

NHS Health Check Programme Commissioning – Legal Advice

“The Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 S.I. 2013/35116 require local authorities to:

- . make arrangements for each eligible person aged 40-74 to be offered an NHS Health Check every five years, and for each individual to be recalled every five years if they remain eligible
- . include specific tests and measures in the risk assessment
- . ensure the individual having their NHS Health Check is told their cardiovascular risk score, and other results are communicated to them ensure that specific information and data is recorded during a check and, where the risk assessment is conducted outside the individual's GP practice, for that information to be forwarded to the individual's GP.
- . continuously improve the percentage of eligible individuals having an NHS Health Check.

Local authorities are not responsible for offering eligible prisoners or people in detained settings an NHS Health Check. Section 7A of the National Health Service Act 2006, as amended by the Health and Social Care Act 2012, requires NHS England to provide public health services in prisons and detained settings, this includes offering all detainees aged between 40 and 74 an NHS Health Check.

Where the Health Check risk assessment is conducted outside of the individual's GP practice, there is also a legal duty for the following information to be forwarded to the individual's GP:

- age
- gender
- smoking status
- family history of coronary heart disease
- ethnicity
- body mass index (BMI)
- cholesterol level
- blood pressure
- physical activity level
- alcohol use disorders identification test (AUDIT) score
- cardiovascular risk score

The regulations also requires that an individual having an NHS Health Check must be told their BMI, cholesterol level, blood pressure and AUDIT score as well as their cardiovascular risk score. In addition, those aged 65-74 should be made aware of the signs and symptoms of dementia and signposted to memory services if this is appropriate.

On 1 October 2021, responsibility for the NHS Health Check programme was transferred from Public Health England (PHE) to the Office for Health Improvement and Disparities (OHID), located within the Department of Health and Social Care. National Best Practice Guidance (produced by PHE)

remains current for local public health commissioners and providers of the NHS Health Check programme supports with information needed to commission and deliver a high-quality programme. It is designed to be used in conjunction with the NHS Health Check Programme Standards, National Institute for Health and Care Excellence (NICE) Clinical Guidance 181 and the NHS Health Check workforce skills and competency framework (minimum standards).

Local areas will wish to ensure that the NHS Health Check programme they offer is in keeping with the Equality Act 2010. Equality of opportunity cannot be achieved simply by treating everyone the same. Active consideration should be given locally with regard to both access to, and delivery of, the NHS Health Check for everyone but specifically in respect of those who share one of the nine protected characteristics.

Data flow between parties involved in the NHS Health Check programme is subject to the Data Protection Act and information governance rules. The three main data flows for the programme are:

- identifying and inviting the eligible population
- transferring NHS Health Check assessment data from non-GP NHS Health Check providers back to the GP practice
- data extraction from GP practices for local monitoring, evaluation and quality assurance of NHS Health Check. It is up to local commissioners to decide the level of data required to properly assess the impact of the programme. Flows of personal data between parties involved in the NHS Health Check programme are subject to the General Data Protection Regulation and the Data Protection Act 2018.

Local authorities have a legal duty to collect information on the number of NHS Health Checks offered and the number of NHS Health Checks received each quarter, and return this data to PHE. This data collection requirement is set out in the single data list (ref 254-00) which prescribes the datasets that local government must routinely submit to central government.

From the perspective of commissioning of providers, only accredited/ certified healthcare professionals can provide the Health Check Programme service. Section 2 of the HNS Health Check Competency Framework outlines the core competencies and clinical skills competencies, and section 3 specifies the NHS Health Check programme specific competencies that must be met before accreditation is achieved. The scheme therefore operates as an accreditation scheme, meaning contracts and payments are awarded on the basis of providers meeting certification requirements. Fairness, transparency and best value are achieved through this process. There is no ability to select providers outside of the accreditation scheme requirements and thus does not involve a procurement contract under the UK Public Contracts Regulations 2015, as there is no wider selection of suppliers on the part of the Council, but the programme does permit specification of standards that allow for flexibility of delivery applicable to local need.

The specialist e-Healthscope software was specifically developed (and is owned by the NHS) to meet the reporting needs of certified providers, to best support the delivery of the health checks and avoid disruption from any system changes. It is highly integrated within existing providers systems. The contract value threshold of £25,000 in the Contract Procedure Rules, is not reached, so there is no need to seek three quotations. In any event, exemption from this requirement may have been justified on the grounds of special circumstances making an award to the identified provider permissible, as it is understood there are no alternative providers in the market. “