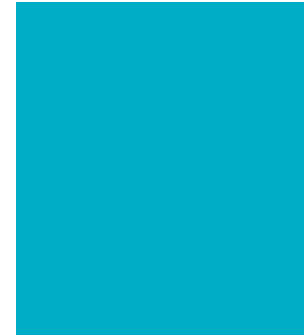


Interim guidance:

Implementing patients' right to choose any clinically appropriate provider of mental health services



May 2014

This is an interactive PDF. To navigate use the arrow buttons on either side of each page, or locate a specific section using the tool bars at the top of the page.



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This interim guidance is issued in as ‘interim’ for adoption and further consultation, before final publication. Details on sharing your views with NHS England are on [page 3](#). The guidance will be kept under review and revised and updated in future, as and when required.

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Your views

This document has been published as interim guidance, and we urge commissioners, GPs and providers to adopt it to support implementation of patients' right to choice of mental health provider at first outpatient appointment.

The guidance was developed with input from commissioners, providers and GPs, as well as other key stakeholders. We would like to test more widely whether it meets your needs and strengthen and supplement where necessary before publishing the guidance in final form in summer 2014.

In particular we would welcome your views on:

1. Do the interim guidance and FAQs provide you with the information you need to effectively implement patient choice of provider in mental health? If not, what needs changing or adding?
2. Is the guidance presented in a way useful to quickly finding the information you need? If not, what needs changing?
3. Does the further programme of work outlined [here](#) cover all of the right areas for embedding the right to choice in mental health? If not, what needs changing or adding?

We propose to hold workshops across England and online webinars to help us better understand your feedback. Please let us know if you would like to attend, and whether you would like to meet online or in person. More information is on our [website](#).

Please send your comments to england.mentalhealthchoice@nhs.net by 5pm, Friday 15 August 2014.

Our postal address is: Mental Health Choice, NHS England, 6E47, Quarry House, Quarry Hill, Leeds LS2 7UE

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From 1 April 2014, the legal right to choice in mental health has been extended to allow a patient to choose for the patient's first outpatient appointment both:

- any clinically appropriate provider of mental health services that has a contract with any NHS commissioner; **and**
- which team within that organisation provides the patient's care and treatment.

This document sets out interim guidance to help commissioners, GPs and providers implement the new (1 April 2014) legal right for patients to choose any clinically appropriate provider of mental health services upon referral for a patient's first outpatient appointment.

Enabling patients to make choices about their care is at the heart of NHS policy. Choice has a key role to play in improving quality and contributing to the delivery of better outcomes for patients. The [NHS Constitution](#) sets out patients' rights to make choices about the health care services they use, as well as information to support their choices. Further details are set out in the [Handbook to the NHS Constitution](#) and in the [NHS Choice Framework](#), which brings together information for the public on their rights to choice about their health care, where patients can obtain more information to help them make a choice, and how they can complain if they have not been offered choice.

Since 1 April 2013, people with mental health conditions who have been referred for a first outpatient appointment have had a right to choose who treats them within the organisation providing their care and treatment. This means having a right to choose which team, led by a named healthcare professional, delivers their care and treatment. Until April 2014, this right was limited to a mental health provider with which the patient's clinical commissioning group (CCG) or NHS England had contracted.



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The right to choice is no longer limited to mental health providers that have a contract with the CCG responsible for that patient, but is extended to other providers with a contract with any CCG, in the same way there is a right to choice of provider in physical health. This is an important step both towards establishing 'parity of esteem', or equal status, between mental and physical health services in the NHS and towards improving access, personalising and improving both the quality of care that people receive and, ultimately, their health outcomes.

The [NHS Choice Framework](#) has been updated to reflect the extension of mental health patients' rights to choice

To put the extended right to choice into practice, all parts of the system - particularly commissioners, GPs and other NHS staff responsible for secondary care referrals, and providers of mental health services - need to have a clear and consistent understanding of what the new right means and what the choice 'offer' is across England, as well as have the necessary systems, processes and other arrangements in place to make the new right work effectively in practice. This document sets these out, pointing to further detailed guidance that already exists on specific aspects relevant to the implementation of choice in general and choice in mental health in particular.

The aim of this interim guidance is to help all parts of the system to implement the new right to choice of mental health provider using existing systems and processes. It includes [Frequently Asked Questions](#) and asks for help to review a series of [case scenarios](#) exploring how the right to choice of mental health provider and mental health team might apply in particular circumstances. This document has been published as interim guidance, for adoption during a period of engagement and consultation before it is finalised in summer 2014.

As experience in the implementation of the right to choice in mental health develops during 2014 and beyond, NHS England and other key stakeholders will consider emerging lessons and issues and whether further steps need to be taken to strengthen the advice, guidance or other support available.

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Significant programme of further work to embed the right to choice of provider

Significant further work will support and embed the new right to choice of mental health provider, and to enable patients to make meaningful, well-informed choices. This work will include:

- **improving the information on mental health conditions** - to help patients and referrers better understand the nature of mental health conditions, and the range of effective treatments and means of access to them that enable self-management and treatment;
- **improving the information to help patients choose** providers and/or consultant-led or healthcare professional-led team. A standard template has been co-produced with patients, NHS England, NHS Choices, Choose and Book, NHS 111 and the Care Quality Commission (CQC) for providers to complete with information about their services, including the assessment process, waiting times, the treatments on offer and patient experience and outcomes;
- **helping referrers and providers to develop a common understanding of the services available to patients.** NHS England is working with key stakeholders to map the service type descriptors recognised and used by mental health providers and referrers against the service types itemised on Choose and Book and will publish these so that the categorisation of services is well understood and consistently applied;
- **putting patients in greater control of their care** and helping primary care to provide a better mental health service for their patients – this includes developing patient self-assessment tools to aid with diagnosis and formulation of mental health conditions, promoting and supporting the use of existing shared decision making tools which will help GPs make accurate diagnostic assessments and helping patients choose who will provide their care and treatment; and
- **ensuring that money follows the patient to incentivise providers to improve their services to meet patients' needs**, reflecting the range of settings in which mental health services can be provided. Whilst existing guidance supports commissioners and providers to operate an effective payments system in 2014-15 based on local prices, work will continue to develop and implement nationally consistent payment approaches for mental health services.

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Legal change **Conditions & services** Mental Capacity Exemptions Clinical assessment services

Revised Regulations 2013

The NHS Responsibilities and Standing Rules Regulations have been amended, removing - with effect from 1 April 2014 - mental health service exemptions from certain of the obligations that previously existed in relation to choice.¹ The 2013 Regulations established patients' right to choose their provider of mental health services in relation to an elective referral to any clinically appropriate:

1. mental health service provider that has a contract with any CCG or with NHS England for the service required; and
2. mental health team led by a named consultant or health care professional employed or engaged by that mental health service provider.

These changes mean that a patient who requires an elective referral for mental health services has a right from 1 April 2014 to choose any clinically appropriate health service provider (whether an NHS mental health trust, a Foundation Trust or a mental health provider in the independent or third sector) for their first outpatient appointment² as long as the provider has a contract with any CCG or with NHS England for the service required, and that the service or treatment is routinely commissioned by the patient's CCG or NHS England, or is approved by the relevant Independent Funding Review Panel. This brings mental health services a step closer towards 'parity of esteem', or equal status, with physical health services in the NHS.

A patient's legal rights to choice do not extend beyond the first outpatient appointment. The right to treatment within 18 weeks from referral that exists for physical health does not currently apply to mental health services. NHS England is leading a mental health waiting times steering group with Department of Health and other system partners to consider the relevant issues.

¹ The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891) amended the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (S.I. 2012/2996).

² With a consultant or a consultant led team, or with a health care professional or a team led by such a professional.

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Legal change **Conditions & services** Mental Capacity Exemptions Clinical assessment services

Types of mental health conditions and services subject to the right to choice

Other than in the circumstances where the exemptions apply the choice of provider 'offer' from 1 April 2014:

- is for all patients who require an elective referral to their first outpatient appointment for mental health services; and
- applies irrespective of the mental health condition that the patient presents with. A patient's mental health condition itself, whether known or otherwise not specified, is not the determining factor in whether the patient has a right to choose the provider to meet his or her mental health needs.

[Choose and Book – Supporting Referrals to Mental Health Services](#) (November 2013) includes the list of Mental Health Clinic Types for adults and children and adolescents specialties that are supported by Choose and Book.

In physical health referrals to outpatient appointments are often to consultant-led teams in hospital settings. Many mental health services are not provided in hospital settings, so in mental health care the right to choice is to a consultant-led or healthcare professional-led team in whichever setting the service is provided.

Consistent with the operation of choice in physical health care, patients cannot generally choose services or treatments which are not routinely commissioned by their local CCG or NHS England. Patients wishing to access services not commissioned by their CCG or (where relevant) NHS England, may seek to demonstrate exceptionality and so access funding for the treatment through the commissioner's Independent Funding Review Panel. Patients should discuss their options with their GP who is required to support such an application.

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Legal change Conditions & services **Mental Capacity** Exemptions Clinical assessment services

Patient choice and the Mental Capacity Act 2005

As a guiding principle, patients should be involved, as much as possible, in decisions about their care, as set out in the Government's response to [Liberating the NHS: No decision about me, without me](#) (December 2012).

In all cases any elective referral must be to a clinically appropriate service.

Across the range of mental health conditions that patients might experience, patients may be vulnerable and their ability to exercise choice that is clinically appropriate could be compromised. Referrers are required, under the [Mental Capacity Act 2005](#), to support their patients in making decisions about their care and treatment. The Act requires all health professionals to take 'all practicable steps' to help people make their own decisions, including patients with a mental impairment. The principles of the Act must be adhered to in any decision-making where a patient lacks capacity or their capacity is predicted to deteriorate over time.

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Exemptions

The **right to choice** of mental health service provider for first outpatient appointment **does not apply**:

- to **high secure psychiatric services**;
- if the patient is **detained** under the Mental Health Act 1983;
- if the patient is detained in, or on temporary release from, **prison**;
- if the patient is serving as a **member of the armed forces** (family members in England have the same rights as other England residents);
- if a patient is **already receiving** mental health care as an outpatient. However, where a mental health consultant or healthcare professional makes an assessment and diagnosis subsequent to the outpatient referral that is different to the assessment and diagnosis for which the patient was referred, under the terms of the NHS Standard Contract the provider may contact the patient's GP and, with the GP's approval, refer the patient to an appropriate provider for treatment. The GP or provider should act with the best interests of patients in mind. They would be expected to support the patient to consider the options for ensuring that the patient's clinical needs are met, including where this might mean offering the patient the opportunity to attend a different outpatient provider, where treatment more appropriate to their needs is available;
- to **drug and alcohol misuse services commissioned or provided by local authorities**; or
- where it is necessary to provide **urgent care or treatment**, in the same way that choice of provider does not apply with a physical health care emergency, such as a heart attack or stroke. The [Mental Health Crisis Care Concordat: Improving outcomes for people experiencing mental health crisis](#) sets out an effective approach to ensuring people experiencing mental health crisis can access the support they need, when they need it.

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Clinical assessment services

In some cases, depending on the provider, GPs and referrers are able to refer patients directly to a consultant-led or healthcare professional-led team for care and treatment. However, some providers require patients to attend the providers' clinical assessment service to help identify the services that the patient requires, before accessing care and treatment.

In either case, the patient's rights to choice at first outpatient appointment will be exercised at the point where the patient can make a meaningful choice about the provider of their care and the consultant-led or healthcare professional-led team which provides it.

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Responsibilities of CCGs and NHS England for commissioning mental health services

The Health and Social Care Act 2012 (“the Act”) established the legal framework for the new commissioning architecture for the NHS in England, including the responsibilities of NHS England and clinical commissioning groups (CCGs). The Act sets out that, in general, CCGs are responsible for commissioning health services to meet all the reasonable requirements of their patients, including the responsibility to commission urgent and emergency care services for everyone present in their geographic area.

In the case of mental health services, this is with the exception of prescribed Specialised Mental Health Services commissioned by NHS England.

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CCGs and NHS England **Commissioning services** Pricing services Paying for services

Commissioning for the provision of mental health services

On 1 April 2013, CCGs inherited the contracts put in place by the former Primary Care Trusts with providers of mental health services through the NHS Standard Contract. With the extension of the right to choice in mental health from 1 April 2014 to allow a patient to choose any clinically appropriate provider of mental health services, CCGs need to ensure that arrangements are in place for qualified public, independent and third sector providers to secure contracts in their areas to provide such services under the NHS Standard Contract.

NHS England has provided CCGs with [guidance](#) on the re-contracting of providers of elective services. That guidance points out that, under legislation, it is not sufficient for a CCG to do nothing more than re-contract with existing qualified providers that are performing satisfactorily. CCGs must, in addition to this, provide appropriate opportunities for new providers to qualify and secure a contract to deliver such services and must not refuse to qualify any providers, that satisfy the criteria, in line with their obligations under the NHS Procurement, Patient Choice and Competition (No. 2) Regulations 2013.

NHS England is responsible for commissioning all Specialised Mental Health Services. Most Specialised Mental Health Services fall under the [exemptions](#), but those not exempt are subject to the extended right to choice of mental health provider.

The right to choice of provider is exercised at the point where the patient is able to make a meaningful, informed choice. Where a provider is contracted to provide a clinical assessment service the commissioner will want to discuss with the provider what role the provider will play in ensuring patients receive their legal right to choice of provider and choice of consultant-led or healthcare professional-led team which provides their care and treatment. This is consistent with the [NHS Standard Contract](#) (Service Condition 4.2) which requires providers to co-operate with others and have due regard to the welfare and rights of service users.

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Pricing of mental health services

Under the established arrangements governing the provision of elective services subject to patients' right to choice, all providers of such services should normally deliver them at the national price and with no guarantees about the volume of patient referrals they might receive.

However, there are currently no nationally mandated prices for mental health services. Section 7 of the [2014/15 National Tariff Payment System Document](#) (December 2013) set out a framework and principles by which prices for services without a national price should be agreed.

For services in the 20 mental health clusters covered by the nationally mandated currencies, Monitor and NHS England have recommended for 2014-15 that all mental health providers and commissioners move to contracts which are based on anticipated cluster caseload, with a local price agreed for each cluster treatment as well as a price for assessment. A [methodology](#) is set out in the 2014-15 guidance on mental health currencies and prices for providers to calculate cluster prices, based on their current contract value. Contracts should contain caps and/ or collars so that, where activity varies considerably from what is anticipated, the amount paid to providers will also change within agreed boundaries.

The guidance document published by NHS England - [Who Pays?](#) - clarifies the general arrangements for services provided as non-contract activity (i.e. activity not covered by a contract). Mental health providers might have contracts with a number of different commissioners and have agreed a number of different local prices, potentially with different service specifications for similar patient groups. The price established in the contract between the provider and its host commissioner (the commissioner commissioning most activity from the provider) should be used by other commissioners where there are no national prices.

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Commissioners who do not normally contract with a provider will need to be clear about the scope of the service being provided to patients as non-contract activity, to determine the appropriate local provider price.

Other helpful information sources include an NHS England publication setting out the average cluster prices that were agreed by commissioners and providers for 2013-14, which will be published shortly. Reference costs are a further source of indicative information, providing a breakdown of the reported costs of admitted and non-admitted care associated with each cluster, and the costs of a number of other specialist services.

Over time, we expect commissioners of mental health services to move away from block contracts and unbundle services, and more providers to publish information about their individual services on the referral and information tools such as NHS Choices, Choose & Book (e-Referral Service) and NHS 111 Directory of Services. These changes should increase transparency in the way that mental health services are commissioned, at the same time as patients are increasingly able to choose provider and money follows the patient.

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CCGs and NHS England Commissioning services Pricing services **Paying for services**

Paying for mental health services

Until 31 March 2014, patients' rights to choice in mental health was limited to choosing which team, led by a named healthcare professional, delivered their care and treatment from within a mental health care provider that had a contract with the patient's clinical commissioning group.

From 1 April 2014, eligible patients who require an elective referral for mental health services have a right to choose any clinically appropriate health service provider from anywhere in England, as long as the provider has a contract with any CCG or with NHS England for the service required. Patients may therefore choose to be referred to a provider outside the geographical area of their CCG and with which their CCG does not hold a contract. In these cases, the CCG or NHS England (where relevant) will need to pay the provider price for any clinical assessment and package of care that the provider delivers, consistent with the [Who Pays?](#) guidance.

We expect patients to take up this new legal right gradually, over time, as knowledge and understanding grows, as was the experience in the introduction of choice of provider of elective services in physical health care. If, over time, the introduction of their right to choose their mental health provider at the first outpatient appointment results in a significant shift in referral patterns involving a large number of patients choosing to go to providers outside the patients' CCG areas, the CCGs responsible for the patients and for paying for their care should consider agreeing a contract with those providers.

During 2014/15, if no caps and collars have been agreed in block contracts between commissioners and providers and if referrals from CCGs vary outside anticipated caseloads, the CCG will wish to seek a variation to contracts to help ensure that money follows the patient and that providers are reimbursed for the services they have delivered. CCGs should work with providers to monitor the impact on patient flows following the introduction of the new right to choice.



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CCGs and NHS England Commissioning services Pricing services **Paying for services**

Where any emergency or urgent intervention is required from a provider with whom the responsible commissioner does not have a contract, the commissioner will be expected to fund this as non-contract activity, in line with the [Who Pays?](#) guidance. The [Mental Health Crisis Care Concordat: Improving outcomes for people experiencing mental health crisis](#) sets out ways to make sure that people experiencing a mental health crisis receive as responsive an emergency service as people needing urgent and emergency care for physical health conditions. The Concordat sets out an effective approach to ensuring people experiencing mental health crisis can access the support they need, when they need it.



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Assessing eligibility Clinical appropriateness Using Choose and Book Clinical assessment services

Assessing patients' eligibility to exercise rights to choice of mental health provider

[The choice offer](#) part of this guidance sets out which mental health patients, conditions and services are covered by the right to choice, as well as those patients, services and circumstances for which the right to choice does not apply.



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Assessing eligibility **Clinical appropriateness** Using Choose and Book Clinical assessment services

Determining what is 'clinically appropriate' for each eligible patient

It is for the GP or other referrer to decide what is clinically appropriate (that is within published guidelines and specifications, and using clinical judgement) when patients exercise their right to choice.

Particular consideration needs to be given to clinical appropriateness where patients have complex mental health needs that require integrated packages of health and social care, to avoid the patient's care pathway being fragmented, which may not be in the patient's best interests. GPs and referrers should discuss options with the patient and make clear their right to approach their CCG if they are unhappy about the extent of choice offered.

Where a provider of mental health services has staff⁵ within a GP practice, either to provide advice on diagnoses and/or to administer care and treatment, the GP or other referrers may seek their advice to help determine the patient's condition(s) and the type(s) of services that the patient needs. The mental health staff, the GP or other referrers must, however, avoid any conflicts of interest in supporting the patient's subsequent choice of provider to deliver the care and treatment. NHS England has [published guidance](#) on managing conflicts of interest for CCGs, the principles of which may be useful where a provider of mental health services has staff within a GP practice.

Where a provider of mental health services has staff⁵ within a GP practice to administer care and treatment, the GP practice may not prevent or otherwise restrict patients from other GP practices accessing those services if patients exercise their right to choose to be referred to those services for their first outpatient appointment. The same is true of services delivered in primary care under Alternative Provider Medical Services contracts.

⁵ A consultant or a consultant led team, or a health care professional or a team led by such a professional.

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Assessing eligibility Clinical appropriateness **Using Choose and Book** Clinical assessment services

Using Choose and Book to make referrals to mental health services

Choose and Book is well established as an effective means of referral to outpatient services, and is being used more and more for referrals to mental health services. It allows referrers to support their patients in choosing a clinically appropriate provider, to send referral information electronically to that chosen provider, and to enable the patient to be booked into an appointment slot.

Choose and Book supports referrals and the booking of outpatient appointments from GPs/ referrers for adults of all ages (including children and adolescents) directly into an outpatient appointment, or to a preliminary mental health Clinical Assessment Service, if required, before referral to a clinically appropriate mental health service provider.

Making a referral to a Mental Health service is broadly similar to referring to any other service on Choose and Book. For new users of the system, the [‘Referring a Patient’](#) e-learning tool available from the Choose and Book website gives a comprehensive step by step guide.

[Choose and Book – Supporting Referrals to Mental Health Services](#) (November 2013) provides further guidance.

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Clinical Assessment Services

In some cases, depending on the provider, GPs and referrers are able to refer patients directly to a consultant-led or healthcare professional-led team for care and treatment. However, some commissioners and/or providers require patients to attend a providers' clinical assessment service to help identify the services that the patient requires, before accessing care and treatment.

In either care, the patient's rights to choice at first outpatient appointment will be exercised at the point where the patient can make a meaningful choice about the provider of their care and the consultant-led or healthcare professional-led team which provides it.

Where a clinical assessment service sits between the initial referral and the eventual provision of care and treatment, it is important that patients, in consultation with their GP or other referrer, have appropriate information about the pathways that would follow any referral to a provider requiring the patient to go through a clinical assessment service, in the same way that this should be transparent for referrals to providers that do not require such a service.

Providers are encouraged to provide this information to local referrers and on their entries in Choose and Book and NHS Choices.

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Contracting to provide services Making service information available Being paid

Contracting to provide mental health services

The extension of the right to choice in mental health from 1 April 2014 means a patient may choose any clinically appropriate provider of mental health services (whether a NHS mental health trust, Foundation Trust or mental health provider in the independent or third sector) as long as the provider has a contract with any CCG or with NHS England for the service required.

Mental health is a sector where there is already a wide range of providers, and there is potential for changes in referral patterns across existing providers and for new providers to enter the sector over the coming years in response to patients exercising their rights to choice. CCGs and NHS England must provide appropriate opportunities for new providers to qualify and secure a contract to deliver such services and must not refuse to qualify any providers that satisfy the criteria.

The right to choice of provider is exercised at the point where the patient is able to make a meaningful, informed choice. Where a provider is contracted to provide a clinical assessment service the provider will need to consider its role in ensuring patients receive their legal right to choice of provider and the consultant-led or healthcare professional-led team which provides their care and treatment. This will likely form part of discussions with the relevant commissioner and is consistent with the [NHS Standard Contract](#) (Service Condition 4.2) which requires providers to co-operate with others and have due regard to the welfare and rights of service users.

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Contracting to provide services Making service information available Being paid

Making service information available to support referrals

Mental health services are going through a period of redesign and reconfiguration, whose scale and pace will be different across localities. Service re-development will impact on how local mental health services are accessed, the menu of services and treatments offered, and the range of providers from which a patient may choose. Informed, meaningful choice of provider for people with mental health conditions depends on patients, GPs and referrers having access to key information from providers on the mental health services they offer.

Mental health providers that have or secure a contract with a CCG or NHS England need to make the relevant details of their services available to GPs and other staff responsible for making referrals. The NHS Standard Contract requires providers to describe and publish all relevant services and associated appointment slots on Choose and Book.

Choose and Book is a national, electronic tool that allows providers to upload details of the services they offer. The principles of setting up a mental health service are broadly the same as setting up any other service in Choose and Book. The NHS Standard Contract for 2014/15 includes in Service Condition 6 a requirement that mental health providers do this, excluding high secure services in line with the legislation.

Providers need to:

- **decide which of their services are appropriate to load on to Choose and Book.** Routine consultant-led services as a minimum should be made available plus routine services led by other healthcare professionals and in other settings, e.g. in the community; and
- **upload key clinical information about their services for patients,** based on Speciality/Clinic Types and SNOMED clinical terms e.g. anxiety disorder, and including named clinicians.

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An [e-learning training package and further guidance](#) is available to enable providers to set up services within Choose and Book.

Many existing and prospective mental health providers in the independent and third sector do not yet have systems that communicate directly with Choose and Book. They are, however, still able to list their services on the Choose and Book system, whilst the booking of appointments requires manual intervention. All mental health providers should therefore be able to make the necessary information about their services available to help patients and their GPs and referrers choose a clinically appropriate service to meet the patient's needs. Further guidance is available in [Choose and Book - Supporting Referrals to Mental Health Services](#).

Recognising the need for patients, referrers and commissioners to have similar, good quality information to ensure that the right to choice of mental health provider is effective, NHS England, NHS Choices, Choose and Book, NHS 111 and CQC have developed with patients simple templates for providers to populate with their service information and outcomes data. We will be engaging with providers in spring and summer 2014 to populate the template and ensure their information is entered onto all of the relevant national systems that support choice of provider.

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Contracting to provide services Making service information available **Being paid**

Being paid for services provided to patients who have exercised choice

From 1 April 2014, eligible patients who require an elective referral for mental health services have a right to choose any clinically appropriate health service provider from anywhere in England. Patients may choose to be referred to a provider within the geographical area of their CCG (where the provider is likely to have a contract with that CCG) or outside the CCG's area (where the provider may not have a contract with the CCG responsible for the patients).

Where patients choose to be referred to a provider with which their CCG does not have a contract, the patient's CCG will be required to pay the appropriate price established by the CCG that has a contract with the provider for initial assessment and for the subsequent package of care for which the patient has been referred and that the provider delivers.

Where patients need Specialised Mental Health Services they can choose any provider if it has a contract with NHS England for the provision of these specialised services. NHS England will pay the agreed provider price for any initial assessment and for the subsequent package of care for which the patient has been referred and that the provider delivers.

Where a provider does not offer the breadth of services required in relation to the condition for which the patient was referred, under the terms of the NHS Standard Contract the provider may refer the patient to another provider for part or all of the package of care that the patient needs. Further details are available in the [NHS Standard Contract](#) (Service Conditions 8 and 11). The commissioner will be expected to pay the price as set out above.



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Where a provider considers that there is unmet patient need and services additional to those related to the patient's initial referral should be added to the package of care chosen from Choose and Book, the provider must contact the patient's GP and/or relevant commissioner (the CCG responsible for the patient or NHS England) and obtain approval before providing any additional services.

In August 2013, NHS England published revised guidance - [Who Pays?](#) - for establishing the commissioner responsible for paying for patients' care and treatment, including arrangements for non-contract activity.

Contracts should contain caps and/ or collars so that, where activity varies considerably from what is anticipated, the amount paid to providers will also change within agreed boundaries.

During 2014/15, if no caps and collars have been agreed in block contracts between commissioners and providers and if referrals from CCGs vary outside anticipated caseloads, the CCG will wish to seek a variation to contracts to help ensure that money follows the patient and that providers are reimbursed for the services they have delivered.

We expect this new legal right to be taken up gradually, as was the case in physical health care. If, over time, the introduction of mental health patients' right to choose provider at the first outpatient appointment results in a significant shift in referral patterns involving a large number of patients choosing to go to providers outside the patients' CCG areas, the CCGs responsible for the patients and for paying for their care should consider agreeing a contract with those providers.

Where any emergency or urgent intervention is required from a provider with whom the responsible commissioner does not have a contract, the commissioner will be expected to fund this as non-contract activity, in line with the [Who Pays?](#) guidance.

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Clinical and payment scenarios

Worked scenarios

We are developing a series of worked case scenarios to assist commissioners, referrers and providers think through, for illustrative patients and presentations, the implications of the new legal right to choice of mental health provider at first outpatient appointment. We plan to test these scenarios with stakeholders during the twelve week period of consultation on the guidance. Once tested, these scenarios and other supporting material which prove useful - such as decision flow diagrams - will be made available when the final version of this guidance is published in August 2014.

If you would be happy to help us review these case scenarios, please let us know through the [consultation](#) and we will respond to you directly.

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Mental health patients and the circumstances in which they have a right to choice

Q1: Who is eligible for the extended rights to choice in mental health?

A: From 1 April 2014, all eligible patients should be offered the choice of mental health service provider and a consultant-led team or team led by a named healthcare professional who will be in charge of their care for their first outpatient appointment. The [NHS Choice Framework](#) sets out which patients are eligible to be offered choice. A person is not eligible to be given choice if the person:

- requires urgent care or treatment (including mental health crisis care);
- is detained under the Mental Health Act 1983;
- is detained in, or is on temporary release from, prison;
- is a serving member of the Armed Forces (family members in England have the same rights as other England residents); or
- is already receiving mental health care as an outpatient.

A person does not have the right to choose if referred to:

- high secure psychiatric services; or
- drug and alcohol misuse services commissioned or provided by local authorities.



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Q2: Do patients have a right to choose in circumstances where their mental capacity is impaired?

A: Patients should be involved as much as possible in decisions about their care. However, across the range of mental health conditions that patients might experience, patients may be vulnerable and their ability to exercise choice that is clinically appropriate could be compromised. All issues relating to mental capacity should be decided with reference to the *Mental Capacity Act 2005* (MCA).

Under the Act, all referrers are required to support their patients in making decisions about their care and treatment, including patients with a mental impairment.

Patients aged 16 or over are assumed to have capacity to make their own decisions, including decisions relating to their healthcare. If all practicable steps have been taken to help a person to make their own decision, and the person is assessed to lack capacity in accordance with the MCA, then treatment decisions in the person's best interests may be made for them.

The [Mental Capacity Act 2005 \(Code of Practice\)](#) provides guidance on making treatment decisions for people who are assessed to be lacking the capacity to make such decisions for themselves (see chapter 2 of the *Code of Practice*).

There are a number of sources of guidance on the law concerning consent to physical examination and treatment. The Department of Health's [Reference Guide to Consent for Treatment or Examination](#) (Second edition) provides further advice on considering a person's mental capacity when obtaining consent to treatment.

The General Medical Council guidance on consent, [Consent: patients and doctors making decisions together](#) (2008) and the British Medical Association's [Consent Tool Kit](#) (Fifth edition, 2009), also provide useful guidance on making decisions about medical examination and treatment for people who lack capacity to make those decisions for themselves.

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Q3: Does a patient requiring a crisis response have a right to choose the organisation that provides their care and treatment?

A: A patient does not have a right to choice where it is necessary to provide urgent care or treatment, in the same way that choice of provider does not apply with a physical health care emergency, such as a heart attack or stroke. The [Mental Health Crisis Care Concordat](#) sets out how effective crisis care should be delivered. The *Concordat* states that a patient should have access to crisis care in whatever circumstances they first need help and from whichever service they turn to first.

Q4: Do children and young people have the right to choose who provides their mental health services?

A: Patients aged 16 or over are assumed to have capacity to make their own decisions, including decisions relating to their healthcare. Patients younger than this age should be kept as fully informed as possible, just as an adult would be, and should receive clear and detailed information concerning their care and treatment, explained in a way that they can understand and in a format that is appropriate for their age. The child or young person's views, wishes and feelings should always be sought, their views taken seriously and professionals should work with them collaboratively in deciding on how to support that child or young person's needs.

The Department of Health's [Reference Guide to Consent for Treatment or Examination](#) (Second edition) provides further advice on when children and young people can consent to treatment and therefore make decisions about their own care.

The General Medical Council's [0-18 Years: Guidance for all doctors](#) and the British Medical Association's [Consent Tool Kit](#) (Fifth edition, 2009), also provide useful guidance on helping children and young people make valid consent decisions about their treatment.



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Q5: Do patients have a right to choice if they are already receiving care as an outpatient?

A: Patients do not have a right to choice of another mental health provider or another consultant or healthcare professional to be in charge of their care for an existing condition if they are already receiving care as an outpatient.

Q6: Do patients have a right to choice if they are already receiving treatment from another provider?

A: Patients do not have a right to choice of another mental health provider or another consultant or healthcare professional to be in charge of their care for an existing condition if they are already receiving care as an outpatient.

A patient's legal rights to choice do not extend beyond the first outpatient appointment. However, the GP or provider should act with the best interests of patients in mind. They would be expected to support the patient to consider the options for ensuring that the patient's clinical needs are met, including where this might mean offering the patient the opportunity to attend a different outpatient provider, where treatment more appropriate to their needs is available.

Providers have a duty to ensure that a patient's care remains integrated and should ensure that patients have access to their records and that any other provider that is treating a patient has access to their records if this is clinically appropriate and if the patient agrees to providing access to their records.



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Q7: Do patients have a right to choice if they have complex needs or require packages of care?

A: The complexity of a patient's condition does not affect their right to choice or their involvement in decisions about their care, however a patient does not have a right to choice of providers of drug and alcohol misuse services commissioned or provided by local authorities. Patients should discuss their choice options with their GP to ensure the choices offered are clinically appropriate to best meet their needs and preferences.

Q8: Do patients have a right to choice if they require integrated social care?

A: Patients are eligible for choice of mental health provider as set out in the [NHS Choice Framework](#), including where they require integrated packages of care involving social care. Patients should discuss their options with their GP to ensure that their choices are clinically appropriate to meet their needs and preferences and to ensure that care can continue to be delivered in an integrated way that is effective in meeting their needs.

Q9: Do patients have a right to choose independent or third sector providers?

A: Yes. From 1 April 2014, patients have a right to choose any clinically appropriate mental health service provider - including independent, third sector provider - that has an NHS contract with any CCG in England or with NHS England and that provides a service that meets the patients' needs. If the service is not routinely commissioned by the patient's CCG or NHS England, patients may apply to their CCG's or NHS England's Independent Funding Review Panel, where appropriate, for their referral to be considered for approval.



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Q10: What happens if a patient is not happy with the service they have chosen – do they have a right to make a further choice?

A: No. But, if a patient is not happy with the service they are receiving they should discuss their concerns with the provider in the first instance. The GP or provider should act with the best interests of patients in mind. They would be expected to support the patient to consider the options for ensuring that the patient's clinical needs are met, including where this might mean offering the patient the opportunity to attend a different outpatient provider, where treatment more appropriate to their needs is available. Ultimately, if still not satisfied, the patient may choose to make a complaint through the [NHS Complaints Procedure](#).

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How the right to choice works

Q11: Who is responsible for offering patients choice?

A: GPs and others who may refer patients to mental health services are responsible for offering choice to those patients who are eligible (see [exemptions](#)).

The [National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) Regulations 2012](#) set out these responsibilities at paragraph (39).

Q12: What happens when a GP assesses a patient as needing to be referred to secondary care mental health services?

A: Where a GP assesses a patient as needing to be referred to secondary care mental health services as an outpatient the GP should discuss the choices available to the patient that best meet their clinical needs and preferences, including the choice of provider and consultant-led or mental health professional-led team to provide their care and treatment at their first outpatient appointment. This may be any provider (including from the independent, third sector) that has an NHS contract either within the patient's local clinical commissioning group (CCG) or with NHS England or another CCG anywhere in England.

The patient may choose the provider with or without support in choosing from their GP, although the provider must offer services that are clinically appropriate for the patient.



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Once the patient has chosen a clinically appropriate provider, referrals can be made with the GP through a referral tool (currently Choose and Book), if the provider is listed on this system, or the GP can make the referral through traditional referral processes. Work is underway to ensure that all mental health providers have the opportunity to register their services on all referral and information tools in a consistent way to support GPs and patients in making these choices.

The interim guidance on the extended rights for choice in mental health *Implementing patients' right to choose any clinically appropriate provider of mental health services* (this document), provides advice to commissioners, mental health providers and GPs on the arrangements for choice of mental health provider.

The updated [NHS Choice Framework](#) provides information for patients on their rights to choice. Recently [updated guidance](#) about Choose and Book supports referrers and providers in using the system to make referrals to mental health services.

Q13: How do providers register with the relevant referral tools?

A: Information is available on the websites of each referral tool advising providers on how to register and list their services. NHS Choose and Book has published [Choose and Book Supporting Referrals to Mental Health Services](#), which provides guidance for providers.

NHS England in association with NHS Choose and Book and NHS Choices are organising regional workshops soon for mental health service providers on how to register with Choose and Book and other referral and information tools. NHS England will be contacting all mental health providers to provide details of these regional workshops.

NHS England is undertaking further work to develop standard templates so that mental health service providers can provide details about their services on referral tools to ensure GPs and patients are supported to make informed choices.



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Q14: Is referral to an assessment service or single point of access service fulfilling the obligation to offer patients the choice of provider for their first outpatient appointment?

A: Some providers require patients to attend the providers' clinical assessment service to help identify the services that the patient requires, before accessing care and treatment. The patient's rights to choice at first outpatient appointment will be exercised at the point where the patient can make a meaningful choice about the provider of their care and the consultant-led or healthcare professional-led team which provides it. Further information is provided in the interim guidance *Implementing patients' right to choose any clinically appropriate provider of mental health services* (for example, [here](#)).

Q15: Who is responsible for maintaining and sharing patient medical records where a patient may be treated by more than one provider and/or social care?

A: Providers of mental health and social care services directly involved in a patient's care should ensure that patients have access to their medical records and should ensure that any other provider directly involved in treating a patient has access to their medical records if this is clinically appropriate and where the patient agrees.

Q16: What should patients do if choice is not offered?

A: GPs and others who may refer patients to mental health services are responsible for ensuring that patients are aware of their choice options and that eligible patients are offered the choices to which they are entitled. However, if choice is not offered, the [NHS Choice Framework](#) provides information on the steps that patients can take. Patients should contact their local CCG in the first instance.



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Out of area referrals

Q17: Do patients have a legal right to be referred to a mental health provider out of area for a service or treatment that is not routinely commissioned by their local CCG or (where relevant) NHS England?

A: As with the operation of choice in physical health, when patients are referred for a first outpatient appointment they have the legal right to choose the provider that will deliver their care, while the referring healthcare professional is responsible for determining the treatment that is clinically appropriate to meet the patients' needs. If the service or treatment is routinely commissioned by the patient's CCG or NHS England, patients are able to choose any clinically appropriate provider in England for that service as long as the provider has a contract with any NHS commissioner in England. If the service is not routinely commissioned by the patient's CCG or NHS England, patients may apply to their CCG's or NHS England's Independent Funding Review Panel, where appropriate, for their referral to be considered for approval. Patients should discuss their options with their GP, who is required to support such an application.

Q18: If a patient is referred to a mental health service provider out of area, which criteria are used to determine their eligibility for that service - the patient's CCG or the provider's contracting commissioner(s)?

A: Decisions about a patient's eligibility for a particular service or treatment should be made by the referring healthcare professional, in accordance with the commissioning policies of the responsible commissioner. Arrangements for determining the responsible commissioner are set out in the [Who Pays?](#) guidance. The CCG responsible for payment would usually be where a patient is registered on the list of NHS patients of a GP practice, the responsible commissioner will be the CCG of which the GP practice is a member.



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Where a patient is not registered with a GP practice, the responsible commissioner will be the CCG in whose geographic area the patient is usually resident. Patients wishing to access services not commissioned by their CCG or (where relevant) NHS England, may apply to their CCG's or NHS England's Independent Funding Review Panel, where appropriate, for their referral to be considered for approval.


Q19: Should mental health providers accept referrals from outside the area of the CCG who contracts with them?

A: Mental Health providers should accept referrals from outside the area of the CCG(s) who contracts with them if the mental health service provider offers services that meet the clinical needs of the patient and is either routinely commissioned by the patient's CCG, or if the referral is otherwise approved by the CCG's Independent Funding Review Panel. Providers receiving patients from a CCG for the first time may wish to check with the CCG to determine that this is the case.

Q20: Who meets the travel costs for patients attending outpatient appointments outside the geographical area of their CCG?

A: The NHS travel costs guidance [Healthcare Travel Costs Scheme: Instructions and Guidance for the NHS](#) provides further information on paying for travel costs.

Q21: Would patients referred out of area wait longer for treatment?

A: The right to treatment within 18 weeks from referral that exists for physical health, as set out in the NHS Constitution, does not currently apply to mental health services. NHS England is leading a mental health waiting times steering group with the Department of Health and other system partners, which is considering the relevant issues. 

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Waiting times to access mental health services should be included in the information that patients, in consultation with their GPs and other referrers, take into account when considering which provider to choose for the first outpatient appointment. Patients may choose to wait longer to attend a provider outside their local area, for clinical or other reasons.

Q22: Can commissioners and providers decline out of area referrals where high levels of demand are creating longer waiting times?

A: No. From 1 April 2014, patients are entitled to be referred to any mental health provider which has an NHS contract with any CCG in England, which provides a service that meets their needs and where they meet the eligibility criteria to be given choice as set out in the [NHS Choice Framework](#).

Where a mental health service is experiencing higher demand leading to longer waiting times we would expect the commissioner to work with the providers to take mitigating action. We would also expect commissioners and providers to ensure that waiting time information on Choose and Book and other NHS referral systems is kept up to date so that patients and GPs may take this into account when patients choose which provider they want to attend for their first outpatient appointment.

If, over time, the introduction of mental health patients' right to choose their provider at the first outpatient appointment results in a significant shift in referral patterns to providers outside a CCG's local area, the CCG may consider agreeing a contract with those providers. Further information is set out in the interim guidance *Implementing patients' right to choose any clinically appropriate provider of mental health services* ([here](#)).



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Q23: Should commissioners allow out of area referrals to services which are the same as, but more expensive than, those provided in the patient's local CCG area?

A: Yes. From 1 April 2014, eligible patients are entitled to be referred to any mental health service provider which has an NHS contract with any CCG in England which provides a service that meets their needs. Patients are eligible to choice of mental health service provider out of their local area even when the same service is provided within their local CCG area.

The price that is paid for the service to which the patient has been referred is the local price agreed with that mental health provider and its contracting commissioner(s).

Q24: If so, who pays?

A: The guidance document [Who Pays?](#), clarifies the general arrangements for payment of services provided as non-contract activity (i.e. activity not covered by a contract) and dispute resolution. It advises that local prices set out in the provider's contract with its contracting commissioner(s) should be used by other commissioners where there is not national tariff.

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Changes in referral patterns

Q25: What can commissioners and providers do if referrals to a mental health service provider through the introduction of extended choice from 1 April 2014 exceed local contracted levels?

A: The guidance document [Who Pays?](#), clarifies the general arrangements for payment of services provided as non-contract activity (i.e. activity not covered by a contract). It advises that local prices set out in the provider's contract with its contracting commissioner(s) should be used by other commissioners where there is no national tariff.

However, we do not anticipate significant changes to patient flows as a result of the extended rights to choice in mental health (and not in the first year).

Q26: What should commissioners do if changes to patient flows make some services unsustainable?

It is unlikely that changes to patient flows resulting from the introduction of extended choice in mental health will be the primary reason for a service becoming unsustainable. Services should be designed around the needs of local communities and strive to achieve and demonstrate the best quality and patient outcomes – these will be the most attractive services to patients. Where patients experience high quality local services, we do not anticipate significant changes in patient flows out of area.

Mental health providers will have the opportunity to provide key quality, outcomes and access information about their services on the various referral tools available to GPs and patients which will enable people to make informed choices.

