



**ADSS Cymru**

Yn arwain Gwasanaethau  
Cymdeithasol yng Nghymru  
Leading Social Services in Wales

## **ASSOCIATION OF DIRECTORS OF SOCIAL SERVICES CYMRU**

### **Delivering Transformation Grant (DTG) Programme 2018-19**

#### **Advice Note 6 – Charging for Services within Formal Partnership & Pooled Fund Arrangements**

**April 2019**

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## Introduction

1. A local authority may commission or provide NHS services under delegation of functions from the NHS. Local authorities already have systems in place for the administration and collection of charges.
2. Alternatively, an NHS body may commission or provide local authority services under delegation of functions from a local authority. In doing so, an NHS body may also take on the associated duty of collection of charges, if this duty has been delegated as well. This will be a matter to be determined between NHS and local authority partners.
3. It is not the purpose of this advice note to provide detailed advice on charging although a useful summary of information is included in Annex 1. The purpose of this advice note is to briefly outline the issues affecting the collection of charges (income for local authorities) from the service users within Part 9 arrangements (or Section 33 arrangements) and how to address such arrangements within local partnerships. This is important because one of the misunderstandings concerning pooled budgets is the often-mistaken belief that pooling budgets is not possible because whilst the local authority can charge for services, the NHS cannot or that an NHS body cannot undertake lead commissioner responsibilities for services which are subject to charges.

### **Key Message – Always seek legal advice**

This and other advice notes in the series, together with any attachments, should not be used as an alternative to obtain independent legal advice as appropriate. The advice notes are intended as aids to the consideration of what might be required.

4. The local authority may retain the function of collection of charges but still delegate the functions of commissioning or provision. It must be stressed that it is not necessary for the NHS to collect or assess for any charges, as the partners may agree that it is simpler and clearer for the service user to be advised that there are potentially some services that may attract charges and that for these, they will be contacted and assessed by local authority staff. The person for whose benefit the care is being commissioned should be aware from the very first contact with a care professional that there may be a charge for any care services that are being commissioned on their behalf. The assessment process should be explained and conducted without delay so that the person can make a fully informed choice regarding their care and how their needs can be met.
5. This advice note is not advocating that the NHS should exercise the duty for collecting charges. This will be a matter for the partnership. The paper merely outlines the possibilities.
6. It should be noted that where contributions to a Partnership Agreement are dependent upon income to be collected, the Finance Leads should advise on the best method for protecting the aim of strategic financial management, alongside the management of risk. This is covered in Advice Note 3 - Practicalities of Partnership Development.

### **Key Message – It is for partners to decide**

Whilst it is possible for an NHS body to take on the function of collecting charges, this guidance is not recommending this practice. Given the limited experience of operating formal partnerships and pooled budgets in Wales to date, the delegation of the functions of

collecting charges to the NHS may be unwise at this stage. However, it is a matter for the partners.

Many local authorities have in place locally established arrangements for assessment and collection of charges. These arrangements need not necessarily be changed simply because partners are entering into streamlined processes for commissioning and, or, provision.

Where the NHS takes on such duties in terms of collection of charges within the Partnership Agreement, the details of that process should be clearly set out and should also cover how it will be made clear to users. Where the process of collection is changing, besides the revision of documentation or process to be used, more comprehensive consultation with others may be required.

## Background

7. Local authorities have the discretion to charge for services. NHS services are mostly free at the point of delivery and it must be clear that this remains so.
8. Where the NHS may be the lead partner under a Part 9 Agreement (or Section 33 Agreement), it is permitted to collect charges on behalf of the local authority but only for non-NHS elements of services being provided.
9. Local authorities when exercising their social services functions must act in accordance with the requirements contained in the Social Services & Well-being (Wales) Act 2014 Part 4 and 5 Code of Practice (Charging & Financial Assessment).<sup>1</sup> This code of practice is issued under section 145 of the Social Services & Well-being (Wales) Act 2014. The code covers:
  - Designing a charging policy
  - Common issues in relation to charging
  - Charging for care and support in a care home
  - Choice of accommodation when arranging care in a care home
  - Making payments for additional costs for preferred accommodation
  - Charging for care and support in the community
  - Charging for support for carers.
10. The charging and financial assessment framework introduced by the Act, along with the regulations and the code, are intended to make charging where it occurs, consistent fair and clearly understood. The overarching principle is that people who are asked to pay a charge must only be required to pay what they can afford.
11. The design of the charging policy always remains with the local authority. The Code states that:

*“Where local authorities are designing policies for charging, they should consider whether to do this in conjunction with other authorities. This would be particularly relevant for authorities within the same Local Health Board Area, so as to create a consistency of practice across the region.”*

It will be critical that partners agree appropriate mechanisms for the recovery of charges and that such arrangements are clear and explicit and carefully explained and understood by all concerned, especially staff, families, carers and clients, to avoid any misunderstanding that NHS services are being charged for.
12. Where the NHS body is intending to undertake the associated functions related to the collection of charges on behalf of the partner local authority, then the process should be set out in the Partnership Agreement and in documentation for use by practitioners and to be available to service users.
13. The local authority may retain the function of collection of charges but still delegate the functions of commissioning or provision. Where that is the case, the NHS body will have no authority to play a part in the process of collection of charges and should not do so, and the Partnership Agreement should make no reference to it having any such role.
14. Where a local authority retains the responsibility for assessment and collection of charges, it is allowable for local authority staff under the management of the NHS, for example, social work staff within an integrated mental health service, simply to inform service users that they

will be contacted separately by the local authority to assess their contributions. The local authority will then be responsible for that task.

15. It is not necessary for the NHS to collect or assess for any charges as the partners may agree that it is simpler and clearer for the service user to be advised that there are potentially some services that may attract charges and that for these, they will be contacted and assessed directly by local authority staff.
16. The income from such charges can be considerable. Therefore, the charges cannot easily be dropped for the sake of administrative convenience. Additionally, if the NHS partner is to lead on delivery of the new partnership, it may be anxious not to be portrayed as an NHS body charging for care. It might even be construed by service users in these circumstances, that the care being commissioned or provided by the NHS under partnership arrangements was previously or would normally have been, free health care. It must be made clear in all discussions and consultations that the majority of services provided by the NHS are free at the point of delivery.
17. There are essentially two areas for resolution:
  - How to manage the process of income collection once there is a Partnership Agreement in place?
  - What to do if the Partnership Agreement is to be led by the NHS rather than the local authority as the commissioner or provider of care?

An additional challenge is:

- How to allow for potentially variable levels of income collection within the financial framework of the Partnership Agreement, when the agreed 'contribution' from the other partner is expected to be clear and specific from the outset? This is discussed separately in Advice Note 3 - Practicalities of Partnership.

## Management of Income Collection within a Part 9 Agreement (or Section 33 Agreement)

### Change of income collection arrangements required

18. The introduction of local Part 9 arrangements (or Section 33 arrangements) between an NHS body and local authority need not require any change to arrangements for income collection.
19. Essentially, the use of legislative flexibilities is enabled by the provision of a Partnership Agreement, which sets out:
  - the agreed aims and outcomes of the pooled fund arrangements;
  - the contributions to be made to the pooled fund by each of the partners and how those contributions may be varied;
  - both the National Health Service functions and the health-related functions, the exercise of which are the subject of the arrangements;
  - the persons in respect of whom the partnership is aiming to serve.
  - the staff, goods, services or accommodation to be provided by the partners in connection with the arrangements;
  - the duration of the arrangements and provision for the review or variation or termination of the arrangements; and
  - how the pooled fund is to be managed and monitored including which partner is to be the host partner.

### General Delegation of Functions

20. Within the Partnership Agreement, one partner will act as the 'lead' or 'host' responsible for carrying out their duties and those 'functions' of their partner insofar as they are necessary for the fulfilment of the primary objectives of the agreement. Thus, alongside their own duties, an LHB or local authority will act for the other partner in being the Lead Commissioner or Integrated Service Manager. This could be with or without a 'pooled budget'.
21. Where there is no pooling of budgets, the lead partner will effectively manage two budgets - the health care budget and/or service and health-related care (local authority) budget and/or service under a single point of leadership.

## Delegation of Function: Charging for Care

22. The functions, which may be delegated from one partner to another, are set out in regulations; *The Partnership Arrangements (Wales) Regulations 2015<sup>ii</sup>* (subsequently amended by *The Partnership Arrangements and Population Assessments (Miscellaneous Amendments) (Wales) Regulations 2019<sup>iii</sup>*) for Agreements under Part 9 of the Social Services & Well-being (Wales) Act 2014 and the *NHS Bodies and Local Authority Partnership Arrangements (Wales) Regulations 2000<sup>iv</sup>* for Section 33 Agreements.
23. Therefore, a local authority may choose, where the aims of the agreement are to secure or provide care and support services under local NHS leadership, for the NHS body to also carry out the collection of charges. The inclusion of the function of charging in these circumstances is not obligatory or automatic. The decision is a matter for the statutory partners.

## Arrangements for the NHS to manage charging for Care & Support Services

24. Where it is intended that the NHS undertake these duties, the Partnership Regulations also require that the Partnership Agreement sets out clearly the arrangements in place both for determining the services in respect of which a user may be charged and for informing users about such charges.

## Access to free Health Care

25. It will be clear that if an NHS body is to manage such a responsibility that there will need to be transparency on a day-to-day basis, not just about the process but also about which services are the subject of charging, i.e. those provided within Social Services competence, both to remain within the law and to ensure that all concerned can see clearly that health care remains ‘free at the point of delivery’.

## Necessary Consultation

26. It is a requirement that with the development of any partnership arrangement, the partners consult in a form and content that they determine appropriate, with those affected in terms of role and function.
27. Under these circumstances, the partners will ensure that they have been consulted fully and appropriately. They will also need to have revised any necessary procedures or documentation for use at the point of contact with service recipients.



## **ANNEX 1: Social Care and Support Charging and Financial Assessment**

A new charging and financial assessment framework was put in place under Part 4 and Part 5 of the Social Services & Well-being (Wales) Act 2014. The Act provides local authorities with discretion to charge for social care and support should they wish to do so. Where a local authority applies discretion and charges a person for social care and support it provides or arranges for them, or support provided or arranged for a carer, it must apply the requirements set out in Regulations and a Code of Practice in place under the Act. These Regulations and Code of Practice came into effect in April 2016 and are reviewed annually.

### **Persons and Services Where a Charge Cannot be Applied.**

Local authorities cannot charge for care and support provided to a child, a person with a diagnosis of Creutzfeld-Jakob Disease (CJD) or a person provided with services as part of a package of after-care under section 117 of the Mental Health Act 1983. Certain other services cannot be charged for including transport to and from a day service, provision of a statement setting out a charge determination, advocacy services, information or advice.

### **Non-Residential Care and Support**

Where, as an outcome of their care needs assessment, a person requires care and support at home or within the community, and their local authority wishes to charge, a financial assessment of their ability to meet that charge is undertaken. Regulations set a maximum a person can be charged for this form of care and support. From the 8 April 2019, this amount will be £90 per week. The Welsh Government has committed to raise the maximum weekly charge to £100 a week before the end of the term of the current Government in 2021.

The financial assessment will consider a person's income (such as state and private pensions and welfare benefits) together with any capital they hold over £24,000 (such as savings and investments but not the value of their only or main home). Any income a person receives in the form of earnings is disregarded in full.

In calculating how much a person pays up to the maximum, the Regulations and Code set out the assessment process. This includes a number of requirements and protections that ensure a person's charge is affordable and does not cause them financial hardship in meeting their daily living costs. This requires that a person retains their basic weekly entitlement to the relevant benefit they receive plus an amount of not less than 35% of this amount (known as the "buffer"). In addition, the person must be able to keep a further 10% as a contribution to their disability-related expenditure.

Based on the outcome of their assessment, a person can be required to pay the maximum weekly charge although they can be charged a lower amount or no charge depending on the level of care required and the level of their income and/or capital. A review of the resulting charge can be undertaken at a person's request.

### **Residential Care and Support**

Where, as an outcome of their care needs assessment, it is considered that a person's needs would be best met in a care home, again a financial assessment is undertaken. The assessment

will again consider a person's income (such as state and private pensions and welfare benefits) together with capital (such as savings, investments and the value of any property they own which is not to remain the home of their partner, former partner or a dependent relative once they move into care). Any income a person receives in the form of earnings is disregarded in full.

In considering a person's capital, the Regulations set a "capital limit" which, in residential care charging, will be set at £50,000 from 8 April 2019. Where a person holds capital at or under this limit, they become the responsibility of their local authority, who will arrange their care home placement and meet their costs in full. No element of capital they hold at or under the capital limit can be used towards their care costs and the person can retain this amount to spend as they choose. However, in this situation a person will be required to pay towards their costs based on the level of their eligible weekly income.

In this instance, a person must be able to retain a certain amount of their income to spend as they choose. This is known as the Minimum Income Amount and from 8 April 2019 will be set at £29:50 a week.

A person with capital over the capital limit, will be required to meet their care home costs in full. However, the value of their property will be disregarded for the first 12 weeks of a permanent stay at a care home, during which time they will receive financial support from their local authority. Following this period, the person will become liable to meet their care costs in full and will enter into a contract with their care home. However, they can request their local authority to make arrangements on their behalf should they wish but will still be liable for charges.

### Short-term and Temporary Stay at a Care Homes

Where a person's stay at a care home is short-term (not exceeding 8 weeks) they must be charged as if they were receiving care at home or in the community – i.e. no more than (as of 8 April 2019) £90 per week. This is to enable them to continue to meet the on-going daily living costs. If their stay is on a temporary basis (usually less than 52 weeks) the financial assessment and charging requirements will vary in some respects.

### Deferred Payment Agreements (DPA)

Where a person is unable or does not wish to sell their property, they could be eligible for a DPA. In this instance, their local authority will place a legal charge on the property and meet the person's care home costs for the duration of the deferment. A local authority can charge a low level of interest on the deferred amount. The DPA can run until a person decides to sell the property or for the duration of their care home stay. Following their death, the outstanding cumulative debt must be paid to the local authority, in full, from the person's estate.

### Additional Cost Payments

Where a person's care home placement has been made and paid for by their local authority, they must be able to express a choice for their preferred accommodation. The local authority can make such placements as long as certain conditions are met, as set out in the Regulations and Code. Where their preferred accommodation is more expensive than their local authority's usual rate to meet a person's care needs in full, or where a person requests additional services or facilities that do not form part of their assessed needs, an additional cost payment can be requested. In these circumstances an additional cost payment arrangement must be entered into by a third party (a

family member or friend) who is willing and able to meet the additional cost for the duration of the arrangement.

## Treatment of Joint Income and Capital

Where certain forms of income and capital assets are held jointly between the person in need of care and support and another person (the definitions of which can be found in the Part 4 & 5 Code of Practice), this is usually treated as each person receiving/owning an equal share, unless this is proved otherwise. A spouse or civil partner's personal income and capital are not taken into consideration in the financial assessment process and earnings are always disregarded in full. This applies regardless of what kind of care and support a person requires.

## Flat Rate Charges

Local authorities can make a low-level flat rate charge for care and support that assists a person with their daily living such as meals or laundry services. They can also apply a flat rate charge for preventative services or assistance. In these circumstances, local authorities are not required to undertake a financial assessment.

## Reablement

Where a person is assessed as requiring some form of reablement, perhaps in order to help prevent the need for further care and support or as rehabilitation following a hospital stay, this provision must be free of charge for the first 6 weeks.

## Continuing NHS Healthcare (CHC)

When a person is assessed as having complex, intense or unpredictable health needs in several areas which alone, or together, demonstrate a primary health need because of the quality and/or quantity of care they require, they could be entitled to CHC. Under CHC, the NHS funds all of their care needs. If they are in a care home this also includes the cost of their accommodation. CHC is not means tested.

Details of the assessment process, the eligibility rules and related matters are set out in the Welsh Government document: *Continuing NHS Healthcare: The National Framework for Implementation in Wales*.<sup>v</sup>

## Care Provided by Registered Nurses in a Care Home

If a person is assessed as needing to go into a care home providing nursing care, and they are not eligible for CHC, they are entitled to a weekly NHS funded nursing care contribution towards the overall cost of their care package. This is for the cost of a registered nurse providing, planning or supervising elements of their care. This contribution is paid by the NHS directly to the care home and is not means-tested.

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## References

- <sup>i</sup> Social Services and Well-being (Wales) Act 2014 – Part 4 and 5 Code of Practice (Charging and Financial Assessment) (Ed.4), 2019. <https://gov.wales/sites/default/files/publications/2019-04/social-services-and-well-being-wales-act-2014-part-4-and-5-code-of-practice-charging-and-financial-assessment.pdf>
- <sup>ii</sup> The Partnership Arrangements (Wales) Regulations 2015. <http://www.legislation.gov.uk/wsi/2015/1989/contents/made>
- <sup>iii</sup> The Partnership Arrangements and Population Assessments (Miscellaneous Amendments) (Wales) Regulations 2019. <http://www.legislation.gov.uk/wsi/2019/760/regulation/3/made>
- <sup>iv</sup> NHS Bodies and Local Authority Partnership Arrangements (Wales) Regulations 2000. <http://www.legislation.gov.uk/uksi/2000/617/contents/made>
- <sup>v</sup> Welsh Government, *Continuing NHS Healthcare: The National Framework for Implementation in Wales*, 2014. <https://gweddiill.gov.wales/docs/dhss/publications/140630frameworken.pdf>