

# NATIONAL HEALTH SERVICE ACT 2006

## THE DELAYED DISCHARGES (CONTINUING CARE) DIRECTIONS 2013

The Secretary of State for Health gives the following Directions in exercise of the powers conferred by sections 8 and 272(7) and (8) of the National Health Service Act 2006(a).

### Citation, commencement, application and interpretation

1.—(1) These Directions may be cited as the Delayed Discharges (Continuing Care) Directions 2013 and come into force on 11th November 2013.

(2) These Directions apply to every NHS trust.

(3) In these Directions—

“appropriate clinician” means a person who is—

(a) responsible for the diagnosis, treatment or care of a patient under the National Health Service Act 2006 in respect of whom the Fast Track Pathway Tool is being completed, and

(b) a registered nurse(b) or a registered medical practitioner(c);

“Decision Support Tool” means the document entitled “Decision Support Tool for NHS Continuing Healthcare” issued by the Secretary of State and dated 28th November 2012(d);

“Fast Track Pathway Tool” means the Fast Track Pathway Tool for NHS Continuing Healthcare issued by the Secretary of State and dated 28th November 2012(e);

“healthcare profession” means a profession which is concerned (wholly or partly) with the physical or mental health of individuals (whether or not a person engaged in that profession is regulated by, or by virtue of, any enactment);

“multi-disciplinary team” means a team consisting of at least—

(a) two professionals who are from different healthcare professions, or

(b) one professional who is from a healthcare profession and one person who is responsible for assessing persons for community care services under section 47 of the National Health Service and Community Care Act 1990(f);

“National Framework” means the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care issued by the Secretary of State and dated 28th November 2012(g);

“NHS CHC Checklist” means the document entitled “NHS Continuing Healthcare Checklist” issued by the Secretary of State and dated 28th November 2012(h);

“NHS Continuing Healthcare” means a package of care arranged and funded solely by the health service in England for a person aged 18 or over to meet physical or mental health needs which have arisen as a result of disability, accident or illness;

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(a) 2006 c. 41; by virtue of section 271 of the Act, those powers are exercisable by the Secretary of State only in relation to England.

(b) See Schedule 1 of the Interpretation Act 1978 (c. 30) for the definition of a registered nurse.

(c) See Schedule 1 of the Interpretation Act 1978 for the definition of a registered medical practitioner.

(d) The Decision Support Tool can be found at [www.dh.gov.uk/health/2012/11/continuing-healthcare-revisions/](http://www.dh.gov.uk/health/2012/11/continuing-healthcare-revisions/).

(e) The Fast Track Pathway Tool can be found at [www.dh.gov.uk/health/2012/11/continuing-healthcare-revisions/](http://www.dh.gov.uk/health/2012/11/continuing-healthcare-revisions/).

(f) 1990 c. 19; section 47 has been amended by the Health Authorities Act 1995 (c. 17), Schedule 1, paragraphs 65 and 81; the National Health Service Reform and Health Care Professions Act 2002 (c. 17), Schedule 2, paragraphs 53 and 56; the National Health Service (Consequential Provisions) Act 2006 (c. 43), Schedule 1, paragraphs 128 and 130; and the Health and Social Care Act 2012 (c. 7), Schedule 5, paragraphs 58 and 59.

(g) The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care can be found at [www.dh.gov.uk/health/2012/11/continuing-healthcare-revisions/](http://www.dh.gov.uk/health/2012/11/continuing-healthcare-revisions/).

(h) The NHS Continuing Healthcare Checklist can be found at [www.dh.gov.uk/health/2012/11/continuing-healthcare-revisions/](http://www.dh.gov.uk/health/2012/11/continuing-healthcare-revisions/).

“NHS trust” means an NHS trust<sup>(a)</sup> all or most of whose hospitals, establishments and facilities are situated in England;

“patient” means any person who is, or is expected to become, a “qualifying hospital patient” as defined in section 1(1) of the Community Care (Delayed Discharges etc) Act 2003<sup>(b)</sup>;

“registered manager” means, in respect of relevant premises, a person registered with the Care Quality Commission under Chapter 2 of Part 1 of the Health and Social Care Act 2008<sup>(c)</sup> as a manager in respect of the regulated activity carried on at those premises;

“registered person” means, in respect of relevant premises, a person who is a service provider or registered manager in respect of those premises;

“regulated activity” means the activity of providing residential accommodation, together with personal or nursing care, specified in paragraph 2 of Schedule 1 to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010<sup>(d)</sup>;

“relevant body” means the body which is responsible for deciding whether a person is eligible for NHS Continuing Healthcare under regulation 21(6) or (9) of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012<sup>(e)</sup>;

“relevant premises” means premises where regulated activity is carried on and for which there is a registered person;

“relevant social services authority” means the social services authority appearing to an NHS trust to be the authority in whose area a patient is ordinarily resident;

“service provider” means, in respect of relevant premises, a person registered with the Care Quality Commission under Chapter 2 of Part 1 of the Health and Social Care Act 2008 as a service provider in respect of the regulated activity carried on at those premises;

“social services authority” means a local authority for the purposes of the Local Authority Social Services Act 1970<sup>(f)</sup> and the Council of the Isles of Scilly.

## **Duties of NHS trusts**

2.—(1) Before an NHS trust gives notice of a patient’s case to a social services authority in compliance with its duty under section 2(2) of the Community Care (Delayed Discharges etc) Act 2003, it must comply with paragraphs (2) to (10).

(2) The NHS trust must take reasonable steps to ensure that an assessment of eligibility for NHS Continuing Healthcare is carried out in all cases where it appears to the trust that the patient may have a need for such care, in consultation, where it considers it appropriate, with the relevant social services authority.

(3) The NHS trust must consult the patient and, where it considers it appropriate, the patient’s carer when carrying out the assessment.

(4) If an NHS trust wishes to use an initial screening process to decide whether to undertake an assessment of a patient’s eligibility for NHS Continuing Healthcare it must—

- (a) complete and use the NHS CHC Checklist to inform that decision,
- (b) inform the patient (or someone lawfully acting on the patient’s behalf) in writing of the decision as to whether to carry out an assessment of the patient’s eligibility for NHS Continuing Healthcare, and

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(a) An NHS trust is a body established under section 25 of the National Health Service Act 2006.

(b) 2003 c. 5; there are amendments to section 1 which are not relevant to these Directions.

(c) 2008 c. 14.

(d) S.I. 2010/781. Paragraph 2 of Schedule 1 has been amended by article 2 of, and paragraph 27 of the Schedule to, S.I. 2012/979.

(e) S.I. 2012/2996, to which there are amendments not relevant to these Directions.

(f) 1970 (c. 42). See section 1, to which a relevant amendment was made by section 195(1) and (3) of the Local Government Act 1972 (c. 70).

- (c) make a record of that decision in the patient's notes.
- (5) When carrying out an assessment of eligibility for NHS Continuing Healthcare, an NHS trust must ensure that—
- (a) a multi-disciplinary team—
    - (i) undertakes an assessment of needs, or has undertaken an assessment of needs, that is an accurate reflection of the patient's needs at the date of the assessment of eligibility for NHS Continuing Healthcare, and
    - (ii) uses that assessment of needs to complete the Decision Support Tool, and
  - (b) the NHS trust makes a decision as to whether that patient has a primary health need in accordance with paragraph (7), using the completed Decision Support Tool to inform that decision.
- (6) If an NHS trust decides that a patient has a primary health need in accordance with paragraph (5)(b), it must also make a recommendation to the relevant body that it should decide that that patient is eligible for NHS Continuing Healthcare.
- (7) In deciding whether a patient has a primary health need in accordance with paragraph (5)(b), an NHS trust must consider whether the nursing or other health services required by that patient are—
- (a) where that patient is, or is to be, accommodated in relevant premises, more than incidental or ancillary to the provision of accommodation which a social services authority is, or would be but for a patient's means, under a duty to provide; or
  - (b) of a nature beyond which a social services authority whose primary responsibility is to provide social services could be expected to provide,
- and, if it decides that the nursing or other health services required do, when considered in their totality, fall within sub-paragraph (a) or (b), it must decide that that patient has a primary health need.
- (8) Paragraphs (2) to (6) do not apply where an appropriate clinician decides that—
- (a) a patient has a primary health need arising from a rapidly deteriorating condition; and
  - (b) the condition may be entering a terminal phase,
- and that clinician has completed the Fast Track Pathway Tool stating reasons for the decision.
- (9) An NHS trust must, upon receipt of the Fast Track Pathway Tool completed in accordance with paragraph (8), make a recommendation to the relevant body that it should decide that a patient is eligible for NHS Continuing Healthcare.
- (10) In carrying out its duties under this direction, an NHS trust must have regard to the National Framework.

Signed by authority of the Secretary of State for Health



Member of the Senior Civil Service  
Department of Health

23 October 2013