

HEALTH OVERVIEW AND SCRUTINY COMMITTEE

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ASSISTIVE REPRODUCTIVE TECHNOLOGIES – POLICY REVIEW

Report from: Stuart Jeffery, Chief Operating Officer, NHS Medway
Clinical Commissioning Group

Author: Michael Griffiths, Partnership Commissioning
Programme Lead, Children and Families

Summary

This report follows the paper that was presented to the Health Overview and Scrutiny Committee in November 2017, advising of a review of the policies relating to the review of Assistive Reproductive Technologies that is to be undertaken by the eight Kent and Medway Clinical Commissioning Groups.

In line with many health economies across England, Kent and Medway, CCGs are considering a range of difficult decisions to ensure that overall financial risks are minimised. CCGs have agreed to review the policies relating to ART.

1. Budget and Policy Framework

- 1.1 Assistive Reproductive Technologies (ART) are funded by Clinical Commissioning Groups (CCGs).
- 1.2 NHS Medway CCG is the lead commissioner for ART services for the eight CCGs across Kent and Medway.

2. Background

- 2.1 The review will focus on two aspects:
 - Ensuring that the number of funded cycles is both affordable and reasonable. This may result in a reduction to the number of IVF cycles that are funded for eligible patients.
 - Considering the funding of assisted conception treatments using donated genetic materials for all patient groups. A complainant highlighted that the current policy effectively excludes same sex couples access to NHS funded fertility treatment due to their requirement for donated materials.

- 2.2 This report outlines the national and local context with regard to ART policy development and proposes an approach to reviewing the current Kent and Medway CCGs' ART policies. In addition, the attached documents identify the current schedule of policies, and the potential changes that the review may bring about, and seeks the view of the Committee as to whether such changes would constitute a significant variation to health services.
- 2.3 Under Part 4 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 the Council may review and scrutinise any matter relating to the planning, provision and operation of the health service in Kent. In carrying out health scrutiny a local authority must invite interested parties to comment and take account of any relevant information available to it.
- 2.4 Regulation 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 requires relevant NHS bodies and health service providers ("responsible persons") to consult a local authority about any proposal which they have under consideration for a substantial development of or variation in the provision of health services in the local authority's area. This obligation requires notification and publication of the date on which it is proposed to make a decision as to whether to proceed with the proposal and the date by which Overview and Scrutiny may comment. Where more than one local authority has to be consulted under these provisions those local authorities must convene a Joint Overview and Scrutiny Committee for the purposes of the consultation and only that Committee may comment.
- 2.5 If this Committee and Medway Council's Health and Adult Social Care Overview and Scrutiny Committee were to both determine that the proposals constitute a substantial health service development or variation the responsible persons will have to consult the Kent and Medway Joint Health Scrutiny Committee and only that Committee may make comments and require information on the matter.
- 2.6 The terms "substantial development" and "substantial variation" are not defined in the legislation. Guidance on health scrutiny published by the Department of Health in June 2014 suggests it may be helpful for local authority scrutiny bodies and responsible persons who may be subject to the duty to consult to develop joint protocols or memoranda of understanding about how the parties will reach a view as to whether or not a proposal constitutes a "substantial development" or "substantial variation".

3. National and Local context

- 3.1 Please see appendix one, which provides the national and local context for this work.

4. Proposed service development or variation

- 4.1 The review will focus on two aspects:

- Ensuring that the number of funded cycles is both affordable and reasonable. This may result in a reduction to the number of IVF cycles that are funded for eligible patients.
- Considering the funding of assisted conception treatments using donated genetic materials for all patient groups. A complainant highlighted that the current policy effectively excludes same sex couples access to NHS funded fertility treatment due to their requirement for donated materials.

5. Advice and analysis

- 5.1 CCGs in Kent and Medway have now considered the potential impacts of a review of ART policies, and agree that a review should be undertaken. The proposed process for the review of policies relating to the number of cycles and use of donated genetic material is outlined below.

6. Review timeline

- 6.1 It is proposed that engagement with members of the public and stakeholders takes place between February and April 2018, with the decision relating to the review to be presented to each CCG in July / August 2018. A new schedule of policies would be published and implemented after this time.

7. The consultation and engagement process

- 7.1 When considering significant changes to public services, CCGs have a legal duty to involve the public.
- 7.2 In order to ensure that a region-wide policy is maintained, CCG Chief Operating Officers (COOs) will oversee this policy review and discuss progress at regular region-wide meetings.
- 7.3 The North and East London Commissioning Support Unit (NEL CSU) will lead on engagement processes with members of the public and with patient support groups, with support from individual CCGs.
- 7.4 The process of public engagement will be carried out through online questionnaires which would be hosted on each CCG's website and promoted via social media channels and public meetings in each CCG area.
- 7.5 A full engagement plan will be developed by NEL CSU in the coming weeks. In addition, the report that is presented to the Health Policy Reference Group will include equality and diversity impact assessments for consideration by the Group.

8. Risk management

8.1 Risks associated with reviewing the schedule of ART policies include:

Risk	Description	Action to avoid or mitigate risk	Risk rating
Poor response to engagement process	Should there be a poor response, CCGs may be required to amend the approach to the review, thus causing increased costs and a delay to the proposed timeline.	Clear communication and engagement plan to be developed and implemented. Individual CCGs must support the proposed process	E3 <i>E = very low probability 3 = marginal impact</i>
Lack of input from one or more CCGs	CCGs are under pressure in a number of areas and it is possible that this work is not prioritised by all eight CCGs in Kent and Medway. This would cause a delay to the process and could potentially destabilise the review and engagement phase.	All CCGs are actively involved with this process at present, via Chief Operating Officers. All CCGs are represented on the HPRG and will take decisions via their own governance routes.	E3 <i>E = very low probability 3 = marginal impact</i>
CCGs are unable to agree the outcome of the policy review	At the conclusion of the review, there is the chance that consensus is not reached across the eight Kent and Medway CCGs. This could lead to the implementation of different policies in CCG areas and give rise to allegations of a “postcode lottery” for health services.	This risk must be tolerated to respect the sovereignty of individual CCGs.	D3 <i>D = low probability 3 = marginal impact</i>
Challenge from patient groups/ reports in local media	ART services are highly emotive and proposed changes could lead to reputational damage for CCGs.	Clear communication and engagement plan to be developed and implemented to help mitigate this risk.	B2 <i>B = high probability 2 = critical impact</i>

9. Financial implications

9.1 The Health policy Support Unit estimate that should Kent and Medway CCGs reduce to one cycle of NHS funded IVF per eligible couple, this would have a cost saving of approximately £666k p.a. across Kent and Medway CCGs. Potential financial savings are identified in more detail in appendix one.

9.2 Depending on the outcome of the review relating to the use of donated genetic materials, there may be a cost pressure for Kent and Medway CCGs.

This cost pressure is being calculated, and further work relating to the cost of the proposed review will be undertaken by the Health Policy Support Unit throughout the review, for consideration by the Health Policy Review Group.

10. Legal implications

10.1 The legal implications are set out with in the report and in particular Section 2.

11. Recommendation

11.1 The Committee is asked to note the review of Assistive Reproductive Technologies (ART) policies, set out in the report, in light of the financial challenges faced by Clinical Commissioning Groups (CCGs), and note the review process set out in section six of the report.

11.2 The Committee is further asked to determine whether the proposed policy changes constitute a significant variation in health services

Lead officer contact

Michael Griffiths, Partnership Commissioning Programme Lead – Children and Families Services

Telephone: 01634 334402 E-mail: Michael.griffiths@medway.gov.uk

Appendices

Appendix 1 - Review of Kent and Medway CCGs' policies on assisted reproductive technologies (ART) – Paper for HOSCs, provided by NEL Commissioning Support Unit

Appendix 2 - Existing schedule of policies relating to Assistive Reproductive Technologies

Appendix 3 - Substantial Variation Questionnaire