

# Covid-19 discharge requirements – the underpinning legal arrangements

The Covid-19 Hospital Discharge Service Requirements (Discharge Requirements) came into effect on 19th March and outlined the new approach to hospital discharges during the current pandemic.

24 April 2020

**Please note: the information contained in our legal updates are correct as of the original date of publication**

The Covid-19 Hospital Discharge Service Requirements (Discharge Requirements) ([available here](#)) came into effect on 19th March and outlined the new approach to hospital discharges during the current pandemic.

The Discharge Requirements have set out a new, albeit temporary, approach to the funding of new and extended out-of-hospital health and social care support packages that are put in place when a patient is discharged from hospital or when the package is needed to avoid admission to hospital. Until further notice such care packages will be funded by the NHS and the usual rules relating to how the cost of these packages fall to be met by health, social care or service users themselves are suspended. The funding for these services will flow to CCGs from NHS England and Improvement and an appropriate mechanism will need to be in place to allow this funding to be used as intended.

The Discharge Requirements envisage that local authorities and CCGs will agree how to implement the arrangements on a local level including through the adoption of a lead commissioner role by one of the partners. For the most part it is expected that local authorities will take on this role but in some areas it may be that the CCG acts as a lead commissioner.

In order for these arrangements to have a sound legal basis it will be necessary for the partners to ensure that the arrangements are properly documented. For example:

- where lead commissioners arrangements are proposed there will need to be a proper and effective delegation of the relevant statutory duties of the non-lead partner to the partner acting as the lead commissioner;
- funding flows from the CCG(s) to the local authority can be achieved through the use of a pooled fund.

A section 75 partnership agreement between one or more local authorities and one or more CCGs will provide a quick means of putting in place the legal framework required to give effect to these arrangements.

## Steps to take

It is likely that the quickest and easiest approach to documenting these arrangements will be for partners to amend or extend one of their existing section 75 agreements. All local authorities and CCGs should have in place a Better Care Fund section 75 agreement and many may have other section 75 agreements in place as well. Any of these will provide the necessary vehicle for implementing these arrangements.

It is, therefore, important that local authorities and CCGs now take steps to review their section 75 agreements and agree the relevant variation to ensure to support these arrangements.

In considering the detail of the variation, local authorities and CCGs should consider:

- the scope of the necessary delegation and any limits on it;
- the role and responsibilities of the lead commissioner;

- whether a pooled fund is required and if so, which partner will host it;
- the appropriate governance arrangements for a scheme of this nature which will change on government direction and may do so before the end of the financial year and out of sync with normal scheme review processes;
- how the parties will plan to transition back to business as usual arrangements once notified that this funding arrangement will cease.

All of the above arrangements (and any other necessary arrangements) can be captured in a suitable variation agreement and through the introduction of a new Scheme Specification.

## Further support

NHS England and Improvement supported by colleagues from the LGA and ADASS have been issued a set of FAQs to support local authorities and CCGs with the implementation of these arrangements. Those guidance resources along with a template variation agreement which can be used as a starting point to vary existing section 75 agreements are available from the Better Care Exchange.

If you require further support in understanding how to implement these arrangements from a legal perspective or assistance in developing a variation agreement, please do get in touch.

## Contact



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