**Summary of the new statutory guidance for engagement developed by**

**NHS England (Published April 2017)**

**Audience: CCG staff to be used in training sessions**

The newly published statutory guidance explains how we as a CCG along with NHS England can meet our legal duties in relation to involvement and consultation.

Statutory guidance means we have to ‘have regard’ to this; we don’t have to do anything, but if we chose not to - we need to explain why!

The guidance is in two parts and focuses on – **a) individual** and **b) patient and public** engagement

1. **Individual engagement** [(Involving people in their own health and care)](https://www.england.nhs.uk/publication/involving-people-in-their-own-health-and-care-statutory-guidance-for-clinical-commissioning-groups-and-nhs-england/)

**What does involving people in their own health and care mean?**

* Supporting people to manage their own health and wellbeing on a daily basis.
* Supporting them to become involved, as much as they want or are able to, in decisions about their care
* Giving them choice and control over the NHS services they receive.
* Focusing on what matters to the individual within the context of their lives,
* Commissioning services that routinely provide individuals with the information, care and support

**What should CCGs and NHS England do in practice?**

1. **Support patients, carers and representatives** (
* Inform individuals/ provide information about their right to be involved in and make choices regarding their care.
* Learn how involved people are in their care and how they feel they could become more involved.
* Make it easier for patients to access information about their health.
* Make use of existing insight (experience) to understand how this links to what an individual wants and needs.
* Require providers to take measures such as those set out above.
1. **Publicise and promote personal health budgets (PHB)**
* Publish the local personal health budget offer
* Inform people in receipt of continuing healthcare, or children in receipt of continuing care, of their legal right to have a personal health budget.
1. **Publicise and promote the choices available to patients**
* Promote awareness of providers that people can choose for an elective referral, and where info is found
1. **Commission for involvement**
* Introduce requirements and incentives in relation to individual involvement in contracts, service specs/ tenders.
* Look at individual involvement in all service commissioning- prevention, diagnosis, care planning, treatment
* Work with providers/professionals to understand challenges/opportunities in involving people in their care.
* Co-produce services and pathways with patients, carers and the public to better understand what challenges and opportunities they face in becoming more involved and to create more effective health services.
1. **Promote and publicise the involvement of individuals**
* Promote the importance of involving people in their own health and care in conversations with staff, providers and the general public.
* Publicise how people can be involved in their own health and care and share good practice.
* Publicise individuals’ right to be involved in and make choices about their care.
1. **Assure themselves that providers are involving people in their own health/care to an acceptable standard by**
* Systematically identifying and engaging with people with LTC/ disabilities, including the offer of integrated personal commissioning or a PHB? i.e. through the Patient Activation Measure (PAM)
* Systematically providing personalised care and support planning for people living with LTC/ disabilities who would benefit this; and/or more support to develop the knowledge, skills and confidence
* Giving people access to their own health records
* Ensuring their clinicians/care staff systematically share decisions across all care pathways
* Following the Accessible Information Standard
* Considering the needs of carers
* Tailoring information to peoples’ health literacy, using the accessible information standard
* Offering meaningful choice to patients for care or support services
* Providing /promoting online services for shared decision making, empowering best use of health services?
1. **Use and promote tools and resources.**
* [‘Think Local Act Personal’](https://www.thinklocalactpersonal.org.uk/) for health and care leaders, commissioners, planners, clinicians and practitioners.
* NHSE resources - [personalised care and support planning handbook](https://www.england.nhs.uk/ourwork/patient-participation/patient-centred/planning/); support materials for online services.
* NHSE- resource pack for commissioners – [Embedding shared decision making](https://www.england.nhs.uk/ourwork/pe/sdm/capita/res-pck/).
* [Online health literacy resources](https://hee.nhs.uk/our-work/hospitals-primary-community-care/population-health-prevention/health-literacy).
1. **Assure themselves that they are commissioning services that match population needs and preferences**
* Commission services around what matters to people, changing/decommissioning services that do not.
* Commissioning the right mix of self-care approaches - both generic and condition specific self-management education programmes (face to face or online) to match needs.
* [‘Realising the Value’](http://www.nesta.org.uk/project/realising-value) has a range of resources on self-management education.
* Commissioning health coaching for people with LTC who have low levels of knowledge, skills and confidence to manage their health and wellbeing.
* Commissioning peer support and group activities as a core service offer.
* Using local community assets in commissioning (organisations, groups, activities and resources), to provide a breadth of services that address a variety of health and care needs, such as through social prescribing.
* Systematically identifying, supporting and involving carers is also key to this.
1. **Implement a workforce strategy, supporting health/care professionals to involve people in their own health and care**
* Involving individuals in managing their health and wellbeing relies on a changed relationship between individuals and professionals.
* Key to achieving this is ensuring that all those working in health and care have person-centred and community centred skills, competencies, values and behaviours.
* In addition, it means understanding which staff roles would benefit from training in specific approaches that promote the involvement of individuals in their own health and care.
1. **Advance equality and reduce health inequalities**
* Creating the conditions for involving people in their health and wellbeing means proactively reaching out to those who experience the greatest health needs, those who face barriers to access and participation, and those groups protected under the Equality Act 2010.
* An equality and health inequality analysis can help to identify those groups. Both NHSE and CCG staff can access the [NHSE Equality and Health Inequalities Hub](https://www.england.nhs.uk/about/equality/equality-hub/) for more information and resources.
* Particular attention should be paid to the needs of those people who are most excluded from traditional services; for example, the homeless, sex workers, recent migrants and Travellers

**Measurement and assurance**

There is a number of ways to measure individual involvement and to provide assurance that CCGs and NHS England are meeting their associated legal duties. Examples are outlined below:

* CCGs will be monitored on progress towards meeting their trajectories to expand the uptake of personal health budgets in line with the Mandate commitment. The NHS Operational Planning and Contracting Guidance for 2017-19 sets an aim for CCGs to deliver their share of the Mandate commitment (50,000) by March 2019.
* For 2016/17, NHS England introduced a new Improvement and Assessment Framework (IAF) for CCGs. The framework includes one indicator regarding how supported people with long term conditions feel and one regarding personal health budgets (a headline count of the total number of personal health budgets per 100,000 population). The IAF indicators are published on the comparison website MyNHS, enabling people to see how their local area is performing compared to others, and allowing CCGs to benchmark performance against peers.
* CQUIN 11 in the National Commissioning Quality and Innovation (CQUIN) scheme 2017/19 relates to the delivery of personalised care and support planning, whilst the CQUIN Specialised Scheme 2017-19 includes measurement of patient activation for long term conditions.
* CQC regulation 9 specifically states that providers must ‘provide support to help [individuals] understand and make informed decisions about their care and treatment options’.
* National surveys, such as the GP Patient Survey and Inpatient Survey, provide data on how involved individuals feel they are in their health and wellbeing.
* The Care Quality Commission (CQC) have included ‘accessible information and communication’ as one of their Equality Objectives for 2017-2019. In order to meet this objective, one of their commitments is that, ‘From October 2017, all inspection reports include how providers are applying the standard’.

**B) Public Engagement -** [Patient and public participation in commissioning health and care](https://www.england.nhs.uk/publication/patient-and-public-participation-in-commissioning-health-and-care-statutory-guidance-for-ccgs-and-nhs-england/)

The new guidance sets out 10 principals of participation developed by NHSE (page 12)

Commissioners should:-

**1. Involve the public in governance - The CCG constitution must describe:**

* The key ways it involves the public in commissioning
* A statement of the principles it will follow in involving the public
* How the CCG will ensure transparency of decision making.

**CCG governing bodies must include at least:** one lay person who has qualifications, expertise or experience in finance and audit, and chairs the audit committee; one lay member regarding primary care, and a third lay person who has knowledge about the CCG’s local area to express informed views about how the CCG is performing its functions, and will help to ensure that the voice of the local population is heard.

**2. Explain public involvement in commissioning/business plans**

CCG commissioning plans must explain how the public involvement duty will be met. This means explaining how priorities have been influenced by engagement and planning and budgeting for future engagement activity.

**3. Demonstrate public involvement in annual reports**

Annual reports produced by CCGs must show how the public involvement duty has been discharged -details in various NHS guides including tools and resources.

**4. Promote and publicise public involvement**

Arrangements for public involvement should be promoted and publicised in a variety of ways, appropriate to the identified audience. CCGs should publish (on the website) at least these:-

* Involvement opportunities, including formal roles, consultations and public meetings.
* Details of how to make complaints and comments.
* A summary of key local health needs and how these are being addressed.
* Links to local Healthwatch.
* Links to other relevant local organisations.

**5. Assess, plan and take action to involve – and the legal duty to involve**

CCGs must assess the benefits of and the legal requirement for public involvement; and must plan and carry out involvement activity. Decision making and the rationale for decisions should be clearly documented at all stages. The duty is likely to apply to planning, and developing proposals for change:-

**Changes to commissioning arrangements**

* The strategic planning of services; plans to reconfigure or transform services or improve health and will link to plans in response to the latest JSNA and health and wellbeing strategy.
* Developing proposals to change commissioning arrangements; i.e. changes to services, new models of care/ service specifications; local improvement schemes; moving services from between provider or location.

**Procurement**

* Considering or developing proposed models or specifications for a service, starting a procurement process

**Contracts**

* Entering into a contract with a provider; varying a contract; serving a notice to terminate a contract with a provider; receiving a notice to terminate from a provider.

**Overview and scrutiny referral**

* Any instance in which a referral has been made to the local overview and scrutiny committee.

**Equality**

* An EIA may indicate the need for engagement, for example a lack of evidence relating to certain groups.

**If the legal duty to involve does not apply (if it’s an operational decision), you should still consider whether some form of public involvement, or staff/stakeholder engagement would be beneficial.**

**When the duty applies**, CCGs then need to do the following (note these steps form part of our engagement planning template which details the four Gunning Principles):-

* Plan for engagement
* Review existing insight and previous involvement activities– what do we already know?
* Who needs to be involved
* Decide how to people will be involved
* How will the activity be appropriate, fair and proportionate to the subject
* Timely - when the proposal is still at a formative stage (Gunning 1),
* Sufficient information and reasons must be put forward for the proposal to allow for intelligent consideration and response (Gunning 2) and enough time given for responses (Gunning 3)
* Consultation feedback needs to be conscientiously taken into account as part of the decision making process (Gunning 4)

**6**. **Feedback and evaluate**

* Feeding back on the results of participation is a critical step in the process. It helps people to feel valued and encourage them to be involved.
* Feedback should show how views have been considered and how they have impacted (or not) on commissioning decisions.
* If public participation has indicated support for a proposal which is not taken, the reasons should be explained. It is recognised that commissioning decisions are highly complex, and the views of patients and the public are one of a number of factors for CCGs and NHS England to take into consideration.
* Feedback should be shared with other partners where appropriate, to maximise joint intelligence and avoid the risk of people being asked the same/ similar questions more than once.
* Evaluation of the whole process of patient and public involvement is necessary in order to learn the lessons for the future and continuously improve performance. Evaluation should cover every aspect, from planning to delivery and feedback.

**7. Implement assurance and improvement systems**

CCGs and NHS England must have systems to assure themselves that they are meeting their legal duty to involve the public, in order to fulfil the requirement to report on this in their annual reports. In addition, in year evaluation and assurance of activity and impact is necessary for continuous improvement.

The [CCG Improvement and Assessment Framework](https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2016/03/ccg-iaf-mar16.pdf) includes a series of key lines of enquiry (KLOE) for patient and public participation, as follows:

* The CCG has governance processes which embed participation throughout the organisation and across the commissioning cycle. It can evidence how decisions taken by the governing body (and any relevant subcommittees) are informed by engagement with – and the views of – patients and the public.
* The CCG has built, and continues to build, robust relationships with its local communities. It supports strong partnerships with VCSE organisations, local Healthwatch, and patient groups.
* The CCG can demonstrate how it has identified and engaged with ‘seldom heard’ groups and diverse local population.
* Prior to starting engagement activity, the CCG considers and uses existing sources of insight
* The CCG holds its providers to account for how they involve patients in their own governance, decision making and quality improvement activities.
* The CCG ‘closes the loop’ whenever it seeks the views of patients and the public by feeding back the results of consultation and engagement activities and explaining how views have been considered and had an impact on decisions.

CCGs should be able to demonstrate through the annual reporting process how they have met the requirements set out in the guidance.

**8. Advance equality and reduce health inequalities**

CCGs should be able to demonstrate how they have tried to ensure:

* Participation activity reaches diverse communities and groups with distinct health needs and those who experience difficulties accessing health services, including inclusion health groups.
* People who have characteristics that are protected under the Equality Act 2010 are involved.
* People who lack capacity are protected and empowered and that the provisions of the Mental Capacity Act 2005 are met.

This is likely to be through carrying out an equality and health inequality analysis.

**9. Provide support to enable effective involvement**

* CCG staff must be provided with appropriate information, training and support to effectively and confidently engage patients and the public in their commissioning activities.
* In addition, all staff should be encouraged and supported to get involved and share their personal experiences and their own views as users of NHS services and members of communities.
* Other ways that CCGs and NHS England should support participation include ensuring that information is accessible and timely, and that they implement a transparent expenses policy.

**10. Hold providers to account on patient and public involvement**

* CCGs and NHS England must use the Standard Contract for all provider service contracts, other than for primary care which is covered by separate contracting arrangements. This includes service condition 12, which outlines contractual requirements in relation to communicating with and involving service users, the public and staff.
* NHS trusts and NHS foundation trusts have their own legal duty to involve the public (section 242 of the National Health Service Act 2006, as amended by the Health and Social Care Act 2012).

**Local variations in commissioning arrangements**

* Under the Five Year Forward View, the traditional divisions between primary care, community services and hospitals are being broken down and the roles of CCGs and NHS England and providers are being integrated to better meet the needs of patients. There is not a ‘one size fits all’ approach, and the plans to achieve this, including sustainability and transformation partnerships and emerging accountable care systems, are place based and built around the needs of local populations.

**Existing flexibilities under the National Health Service Act 2006**

* There are flexibilities within the National Health Service Act 2006 to enable one NHS body’s functions to be exercised by or jointly with another NHS body or bodies.

**New options under the Cities and Local Government Devolution Act 2016**

The Cities and Local Government Devolution Act 2016 enables the transfer of powers and funds from central government to local government and strengthens integration of public service functions in local areas, expanding the range of possibilities for CCGs to work together with other public bodies, whether NHS bodies or not, which extend beyond the existing flexibilities under the National Health Service Act 2006. However:-

* Day to day responsibility for public involvement generally sits with the commissioning organisation
* As a principle of good governance, day to day responsibility for making arrangements to involve the public should be formally documented. For example, a joint committee may set of a delegation agreement in its terms of reference. It should remain clear who has day to day responsibility for the public involvement arrangements that are necessary to meet the legal duties.
* The commissioning organisation (CCG) is liable for the exercise of its functions, including the duty to involve the public, even if in practice the activity is delegated to, or carried out jointly with, another body. CCGs should seek assurance that the arrangements for public involvement are adequate.