EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (CLINICAL COMMISSIONING GROUPS – PAYMENTS IN RESPECT OF QUALITY) REGULATIONS 2013

2013 No. 474

1 This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2 Purpose of the instrument

2.1 This instrument makes provision in relation to payments to Clinical Commissioning Groups (CCGs) in respect of quality.

3 Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4 Legislative Context

4.1 The Health and Social Care Act 2012 ("the 2012 Act") amends the National Health Service Act 2006 ("the 2006 Act") and sets out the high-level framework for the establishment of commissioning arrangements.

4.2 Under section 223K of the 2006 Act the NHS Commissioning Board ("the Board") may, after the end of the financial year, make a payment to a CCG in respect of quality. Section 223K(2) of the 2006 Act sets out that, in determining whether to make a payment, and if so the amount, the Board must take into account at least one of the following factors: quality of services, outcomes achieved from the provision of those services and improvements to such quality and outcomes. The Board may also under section 223K(3) of the 2006 Act, take into account any relevant inequalities identified during that year and any reduction in relevant inequalities identified during that year in comparison with relevant inequalities identified over previous years. Section 223K(4) enables regulations to be made as to the principles and other matters that the Board must or may take into account in assessing these factors. Section 223K(5) enables regulations to set out when the Board may reduce the amount of a payment it would have otherwise made or withhold it entirely and section 223K(6) of the 2006 Act enables regulations to make provision about how any quality payment received by a CCG may be spent. The regulations exercise these powers and set out the principles and framework governing the quality payment arrangements.

5 Territorial Extent and Application

5.1 This instrument applies to England only.

6 European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7 Policy background

- What is being done and why

7.1 *Equity and Excellence: Liberating the NHS* set out the Government's intention to change how NHS care is commissioned: CCGs will be responsible for commissioning most NHS services, to be supported by and accountable to a new non-departmental public body, the Board, which in turn will be accountable to the Secretary of State. This approach builds on the key role that GP practices play in coordinating patient care and acting as patient advocates, allowing them to play the lead role in deciding what wider health care services to commission on their patients' behalf.

7.2 The Secretary of State will continue to be under a duty to promote a comprehensive health service, and will be held accountable for the system through the duties in the Act including a duty to keep under review the effective exercise of functions by national bodies, including the Board, and a duty to report annually on the performance of the health service.

7.3 One of the central features of the amendments made to the 2006 Act by the 2012 Act is that in future NHS commissioners should have a stronger focus on improving the quality and outcomes of care for patients. This focus on better care will be for all patients, and both the Board and CCGs will be under a statutory obligation to reduce inequalities in healthcare. A new duty as to improvement in quality of services is a key element in supporting quality improvements and the Board will hold CCGs to account for the quality outcomes they achieve and for financial performance. It will also be able to make payments to CCGs in respect of quality.

7.4 These regulations set out the principles and associated matters which the Board must or may take into account when assessing the eligibility of a CCG for a payment in respect of quality; the circumstances in which the Board may choose not to make a payment it would otherwise have made or to reduce the amount of such a payment; and how such payments may be spent by a CCG.

- ***Consolidation***

7.5 These regulations do not consolidate any previous legislation.

8 Consultation outcome

8.1 The provisions of the 2012 Act are based on policies tested through a series of consultations; the White Paper, *Equity and Excellence: Liberating the NHS*, and the listening exercise led by the NHS Future

8.2 The underlying policy and arrangements covered by this SI were discussed with a wide range of stakeholders including:

- the British Medical Association (BMA)
- the Royal College of General Practitioners (RCGP)
- the National Association of Primary Care (NAPC)
- the NHS Alliance
- the Family Doctors Association
- emerging and established CCGs
- the NHS Commissioning Board
- HM Treasury and other Government Departments

8.3 This has improved the policy and design of the new arrangements in a number of ways, by clarifying: the factors that the Board ether may or must take into account when assessing quality; the circumstances in which the Board may choose not to make a payment, or to reduce the amount of such a payment; and how payments may be spent by a CCG.

9 Guidance

9.1 The Board has powers (and in some cases is required) to issue guidance to CCGs. For example, section 2 of the 2006 Act provides a general power for the Board to issue guidance material to CCGs. Regulations also require the Board to publish its procedure for determining whether to make a quality payment to a CCG. The Board has provisionally published its procedure for 2013/14, *Quality Premium: 2013/14 guidance for CCGs* (December 2012).[1]

10 Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 A full Impact Assessment has not been prepared for this instrument as no impact on the private sector or civil society organisations is foreseen: the costs and cost-savings of transferring the commissioning responsibilities from SHAs and PCTs to the Board and CCGs have been set out in Commissioning for Patients Impact Assessment (see pages 3 – 29, Annex A)[2] that accompanies the Health and Social Care Act 2012. These costs and cost-savings are not easily attributable to any one particular piece of secondary legislation.

10.4 Since the publication of the Impact Assessment for the Health and Social Care Act 2012, officials have been tracking closely the actual

[1] Published at http://www.commissioningboard.nhs.uk/files/2012/12/qual-premium.pdf
[2] to be found at http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_129917.pdf

[3]

11 Regulating small business

11.1 The legislation does not apply to small business.

12 Monitoring & review

12.1 Secretary of State will keep the Board's performance under review in line with his duty under the NHS Act 2006, as amended by the Health and Social Care Act 2012. In turn and as part of its responsibilities, the Board will monitor the exercise by CCGs of their statutory functions as part of its annual performance assessment of CCGs.

12.2 The exact details of monitoring arrangements for and reviews of secondary legislation has not yet been finalised, but will build on planned evaluations of commissioning by external academics from the Department of Health funded Policy Research Programme. This is in addition to ongoing reviews within the system that will examine the extent to which the implemented regulations have achieved their objectives, costs and benefits and identify whether they are having any unintended consequences.

13 Contact

13.1 Claire Aldiss at the Department of Health (Tel: 0113 254 5619 or email: claire.aldiss@dh.gsi.gov.uk) can answer any queries regarding this instrument.

[3] 18 Oct 2012 : Column 36WS: http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121018/wmstext/121018m0001.htm#12101829000017