

From: Clair Bell, Cabinet Member for Adult Social Care and Public Health
Richard Smith, Corporate Director Adult Social Care and Health

To: Adult Social Care Cabinet Committee – 1 December 2021

Subject: **OLDER PERSONS RESIDENTIAL AND NURSING CONTRACT EXTENSION AND VARIATION**

Decision Number: 21/00104

Classification: Unrestricted

Past Pathway of report: Adult Social Care Governance Board - 26 October 2021

Future Pathway of report: Cabinet Member decision

Electoral Division: All

Summary: The Older Persons Residential and Nursing Contract will expire automatically on the 31 March 2022 unless the Council exercise the right, by giving written notice to the Provider, to extend the contract for a further two years from 1 April 2022 to 31 March 2024, giving up to 3 (three) Months' notice to the Provider (or such other time agreed between the Parties).

A contract modification will enable a separate Lot to be added that enables the purchasing of Pathway 3 Discharge Beds on behalf of NHS Kent and Medway Clinical Commissioning Group.

Recommendation(s): The Adult Social Care Cabinet Committee is asked to **CONSIDER** and **ENDORSE** or make **RECOMMENDATIONS** to the Cabinet Member for Adult Social Care and Health on the proposed decision (attached as Appendix A) to:

- a) **EXTEND** the current contract in line with contract conditions for a further two years from 1 April 2022 to 31 March 2024;
- b) **MODIFY** the contract to allow a separate Lot to be added that enables the purchasing of Pathway 3 Discharge Beds on behalf of NHS Kent and Medway Clinical Commissioning Group; and
- c) **DELEGATE** authority to the Corporate Director of Adult Social Care and Health to take relevant actions, including but not limited to finalising the terms of the contract modification or other legal agreements, as necessary to implement the decision.

1. Introduction

- 1.1 The current Older Persons Residential and Nursing Contract commenced in April 2016 with an initial four-year contract period. The council may, by giving written notice to the Provider extend this contract for such further period or periods of up to 4 (four) years as agreed between the Parties.
- 1.2 The contract is by way of a Dynamic Purchasing System (DPS), that allows the council to add new providers during the lifetime of the contract having passed the relevant selection criteria and provide an indicative tender which meets the specification.
- 1.3 The contract includes five Lots that providers can tender for:
 - Lot 1 CQC Registered Residential Homes or “Care Homes without nursing” for the provision of Long Term, Short Term and respite care services.
 - Lot 2 CQC Registered Nursing Homes or “Care Homes with nursing” for the provision of Long Term, Short Term and respite care services.
 - Lot 3 Providers of Bariatric care services.
 - Lot 4 Call off Block Contract for the provision of multiples of two beds for short term Respite care services across Kent; and
 - Lot 5 Residential or Nursing Care Home providers able to offer ‘day’ services.
- 1.4 The current contract will automatically expire on 31 March 2022 unless it is extended. It is proposed to extend the current contract, by giving written notice to the provider, for a period of two years from 1 April 2022 to 31 March 2024.
- 1.5 Extending the contract by two years to 31 March 2024 will provide the necessary time and resource to consider the integration of the health and social care system and new models of care that ensure the right residential accommodation is available for the people of Kent.
- 1.6 Kent County Council (KCC) and Kent and Medway Clinical Commissioning Group (KMCCG) have been working together to support people requiring discharge from hospital into a residential bed, for a four-week assessment period following National Pathway 3 guidance. The beds are currently sourced by health partners from the Older Person Residential and Nursing provider market.
- 1.7 The ambition is to work more collaboratively across health and social care and with providers to support sustainability and efficiency within the sector. The new model will continue to ensure that people and families are placed in the most appropriate provision based on the level of care need and support timely discharge from hospitals.
- 1.8 The intention is for the council to place a modification notice and work with KMCCG to develop a specification, which will be placed as an additional Lot to the current contract DPS Agreement. This will enable providers to bid and provide beds to KMCCG. The plan is to have this in place from 1 April 2022. Hospital discharge teams will take responsibility for management of placements of people.

1.9 Contract management improvements continue to be made, and new tools introduced to allow for better management of contracts and potential risks.

- Updated processes and systems for the administration of the DPS
- The development of a dashboard that includes spend and cost
- The development of a risk matrix that independently RAG rates each home based on a range of quality factors
- Collection of data to determine homes at risk of market failure

1.10 The following options have been considered:

- **Option 1: Do Nothing: The contract will automatically end 31 March 2022.** This option is not viable as there will be no contract in place for Older Persons care homes leaving the council unable to fulfil its legal obligations as this is a statutory service.
- **Option 2: Extend the current contract without the additional Lot for KMCCG beds:** This will not fulfil the ambition to work more collaboratively across health and social care as well as with providers to support sustainability and efficiency within the sector and ensure the best care for residents discharged from hospital.
- **Option 3: Retender the service:** Although there is an option to retender the service earlier than 1 April 2024, it is felt that there needs to be significant work done to ensure that the new contract meets the demands and needs of the health and social care system. A two-year extension will enable the analysis of the market and a meaningful consultation with all stakeholders to ensure a service that is fit for purpose and outcome driven through collaborative coproduction with KMCCG and partners.
- **Option 4: Extend and modify the Contract to add an additional Lot for KMCCG beds:** This is the preferred option and the option put forward for consideration. The new model will ensure people are placed in the most appropriate provision based on the level of care need and support timely discharge from hospitals. The benefits include supporting the integration of health and social care and economies of scale. The extension to the contract will also allow for the appropriate planning and preparation for a retender of the contract.

2. Financial Implications

2.1 The total cost of the Older Persons Residential and Nursing Contract is approx. £100M per annum with a total of £200M for period of the contract extension.

2.2 The guide price for the beds will be reviewed as part of the annual bed price review and implemented in April 2022.

2.3 No financial implications are foreseen for the addition of KMCCG to the Council's DPS arrangement.

3. Legal Implications

- 3.1 Although the council has set its Guide Prices, the design of the contract is for the market to set an indicative (not to exceed) price when joining. Underlying sustainability of the social care market for older people is a key factor when analysing the costs of care.
- 3.2 No legal implications are foreseen for extending the DPS arrangement as the contract term including extensions were advertised within OJEU when the opportunity was contracted for.
- 3.3 Both internal and external legal advice has been sought in relation to KMCCG joining the council's DPS arrangement as a new LOT. The CCG were named in the original procurement advert and the advice provided from Trowers & Hamlins LLP is that KMCCG can be included within our contracted contractual arrangement. The council would need to place a Modification Notice within **Official Journal of the European Union and the UK's Find a Tender Service** using Regulation 72(C) 1 of the Public Procurement Rules, ideally at same time as extending the contract.

4. Equalities Implications

- 4.1 An Equality Impact Assessment was undertaken as part of the original tender process and will be refreshed as part of the extension. A copy is available on request.

5. Conclusions

- 5.1 Unless the Older Persons Residential and Nursing Contract is extended the contract will automatically end on 31 March 2022. Therefore, it is recommended that the contract is extended for a further two years from 1 April 2022 to 31 March 2024.
- 5.2 It is recommended that as part of the extension that a contract modification notice is made that allows an additional Lot to be added to the current contract DPS Agreement which will enable Providers to bid to provide beds to KMCCG from 1 April 2022.

6. Recommendations

6.1 Recommendations: The Adult Social Care Cabinet Committee is asked to **CONSIDER** and **ENDORSE** or make **RECOMMENDATIONS** to the Cabinet Member for Adult Social Care and Health on the proposed decision (attached as Appendix A) to:

- a) **EXTEND** the current contract in line with contract conditions for a further two years from 1 April 2022 to 31 March 2024;
- b) **MODIFY** the contract to allow a separate Lot to be added that enables the purchasing of Pathway 3 Discharge Beds on behalf of NHS Kent and Medway Clinical Commissioning Group; and
- c) **DELEGATE** authority to the Corporate Director of Adult Social Care and Health to take relevant actions, including but not limited to finalising the terms of the contract modification or other legal agreements, as necessary to implement the decision.

7. Background Documents

None

8. Lead Officer

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