments to providers outside a local authority's area are for local determination. On 30th September 2016, a decision was made by the Executive Member for Health to pay sexual health providers from out of the borough for Genitourinary Medicine (GUM) activity only, where activity has taken place within the Lancashire and South Cumbria Integrated Care System (ICS) geographical area. The agreement was effective from 1st April 2016 and was reviewed in October 2016 with an agreed extension to 31st March 2017. This arrangement has continued and now needs to be reviewed.

Commissioners and providers across the ICS footprint agreed that primary attendances for GUM would be paid using the tariff obtained from Pathway Analytics (a data collection system which considers activity and patient flow). Any additional tariffs including contraception and psychosexual services were excluded from the agreement. The ambition was that all data and activity would be shared across the geographical footprint and monitored monthly from 1st April 2016. However, this has only been recently facilitated by commissioning partners from Lancashire County Council.

As the local provider, Lancashire and South Cumbria Foundation Trust (LSCFT) has continued to shadow and monitor the tariff-based payment model even though Blackburn with Darwen (BwD) commissioners have maintained a block contract arrangement. This has enabled a more transparent understanding between commissioners and providers with regards to the efficiency of the contract delivery based on a block payment. It has also enabled an accurate understanding of the costs associated with outside residents coming into the local service in BwD which has remained in line with the mandated open access requirements.

The Council has regularly received requests for payments from providers outside the ICS which have not been paid in accordance with the local policy. A number of providers have questioned this policy and accordingly the Council obtained independent legal advice from a Queen's Counsel (Barrister).

That advice concluded that the Council is entitled to have reached its current position in relation to these payments. Having considered the advice the Council has decided to review its position in relation to payments in the areas of Lancashire and South Cumbria to ensure a consistent approach.

The current sexual health service contractual arrangements ensure the open access provision will remain subject to the block contract arrangement until 31st March 2021. A contract variation will be issued to LSCFT to reflect the changes in expectations for cross charging of the sexual health provision.

2. RECOMMENDATIONS

That the Executive Member approves the revised policy which is as follows:-

- Continue to meet the requirements of the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 through the Council's block contract with LSCFT.
- Not to pay 'out of area sexual health tariff payments' for sexual health service activity (including within the local ICS geographical area)
- Keep the intelligence under review so that any emerging issues or risks can be escalated via the Public Health Senior Leadership Team.
- Ensure that commissioners continue to review activity and cost on an ongoing basis.
- Take into account any revised legislation or national guidance from Public Health England and / or the Department of Health and Social Care.
- Issue a contract variation to LSCFT to reflect the changes in expectations for charging arrangements within the ICS footprint.

3. BACKGROUND

Since 1 April 2013, Local Authorities have been mandated to ensure that comprehensive, open access, confidential sexual health services are available to all people, including non-residents. When the allocations in respect of the ring fenced public health budgets were announced in January 2013, the Advisory Committee on Resource Allocation recommended the development and agreement of charging where 'out of area' services are provided to other authorities' residents. The Department of Health supported this recommendation as a system of cross-charging but have confirmed that arrangements are for local determination. Local Authorities are not mandated to pay cross charges, and any policy on such payments should not impact on the local funding formula.

The Department of Health published a cross charging document in August 2013. This document outlined the key principles to assist commissioners and providers to develop fair payment systems for sexual health services. The 'key principles' of cross charging were originally endorsed by the Local Government Association, the Association of Directors of Public Health and Public Health England (PHE). These 'key principles' have been reviewed more recently by the Department Of Health and Social Care in 2018, and a further guidance document has been published. The published version continued to state that these arrangements are subject to local determination, and although seen as good practice they are not mandated.

PHE also carried out a national review of commissioning in 2017 and the findings did demonstrate that this payment method has; 'generated an administrative burden that can lead to disputes between commissioners' and that 'cross boundary flows remain a major contractual issue, with different tariffs, data sets and specifications leading to disputes between commissioners and providers'. In response, PHE advised that guidance in this area should be reviewed but this has not yet been actioned.

The monitoring of tariff activity and the corresponding payment processes are currently resource intensive within the ICS geography. If this arrangement was to be continued or indeed expanded to a wider geographical area this would put additional pressure on an already stretched team and a progressively shrinking public health budget. This policy change will reduce the payment processes, but will still maintain scrutiny of the activity.

4. KEY ISSUES & RISKS

As the use of cross-charging arrangements and 'out of area' tariff prices are not mandatory for Local Authorities, some of the following key issues continue to be debated locally, regionally and nationally:

- There is no standardised approach for cross charging and therefore the process is being managed differently by various Local Authorities, both regionally and nationally.
- A revised integrated sexual health tariff monitored via 'Pathway Analytics' has been developed for both GUM and SRH (Sexual Reproductive Health) services leading to some 'out of area' providers now claiming for additional interventions with the potential to create double funding and an additional financial burden on Local Authorities.
- Where a service provider is commissioned within a block contract arrangement for open access provision then cross charging should not be used as activity is already funded regardless of the area of residence of the patient.
- The local agreement from April 2016 has enabled the positive relationships between ICS area commissioners to continue to develop. This will be continued via the Pan Lancashire and South Cumbria Sexual Health Commissioner's Network and also the Commissioner/Provider meeting for the same footprint.
- Blackpool Council and Lancashire County Council have commissioned their services on a tariff basis rather than via a block contract. Under the changes, the neighbouring local authorities would experience a financial saving by not paying for their residents to be seen in BwD clinics. However, the new policy change may have an impact on their provider. Financially Blackpool and Lancashire County Council may want to consider if this saving could compensate their provider, Blackpool Teaching Hospitals (BTH) for both Local Authorities.
- Through the block contracted commissioning arrangement, as opposed to tariff, there is the opportunity to develop more preventative provision. Where the provision is tariff based there is a risk that the service becomes disproportionately focussed on clinical interventions, which may not reflect the local sexual health strategy, or needs of the patients, which could be seen as a perverse incentive for providers.
- As services are provided anonymously it is often impossible to verify whether users of services are from a particular area, which means that payment of out of area charges creates a risk of double payments and in a worst-case scenario fraud.

The primary GUM tariff costs involved across the ICS footprint have been monitored by the Council over the last three years and there is a good understanding of the financial implications on our local service provider should the current arrangement be withdrawn.

ICS Commissioner awareness

It is also acknowledged that the providers commissioned by Blackpool Council and Lancashire County Council will now not receive payment from BwD Council when seeing BwD residents. However, Blackpool and Lancashire County Council commissioners will not be expected to pay BwD Council's provider LSCFT for their residents coming into BwD clinics. A contract variation will involve agreement that the BwD provider (LSCFT) does not re-charge commissioners from across the ICS geographical footprint. Lancashire County Council and Blackpool Council commissioners have been consulted on the proposed local policy and the rationale, and understand that they will be expected to discuss any potential financial pressures with their contracted providers.

5. POLICY IMPLICATIONS

This practice relates to historic health systems of payment. Currently, there is no national policy or legislation, which mandates the payment of these tariffs. The recommendations in this paper constitute a local policy arrangement, which is in line with the national mandate to provide open access services.

6. FINANCIAL IMPLICATIONS

The tariff costs have been monitored by the Council over the last three years and there is a good understanding of the patient flow and financial implications on our local service provider should the current arrangement be withdrawn.

In 2018-19, BwD council paid a total of £50,796 to providers for BwD residents who presented at non BwD sexual health services within the ICS footprint.

In 2018-19, Lancashire County Council paid a total of £50,995 to the BwD provider for their residents who presented at BwD sexual health services. Patient flow between Blackpool and BwD is minimal.

The net difference of cross charging within the ICS footprint in 2018-19 was £199.53. As part of this recommended local policy change, we will review contract funding to our provider based on actual activity to ensure they are not financially disadvantaged by not cross charging (ICS and national footprint). Therefore, based on analysis of patient flow and tariff activity costs, it is proposed that approximately £50,000 is paid directly to the BwD provider, which will form part of the block contract, and cross charging will cease. This is still to be finalised and agreed with LSCFT.

All the above will be funded from within the PH grant.

7. LEGAL IMPLICATIONS

Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 requires that:

“each local authority shall provide, or shall make arrangements to secure the provision of, open access sexual health services in its area”

And explains:

“references to the provision of open access services shall be construed to mean services that are available for the benefit of all people present in the local authority’s area”

The Department of Health’s ‘Sexual Health Services: Key Principles for Cross Charging’ document (published in August 2013), suggests that Department of Health endorses the concept of cross charging for sexual health services provided by authorities where the service user is not a resident. Earlier guidance “Commissioning Sexual Health Services and Interventions – Best practice guidance for local authorities” (March 2013), and “Sexual Health Commissioning – Frequently Asked Questions” (February 2013) both appear to be clear that it is for local authorities themselves to decide whether they wish to use a system of cross charging, and that the use of cross charging arrangements is not mandatory for local authorities.

The Council has received a number of requests for payment from providers of services to BwD residents outside of the Borough which the Council has refused to pay. As a number of providers have questioned this position the Council commissioned counsel’s advice from Sam Karim QC. That advice concluded that the Council is entitled to have reached its current position in relation to these payments. Having considered the advice the Council has decided to review its position in relation to payments in the areas of Lancashire and South Cumbria to ensure a consistent approach.

8. RESOURCE IMPLICATIONS

The administration processes for managing the ‘out of area’ payments historically has been provided by the Public Health team. There is an ongoing resource pressure resulting from processing ‘out of area’ payments, which involves considerable administration, finance and commissioning lead time and resource.

Commissioners have historically considered individual payment requests and have ratified them after requesting and checking the backing data (relating to partial postcodes). Since the introduction of the policy as of April 2016 this process has continued to be time consuming and resource intensive as pathway analytics has to be checked with regards to all invoiced activity.

The recommendation to discontinue all Out of Area payments will significantly reduce the administrative burden, and this will enable the Council to communicate a clear and consistent policy to all.

9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below. Where appropriate please include the hyperlink to the EIA.

Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*

Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)*

10. CONSULTATIONS

The Council provided feedback to PHE for the review of commissioning arrangements in 2017. The Council also presented evidence to PHE and NHS England as to why the commissioning guidance needs to be reviewed.

The outcome of the Council's initial Executive Member decision was fed back to the Pan Lancashire and Cumbria Sexual Health Commissioning Network. This network includes membership from Public Health England and NHS England. Updates have been provided at the quarterly network meetings on an ongoing basis and the current proposal to discontinue tariff payments to ICS providers has been acknowledged as potentially a challenging way forward. BwD are proposing to mitigate this challenge by continuing to monitor activity and patient flow between areas, and maintaining appropriate investment to the relevant sexual health service providers.

Commissioners have continued to involve the current sexual health service provider in ongoing consultation relating to this matter and formal discussions continue to take place at quarterly contract review meetings.

Members of the Public Health team have been approached by numerous providers and commissioners from across the country over the last three years who have questioned and objected to the rationale for non-payment of out of area tariffs. Although letters of challenge have been produced these have not resulted in any further action being taken.

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded and published if applicable.

VERSION: 4.0

CONTACT OFFICER:	Lee Girvan, Public Health Specialist Cathy Fisk, Public Health Development Manager
DATE:	17 th December 2019
BACKGROUND PAPER:	Please see below the link to the latest version (2018) of the national guidance 'key principles for cross charging' https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/731134/sexual-health-services-cross-charging-guidance.pdf