

**Forward Plan reference number:** Not applicable

<b>Report title: Funding for Adult Social Care: COVID 19 Response</b>	
<b>Report to: Councillor David Finch, Leader of the Council</b>	
<b>Report author:</b> Nick Presmeg Executive Director for Adult Social Care	
<b>Date:</b> 20 March 2020	<b>For:</b> Decision
<b>Enquiries to:</b> Laura Davis-Hughes, Head of Finance - Adult Social Care	
<b>County Divisions affected:</b> All Essex	

## **1. Purpose of Report**

- 1.1 To agree additional funding for adult social care for the purposes of securing residential care capacity in order to support the timely discharge of people from hospital during the COVID-19 emergency.

## **2. Recommendation**

- 2.1 That £18.6m be drawn down from General Balances as follows:

- (a) £300,000 in 2019/20
- (b) £18.3m in 2020/21

to support the NHS and providers to cope with the anticipated demands placed upon them by the COVID-19 response.

- 2.2 Agree that the Director of Commissioning, Adult Social Care enter into new contracts and vary current contracts with residential care providers to deal with the issues identified in section 3.10 of the report.

## **3. Summary of Issue**

### **Context**

- 3.1 The global outbreak of coronavirus (COVID-19) is affecting the UK. The number of cases has grown significantly since early March. The frail and elderly are the most vulnerable. The health and care sectors are significantly affected and face high demand and pressures on workforce due to COVID-19 related absences.
- 3.2 Urgent preparation, to ensure an effective response to 'COVID-19', is taking place across the council and with local NHS partners. We need to ensure that we:
- Ensure the safety and wellbeing of people in Essex and our most vulnerable residents

- Support providers suffering financial hardship as a result of COVID-19
- Support providers within the social care market to remain sustainable at a time when they may be under significant pressure in order to ensure that care staff can continue to work and do not suffer financial hardship as a result of COVID-19
- Maintain statutory duties.

- 3.3 It will be vitally important during the period of the COVID-19 response to sustain providers of social care to make sure that they are able to continue in business in the face of demand and workforce pressures. The council is taking firm and swift action to protect the provider market and wishes to share the approach set out in this paper with providers to assure them during this period. This decision focuses on care home providers.
- 3.5 Equally, Essex acute hospitals are facing increased demand and pressures, meaning that Adult Social Care (ASC) will need to ensure that wherever possible people with social care related needs are able to be cared for out of hospital, freeing capacity for people with COVID-19 related complications. The council is taking steps to ensure maximum flexibility to procure care home beds as well as exploring other facilities to support this drive.
- 3.6 NHS Chief Executive, Sir Simon Stevens, has written to colleagues including local authorities setting out important actions that are required. These include the freeing up of the maximum possible in-patient and critical care capacity to prepare for, and respond to, the anticipated large numbers of COVID-19 patients who will need respiratory support. The operational aim is to expand critical care capacity to the maximum; free up 30,000 (or more) of the English NHS's 100,000 general and acute beds. We believe that in Essex this number grows to a peak of around 1,200 beds, based on knowledge of total bed numbers in our hospitals.
- 3.7 This means that our hospitals will be urgently discharging all hospital in-patients who are medically fit to leave. For those needing social care, emergency legislation before Parliament this week will ensure that eligibility assessments do not delay discharge.
- 3.8 We will need to work with NHS trusts and CCG partners to ensure that additional capacity is appropriately commissioned. This urgent decision is a step towards achieving that and aims to free up acute beds currently occupied by patients awaiting discharge or with lengths of stay over 21 days.
- 3.9 Beds are currently purchased on a framework or through spot purchasing, however, to ensure we have that capacity accessible to us during this time and to ensure the financial stability of care providers.
- 3.10 It is proposed that the Council will
- (a) Block purchase residential beds currently occupied by an ECC funded service user for the next twelve months.

(b) Purchase additional beds over the next six months in order to meet increased demand, this may be on an 'as needed' basis or on a 'block' basis based on the judgment of Directors in Adult Social Care.

- 3.11 It is recognised by ECC that there may be additional costs, including capital, that are required to ensure some schemes are fully operational. In addition, there may also be the need for additional resources to provide assurance and monitoring around quality of service, safe care of residents and best use of public finances.
- 3.12 There will be a requirement that care homes and other facilities being used work within a mutual aid approach and accept referrals on the basis that they will not refuse of a suitable referral of a patient leaving hospital where their care needs can be met by that provider.
- 3.13 The proposals in the Coronavirus Bill which was introduced to Parliament on 19 March will remove the duty (but retain the power) to financially assess people. In practice there is a potential loss in income arising from the delay in assessing people or an inability to charge people, depending on what the final legislation says, and funding is requested to manage this potential loss of income.

#### **4 Reason for Using Urgency Powers**

- 4.1 The council is expecting extremely challenging conditions as Covid-19 takes effect. Adult Social Care needs to be able to take 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.
- 4.3 It is expected that Central Government will therefore support costs outlined in this report. However, the allocation methodology for this, how much ECC will receive and when we will receive it has not been confirmed. Given the urgency of the need to support social care providers and the NHS, the Council cannot wait for that announcement. In the interim the costs will be covered by the Council's General Balance.

#### **5. Financial Implications**

- 5.1 Officers working on the response have identified areas of provision to help secure resources in the residential and nursing market which will in turn support the NHS and ensure providers, employees and service users are supported during this period.

- 5.2 As set out in table 1, the gross cost of securing the 3,600 residential beds and 700 nursing beds currently used by ECC in the market through block purchasing is £133m, the current net cost of these beds is £60m after clients contribute financially to their care, however, we may see a dip in client contributions in future months if beds start being used on a more temporary basis and as the emergency Coronavirus Bill stated on 18 March, that during this emergency period, Local Authorities will not have a duty to carry out financial assessments in line with the Care Act. It is likely that financial assessments will be completed retrospectively, however this brings a heightened risk of lower income collection.
- 5.3 There is a risk that block purchase of these beds results in them not all needing to be used but with demand predictions as they currently stand senior officers believe this risk to be minimal. Funding for the block purchasing is not sought within this report as there is currently sufficient budgetary provision within Adult Services to meet this cost in 2020/21.
- 5.4 Funding is requested in this report to meet the expected expenditure demand of £18.6m set out in table 1, this is split between expenditure on beds and loss of client contribution. It is not possible to precisely predict the cost as it is not known exactly how many people will be discharged from hospital over this time and how long they will need to stay in beds for but based on current information and working with Essex CCGs to look at demand the modelling has estimated the values set out. This will be constantly reviewed over the coming weeks and months.
- 5.5 This funding is expected to support the market for 6 months, modelling assumptions are that once all places on the Integrated Residential and Nursing framework (IRN) are used there will be a need to spot purchase these additional beds at a cost of approximately £15.4m and that income losses of £3.2m may be incurred over this time. Of this approximately £300,000 will fall in 2019/20 and £18.3m in 2020/21.
- 5.6 The Government has made it clear that it will provide emergency funding for social care. As at 19 March there is not clarity about the mechanism for draw down, though this is expected within working days.
- 5.7 It is essential that ECC makes emergency funds available pending that announcement and hereby the call on General Balance is recommend.
- 5.8 The expectation is that the General Balance will be replenished from the emergency funds made available by Government in the short term to ensure resilience for other areas.

Table 1

Item	Description	Estimated Cost	Budget Requirement	Comments
Residential & Nursing	Securing the current 4,300 capacity in the market for 12 months	£133m	-	This capacity is budgeted for in the 2020/21 pre emergency situation and so is not a requirement of this decision. ECC will be guaranteeing these beds for the market and for service capacity.
	Buying additional beds and other facilities where needed in the market for 6 months to support large increase in flow out of hospital during this time.	£15.4m	£15.4m	This assumes that provision of residential and nursing beds will be increased for a period of 6 months at spot rates, growing to a peak of 1,200.  It assumes that there will not be recoupment of any client contribution over this time and therefore reflects the full gross cost of the beds however, following the emergency coronavirus bill, there may be the opportunity to recoup client contributions retrospectively after the emergency period.
	Loss of income from client contributions over this time	£3.2m	£3.2m	Assumes loss of income from clients who may be using beds as intermediate care without a financial assessment.
			<b>TOTAL £18.6M</b>	

- 5.3 There is a significant risk to ASC budgets, longer term, that a number of people placed in this additional provision will continue to live in these homes beyond the temporary arrangement and will then permanently stay in these residential or nursing settings. To minimise the impact on future budgets, discussions will be required with CCGs regarding any ongoing commitment for these residents, possibly under a dowry type arrangement.
- 5.4 Officers are working to ensure maximum flexibility in payment arrangements where needed.

## **6 Legal Implications**

- 6.1 The proposals in this report involves variation to contracts on a temporary basis. Such amendments will need to take place in a way in which we can recover payments if the provider has created extra capacity by cutting support in order to earn extra money. On that basis this decision complies with regulation 72(1)(c) of the Public Contracts Regulations 2015 because:
- (a) the need for modification has been brought about by circumstances which a diligent authority could not have foreseen;
  - (b) the modification does not alter the overall nature of the contract;
  - (c) any increase in price does not exceed 50% of the value of the original contract or framework agreement.
- 6.2 The proposals in this report may also involve entering into new contracts above the threshold of £615,278 applying to such contracts. These will not be able to be tendered given the urgency of the situation. This is allowed by regulation 32(2)(c) of the Public Contracts Regulations 2015 which allows the direct award of contracts when it is not possible to meet the time limits involved in a competitive tender because there is extreme urgency as a result of events unforeseeable by the contracting authority; words which suit the current situation rather well.
- 6.3 The constitutional basis for the decision is that the Chairman of the Corporate Policy and Scrutiny Committee has agreed that it is urgent and cannot reasonably be deferred, this decision will need to be reported to full Council for information.

## **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

<b>I approve the recommendations set out above for the reasons set out in the report.</b>	<b>Date</b>
<b>Councillor David Finch, Leader of the Council</b>	<b>20.03.20</b>

**In consultation with:**

<b>Role</b>	<b>Date</b>
<b>Cabinet Member Health &amp; Adult Social Care</b>	
<b>Councillor John Spence</b>	20.03.20
<b>Executive Director of Adult Social Care</b>	
<b>Nick Presmeg</b>	20.03.20

<b>Executive Director for Finance and Technology (S151 Officer)</b>	
<b>Nicole Wood</b>	20.03.20
<b>Director, Legal and Assurance (Monitoring Officer)</b>	
<b>Paul Turner</b>	20.03.20

**Exemption from call in and being included on the forward plan**

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: 20.03.20**