NHS
North of England
Commissioning Support Unit

NHS
North Cumbria
Clinical Commissioning Group

Cumbria
County Council

Joint Policy on the Provision of After-care under section 117 of the Mental Health Act 1983

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Contents

1. Legislative Background

Section 117 of the Mental Health Act 1983 (as amended by the Health and Social Care Act 2012 and the Care Act 2014) (MHA) creates a joint duty for Clinical Commissioning Groups and Local Authorities to provide or arrange for the provision of after-care services. The duty to provide aftercare begins at the point someone leaves hospital and lasts as long as the person requires the services.

2. Introduction

Social Services and Health Authorities are required to establish jointly agreed local policies on providing s117 after-care:

> *"Social Services and Health Authorities should establish jointly agreed local policies on providing Section 117 aftercare. Policies should set out clearly the criteria for deciding which services fall under Section 117 and which authorities should finance them. The Section 117 aftercare plan should indicate which services are provided as part of the plan". Aftercare under the Mental Health Act 1983 Section 117 Aftercare Services (DH2003)*

The purpose of this policy is to:

- Set out the joint agreement of the Cumbria County Council (CCC) and NHS North Cumbria Clinical Commissioning Group (the CCG) outlining their obligations under s117 of the MHA (s117);
- Provide a policy framework which can be delivered as a combined agreement between Cumbria County Council and NHS North Cumbria Clinical Commissioning Group,
- Provide guidance to practitioners responsible for the delivery of s117 after-care in North Cumbria
- Ensure the consistency and quality of after-care services provided under s117 across North Cumbria;
- Set out the arrangements under which an individual can be discharged from s117 after-care;
- Establish agreed funding arrangements between the Council and the Clinical Commissioning Group for provision of s117 after-care.

There is no specific guidance in or under the Mental Health Act 1983 regarding the respective funding commitment between Local Social Services Authorities (LSSA's) and Clinical Commissioning Groups and therefore those commitments are agreed locally between the CCG(s) and the Council to reflect the 'joint' nature of the s117 duty. Care planning and services will be provided through locally agreed Care Programme Approach (CPA) and Care Co-ordination processes.

Individuals will still be entitled to universal health and social care services that they would have received were they not subject to s117, for example through a Care Act assessment, non-s117 community care services, care management services, carer support services, funded nursing care etc. The costs of these services do not form part of this agreement and will continue to be provided either free or subject to the Local Authority charging policy as appropriate.

3. Definitions

Care Coordinator	The person appointed to act in the role of care coordinator in relation to an individual in accordance with the CPA Guidance (sometimes called a keyworker or case manager.
CCG	A Clinical Commissioning Group for the purposes of s117 – North Cumbria Clinical Commissioning Group
NHS CHC Framework	The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care – Department of Health - November 2012 (Revised 2018)
NHS Continuing Health Care (CHC)	Any package of ongoing care funded solely by the CCG where the individual in receipt of the care has been found to have a primary health need as more particularly defined in the CHC Framework. CHC would typically be provided to meet physical or mental health needs that have arisen as a result of disability, accident or illness. The care can be provided in a variety of settings including a hospital, nursing home, hospice or the individual's own home
Code of Practice	The Code of Practice to the Mental Health Act 1983, Department of Health 2015.
Care Programme Approach (CPA)	The Care Programme Approach (CPA) is a way in which services are assessed, planned, coordinated and reviewed for persons with mental health problems or a range of related complex needs. The CPA is defined and explained in the CPA Guidance. The CPA Assessment will be carried out by a Care Coordinator.
CPA Guidance	Refocusing the Care Programme Approach – Policy and Positive Practice Guidance, Department of Health, March 2008
Community Treatment Order (CTO)	A Community Treatment Order pursuant to sections 17A to 17G of the MHA
FNC Best Practice Guidance	NHS-funded Nursing Care Practice Guide July 2013 (Revised) – Department of Health – August 2013
Funded Nursing Care (FNC)	The funding provided by the NHS to homes providing nursing to support the provision of nursing care by a registered nurse as defined in the NHS-Funded Nursing Care Practice Guide and

	the National Framework for NHS Continuing Healthcare.
Cumbria County Council	The County Council of Cumbria
LSSA	A Local Social Services Authority for the purposes of s117;
Multi-disciplinary Team (MDT)	A group of professionals from diverse disciplines who come together to provide comprehensive assessment and consultation in accordance with the CPA and as part of the CPA Assessment
MHA	The Mental Health Act 1983 as amended by the Health and Social Care Act 2012, the Care Act 2014 and any subsequent legislation
Provider	Any provider of services, whether commissioned by the CCG or the Council, which contribute to or form part of s117 after-care arrangements made by either the Council and/or the CCG;
Responsible Clinician	The Approved Clinician with overall responsibility for an individual's case as defined by s34 of the MHA;
s117 or Section 117	Section 117 of the MHA
s117 register	The register of people with s117 after-care arrangements kept in accordance with paragraph 7.4
Statutory Guidance	The Care and Support Statutory Guidance Issued under the Care Act 2014 – Department of Health – May 2016
Who Pays Guidance	Who Pays? Determining responsibility for payments to providers – NHS England – August 2013

3.1 Defining Health and Social Care

Whilst there is not a legal definition of a healthcare need, there is a significant amount of case law, and in general terms it can be said that such a need is one related to the treatment, control or prevention of a disease, illness, injury or disability, and the care or aftercare of a person with these needs (whether or not the tasks involved have to be carried out by a health professional).

In general terms it can be said that a social care need is one that is focused on providing assistance with activities of daily living, maintaining independence, social interaction, enabling the individual to play a fuller part in society, protecting them in vulnerable situations, helping them to manage complex relationships

and (in some circumstances) accessing a care home or other supported accommodation.

Social care needs are directly related to the type of welfare services that LAs have a duty or power to provide. These include, but are not limited to: social work services; advice; support; practical assistance in the home; assistance with equipment and home adaptations; visiting and sitting services; provision of meals; facilities for occupational, social, cultural and recreational activities outside the home; assistance to take advantage of educational facilities; and assistance in finding accommodation (e.g. a care home).

4 Duty to Provide After-care

4.1 Definition of s117 After-care

Section 117 (2) of the MHA states that:

> *"It shall be the duty of the [clinical commissioning group] or Local Health Board and of the Local Social Services Authority to provide, in co-operation with relevant voluntary agencies, aftercare services for any person to whom this section applies until such time as the [clinical commissioning group] or Local Health Board and the Local Social Services Authority (LSSA) are satisfied that the person concerned is no longer in need of such services". (As amended by the Health and Social Care Act 2012)*

After-care services are further defined by s117 (6) to mean services which have both of the following purposes:

> *(a) meeting a need arising from or related to the person's mental disorder; and*
>
> *(b) reducing the risk of a deterioration of the person's mental condition (and, accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder)*

The Mental Health Act 1983: Code of Practice (Dept of Health 2015 p357) expands on the definition of after-care as follows:

> *"**33.4** CCGs and local authorities should interpret the definition of after-care services broadly. For example, after-care can encompass healthcare, social care and employment services, supported accommodation and services to meet the person's wider social, cultural and spiritual needs, if these services meet a need that arises directly from or is related to the particular patient's mental disorder, and help to reduce the risk of a deterioration in the patient's mental condition is the*

plan of care established to meet the assessed needs of a patient at the point in time when he/she leaves hospital or prison.

***33.5** After-care is a vital component in patient's overall treatment and care. As well as meeting their immediate needs for health and social care, after-care should aim to support them in regaining or enhancing their skills, or learning new skills, in order to cope with life outside hospital."*

4.2 Scope

In law s117 is a 'stand-alone' duty and is not a duty to provide services under other legislation such as the Care Act 2014. The duty is placed jointly upon the Clinical Commissioning Group and the Local Social Services Authority (LSSA) for the area in which the individual resided (other than MHA prisons) immediately before admission to hospital. Both the CCG and LSSA should work in co-operation with relevant agencies to provide aftercare services for any person to whom this Section applies.

Section 117 of the MHA 1983 applies to any person who is or has previously been detained in hospital under:

- Section 3 MHA 1983;
- A Hospital Order made under s37 (with or without Restriction Order made under s41), or
- A Hospital Direction made under s45A (with or without a Limitation Direction), or
- A Transfer Direction made under s47 or s48 (with or without a Restriction Direction), and then ceases to be detained and leaves hospital;

This includes people who are:

- Section 17 when on leave of absence;
- Individuals treated as being detained under one of the above Sections following a transfer to hospital from Guardianship, or from outside England and Wales are also covered by s117

Section 117 includes all those individuals subject to a Community Treatment Order (CTO) under s17A of the MHA 1983.

The Care Act 2014 inserted a new s117A of the MHA under which the Secretary of State is empowered to make regulations requiring a Local Authority to comply with a preference by an individual for particular accommodation, with the individual paying a top-up fee if the preferred accommodation is more than the Authority's usual cost.

Where after-care arrangements are to consist of the provision of care home accommodation, shared lives scheme accommodation or supported living accommodation, the Care and Support and After-care (Choice of Accommodation)

Regulations 2014 give individuals an absolute right to their preferred accommodation under the following conditions:

Conditions for provision of preferred accommodation (The Care and Support and After-care (Choice of Accommodation) Regulations 2014)

(a) The care and support plan for the adult specifies that the adult's needs are going to be met by the provision of accommodation of a specified type;

(b) The preferred accommodation is of the same type as that specified in the adult's care and support plan;

(c) The preferred accommodation is suitable to the adult's needs;

(d) The preferred accommodation is available; and

(e) Where the preferred accommodation is not provided by the local authority, the provider of the accommodation agrees to provide the accommodation to the adult on the local authority's terms.

If the cost to the local authority of providing or arranging for the provision of the preferred accommodation is greater than the amount specified in the adult's personal budget that relates to the provision of accommodation of that type, the local authority must be satisfied that the individual(or a member of their family) is able and willing to pay the additional cost of the preferred accommodation(and sign a written agreement to that effect) for the period during which the local authority expects to meet the adult's needs by providing or arranging for the provision of that accommodation.

Individuals have broadly the same right to choose their accommodation when receiving s117 after-care as they would have if receiving care and support under the Care Act (Statutory Guidance: Annex A, Paragraph 44).

Section 117 gives considerable discretion to Clinical Commissioning Groups and Local Authorities as to the nature of the services that can be provided. Section 117 needs are established through effective partnership working with the individual and the relevant agencies to establish identified services and interventions, which will reduce the likelihood of hospital readmission by being proactive and/or reactive in nature in relation to their mental health needs.

Section 117 places no restriction on the type of service or organisation of service that can be provided. CCGs and LSSAs should interpret the definition of after-care services broadly. For example, after-care can encompass healthcare, social care and employment services, supported accommodation and services to meet the person's wider social, cultural and spiritual needs, if these services meet a need that arises directly from or is related to the particular individual's mental disorder and help to reduce the risk of deterioration in the individual's mental condition. (33.4 Code of Practice 2015)

After-care is a vital component in individual's overall treatment and care. As well as meeting their immediate needs for health and social care, after-care should aim to support them in regaining or enhancing their skills, or learning new skills, in order to cope with life outside hospital.(33.5 Code of Practice 2015)

Individuals are under no obligation to accept the after-care services they are offered, but any decision they may make to decline them should be fully informed. An unwillingness to accept services does not mean that individuals have no need to receive services, nor should it preclude them from receiving them under s117 should they change their mind.

Practitioners need to ensure for those individuals who have been assessed as lacking capacity around their aftercare needs, that they follow the Mental Capacity Act and Code of Practice.

The Duty under the Section continues until such time as the Clinical Commissioning Group and the Local Authority are both satisfied that the Individual is no longer in need of any after-care services. The circumstances in which it is appropriate to end s117 aftercare will vary from person to person and according to the nature of the service being provided. The most clear cut circumstance in which aftercare will end is where the person's mental health has improved to a point where they no longer need services because of their mental disorder. But if these services include, for example, care in a specialist residential setting, the arrangements for their move to more appropriate accommodation will need to be in place before support under s117 is finally withdrawn. Fully involving the individual in the decision making process will play an important part in the successful ending of aftercare (MHA Code of Practice).

The duty is only ended when there is agreement between the Clinical Commissioning Group and Local Authority of discharge from s117. The person and the agencies involved should be notified of this decision and the rationale.

5 Responsibilities

Identifying the responsible Clinical Commissioning Group and Local Authority should be established as soon as the requirement to provide s117 aftercare services is established. The governing rules are different for CCG and Local Authority and are complex.

Clinical Commissioning Groups and Local Authorities are able to pool resources, delegate functions and transfer resources from one body to another so that they can be a single provider of services. Local Authorities are also able to make payments to NHS bodies towards expenditure incurred by them in connection with their performance under s117 and other health related functions can be delegated to Care Trusts, although the CCG remains responsible.

5.1 Local Authority responsibilities

Under s117 (3), the responsibility for after-care rests with the LSSA in which the Individual was resident immediately before their detention under the MHA. That LSSA remains responsible for after-care even if the after-care services include the provision of accommodation in a different area. However, there can be a change in

the LSSA responsible for after-care if an individual is subsequently detained under one of the sections listed at 4.2. In such a case, the LSSA where the individual was resident at the time of their subsequent detention would become responsible for their aftercare and the originating LSSA would be released from its responsibilities.

Section 39(1) of the Care Act 2014 deems residents of care homes and certain other accommodation to be ordinarily resident in the area in which they were ordinarily resident immediately before they began to live in the care home accommodation. It should be noted that the 'deeming' provision does not apply for the purposes of s117. For individuals who lived in care home accommodation immediately before their detention under the MHA, the LSSA for the area where the care home was located is responsible for their s117 after-care *even if* the individual was deemed to have been ordinarily resident in some other LSSA area (this remains an area of dispute, however a recent Secretary of State determination took this approach)

Patients admitted to hospital from prison will be the responsibility of the Local Authority where they were resident at the point they were detained in custody.

If, exceptionally, no place of residence can be established (usually because the individual had been of no fixed abode at the time of admission), the Local Authority responsible for commissioning the after-care will be the one for the area in which the individual was resident immediately before being detained under the 1983 Act. Only if that cannot be established will the s117 responsibilities lie with the Authority for the area to which the individual will be sent on discharge. Any change in the individual's ordinary residence after discharge will affect the Local Authority responsible for social care services but will not affect the Local Authority responsible for commissioning the individuals 117 after-care.

The Local Authority's responsibilities under s117 continue until s117 is discharged, or until the individual is detained again under one of the qualifying Sections of the MHA 1983.

Any issues arising in relation to Ordinary Residence and Local Authority responsibility which require legal clarification will be escalated to the Local Authority Legal team.

5.2 Clinical Commissioning Group responsibilities

If a person is detained for treatment under the Mental Health Act 1983, the responsible Clinical Commissioning Group will be determined in accordance with s117 and the Who Pays Guidance as set out below:

> "*If a person is detained for treatment under the Mental Health Act 1983, the responsible commissioner will be as set out in paragraph 1 of the 'who pays' guidance. Every effort should be made to determine GP practice registration or establish an address where they are usually resident, but if this fails and the patient refuses to assist, then as a last resort the responsible commissioner should be determined by the location of the unit providing treatment.*

It is the duty of both the CCG and the appropriate Local Authority to commission after-care services for those persons discharged from hospital following detention under one of the relevant sections of the Mental Health Act. The responsible CCG should be established by the usual means (see paragraph 1) for their typical secondary healthcare. However, if a patient who is resident in one area (CCG A) is discharged to another area (CCG B), it is then the responsibility of the CCG in the area where the patient moves (CCG B) to jointly work with CCG A, who will retain the responsibility to pay for their aftercare under section 117 of the Act as agreed with the appropriate Local Authority. The purpose of this is to ensure that the person has access to local clinical support and advice in the area they will be moving to (CCG B), whilst remaining the commissioning responsibility of the original CCG (CCG A).

If a detained person who has been discharged, and is in receipt of services provided under section 117 of the Mental Health Act, is subsequently readmitted or recalled to hospital for assessment or treatment of their mental disorder, the responsible CCG will continue to be the CCG that is currently responsible for funding the aftercare under section 117 (except where the admission is into specialised commissioned services).

If a detained person who was registered with a GP in one area (CCG A) is discharged to another area (CCG B) and is in receipt of services provided under section 117 of the Mental Health Act) is subsequently readmitted or recalled to hospital for assessment or treatment of their mental disorder, it is the responsibility of CCG A to arrange and fund the admission to hospital (except where the admission is into specialised commissioned services). Furthermore, the originating CCG (CCG A) would remain responsible for the NHS contribution to their subsequent aftercare under S117 MHA, even where the person changes their GP practice (and associated CCG).

The table below should provide a useful distinction of the changing commissioner responsibilities for patients discharged under section 117."

• *Patients discharged pre 1 April 2013 come under the pre August 2013 PCT Who Pays Guidance and the legacy/originating CCG continues to be responsible for subsequent compulsory admissions under the MHA, and current and subsequent S117 services until such time as they are assessed to no longer need these services.*
• *Patients discharged between 1 April 2013 and 31 March 2016 fall under August 2013 Who Pays Guidance –CCG B would be responsible if a patient is discharged into a location in CCG B and registers with a GP in CCG B.*

- *New revised guidance from 1 April 2016 will revert back to the pre 1 April 2013 position where the legacy/originating CCG continues to be responsible in most cases.*

(Who Pays Guidance – Text substituted for Paragraphs 33 and 34 from 1st April 2016 by NHS England - 'Who Pays'" amendment to the section on 'persons detained under the Mental Health Act 1983'.)

The NHS Commissioning Board (NHS England) is responsible for an individual's after-care if the after-care services required are of the type that the NHS Commissioning Board would be responsible for commissioning rather than a CCG.

5.3 Provider responsibilities

Providers will recognise that s117 of the Act requires Clinical Commissioning Groups and Local Authorities to provide, or arrange for the provision of, aftercare to particular patients detained in hospital for treatment who then cease to be detained. The aim of after care is to maintain the patient in the community with as few restrictions as possible in order to maintain safety and reduce the risk of deterioration.

The MHA Code of Practice defines responsibilities under s117 for Clinical Commissioning Groups and Local Authorities. Providers must work collaboratively with Health and Social Care Commissioners to progress consistent, individual focused care packages that are in keeping with the principles of least restrictive intervention and focused on recovery and maintenance of health.

6 Charging/Funding

Services provided under s117 must be sufficient to meet the assessed mental health needs of the Individual. The Local Authority is not entitled to charge for aftercare services provided as a consequence of their duty under s117. The exemption from charges under s117 applies to all community care charges including:

- Residential/nursing care;
- Day care;
- Domiciliary care.

(If these services are provided to meet the after care needs of the Individual)

There is no obligation to fund services which are not identified within the s117 plan. During assessment and care planning the relevant professional must consider if the need for any service to be provided arises from their mental disorder and will reduce the risk of deterioration in the person's mental health state. A care and support plan may have wider assessed needs/outcomes than those that are provided under s117.

Services that do not relate to assessed mental health needs may be eligible for charges under the Local Authority charging policy.

Needs relating only to the physical health or disability of the Individual (and not related to mental health needs) are not within the ambit of s117, nor are the carer's assessed needs.

6.1 Top up payments

Will be made in accordance with the Care and Support and After care (choice of accommodation) regulations 2014 as outlined in section 4.2

6.2 Personal Budgets, Personal Health Budgets and Direct payments

A **personal budget** is the funding allocated to meet eligible social care needs by a Local Authority which can be used to pay for after-care services under s117 of the Act.

An adult who is eligible for after-care can request that the Local Authority make direct payments to them, if they have capacity to do this. If the adult lacks capacity to do so, the local authority can make direct payments to an authorised person or suitable person if certain conditions are met.

A key condition is that the Local Authority must consider that making the direct payments to the 'authorised person' is an appropriate way to discharge their s117 duty, and that they must be satisfied the 'authorised person' will act in the adult's best interests in arranging for the after-care. The award of any direct payments will only be made in accordance with the Care and Support (Direct Payments) Regulations 2014 and the relevant Local Authority policy.

There are some limits on the use of direct payments for the purchase of long term care home stays, as stated in the Care and Support Statutory Guidance (2018).

A **Personal Health Budget** is an amount of money to support the identified healthcare and wellbeing of an individual, planned and agreed between the individual and the local Clinical Commissioning Group. Adults eligible for NHS Continuing Healthcare and children in receipt of Continuing Healthcare have had the right to have a Personal Health Budget since October 2014. Clinical Commissioning Groups can offer Personal Health Budgets to other groups of patients. A Personal Health Budget can be given as:

- A notional budget managed by NHS on the patient behalf;
- A direct payment (CCG's can make direct payments for aftercare services under the National Health Direct Payments Regulations 2013, when the prescribed criteria are met);
- As a third party budget where an organisation independent of the NHS manages the Personal Health Budget on behalf of the person.

A Personal Health Budget can be used for the health funding element of s117 aftercare. It can be combined with a Personal Budget through a shared care arrangement with the local authority.

A CCG or the NHS Commissioning Board may also make direct payments in respect of after-care to the individual or, where the individual is a child or a person who lacks capacity, to a representative who consents to the making of direct payments in respect of the individual. A payment can only be made if valid consent from the representative has been given. In determining whether a direct payment should be made, a CCG or the NHS Commissioning Board is required to have regard to whether it is appropriate for a person with that person's condition, the impact of that condition on the person's life and whether a direct payment represents value for money. A payment can also, in certain circumstances, be made to a nominee. The award of any direct payments for healthcare will only be made in accordance with the NHS (Direct Payments) Regulations 2013 (as amended) and the CCG policy for the award of Personal Health Budgets.

Local arrangements for the provision of direct payments will be outlined in the S117 standard operating procedures.

6.2 Relationship with Continuing Healthcare

It should be noted that a person subject to s117 aftercare is entitled to be considered for NHS Continuing Healthcare where they have needs outside of their s117 aftercare provisions. Where an individual has needs which are unrelated to their mental disorder it may be necessary to consider NHS Continuing Healthcare, but only in relation to those separate needs. Where an individual is eligible for services under s117 these should be provided under s117 and not under NHS Continuing Healthcare. (National Framework section 120). An individual subject to s117 should only be considered for NHS Continuing Healthcare where they have significant healthcare needs which are not related to their mental health aftercare needs and these needs cannot be met by mainstream statutory services. It is therefore not necessary to assess eligibility for NHS Continuing Healthcare if all the services in question are to be provided as aftercare services under s117. (National Framework 121)

Where an individual develops physical care needs resulting in a rapidly deteriorating condition which may be entering a terminal phase, consideration should be given to the use of the Fast Track Pathway Tool (CHC Framework – Paragraph 122).

6.3 Relationship with Funded Nursing Care

Where an individual is receiving s117 after-care, they will still be eligible for NHS Funded Nursing Care as a universal service, discrete from any s117 provision, if they meet the relevant criteria (FNC Best Practice Guidance – paragraph 63). Individuals placed in nursing homes should be funded by that CCG where they are registered with the GP.

7 Admission, assessment, care planning, record keeping, discharge plans and responsibilities

Admission, assessment, review and care planning for those individuals subject to s117 should be undertaken within the agreed local Care Programme Approach (CPA)/care co-ordination arrangements.

7.1 Admission

On admission of an individual detained under one of the identified Sections of the MHA 1983, Local Authority and Clinical commissioning Group should immediately begin the planning of after-care needs (Code of Practice 33.10). The s117 Register will include a record of all individuals admitted under a relevant section (in respect of whom the duty to commence s117 after-care planning has arisen) as well as all individuals for whom after-care is being provided or commissioned and what after-care services are provided. (Code of Practice 33.7)

The CCG will be advised of all admissions under the Mental Health Act 1983.

The planning of after-care needs should commence as soon as the individual is admitted to hospital. The Clinical Commissioning Group and the Local Authority will take reasonable steps to identify appropriate after-care services for individuals in good time for their eventual discharge from hospital. (Code of Practice 34.17)

Care Planning requires a thorough assessment of the individuals needs and wishes and should be undertaken using the Care Planning Approach (CPA). The CPA process requires the clear identification of a named individual who has responsibility for co-ordinating the preparation, implementation and evaluation of the CPA care plan. In the case of those being discharged under s117, this assessment must address the individual's social care related needs in their own right whilst also considering any social care services required to contribute to s117 aftercare. It is vital that the Local Authority assessment compliments the assessments and planning carried out as part of the individual's CPA and is carried out in partnership with the relevant parties.

It is likely to involve consideration of the following:

- Continuing mental health care, whether in the community or an out-patient basis;
- The psychological needs and, where appropriate, of carers;
- Physical healthcare;
- Daytime activities or employment ;
- Appropriate accommodation;
- Identified risks and safety issues;
- Any specific needs arising from co-existing physical disability, sensory impairment, learning disability or autistic spectrum disorder;
- Any specific needs arising from drug, alcohol or substance misuse (if relevant);

- Any parenting or caring needs;
- Social, cultural or spiritual needs;
- Counselling and personal support;
- Assistance in welfare rights and managing finances;
- Involvement of authorities and agencies in a different area, if the patient is not going to live locally;
- The involvement of other agencies, for example the probation service or voluntary organisations (if relevant);
- For a restricted patient, the conditions which the Secretary of State for Justice or the first-tier Tribunal has - or is likely to - impose on their conditional discharge;
- Contingency plans (should the Patient mental health deteriorate) and crisis details.

7.2 Care Planning

It is the responsibility of the Responsible Clinician to ensure discussion takes place to devise a care plan to meet the patient on-going health and social care needs.

Before deciding to discharge or grant more than very short-term leave of absence for a individual or to place an individual onto a Community Treatment Order, the Responsible Clinician should ensure that the individuals needs for after-care have been fully assessed, discussed with the individual (and their carers where appropriate) and addressed in their care plan. If the individual is being given leave for only a short period, a less comprehensive review may be sufficient, but the arrangements for the individual's care should still be properly recorded.

After-care for all individuals admitted to hospital for treatment for mental disorder should be planned within the framework of the Care Programme Approach. This applies whether or not they are detained or will be entitled to receive after-care under s117 of the Act. But because of the specific statutory obligation it is important that all individuals who are entitled to after-care under s117 are identified and that records are kept of what is provided to them under that Section.

In order to ensure that the after-care plan reflects the full range of needs of each individual, it is important to consider who needs to be involved in addition to individuals themselves. This may involve carers and a wide range of professionals. This discussion should be a multi-professional case review and as recommended by the Code of Practice to the Mental Health Act 1983, should involve the following people as appropriate to each person and in consultation with the individual:

Subject to the individual's views, and as set out at 34.12 of the Code of Practice, this may include:

- The individual's Responsible Clinician;

- Nurses and other professionals involved in caring for the individual in hospital;
- Social workers and other professionals involved in care planning for the individual within the relevant Council or otherwise;
- A psychologist registered with the Health and Care Professions Council, community mental health nurse and other members of the community team;
- The individuals General Practitioner and Primary Care Team (if there is one). It is particularly important that the individual's GP should be aware if they are to go onto a Community Treatment Order. An individual who does not have a GP should be encouraged and helped to register with a practice;
- Any carer who will be involved in providing informal care outside hospital (including, in the case of children and young people, those with parental responsibility);
- The individual's nearest relative (if there is one) or other carers;
- A representative of any relevant voluntary organisations;
- In the case of a restricted individual multi-agency public protection arrangements (MAPPA) co-ordinator;
- In the case of a transferred prisoner, the probation service;
- A representative of housing authorities, if accommodation is an issue;
- An employment expert, if employment is an issue;
- The CCG's appointed clinical representative (if appropriate);
- The Council;
- An Independent Mental Health Advocate, if the individual has one;
- An Independent Mental Capacity Advocate, if the individual has one;
- The individual's attorney or deputy, if they have one;
- A person to whom the Local Authority is considering making direct payments for the individual ;
- Any another representative nominated by the individual
- Anyone with authority under the Mental Capacity Act 2005 (MCA) to act on the individual's behalf.

Based on this assessment a support plan for aftercare should be agreed with the individual and clearly documented. The plan must include the needs which arise from the person's mental disorder, the services that are required to meet those needs so as to reduce the risk of deterioration, and timescales within which each of the identified needs is to be addressed or reviewed. The aftercare should be recorded on the care plan as part of the CPA process and may include risk management, medication, self-neglect, accommodation and other needs as presented. This will help to ensure the recovery outcome can be clearly monitored and reviewed. The plan should also indicate whether the need to be met is a health

need, a social care need or a joint health and social care need and which needs should be met under s117 funding.

7.3 Transforming Care Programme Implications

The NHS 'Care and Treatment Reviews – Policy and Guidance' sets out guidance related to people of all ages with a learning disability and/or autism who display behavior that challenges, including those with a mental health condition who are at risk of admission or currently in receipt of specialist learning disability or mental health inpatient services.

The guidance requires the local CCG Commissioner to maintain a register of people assessed to be at risk of admission in their local area (called the Dynamic Register). This will include all people at risk, regardless of current funding responsibilities and including those in commissioned placements. The registers should include any individuals currently under or discharged from s117 arrangement as they may be at risk of re-admission in the future.

The aim of the registers and the use of community Care and Treatment Reviews (CTRs) are to avoid unnecessary admissions into hospital.

7.4 Designated Aftercare Services

As stated above the Mental Health Act does not define what services should be provided under s117. Potential services could include:

- Specialist mental health services;
- Integrated Community Equipment Services;
- Placement in Nursing Care Home;
- Placement in Registered Care Home;
- The support provided in Supported Living Service (but neither rent nor service charges related to the building);
- Floating Support;
- Drug treatment support;
- Aids and adaptations to the person's home;
- Telecare;
- Home Care Services;
- Advocacy;
- Employment, volunteering and training services;
- Day opportunities and other daytime activities;
- Supervision of medication requiring close monitoring by a healthcare professional e.g. Clozapine;
- Assistance and support with self-medication programme;

- Interventions and behavior management programmes which need constant oversight by a trained healthcare professional e.g. a Registered Mental Nurse;
- Interventions and behavior management programmes which can be delivered by trained support workers with occasional oversight by healthcare professional.

This list is not exhaustive. The Mental Health Act Code of Practice states that CCGs and Local Authorities should interpret the definition of after-care services broadly and that a wide range of services should be considered provided they meet the individual's needs for aftercare.

7.5 Services where s117 does not apply

The following services will not be provided under s117.

- Storage of property;
- Housing pets;
- Household bills;
- Food;
- Holidays;
- General needs/ordinary accommodation.

7.6 Funding responsibilities

A package of care and support will be based on the aftercare support plan. The plan should follow the principles of self-directed supported and personalized services and the package should utilize existing universal, free to access services where possible. These could include:

- Community based health services;
- Resettlement services;
- Universal advice, advocacy and information services;
- Employment support services;
- Community activity services;
- Leisure services;
- Peer support;
- Other elements of the package should be individually priced.

The local arrangements for the review and ratification of packages of care and support will be outlined in the standard operating procedures.

7.7 Recording of s117 After-care Arrangements

The CCG and Local Authorities will jointly agree the mechanism to keep and maintain a register of s117 after-care arrangements (the s117 Register).

The s117 Register will include a record of:

- All individuals eligible for s117 aftercare within North Cumbria (or eligible to receive s117 after-care funded by the Council) from the point of their admission under a relevant section, whether or not they receive such services;
- The current state of after-care planning in respect of any such individual;
- Any significant changes to the care planning in respect of any such individual including, but not limited to:
    - The date on which s117 after-care ends;
    - Details of any change in responsibility for the provision of s117 after-care and any transfer to another authority.
    - Other information as agreed by the parties.

7.8 Transfer to another Authority

The responsible after-care body under s117 is the Local Authority for the area where the individual resided at the time of detention and it remains responsible until the individual no longer needs aftercare or another after-care body accepts the responsibility to provide services. However this is different for CCGs where the Responsible Commissioner is linked to the GP practice where the individual is residing.

Where an individual receiving aftercare under s117 moves to another area, whilst this may affect the Local Authority responsible for their social care services it will not affect the Local Authority responsible for commissioning the individual's117 after-care. Contact must be made with the Local Authority, Clinical Commissioning Group and healthcare services in that area, as appropriate , to facilitate agreement around level of need, engagement and risk. Appropriate information, including CPA documentation, must be forwarded to the new after-care bodies and transfer of after-care documents completed. It is the responsibility of the Care Coordinator/Lead professional / Care Manager to ensure this happens in consultation with the Responsible Clinician.

7.9 Discharge from Section

Planning for aftercare should start at the earliest opportunity and should include notification to local funding decision making processes to enable funding streams to be agreed in principle prior to final discharge planning to avert any potential delay.

It is important that those who are involved are able to take decisions regarding their own and as far as possible their agency's involvement. If approval for plans needs

to be obtained from more senior levels (for example, for funding), it is important that this causes no delay to the implementation of the care plan.

Those contributing to the discussion must consider:

- The individuals wishes and needs;
- The views of relatives or friends;
- Developing a care plan based on assessment of identified needs;
- Commissioning of services
- The individual's capacity to understand the plan and agree with the contents and any requirement to act in accordance with the Mental Capacity Act/ best interest decisions.

The Aftercare plan should clearly identify the s117 aftercare needs and services to be provided, and record which authority/authorities are funding the package of care. Services being provided other than under s117 should be clearly identified.

7.10 Review

The Clinical Commissioning Group and Local Authority expect reviews to be undertaken that reflect locally agreed standards as outlined by CPA/Care co-ordination processes, policies and procedures, but as a minimum standard, at least annually.

Each review must consider and record whether the individual continues to require services to be provided under s117 aftercare, why they need these services and how this reduces the likelihood of hospital readmission.

Each review must include specific consideration whether it is appropriate for care to continue to be provided under s117 and must record the outcome of that consideration.

Following a review an individual can be discharged back to primary care in line with local agreed policies and remain eligible for an annual review of the s117 needs.

Ending s117 after-care services

Aftercare under s117 does not have to continue indefinitely.

The duty to provide after-care services exists until both the Clinical Commissioning Group and the Local Authority are satisfied that the individual no longer requires them. The circumstances in which it is appropriate to end s117 after-care will vary from person to person and according to the nature of the services being provided. The most clear-cut circumstance in which after-care would end is where the person's mental health improved to a point where they no longer needed services to meet needs arising from or related to their mental disorder.

The Mental Health Code of Practice 2015 stipulates that aftercare services under s117 should not be withdrawn solely on the grounds that:

- The individual has been discharged from the care of specialist mental health services;

- An arbitrary period has passed since the care was first provided;
- The individual is deprived of their liberty under the Mental Capacity Act 2005;
- The individual has returned to hospital informally or under s2 MHA 1983, or
- The Individual is no longer on a CTO or s17 leave.

After-care services may be reinstated if it becomes obvious that they have been withdrawn prematurely, e.g. where an individual's mental condition begins to deteriorate immediately after services are withdrawn. The identification of further s117 after care needs should form part of the CPA process.

Even when the provision of after-care has been successful in that the individual is well-settled in the community, the individual may still continue to need after-care services, e.g. to prevent a relapse or further deterioration in their condition. (33.23 Code of Practice)

There may be cases where after a period of aftercare the individual makes a full recovery and is no longer in need of services for their mental illness, but still requires services for other needs, for example, a physical disability; in such cases it may be possible to end the s117 aftercare, through a clear discharge process.

Discharge from s117 may also be indicated when the individual has experienced a significantly improved level of functioning for a sustained period of time, and there is no indication that they require ongoing intervention to reduce the likelihood of hospital readmission.

A multi-disciplinary team can make a recommendation to discharge from s117 and removal from any local s117 register. This recommendation must be made at a care review meeting with the recommendation being documented and shared with the Clinical Commissioning Group, Local Authority, individual and family (where appropriate).

If the individual or their carer disagrees with any recommendation to discharge from s117 all attempts must be made to reach agreement, however the recommendation can still be made to the Clinical Care Group and Local Authority. The final decision to discharge an individual from s117 can only be made jointly by the Clinical Commissioning Group and Local Authority.

Individuals subject to Community Treatment Order under s17A or Conditional Discharge from s37/41 cannot be discharged from s117 entitlement until the respective order is discharged. It is unlikely that a formerly detained individual who became subject to s7 Guardianship would be discharged from s117 prior to discharge of the s7 Guardianship.

7.11 Post Discharge of s117

Following discharge from s117 the Clinical Commissioning Group and Local Authority recognise that they still have a duty to carry out an assessment of the Individual should they appear to be in need of health and social care services.

8 Dispute Resolution

Disputes must not unreasonably delay a person's discharge from hospital and should be negotiated with the best outcomes for the individual in mind. As all the local agencies and aftercare bodies strive to work in collaboration to support the safe discharge of the patient it is envisaged that any disputes will be kept to a minimum as it is expected that any disagreements between agencies will be resolved at an early stage. However, should a dispute occur, the assessed aftercare needs for the patient will still need to be met until the issue is resolved.

Where residency disputes occur regarding the responsible Clinical Commissioning Group or Local Services Authority they will be resolved in accordance with current statutory guidance. In the case of disputes arising in relation to whether a responsibility lies with health or social care, resolution will be sought in accordance with local standard operating procedures.

If necessary, the Local Services Authority/ Clinical Commissioning Group will provide 'without prejudice' funding pending resolution of the dispute. This process will prevent funding disputes detrimentally affecting individuals' needs or causing undue delay in discharging someone from hospital.

If required the CCG and/or Local Authority will seek legal clarity in relation to any unresolved disputes relating to the provision of and/or funding of s117 after care.

9 Sign-off

Approved by Cumbria County Council in accordance with its constitution

Signed……..

Position……

Date……..

Approved by the North Cumbria Clinical Commissioning Group in accordance with its constitution

Signed……..

Position…….

Date……

References

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Code of Practice to the Mental Health Act 1983
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