

KENT COUNTY COUNCIL – RECORD OF DECISION

DECISION TAKEN BY:

Cabinet Member for Adult Social Care and Public Health

DECISION NO:

20/00084

For publication**Key decision***

Affects more than 2 Electoral Divisions and expenditure of more than £1m

Subject: S75 PARTNERSHIP AGREEMENT VARIATION – COVID-19 HOSPITAL DISCHARGES AND OUT OF HOSPITAL WORK

Decision: As Cabinet Member for Adult Social Care and Public Health, I agree to:

- a) **APPROVE** a variation to the existing S75 Partnership Agreement with the NHS, to allow the pooled budget to include the COVID19 funding in relation to hospital discharges and out of hospital work; and
- b) **DELEGATE** authority to the Corporate Director of Adult Social Care and Health to take other relevant actions, including but not limited to entering into and finalising the terms of relevant contracts or other legal agreements, as necessary to implement the decision.

Reason(s) for decision: As part of the NHS and wider public sector's response to the global Covid-19 pandemic the Government issued the Covid-19 Hospital Discharge Service Requirements (the "Discharge Requirements") which took effect on 19 March 2020. The Discharge Requirements have been introduced to ensure that where it is clinically safe to discharge patients from an acute or community hospital those patients are discharged in accordance with the new 'Discharge to Assess' model.

To enable the Council to reclaim the costs associated with avoiding hospital admission and enabling hospital discharge, as part of the Council's response to Covid 19 in support of the NHS, the Covid-19 Hospital Discharge Service Requirements funding for the NHS requires the Council to establish a pooled budget before any costs can be reclaimed.

Kent County Council and NHS Dartford Gravesham and Swanley Clinical Commissioning Group, NHS West Kent Clinical Commissioning Group, NHS Swale Clinical Commissioning Group, NHS Ashford Clinical Commissioning Group, NHS Canterbury and Coastal Clinical Commissioning Group, NHS Thanet Clinical Commissioning Group, and NHS South Kent Coast Clinical Commissioning Group entered into a Framework Partnership Agreement relating to the commissioning of health and social care services Better Care Fund on 1 April 2015 (Decision Number 15/00015) in exercise of the powers referred to in Section 75 of the National Health Service 2006 Act, as amended by a Deed of Variation dated 22 August 2016 (the "Partnership Agreement"). The NHS Bodies have subsequently undergone a statutory merger reorganisation under section 14G of the National Health Service 2006 Act. The rights and obligations of the NHS Bodies under the Partnership Agreement transferred as a matter of law to NHS Kent and Medway Clinical Commissioning Group (the "CCG") on 1 April 2020.

To support the new Discharge Requirements a range of measures have been introduced including, amongst others:

- a) a temporary suspension of the obligation of the need to carry out Continuing Healthcare assessments for patients on the acute hospital discharge pathway and in community settings during the Enhanced Discharge Services Period;
- b) a commitment that the NHS will fully fund the cost of new or additional elements of existing out of

hospital health and social care support packages to facilitate discharge from, or to prevent admission to, hospital as set out in the Discharge Requirements until such time as local health and care systems are notified that the Discharge Requirements will come to an end; and
c) a suspension of the usual patient eligibility criteria during the Enhanced Discharge Services Period.

In accordance with the Discharge Requirements, the Partners to the S75 agreement have considered the most appropriate model through which to commission the enhanced discharge service and admissions avoidance services and to pool budgets for the purpose of funding this service and have agreed to vary the terms of the existing Partnership Agreement.

Financial Implications:

The Council has incurred around £4.7m of costs relating to the avoidance of admission to or discharge from hospital for the first 3 months of 2020. These costs can be reclaimed from the NHS via the Covid-19 Hospital Discharge Service Requirements funding. In order to be able to reclaim the funding, the Council needs to be part of a pooled fund with the NHS.

The additional funding should be identifiable separately and spending from this new funding should be recorded for each person discharged and supported under these arrangements. 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. Given the Council's financial position and the funding shortfall for Covid related costs, it is critical that this source of funding is made available for the Council to reclaim its costs.

Legal Implications

S75 of the National Health Service Act 2006 and the resulting regulations (NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000/617) set out the partnership arrangements that NHS bodies and Local Authorities may enter into via a s75 agreement. These include pooled funds and delegation of certain functions. As this proposed decision seeks to extend an existing arrangement made in line with the national policy framework there are no direct legal implications arising from it. Legal advice has been sought in preparing the deed of variation.

Equality Implications:

An EQIA has not been completed. The variation agreement is centred on enabling quick and safe discharge and more generally reducing pressure on acute services.

Member and other consultation:

No Cabinet Committee consultation possible due to timing of Committee schedule and the need to complete this agreement to enable the funding to be secured

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This decision was originally intended to be taken as an urgent decision – with the reason for urgency published in the original FED as –“To allow KCC to reclaim the maximum amount of money from the Covid-19 Hospital Discharge Service Requirements, to cover already incurred costs, via the S75 pooled budget arrangements. KCC will host the pooled budget.”

As the finalisation of the agreement has taken a little longer than originally anticipated, the FED publication is now approaching the 28 day period and it felt appropriate to take this decision on the normal timescales, however there is still an element of urgency to the timing of getting the funding in,

and waiting to next committee on 29th September would not be appropriate.

Any alternatives considered:

Any interest declared when the decision was taken and any dispensation granted by the Proper Officer:

N/A

Clair Bell

18 September 2020

signed

date