

Formation of clinical commissioning policies for fertility preservation: Guidance for Clinical Commissioning Groups

INTRODUCTION

Commissioning responsibility¹ for fertility services - including the retrieval and storage of reproductive material - rests with Clinical Commissioning Groups ("CCGs") rather than with NHS England.²

This guidance is directed to the formation by CCGs of clinical commissioning policies for fertility preservation services in circumstances where an individual may be rendered infertile as a consequence of medical treatment.

STATUTORY DUTIES

In forming a clinical commissioning policy, CCGs operate under a number of statutory duties arising from the National Health Service Act 2006:

- to exercise their functions with a view to securing that health services are provided in an integrated way
- to exercise their functions effectively, efficiently and economically
- to exercise their functions with regard to the need to reduce the inequalities between patients in their access to services and their outcomes
- to act consistently with the discharge by the Secretary of State and by NHS England of their duty to promote a comprehensive health service

And, under the Equality Act 2010, when exercising their functions, to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under that Act
- advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

¹ Established by National Health Service Act 2006 as amended ("the 2006 Act") and National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 ("the 2012 Regulations")

² There are specific exceptions: NHS England is required to make arrangements for the provision of secondary care services for serving members of the armed forces and their families; this includes fertility services. Also, men with a diagnosis of azoospermia may be eligible for surgical retrieval of sperm, directly commissioned by NHS England as part of its responsibility for specialist adult urology services.

COMMISSIONING FERTILITY PRESERVATION SERVICES

In a significant numbers of cases an individual's need for fertility preservation will arise because of the threat to fertility from cancer treatment (radiotherapy and chemotherapy). Other patient groups may be affected in the same way, including those who are, or will be, receiving:

- specialist endocrinology services
- services for rare mitochondrial disorders
- endocrine treatment or surgery for the alleviation of gender dysphoria

All patient groups whose medical treatment may compromise fertility should be in the contemplation of a CCG when its clinical commissioning policy for fertility preservation is being developed or is under review. Given the legal duties identified above, CCGs must not determine which patient groups might be offered fertility preservation services on a basis which discriminates against those patients because of a protected characteristic, including gender re-assignment.

Provided there is compliance with the legal duties, it is open to CCGs to form their own clinical commissioning policies (either for routine funding, or not for routine funding) by taking into account local needs and relative priorities, evidence of clinical effectiveness of the intervention under consideration, and available resource, thus developing eligibility criteria accordingly.

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