

## 2.10 'Who Pays' amendment to the section on 'persons detained under the Mental Health Act 1983'

### Purpose

1. This paper provides an:
  - a. Update on the progress in reviewing the responsible commissioner 'Who Pays' guidance as related to persons detained under the 1983 Mental Health Act, and
  - b. Amendment to the NHS England 'Who pays? Determining responsibility for payments to providers' guidance effective from 1<sup>st</sup> April 2016, with no retrospective impact on existing individuals in receipt of section 117 aftercare services and their commissioners.

### Context

2. The recently published Learning Disability transformation plan: *Building the right support - a national plan to develop community services and close inpatient facilities for people with a learning disability* committed to revising Who Pays guidance in relation to section 117 of the Mental Health Act 1983:

*In addition, from November 2015, Who Pays guidance - determining responsibility for payment to providers - will be revised to facilitate swifter discharge from hospital of patients originating from one CCG but being discharged into a different local area. This will ensure continuity of care with responsibility remaining with one CCG rather than being passed from commissioner to commissioner.*

3. As part of the Learning Disability Transforming Care Programme, we were asked to review the responsible commissioner guidance and, in particular, section 117 of the 1983 Mental Health Act. Given that any proposed amendment would impact on both learning disability and mental health services, we have recently consulted with nursing and commissioning contacts in the regions, CCGs and specialised services to assess:
  - If they agree with the proposed amendments
  - To identify any major concerns/issues with the proposed amendments
4. Working through the transforming care agenda, the current guidance has been seen as a major factor in inhibiting hospital discharge as commissioners have not engaged fully in the process as CCGs have sometimes attempted to place someone into another CCG area then pass the funding responsibility for the person's package of support on to them as well. This has led to numerous disputes between commissioners.

### Stakeholder views

5. From 32 communications with commissioners across the country, we have had 23 responses (72%) that were positive about the proposed changes, there were 3 responses (9%) against the change and the remaining 6 responses (19%) were neutral on the amendment.
6. The Finance Working Group and the NHS England Learning Disability Programme Board are both supportive of the changes proposed.

7. We have also had discussions with the Department of Health who are supportive and are planning to repeal related elements of the 2012 Regulations with effect from 1<sup>st</sup> April 2016.

### **The original proposal**

8. The aim is to revise the 'who pays' guidance during 2015/16. There will be no retrospective changes to the guidance so that no existing individuals currently in receipt of S117 aftercare service will be affected by the proposed change and CCGs do not have any significant change to their financial positions. Moreover, this change should not be seen as an opportunity for commissioners to rebase or undertake a retrospective transfer process as current commissioner - patient responsibilities will remain the same (unless there is mutual agreement between CCGs and is in the best interest of the individual).
9. We have also recognised that there is a need to implement this change as soon as possible rather than wait until a fully revised 'Who Pays' document is published. This is due to the need to attribute commissioning responsibility to current hospital in-patients who are requiring a discharge following a Care & Treatment Review.
10. The rationale for an amendment to the guidance focusses on the need:
- To facilitate swifter discharge from hospital of patients originating from one CCG but being discharged into a different local area as specialist provision is not available locally. It should also increase commissioner motivation to maintain local services and help individuals stay in their local areas post discharge.
  - To make it clearer around responsibilities and enable better service planning.
  - To ensure continuity of care from the person's locality community team. Furthermore, the knowledge of and responsibility for the persons needs will remain with the responsible commissioner/CCG rather than be passed from commissioner to commissioner.
11. Following the consultation process, we have reviewed the correspondence and have reflected amendments in the revised guidance in the paragraphs below. It is intended that paragraphs 33 and 34 of the August 2013 'Who Pays' document will be replaced by the following sections (*in italics below*) effective from 1<sup>st</sup> April 2016.

*'If a person is detained for treatment under the Mental Health Act 1983, the responsible commissioner will be as set out in paragraph 1 of the 'who pays' guidance. Every effort should be made to determine GP practice registration or establish an address where they are usually resident, but if this fails and the patient refuses to assist, then as a last resort the responsible commissioner should be determined by the location of the unit providing treatment.*

*It is the duty of both the CCG and the appropriate local authority to commission after-care services for those persons discharged from hospital following detention under one of the relevant sections of the Mental Health Act. The responsible CCG should be established by the usual means (see paragraph 1) for their typical secondary healthcare. However, if a patient who is resident in one area (CCG A) is discharged to another area (CCG B), it is then the responsibility of the CCG in the area where the patient moves (CCG B) to jointly work with CCG A, who will retain the responsibility to pay for their aftercare under section 117 of the Act as agreed with the appropriate local authority. The purpose of this is to ensure that the person has access to local clinical support and advice in the area they will*

be moving to (CCG B), whilst remaining the commissioning responsibility of the original CCG (CCG A).

*If a detained person who has been discharged, and is in receipt of services provided under section 117 of the Mental Health Act, is subsequently readmitted or recalled to hospital for assessment or treatment of their mental disorder, the responsible CCG will continue to be the CCG that is currently responsible for funding the aftercare under section 117 (except where the admission is into specialised commissioned services).*

*If a detained person who was registered with a GP in one area (CCG A) is discharged to another area (CCG B) and is in receipt of services provided under section 117 of the Mental Health Act) is subsequently readmitted or recalled to hospital for assessment or treatment of their mental disorder, it is the responsibility of CCG A to arrange and fund the admission to hospital (except where the admission is into specialised commissioned services). Furthermore, the originating CCG (CCG A) would remain responsible for the NHS contribution to their subsequent aftercare under S117 MHA, even where the person changes their GP practice (and associated CCG).*

*The table below should provide a useful distinction of the changing commissioner responsibilities for patients discharged under section 117.*

<ul style="list-style-type: none"><li>• <i>Patients discharged pre 1 April 2013 come under the pre August 2013 PCT Who Pays Guidance and the legacy/originating CCG continues to be responsible for subsequent compulsory admissions under the MHA, and current and subsequent S117 services until such time as they are assessed to no longer need these services.</i></li></ul>
<ul style="list-style-type: none"><li>• <i>Patients discharged between 1 April 2013 and 31 March 2016 fall under August 2013 Who Pays Guidance –CCG B would be responsible if a patient is discharged into a location in CCG B and registers with a GP in CCG B.</i></li></ul>
<ul style="list-style-type: none"><li>• <i>New revised guidance from 1 April 2016 will revert back to the pre 1 April 2013 position where the legacy/originating CCG continues to be responsible in most cases.”</i></li></ul>

## **Further information**

12. Please contact Tim Heneghan, Strategic Finance: email [tim.heneghan@nhs.net](mailto:tim.heneghan@nhs.net) for any further information on this guidance.