

# The interaction of health and social care services

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## Overview

- Introduction to NHS bodies, duties and the responsible commissioner
- Continuing healthcare
- Hospital discharge during COVID-19 pandemic

## (1) Introduction: NHS bodies

- NHS England:
  - Its duties are set out in the NHS Act 2006.
  - Its general duties remain as set out in the NHS Act 2006: to promote a comprehensive health service, exercising functions in view of continuous improvement of services, reducing inequality, promoting research, etc.
  - Main commissioner of primary and dental care and specialist services

## (1) Introduction: NHS bodies

- CCGs:
  - CCGs are in charge of commissioning health services, and its duties are set out in Chapter A2 of the NHS Act 2006 (inserted by HSCA 2012). Includes wide range of acute and community NHS services other than those commissioned by NHS England.
  - Its general duties remain (which mirror those of NHSE).
- NHS Trusts
  - Sections 25-27 and Schedule 4 of the NHS Act 2006.
  - Provision of goods and services for the purpose of the health service.

## (1) Introduction: local authorities

- Section 2B of the NHS Act 2006 states “[e]ach local authority must take such steps as it considers appropriate for improving the health of the people in its area.”
- This can include:
  - “information and advice”
  - “providing services or facilities for the prevention, diagnosis or treatment of illness”
  - “providing assistance (including financial assistance) to help individuals to minimise any risks to health arising from their accommodation or environment”
  - “making available the services of any person or any facilities”

## (1) Introduction: responsible commissioner

- As a general rule, see section 3(1A) of the NHS Act 2006:

“For the purposes of this section, a clinical commissioning group has responsibility for—

- (a) persons who are provided with primary medical services by a member of the group, and
- (b) persons who usually reside in the group’s area and are not provided with primary medical services by a member of any clinical commissioning group”

## (2) Continuing healthcare: why it matters

- If individual eligible for NHS continuing healthcare then generally no charge is made; whereas LA care and support will usually lead to a charge.
- It also defines who is responsible for the cost of provision. If an individual has CHC funding, an LA will usually determine there is no 'need' for community care services.
- The LA cannot provide services that fall to be provided under the NHS 2006 unless such would be incidental or ancillary, or the service would be of a nature the LA could be expected to provide: section 22 of the Care Act 2014.

## (2) Continuing healthcare: primary health need

- Key concept of primary health need, explained in ‘National Framework for NHS continuing healthcare and NHS funded Nursing Care’:

*“55. An individual has a primary health need if, having taken account of all their needs (following completion of the Decision Support Tool), it can be said that the main aspects or majority part of the care they require is focused on addressing and/or preventing health needs. Having a primary health need is not about the reason why an individual requires care or support, nor is it based on their diagnosis; it is about the level and type of their overall actual day-to-day care needs taken in their totality.”*

## (2) Continuing healthcare: primary health need

- Ineligible only where nursing or other healthcare services required (a) are no more than incidental or ancillary to the provision of accommodation the LA are under a duty to provide, and (b) are not of a nature beyond which a LA whose primary responsibility it is to provide social services could be expected to provide (paragraph 58 of Framework).
- Therefore crucial that LA is represented in the process, and CCG under duty to consult LA: regulation 22(1) NHS (Responsibility and Standing Rules) Regulations 2012.
- Based on assessment of needs: (1) nature, (2) intensity, (3) complexity, (4) unpredictability.

## (2) Continuing healthcare: disputes between LA / CCG

- The decision is for the CCG: St Helens BC v Manchester PCT [2008] EWCA Civ 931. The LA has no veto.
- The LA has no right of appeal, resolution by dispute resolution between bodies: regulation 22(2) of the RSR Regs 2012.
- Does not specifically explain what happens if dispute resolution protocols are not agreed. Mediation? Complaints procedure? Judicial review?

## (2) Continuing healthcare: no gap

- Guidance is clear, and courts have been consistently clear that individuals should not fall between services.
- Paragraph 57 of the CHC Framework: “There should be no gap in the provision of care. People should not find themselves in a situation where neither the NHS nor the relevant local authority (subject to the person’s means and the person having needs that fall within the eligibility criteria for care and support) will fund care, either separately or together.”

### (3) Hospital discharge during COVID-19

- ‘COVID-19 Hospital Discharge Service Requirements’
- In organising community provision, CCGs would take lead but needed to work “hand in glove” with adult social care colleagues.
- LAs were asked to (1) agree a lead LA for each hospital/trust, (2) support discharge work for those leaving hospital, (3) take the lead in contracting in domiciliary care, care homes and reablement services.

### (3) Hospital discharge during COVID-19

- Duty to carry out CHC assessment can arise when patient is being discharged from hospital. All assessments were put off, but Government agreed to fund the discharge pathways.
- Mostly carried out by section 75 agreement, permitting CCGs and LAs to enter into partnership agreements to allow LA to perform health related functions.

### (3) Hospital discharge during COVID-19

- Not completely clear the duration of funding from pooled fund, e.g. person who was funded by LA but discharged from hospital and from pooled fund.
  - Section 75 agreement
  - Para 10.11: “Where a patient has been admitted to secondary care and had previously been in receipt of a funded care package (either in a care-home or in their own home) this guidance and additional funding is intended to support the restart of such a package also. I.e. restarted care following discharge will be counted as covered by this additional funding.”

## Q&A

**We will now answer as many questions as possible.**

**Please feel free to continue sending any questions you may have via the chat section which can be found along the top or bottom of your screen.**

# Thank you for listening

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