

Better Care Fund Legal underpinning

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Outline of BCF

- £3.8bn pooled budget in 2015/16
- Extra £200m for LAs in 2014/15
- Based on joint CCG/LA plans signed off by Health and Wellbeing Boards
- Plans must meet national conditions
- Revised approach to payment for performance

Update from the April Plans

Key issues included weaknesses on:

1. Agreement on the impact of plans on the provider sector and appropriate provider engagement.
2. The metrics and financial benefits data – incomplete or invalid.
3. Lack of consistency with wider operational plans

Revised Guidance and Templates

BCF guidance and plan templates have been revised to ensure:

1. Robust plans – to read more like business plans which clearly articulate aim of BCF locally, includes implementation plans for proposed schemes, how those schemes will improve outcomes (linked to metrics), and the resultant savings/benefits.
2. More appropriate financial risk sharing across the NHS and local government, and between commissioners and providers.

Core legal requirements

- S75 Agreement to include at least a pooled fund
- Governance arrangements to ensure accountability
- Risk share and risk management
- Effective contracts and commissioning structure to deliver the plan objectives

Relationship with the Health and Well being Board

- Sign off required by DH
- Extent of other delegated powers under council constitution
- Is it appropriate for the accountability mechanism for CCGs
- Strategic oversight ?
- Reporting not accountability ?

S 75 Agreements

- Originally introduced as partnership in action Schemes by S31 of the Health Act 1999
- Now S75 NHS Act 2006
- NHS Bodies and Local Authorities Partnership Regulations 2000 no 617
- “Prescribed bodies may enter into prescribed arrangements for prescribed functions”
 - Pooled funds
 - Exercise of health functions by local authorities and vice versa - can be commissioning or provision

Prescribed functions

- Health related functions of the Local Authority
 - Local Authority social service functions
- the function of providing Healthy Start vitamins under regulation 8A of the Healthy Start Scheme and Welfare Foods (Amendment) Regulations 2005;]
- [(b) the functions under [sections 7](#) or [8](#) of the Disabled Persons (Services, Consultation and Representation) Act 1986;]
- (c) the functions of providing, or securing the provision of recreational facilities under [section 19](#) of the Local Government (Miscellaneous Provisions) Act 1976;
- (d) the functions of [local authorities] under the Education Acts as defined in [[section 578](#) of the Education Act 1996];
- (e) the functions of local housing authorities under [Part I](#) of the Housing Grants, Construction and Regeneration Act 1996 and under [Parts VI](#) and [VII](#) of the Housing Act 1996;

Local Authority functions (2)

- (f) the functions of local authorities under [section 126](#) of the Housing Grants, Construction and Regeneration Act 1996;
- (g) the functions of waste collection or waste disposal under the [Environmental Protection Act 1990](#);
- (h) the functions of providing environmental health services under [sections 180 and 181](#) of the Local Government Act 1972;
- (i) the functions of local highway authorities under the [Highways Act 1980](#) and [section 39](#) of the Road Traffic Act 1988; and
- (j) the functions under section 63 (passenger transport) and section 93 (travel concession schemes) of the [Transport Act 1985](#);
- [(k) where partners enter into arrangements under regulation 7(1) or 8(1) in respect of the provision of accommodation under sections 21 or 26 of the 1948 Act, the function of charging for that accommodation under section 22, 23(2) or 26 of that Act, or
- (l) where partners enter into arrangements under regulation 7(1) or 8(1) in respect of the provision of a service under any enactment mentioned in section 17(2)(a) to (c) of the 1983 Act, the function of charging for that service under that section]
- [(m) the functions of local authorities under or by virtue of sections 25 or 66(1) of, or Schedule 1 to, the 2006 Act].

Exclusions from Local authority Social services Functions

- [subject to sub-paragraph (k),] sections 22, 23(3), 26(2) to (4), 43, 45 and 49 of [the 1948 Act];
- [(ii) [section 6](#) of the Local Authority Social Services Act 1970;]
- (iii) [[section 3](#) of the Adoption and Children Act 2002];
- (iv) [sections 114](#) and [115](#) of the Mental Health Act 1983;
- [(iva) subject to sub-paragraph (1), section 17 of the 1983 Act;] [and]
- (v) . . .
- (vi) [Parts VII to IX] and [section 86](#) of the Children Act 1989;

Health Functions of CCGs

- the functions of arranging for the provision of services under sections 3, 3A and 3B of, and paragraphs 9 to 11 of Schedule 1, to the 2006 Act, including rehabilitation services and services intended to avoid admission to hospital but excluding surgery, radiotherapy, termination of pregnancies, endoscopy, the use of Class 4 laser treatments and other invasive treatments and emergency ambulance services

What the exclusions mean

- Certain functions you may want to include – e.g. primary care services, must be excluded
- Does not mean you cannot include in the wider arrangements but need to work around
 - Aligned budgets
 - Grants to transfer money
 - Supply of staff arrangements

Requirements under the regulations

- It will improve the provision of services
 - A written agreement
 - Agreed aims and objectives
 - Identify the functions to be supported and the people who will benefit
 - Contributions to the Fund
 - Length of the agreement
 - Hosting arrangements and a pooled fund manager
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- Consultation

Effect of pooling Budgets

NHS money
For NHS
purposes

Local Authority
Money
For Local authority
purposes

Pooled fund
Can be used for either

Implementing a pooled budget

- Needs a written agreement
- a link to a commissioning structure
- Lead or Joint Commissioning
- What goes in and what can it be used for
- Who are the beneficiaries – NB population issues

The Commissioning arrangements

- Not a formal requirement but a practical one
- Lead commissioning – A exercises B's functions
- Joint commissioning – A & B take their own decisions but the arrangements provide for co-ordination.
- Joint commissioning can be through joint posts
- Implications for who holds contracts

Lead Commissioning example



Joint commissioning Example

CCG

Local Authority

- Delegation of functions/ authority to officer members of the JCG who take separate decisions together

Joint commissioning group

- CCG decision

LA decision

Financial models

- Contributions
- Managing over and underspends
 - overspends pro rata to contribution
 - Just and equitable
 - Agreed proportions
- Who carries the risk – risk transfer to providers?
 - Block contracts
 - Performance related elements

Financial risks and mitigation

- Prior due diligence
- Closed funds – when the money is spent that is it
- Accurate monitoring and reporting
- Is the service demand led or can it be controlled by eligibility
- NB Care Act changes here

Risks for all

- Risks cover commissioners – both Local authority and CCG
- Provider risks from services commissioned from the pool
- Provider risks outside the pooled fund services

Financial risk specific to Better care

- Failure to perform against emergency admission reductions target
- Failure to adequately support social care services - delayed discharge and community services failure
- Care Act implementation costs shortfall
- Risks of success for acute providers – Will the loss of non elective income work for them

Mitigations

- Transfer performance risk in part to providers of out of hospital care?
- Potential use of outcomes based contracts
- Use of reserves

Consultation

- Obligation to consult jointly in advance those affected by the scheme – Regulation 4(2)
- Usual rules apply
- Separate from consultation on service change although in practice may be run together
- Links to other consultation obligations

Governance arrangements

- You will need to provide who oversees the delivery
- How is that reported back to the partners
- What level of oversight do the partners require?
- Relationship with any operational groups or structure

Governance structures

- Who decides what
- Do you need a joint body?
 - Regulation 10 Committee
 - Joint officer group
 - Single lead delegation
- Relationship with the Health and Well being Board

Regulation 10 committees

- Members of the local authority
- ? Committee of the CCG or of the Governing Body
- Limited remit to the S75 – would not have powers to oversee joint commissioning , merely the pooled fund and lead commissioning

Working Group

- As for the commissioning activity – members of the Group have delegated authority
- May need provision for referring upwards depending on level of authority granted .
- Requires consensus

Parallel Committees

- Only works where Local authority has a committee structure
- Committee of each body meets simultaneously
- Technically two separate decisions
- Not suited to multi party arrangements

Exit arrangements

- Length of contract
- Future funding uncertainty
- What happens if/ when the arrangement ceases?
- What happens to continuing contracts ?

Information governance

- Whose information
- DPA issues – who can share what information
- Consent or other justification under the DPA
- Need for clear and effective protocols

Better Care Fund

Implementation

New forms of contracting

Alliance contracting

- Commissioner holds aligned contract with each provider
- Overarching arrangements to ensure coordination

Accountable lead provider

- Commissioner holds one contract with accountable lead provider
- Lead provider coordinates supply chain

Outcomes based contracts

- Capitated budgets/other
- Outcome based payments
- Gainshare (painshare?)

Social finance

- Social investment bonds to fund new services against an outcomes based contract
- Essentially provide working capital for the provider
- Data issues
- Sandwell end of life scheme
- Others in local government – Children at the edge of care; housing

New services

- Do you need new contracts, or even new providers?
- NB s75 integrated provision
- Procurement issues

Decision making

- How are decisions taken
- Consultation
- Public sector Equality Duties
- Other specific duties on the parties

A shared enterprise

- Partnership principles
- Openness
- Integrity
- Honesty
- Trust
- Recognition of the Others point of view

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