

Meeting:	Cabinet
Meeting date:	Thursday 28 February 2019
Title of report:	Agreement of section 75 (s75) between the council and Herefordshire clinical commissioning group (CCG)
Report by:	Cabinet member health and wellbeing

Classification

Open

Decision type

Key

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

(All Wards);

Purpose and summary

To approve the section 75 (s75) agreement between the council and Herefordshire Clinical Commissioning Group (CCG), effective from 1 April 2019 to 31 March 2020. In summary the report identifies the following points:

- the s75 agreement is a national requirement, set by NHS England under the NHS Act 2006, which enables partners to commission integrated health and social care services;
- the existing agreement is due to end on 31 March 2019;
- the new agreement covers a range of services and operational functions of both partners at a total value of £55.685m for 2019/20;

- scheme level detail of the agreement will be finalised following the publication of the national BCF policy framework and planning guidance; and
- a key change to existing schemes is the introduction of a discharge to assess pilot for 2019/20.

Recommendation(s)

That:

- The section 75 (s75) agreement for the period 1 April 2019 to 31 March 2020 at a total value of £55.685m between the council and Herefordshire Clinical Commissioning Group (CCG), as at appendix one, is approved; and**
- the director for adults and communities be authorised to take all operational decisions necessary to complete the section 75 agreement.**

Alternative options

1. It is a national requirement, set by NHS England, that the better care fund (BCF) is transferred into one or more pooled funds established under section 75 of the NHS Act 2006. The existing section 75 agreement between the council and Herefordshire clinical commissioning group (CCG) is due to end on 31 March 2019. There is no alternative as such an agreement must be in place.

Key considerations

2. A partnership arrangement under section 75 (s75) of the NHS Act 2006 enables partners to commission integrated health and social care services to better meet the needs of service users than if the partners were operating independently. Section 75 agreements provide a contractual framework for the use of pooled funds between the council and CCG, to enable services to be delivered and commissioned co-dependently.
3. The services included within the s75 agreement are set out in detail at appendix two. In summary, all of the schemes within the Integration and BCF plan will be included within the s75 agreement including better care fund spending on social care services (PASC), NHS Commissioned Out of Hospital Care and care home market management. All schemes funded through the improved better care fund are included, along with the integrated community equipment store.
4. In addition a number of other schemes are held within pool 4 which includes the children's commissioning unit, children's complex needs funding and children's and adults' safeguarding boards.
5. Scheme level information will be finalised once the national BCF policy framework and planning guidance is published, therefore authority is requested to take the operational decisions necessary to complete the s75 agreement, including legal review of the final document. The draft s75 agreement, as located at appendix 1, will be further reviewed and updated to reflect updates in data protection legislation prior to completion.
6. A key change to existing schemes is the introduction of a discharge to assess (D2A) pilot for 2019/20. Partners have been working together to develop the pilot service that will deliver short-term bed based care that supports a period of change and recovery whilst promoting the opportunity for assessment and planning to meet longer term care needs.

The s75 agreement will enable this pilot to operate through an existing Herefordshire CCG contract and will be funded via the BCF for 2019/20.

7. The budget and contributions for each of the pools described at appendix two are currently under review for 2019/20 and will be finalised as part of the budget setting process.
8. The s75 agreement is also subject to approval by the CCG governing body in March 2019.
9. The BCF schemes and services within the s75 agreement are monitored on a quarterly basis through the better care partnership group and highlight reported to the joint commissioning board, however many of these are operational functions that sit within business as usual for both partners. Quarterly national performance reports are submitted, following approval from the health and wellbeing board. Regarding performance of the existing agreement, the main area that has focus currently is the integrated community equipment store due to the forecasted overspend, which has regular reporting into the joint commissioning board and DLT.

Community impact

10. The Integration and BCF plan for Herefordshire, all schemes of which are subject to the s75 agreement, is set within the context of the national programme of transformation and integration of health and social care. The council and CCG continue to work together to deliver on the key priorities within the plan to improve the delivery of services in order to achieve the priorities of the health and wellbeing strategy in the most cost effective way.
11. The principles of the agreement ensure that individuals' outcomes are improved through supporting the sustainability of services and investing in initiatives that will enhance people's lives. This is fully aligned to the health and wellbeing strategy, which underlines how Herefordshire aims to be a vibrant county where good health and wellbeing is matched with a strong and growing economy and the vision set out in the adults wellbeing plan 2017-2020 - *'All adults in Herefordshire live healthy, happy and independent lives within their local communities, for as long as possible with support when they need it.'*
12. The s75 agreement also supports the principles outlined in the council's corporate plan and Herefordshire's Children and Young People's Plan, *to keep children and young people safe and give them a great start in life*, having a direct effect on the lives of looked after children and care leavers and will support the council in its role as corporate parent.
13. The integration and BCF plan fully support the council's corporate plan and assists the delivery of its priority to enable residents to live safe, healthy and independent lives. The plan also aligns to the health and wellbeing board priorities and the NHS forward plan.
14. Many of the schemes and services within the Integration and BCF plan are provisions that support the operational delivery of health and social care and a high proportion of these supports the statutory function for the council.

Equality duty

15. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
16. The council and CCG are committed to equality and diversity using the public sector equality duty (Equality Act 2010) to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. All equality considerations are taken into account.
17. It is not envisaged that the recommendations in this report will negatively disadvantage the following nine groups with protected characteristics: age, disability, gender, reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
18. The BCF programme aims to deliver better outcomes for individuals and supports the council in proactively delivering its equality duty under the act. This is through improving the health and wellbeing of people in Herefordshire by enabling them to take greater control over their own health and the health of their families, and helping them to remain independent within their own homes and communities.
19. There are no negative impacts for looked after children or with response to the council's corporate parenting role.

Resource implications

20. The indicative budget for each of the pools described in the following table are currently under review for 2019/20 and will be finalised as part of the budget setting process and once the national BCF policy framework and planning guidance is published. Scheme level budget information is located at appendix two.
21. There is no impact on existing resources, including people, IT or property resources. There are no significant changes to existing arrangements and BCF and iBCF funding is confirmed for 2019/20, therefore posing no risks to jobs or services.
22. The BCF funding includes £5.339m for the protection of adult social care (PASC) and £7.079m for NHS commissioned out of hospital care services. The council is required to include the grant capital funding received for the Disabled Facilities Grant (DFG) within the minimum BCF. This is confirmed as £1.853m for 2019/20.
23. The PASC funding (£5.339m) and iBCF funding (£5.703m) are currently secured to March 2020. These funding streams are currently unconfirmed from April 2020 onwards.
24. It is proposed that the s75 agreement continues with the additional pools for the improved better care fund (£5.703m) and the integrated community equipment store (£1m).
25. The CCG will no longer be contributing to a pooled short breaks budget for disabled children from 1 April 2019. This is the result of a planned approach to reducing CCG contributions over several years in recognition that responsibility for arranging and enabling shortbreaks rests with the Council, as set by a report to Cabinet on 15 September 2016.

26. From 1 April 2019, the short breaks budget will be covered by the council's previous s75 contribution and remaining transitional funding approved by cabinet on 21 January 2016 to enable the transition to other service arrangements. Long-term re-basing of the short breaks budget will be informed by an updated needs analysis to ensure that the council continues to meet its statutory duties in relation to short breaks. Where appropriate, the CCG will provide sufficient funding on a case-by-case basis for those individual children that are determined to have continuing care health needs. In some cases, this may lead to joint commissioning of packages of care that may include short break provision.

Section 75 Agreement Finance Summary 2019/20	Draft Budget Values
	£'000
Budget	
Spending on Social Care Services (PASC)	5,339
NHS Commissioned Out of Hospital Care	7,079
Disabled Facilities Grant (Capital)	1,853
Total Pool 1- Mandatory Better Care Fund Contributions	14,272
Herefordshire CCG Funded Packages	9,564
Herefordshire Council Funded Packages	21,359
Total Pool 2- Additional Better Care Fund Contributions	30,923
Improving Integrated Commissioning Capacity	238
Meeting Adult Social Care Needs	3,751
Reducing Pressures on the NHS including Supporting Hospital Discharge	1,212
Supporting Local Social Care Provider Market	501
Total Pool 3- Improved Better Care Fund (IBCF)	5,703
Childrens' Commissioning Unit	80
Childrens' Complex Needs Solutions	3,493
Childrens' contribution to Safeguarding	214
Total Pool 4- Childrens' Services	3,787

Integrated Community Equipment Store	1,000
Total Pool 5- Integrated Community Equipment Store	1,000
Total Section 75 Agreement	55,685

Legal implications

27. The Care Act 2014 amended the NHS Act 2006 to provide the legislative basis for the better care fund, which brings together health and social care funding.
28. Section 75 of the NHS Act 2006 contains the powers enabling NHS bodies (as defined in section 275 and 276 of the NHS Act 2006) to exercise certain local authority functions and for local authorities to exercise various NHS functions. The parties entered into a section 75 agreement in exercise of those powers under and pursuant of the NHS Regulations 2000.

Risk management

29. Risk will be managed and controlled through the governance structure of both organisations and also through the better care fund partnership group, the joint commissioning board and the health and wellbeing board.
30. A risk register, specific to the BCF schemes in the s75 agreement, has been developed and is monitored on a regular basis by the better care fund partnership group. Risks are also identified within the council's adults and communities directorate risk register and will be escalated as appropriate.
31. The PASC funding (£5.339m) and iBCF funding (£5.703m) are currently secured to March 2020. These funding streams are currently unconfirmed from April 2020 onwards. To manage this uncertainty officers continue to monitor the discussions in regard to national policy developments, identify risks through the appropriate risk registers and plan mitigating actions where possible.
32. A financial risk share arrangement will be in place as part of the s75 agreement. The risk share agreement is intended to support joint working on specified areas to improve care and reduce overall system costs. It will do this by sharing the impact (both positive and negative) of in-year changes in how care is provided and commissioned. It is not intended for the risk share arrangement to create a long-term subsidisation by either partner in statutory funding responsibilities.
33. Following confirmation of budget contributions for 2019/20 and receipt of BCF policy framework and guidance, legal teams from both organisations will review the agreement, along with all updated schedules, to ensure accuracy prior to final confirmation.

Consultees

34. The council has worked closely with colleagues from the CCG to draft the 2019/20 s75 pool contributions. The CCG governing body are due to receive formal papers in relation to the s75 agreement in March 2019.
35. Consultation with political groups has been completed. No comments or objections were received.

Appendices

Appendix 1 – draft section 75 agreement

Appendix 2 – 2019/20 section 75 agreement opening budget

Background papers

None.