

Forward Plan reference number: Not applicable

Report title: Financial arrangements for the funding of COVID-19 Enhanced Discharge Services	
Report to: Councillor David Finch, Leader of the Council	
Report author: Nick Presmeg - Executive Director for Adult Social Care	
Date: 11 May 2020	For: Decision
Enquiries to: Laura Davis-Hughes, Head of Finance - Adult Social Care, email laura.davishughes@essex.gov.uk	
County Divisions affected: All Essex	

1. Purpose of Report

- 1.1 To agree to claim the NHS funding made available to local authorities in response to the COVID-19 global pandemic and to agree to temporarily cease the charging of adult social care for the cohort of people receiving the hospital discharge services under the COVID-19 Hospital Discharge (HD) Scheme for the duration of the Scheme as required by the guidance.
- 1.2 To agree a variation of the existing Better Care Fund partnership agreement (BCF s75 Agreement) to enable the necessary delegation of functions from the NHS to Essex County Council (the Council) and to transfer NHS funds to the Council to implement the COVID-19 HD Scheme.
- 1.3 To suspend charging of service users in receipt of services for the duration of the emergency period.

2. Recommendations

- 2.1 That the Council joins the COVID-19 HD Scheme to access the NHS funds made available by the Government in response to the COVID-19 pandemic.
- 2.2 That the Executive Director for Adult Social Care is authorised to amend the s75 Agreement with various NHS organisations with respect to the Better Care Fund is varied to include the COVID-19 HD Scheme and enable the Council to commission the COVID-19 enhanced hospital discharge services (HDS).
- 2.3 That notwithstanding its current charging policies the Council does not charge people for care services provided as part of the HDS for the duration of the COVID-19 HD Scheme.
- 2.4 That as part of the variation to the BCF s75 Agreement, the Council will pool a baseline of spend on residential and domiciliary care placements ordinarily made on discharge from hospital for the period of the COVID-19 emergency.

- 2.5 That the Executive Director for Adult Social Care is given delegated authority to lift the suspension on the charging for adult social care for people affected by this decision.

3. Summary of Issue

Context

- 3.1 On 17 March Sir Simon Stevens wrote to CCGs asking them to work with local authority partners to commission additional out-of-hospital health and social care and support capacity, which was expected to be a blend of care home beds, hospices and home care support. The Department of Health and Social Care (DHSC) then wrote to councils on 19 March and set out a £1.3bn fund to support discharge from hospital, suggesting the fund be held by CCGs. The COVID-19 HD Scheme is being implemented in response to the COVID-19 pandemic.
- 3.2 In response to this letter the Council has already made a number of urgent decisions to secure the estimated capacity needed to meet enhanced discharge service requirements, namely FP-658-03-20 around additional residential and nursing beds, FP-682-04-20 around using disused care homes and FP-683-04-20 to secure a seven-day equipment service. These decisions were, of necessity, taken before the details of the NHS funding arrangements were known.
- 3.3 NHS England produced guidance on the financial arrangements relating to the NHS funding for enhanced discharge services on 8 April 2020, this guidance was updated on 7 May. The guidance sets out the mechanism by which the Council can recover costs from the NHS fund. The guidance confirmed that there will be no overall allocation to CCGs from the £1.3bn, but rather a reclaim process will be used.
- 3.4 The Guidance confirms that Government has agreed to fully fund the cost of new or extended out-of-hospital health and social care support packages, supporting hospital discharge. This applies, from 19 March 2020, for people being discharged from hospital or who would otherwise be admitted into it, for a limited time, to enable quick and safe discharge and more generally reduce pressure on acute services. The length of the limited time period has not yet been confirmed. In essence, during this period, everyone who meets the criteria set out in the guidance is deemed to be receiving health care and therefore the services are not chargeable to the individual. The CCG or Acute Hospital Trust will notify ECC of anyone eligible for this funding as part of the discharge planning. The Council will keep a record of the people who are eligible.
- 3.5 The funding covers the following as from 19 March 2020:

- The full or enhanced cost of care packages agreed at the point of discharge both residential domiciliary and non-domiciliary. (The guidance does allow for the block purchase of capacity to meet anticipated demand)
- The additional cost of care for those who would ordinarily be deemed 'self-funding' during the period of the process if they were a hospital discharge during the emergency period or if their needs increased and required a new care setting
- Enhancements to existing packages of care
- The loss of client contributions during the emergency period
- The costs of providing community health services to the homeless and rough-sleepers
- The cost of onward care after the initial placement both stepping up and stepping down packages of care intensity throughout the period covered by these arrangements.

- 3.6 The services commissioned by the Council are care services under the Care Act 2014 but funded by the NHS. It is a pre-condition of funding that a formal partnership agreement under section 75 of the National Health Service Act 2006 is in place to provide the Council with the powers to commission these COVID-19 HD services. NHS England and the Local Government Association (LGA) consider that, in most areas of the country, the most straightforward way to achieve this end is for the EDS and associated funding to be added into existing Better Care Fund section 75 agreements through a deed of variation.
- 3.7 Provided that a s75 agreement is in place, the Council will be able to reclaim costs it incurs to support the HDS through a monthly claim process, through a host CCG acting on behalf of all Essex CCGs. In Essex it has been agreed that the Council will submit a single monthly claim via Mid Essex CCG, as the nominated Host CCG.
- 3.8 As a condition of the funding, local authorities are required to pool existing funding for discharge support with this additional money, largely to ensure that for the duration of the emergency the council is not double funded for this activity. As well as existing BCF spending on reablement and domiciliary care in lieu of reablement, the council will need to pool an amount calculated by reference to the amount it would ordinarily spend on residential and domiciliary care placements made as a result of discharge from hospital.
- 3.9 This funding agreement will be kept under review. CCGs and local authority partners will be notified by NHS England and NHS Improvement or the government, in collaboration with the Association of Directors of Adult Social Services (ADASS) and the LGA, when this no longer applies to new patients or recipients of support.
- 3.10 Once the funding is no longer available to new patients, NHS funding will continue for these individuals for an, as yet, undefined "short period", to allow time for a smooth transition to previous funding arrangements.

4 Reason for Using Urgency Powers and Options

- 4.1 The Council is experiencing extremely challenging conditions as the COVID-19 emergency continues. Adult Social Care needs to be able to continue taking all necessary action to fulfil its duties during this period and reassure providers, service users, and partners in the NHS of its capacity to do so.
- 4.2 Following on from the Budget on 11 March, the Chancellor made another announcement on 17 March which reiterated the government's commitment to support with whatever resources the NHS needs, and we are taking this to include support from Local Authorities as part of the COVID-19 HD Scheme. On that basis, the Council needs to provide a rapid response to the COVID-19 pandemic by commissioning out-of-hospital care and reduce pressure on the NHS and, as such, it needs to have the lawful delegation of functions and legal arrangements required to transfer NHS funding from NHS England to the Council as soon as possible.
- 4.3 The options available to the Council are as follows:

1. Option 1 – to not implement the COVID-19 HD Scheme and continue to charge for social care those adults receiving hospital discharge services. Not Recommended

This option is not recommended as not in line with the Secretary of State for Health and Social Care's requirements as set out in the Guidance and would not enable the national priority of a rapid response to the COVID-19 pandemic.

2. Option 2 – to implement the COVID-19 HD Scheme and cease charging for social care those adults receiving the hospital discharge services under the Scheme. Recommended

This option is recommended as it is in line with the Secretary of State for Health and Social Care's requirements as set out in the Guidance and would enable the national priority of a rapid response to the COVID-19 pandemic.

5. Financial Implications

- 5.1 The scale of additional costs to be reclaimed from the NHS fund is not yet known but claims will include all council expenditure on items listed in paragraph 3.4 including securing additional bed capacity and the purchase of additional equipment to support discharge.
- 5.2 For the purpose of pooling, the level of Council expenditure on residential and domiciliary care placements ordinarily made on discharge from hospital has been calculated as set out in the table below. This calculation is based on the

pattern of discharges taking place in the previous year to ECC funded domiciliary or residential care and takes account of client contributions. The figures shown are for the period April to June. If the Emergency Period ends before the end of June then the contribution to the pool will be reduced to show costs to that new date instead, and if the period extends beyond June then future monthly values will be calculated using the same methodology and added into the pool.

Table 1: Calculated Council Pool contributions from 19 March onwards

	March £	April £	May £	June £
Domiciliary	5,225	47,594	89,102	115,654
Residential	2,636	19,649	22,906	33,095
Total	7,861	67,243	112,008	148,749

- 5.3 The sum will be pooled within the COVID-19 Pooled fund within the Better Care Fund for the Emergency Period, and so, in essence, the Council's claim for reimbursement will be reduced by this value, reflecting the amount we would ordinarily spend on such services.
- 5.4 Reablement services and care provision for those over 85 years of age are already included within the BCF and therefore not included in the above table. The principle followed is that the Council should not financially gain or lose during this period; the Council puts into the pool what is considered normal and budgeted spend for this period of time and the NHS funding pays for the costs incurred in excess to this amount. The normal and budgeted spend has been determined using activity from the same period during 2019.

6. Legal Implications

- 6.1 To be able to access NHS funding under the COVID-19 HD Scheme, the Council will need to enter into a partnership agreement under s75 of the NHS Act 2006 which is a statutory agreement to enable the delegation of commissioning functions from the NHS to the Council (and vice versa) as well as the transfer of NHS funds to the Council. The Guidance specifically requires that local authorities should pool existing funding for discharge support with the COVID-19 HD Scheme money. Once pooled, funding should be treated as a single pooled fund and used to deliver the appropriate care for individuals to be discharged under these new arrangements.
- 6.2 The CCGs and the Council have agreed to comply with this legal requirement by varying the existing BCF s75 Agreement to include the COVID-19 Discharge Scheme. This variation will be via a deed of variation in the form required by NHS England.

- 6.3 The Council would be meeting urgent care needs in response to the COVID-19 HD Scheme using its powers under section 19 of the Care Act 2014 and as such no eligible needs and financial assessments would be undertaken until cessation of the COVID-19 Discharge Arrangements when notified by the government.
- 6.4 The Guidance states that individuals provided with care packages under the COVID-19 HD Scheme must not face any requirement to refund commissioners retrospectively for the period in question. This is a consequence of the fact that NHS funded care is free at the point of entry under section 1(4) of the NHS Act 2006 and as local authorities would be reimbursed for the full costs of health and social care packages by the NHS, they should not charge the individuals as well (the Guidance states that the NHS funding also covers the cost of any loss of 'means tested' income from this cohort by the local authority).
- 6.5 The Council would suspend the exercise of its powers to charge for social care under section 14 of the Care Act 2014 during the Emergency Period.
- 6.6 The CCGs and the Council will have regular planning meetings to agree a suitable exit strategy. Guidance is expected in this respect from the government setting out the relevant timelines and transition periods. Eligible needs assessments and financial assessments would resume at the end of the transition period following cessation (or as notified by the government) under sections 9 and 17 of the Care Act 2014 and needs will then be met under the duty in section 18 of the Care Act 2014.
- 6.7 The Council will act as the Lead Commissioner for the COVID-19 HD Scheme and Mid Essex CCG will act as the Host CCG. New streamlined governance is being put in place via the deed of variation to ensure rapid response by reducing the bureaucratic burden.

7. Equality and Diversity Implications

- 7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful.
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

7.3 The recommendations in this report are designed to ensure that the Council meets the need of social care users, most of whom are disabled. In view of the urgency of this decision a full equality impact assessment has not been undertaken but we do not believe that there will be a significant adverse impact on any people with a protected characteristic.

8. List of Appendices

None

9. List of Background Papers

None

I approve the recommendations set out above for the reasons set out in the report.	Date
Councillor David Finch, Leader of the Council	12.05.20

In consultation with:

Role	Date
Cabinet Member Health & Adult Social Care	
Councillor John Spence	8.5.20
Executive Director of Adult Social Care	
Nick Presmeg	11.5.20
Executive Director for Finance and Technology (S151 Officer)	
Stephanie Mitchener (Deputy)	11.5.20
Director, Legal and Assurance (Monitoring Officer)	
Paul Turner	11 May 2020

Exemption from call in and being included on the forward plan
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I agree that this key decision is urgent and cannot reasonably be deferred and therefore that it may be taken without it being on the forward plan.

I also agree that it is in the best interests of the Council for this decision to be implemented urgently and therefore this decision is not subject to call in (paragraph 20.15(xix) of the constitution applies).

Councillor Mike Mackrory – Chairman of the Corporate Policy and Scrutiny Committee

Dated: 13 May 2020