

CABINET

11 MARCH 2014

2013/14 HEALTH FUNDING FOR ADULT SOCIAL CARE

Portfolio Holder: Councillor David Brake, Adult Services

Report from/Author: David Quirke-Thornton, Deputy Director, Children & Adults Directorate

Summary

To provide information on the transfer and allocation of the 2013/14 Health Funding for Adult Social Care.

1. Budget and Policy Framework

- 1.1 NHS England has issued guidance, Gateway Reference: 00186, setting out the transfer of funding from NHS England to Adult Social Care in 2013/14. For Medway the value of funding is £3,571,548.
- 1.2 In 2011/12 and 2012/13 Health Funding for Adult Social Care was passed through Primary Care Trusts to Local Authorities.
- 1.3 The Fund will be used to support and deliver Adult Social Care and associated services that are consistent with the Council Plan priority of Adults maintaining their independence and living healthy lives.

2. Background

- 2.1 For Medway, prior year funding transfers have been used to support a range of services for older people and adults with disabilities, including:
 - Community rehabilitation services and supporting people to live at home - adaptations
 - Rapid Response, health and social care team
 - Intermediate care (social) services
 - Supporting the hospital social work team
 - Mental health community and voluntary sector services

- Stroke support
 - Support to maintain current Fair Access to Care Services (FACS) eligibility levels at Substantial and Critical to meet assessed need and associated packages of care.
- 2.2 In 2013/14 the funding is integrated into the resources available for delivery of Adult Social Care and continues to be used to support these existing services, which benefit the wider health and social care economy. Attached at Appendix 1 is a summary setting out the allocation of funding, against the Department of Health defined service allocation categories.
- 2.3 The 2013/14 funding will be transferred under a Section 256 Agreement between NHS England and Medway Council. The draft agreement is attached at Appendix 2.
- 2.4 In future years, this funding will form part of the transfer into the Better Care Fund.
- 2.5 The transfer and allocation of funding has been agreed with Medway NHS Clinical Commissioning Group and there has been regard to the Joint Strategic Needs Assessment for our local population, and existing commissioning plans for health and social care.

3. Governance

- 3.1 The governance journey is set out below:
- Health and Wellbeing Board - 25 February 2014
 - Cabinet - 11 March 2014
- 3.2 The Health and Wellbeing Board considered this report on 25 February 2014 and made the following decisions:
- 3.2.1 The Board noted the proposed governance journey for the transfer of health funds from NHS England to the Council.
- 3.2.2 The Board approved the report and forwarded it to the Cabinet for formal agreement.
- 3.3 The Section 256 Agreement to be signed by the Council in accordance with its formal signing arrangements following Cabinet approval.

4. Legal and Financial Implications

- 4.1 Under Section 256 National Health Service Act 2006 ("the Act"), NHS England may make payments to a local authority in connection with the provision of social services, housing, meals and recreation for old people and any other local authority functions that (i) have an effect on the health of any individuals, (ii) have an effect on, or are affected by, any NHS functions and

(iii) are connected with any NHS functions. The Secretary of State has exercised his powers under the Act and directed NHS England to transfer health funding to Adult Social Care through Section 256, a draft copy of the Section 256 Agreement is attached to this report.

4.2 This anticipated income stream is reflected in the 2013/14 revenue budget and is fully committed. If not received, it will result in a pressure within the 2013/14 revenue outturn.

5. Risk Management

5.1 There are no specific risk implications connected with this report.

6. Recommendations

6.1 It is recommended that the Cabinet approve the Council entering into the Section 256 Agreement (Appendix 2) with NHS England to receive £3,571,548 funding transfer from the NHS budget for the purposes of supporting Health Funding for Adult Social Care;

7. Suggested Reasons for Decision

7.1 To enable the Council to receive the NHS funding for Adult Social Care in order that adults are supported to maintain their independence and live healthy lives.

Lead officer

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Background Papers:

None

Health Funding for Adult Social Care 2013/14

Appendix 1

Health Funding for Adult Social Care Categories	Commentary service and activity	13/14 £
Integrated Crisis and Rapid Response	Rapid Response – social care	170,000
Intermediate Care Services	Social care support to St Barts	146,000
Early Supported Hospital Discharge Schemes	Supporting hospital social work team	164,000
Mental Health Services	Community and voluntary services	470,048
Other Preventative Services	Stroke support	134,000
Community Equipment and Adaptations	Community rehabilitation services and supporting people to live at home - adaptations	687,500
Maintaining Eligibility Criteria	FACS eligibility maintained at Substantial and Critical – in accordance with section 3.3c of the National Health Service Commissioning Board (Payments to Local Authorities) Directions 2013	1,800,000
Total Investment of Health Funding for Adult Social Care		3,571,548

total allocation	£3,571,548
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Draft Section 256 Agreement

This is the Partnership Agreement made on the _____ day of _____ 2014

BETWEEN

- (1) Medway Council** of Gun Wharf, Dock Road, Chatham, Kent, ME4 4TR (“the Council”); and
- (2) NHS England, Kent and Medway Local Area Team** of Wharf House, Medway Wharf Road, Tonbridge, Kent TN9 1 RE (“the NHS Body”)

Background

The statutory duty of partnerships on the National Health Service (“NHS”) bodies and local authorities was established under the Health Act 1999 and later the Health and Social Care (Community Health and Standards) Act 2003. The National Health Services Act 2006 (“the Act”) more recently reinforced this legislation, further enabling the Health Act Flexibilities (HAFS) set out in the 1999 Act. NHS bodies and local authorities can now more easily delegate functions to one another to meet partnership objectives and create joint funding arrangements.

Whereas;

- (a) This arrangement is made in accordance with Section 256 of the Act.
- (b) The NHS Body can make payments (service revenue or capital contributions) to the Council to support specific additional local authority services.
- (c) This is a grant for additional local authority spend (a contribution to the other partner’s costs for care delivery), not a transfer of health functions to the Council.
- (d) The key criteria for the use of Section 256 of the Act funding is consistent with the local Joint Strategic Needs Assessment and commissioning plans.
- (e) The Parties have agreed to nominate officers to act on behalf of the Parties, who will monitor this Agreement and the performance of the Services.
- (f) The objectives and outcomes of the Partnership Arrangement are set out in local commissioning plans and in relation to this funding is to deliver social care services that will benefit the NHS Body. The arrangement seeks to achieve the objectives of best value.

- (g) The Partnership Arrangement has been agreed pursuant to Section 256 of the Act and the Regulations and the Parties seek to deliver the aims and expectations of Services led by the needs of people who may require the Services.
- (h) Approval for the Partnership Arrangement was agreed on behalf of the Council by Cabinet on 11 March 2014 following discussion at the Health and Wellbeing Board on 25 February 2014.
- (i) In the interpretation and construction of this Agreement:
 - i. Any reference to any Act of Parliament shall include any modification extension or re-enactment thereof for the time being in force and shall also include all instruments orders and regulations for the time being made thereunder or deriving validity therefrom.
 - ii. The headings in this Agreement are inserted for convenience only and shall be ignored in construing terms and provisions thereof.

IT IS HEREBY AGREED:

1. Interpretation

- 1.1. For the purpose only of understanding the content of this Agreement (including the recitals) the following terms will have the following meanings. Other terms may have definitions in the Act or in the regulations.

“The Act”	The National Health Service Act 2006
“Commencement Date”	1 April 2013
“Financial Year”	2013/2014
“Functions”	The Council’s functions relied upon for the services in accordance with the eligibility criteria in place at any time
“Nominated Officers”	The group of officers appointed by the Parties who will act jointly to oversee the Partnership Arrangement with powers being delegated by the Parties to whom the Officers will be accountable
“Parties”	The Council, of the first part and the NHS Body of the second part and any statutory or legal successor to their respective functions
“Partnership Arrangements”	The arrangements provided for in this Agreement for the management and joint provision of the Services by the Parties through a fund or otherwise.

“Fund”	The funds designated by the NHS Body to support Adult Social Care 2013/14, the sum of £3,571,548.00 as allocated by the Parties for the purpose of funding the Services and which may otherwise be referred to as the Support for Adult Social Care Fund.
“Services”	<p>Provision of;</p> <p>(a) services for older people and adults with disabilities in accordance with the Fair Access to Care Services eligibility criteria as determined by the Council;</p> <p>(b) social work assessment, support and care services for older people and adults with disabilities who meet the criteria to receive social care services.</p> <p>Together with all statutory and other social care functions</p>

2. Arrangements for Delivering the Services

- 2.1. The Fund will be used to support and deliver Adult Social Care and associated services where they meet eligible need such as adaptations to support older people or adults with disabilities to remain at home.
- 2.2. The Services that the Council will procure will take into account the Joint Strategic Needs Assessment and the existing local health and social care commissioning strategies. The Services will be those that are the responsibility of the Council that also benefit the NHS Body.

3. Funding the Partnership Arrangements

- 3.1. The Parties agree that the funding required for the delivery of the Services shall be the Fund designated by the NHS to support Adult Social Care in 2013/14 as allocated by the Parties for the purpose of funding the Services.
- 3.2. The NHS Body shall transfer the Fund to the Council on the execution of this Agreement. The sum to be transferred is £3,571,548.00.

4. Responsibility for spending over or under budget

- 4.1. Any over spending in relation to the Fund shall be the responsibility of the Council. Any under spending shall be carried forward to be used to fund services in accordance with this agreement and within any rules put in place from time to time by the Council.

5. Audit Arrangements

- 5.1. The accountancy and audit arrangements will be in line with the usual arrangements with the Council and the Council will ensure that such arrangements comply with the audit requirements of the NHS Body.
- 5.2. The Council shall give the NHS Body full access to all internal and external audit reports relating to the Partnership Arrangements and shall permit and assist them to undertake their own audit reviews of the Partnership Arrangements should they consider this to be necessary.
- 5.3. Any dispute or disagreement arising from the Fund, charges made or proposed to be made against the Fund or the use of overspending or under spending shall be dealt with in accordance with clause 16 (Costs) of this Agreement.

6. The Exercise of Functions and Quality Assurance

- 6.1. The Council will make arrangements for the Functions to be carried out through the Adult Social Care Team but nothing in this Agreement will entitle the Adult Social Care Team to make commitments or take decisions about any services or functions which are specifically excluded by regulations.
- 6.2. The Council will provide such reports and information as are deemed necessary by the Joint Commissioning Management Group to enable effective performance management of the Services and the Fund.
- 6.3. The Council will be entitled to enter into agreements and contracts necessary for the delivery of the Services in accordance with the scheme of delegation and standing orders as may be in force at the relevant time.

7. Complaints

- 7.1. Any complaint relating to the Functions or the delivery of the Services shall be dealt with in accordance with the complaints procedures adopted by the Council.

8. Term and Termination

- 8.1. This Agreement commences on the Commencement Date and shall continue for a period of one year. The Agreement shall terminate on the 31 March 2014.

9. Dispute Resolution

- 9.1. In the event of any dispute between the parties arising out of the construction of this Agreement or any of its provisions such dispute shall be referred in the first instance to the Deputy Director, Children & Adults and, if not resolved, to the Director of Children & Adults at the Council and to the Nominated Officer of the NHS, failing which, the matter may be referred at the option of either of the parties to mediation in accordance with the model mediation procedure for the time being of the Centre for Effective Dispute Resolution.

9.2. In default of either Party exercising such an option or such a referral does not lead to a resolution, the matter may be referred by either Party to an arbitrator to be nominated by the President of the Royal Institute of Arbitrators, such reference to be within the provision of the Arbitration Act 1996 (as amended) and the costs of any such arbitration shall be borne by the parties as determined by the arbitrator.

10. Management of the Agreement

10.1. The Parties agree that responsibility for managing, planning and monitoring the Partnership Arrangements, the performance of the Services and the Fund and for overseeing the implementation of this Agreement shall be discharged by Nominated Officers of the Council and of the NHS Body.

10.2. The Nominated Officers will agree their own arrangements for meetings and decisions and shall apply the complaints procedures as referred to in clause 7 (Complaints) and receive or deliver reports as provided for in this Agreement.

11. Variation

11.1. The terms and conditions of this Agreement may only be varied by the written agreement of the Parties.

12. Notices

12.1. Any notice given under this agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at its registered office for the time being or by sending it by fax to the fax number notified by the relevant party to the other party.

12.2. Any such notice shall be deemed to have been received:

12.2.1. if delivered personally, at the time of delivery;

12.2.2. in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting;

12.2.3. in the case of fax, at the time of transmission.

12.3. In providing such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post.

12.4. Notices to the Council should be marked for the attention of the Deputy Director, Children & Adults. Notices to the NHS Body should be marked for the attention of the designated officer of the NHS Body.

13. Assignment or Transfer

- 13.1. This Agreement and any rights and conditions contained in it may not be assigned or transferred by either party without the prior written consent of the other party except to any statutory successor to the relevant Functions.

14. Data Protection

- 14.1. The Parties agree to provide or make available to each other sufficient information concerning their own operations and actions and concerning client and service user information (including material affected by the Data Protection Act in force at the relevant time) as to enable the efficient operation of the Services and actions covered by the Partnership Arrangements. The Parties agree to abide by the terms of any information sharing protocol that may be agreed by the Parties.
- 14.2. Each Party shall have in place a policy and procedure for compliance with the provisions of the Data Protection Act 1998 and the Freedom of Information Act 2000 and shall co-operate with the other party and respond in a timely way to any request received from the party so as to enable them to comply with their obligations under those Acts.

15. Costs

- 15.1. Each party shall bear their own costs and expenses incurred in connection with the implementation of this Agreement.

16. No Partnership (Save to the Extent of this Agreement)

- 16.1. Neither party to this Agreement shall act as agent of or have the power or authority to make any commitment on behalf of the other party or compromise the credit of the other party in any way nor shall this agreement constitute a legal partnership between the Parties save to the extent that is necessary to give effect to the arrangements for delegation of respective Functions and each party shall be responsible for its own commitments under this Agreement.

17. Confidentiality

- 17.1. Except as required by law, the Parties agrees to keep confidential at all times during the continuance of this Agreement and after its termination all documents, data or papers which they receive or otherwise acquire in connection with the Services and or this Agreement and which are marked "Commercial – in confidence" or such other similar words signifying that they should not be disclosed, save in so far as such designation of any data cannot lawfully be maintained in compliance with any obligation.

18. Publicity

- 18.1. Prior to the issue of any press release about matters relating to the Partnership Arrangements or making any contact with the press on any issue attracting media attention the designated officer of the NHS Body and the Deputy Director, Children

& Adults of the Council (or such persons as they shall each designate) will consult with each other to agree a joint strategy for the release or handling of the issue. The provisions of this clause is subject to any alternative arrangements that the parties may agree for press relations in particular situations.

19. The Contracts (Rights of Third Parties) Act 1999

19.1. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement. No person other than the Council and the NHS Body shall have any rights under it and shall not be enforceable by any person other than the Council and the NHS Body.

20. Governing Law and Jurisdiction

20.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

20.2. The Parties irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

THE COMMON SEAL)
of **MEDWAY COUNCIL**)
was hereunto affixed)
in the presence of:)

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The Officer duly authorised on behalf of the Council

THE COMMON SEAL of)
NHS ENGLAND, KENT AND)
MEDWAY LOCAL AREA TEAM)
was hereunto affixed)
in the presence of:)

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The Officer duly authorised on behalf of the NHS Body