

MEETING:	CABINET
DATE:	17 FEBRUARY 2011
TITLE OF REPORT:	SECTION 75 AGREEMENTS
PORTFOLIO AREA:	ADULT SOCIAL CARE, HEALTH & WELLBEING

Wards Affected

County-wide

Purpose

To agree Section 75 arrangements for 2011/12, including new arrangements in respect of adult social care, mental health and learning disability services.

Key Decision

This is a Key Decision because it is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates;

It was included in the Forward Plan

Recommendation(s)

THAT:

- (a) a Section 75 agreement be established between the Herefordshire Integrated Care Organisation and Herefordshire Council in respect of hospital, community health and adult social care services;**
- (b) a Section 75 agreement be established between Together NHS Foundation trust and Herefordshire Council in respect of community Mental Health services;**
- (c) the remaining Section 75 agreement between Herefordshire Council and NHS Herefordshire be revised to reflect the changes in provider arrangements arising from recommendations a and b above; and**
- (d) delegated authority be given to the Director of Resources, in consultation with the Chief Executive, to complete the agreements.**

Key Points Summary

- Section 75 of the NHS Act (2006) (previously S31 of Health Act 1999) provides Local Authorities and NHS Bodies with the power to pool budgets, delegate commissioning powers and integrate provision of a service.
- An overarching Section 75 agreement between Herefordshire Council and NHS Herefordshire was signed on 1st April 2009 outlining a structural framework, a financial framework and a performance management framework. The agreement includes schedules that cover key joint services for example learning disabilities and mental health services. The total resource covered by the S75 is circa £55m, of which £23m is council resource.
- The agreement is reviewed annually in March to ascertain whether any major changes are required and to consider status of spend and delivery against key performance measures. Minimal changes were made to the agreement for the financial year commencing in April 2010.
- 2011/12 will see significant changes to the provider landscape following the procurement by NHS Herefordshire of a new mental health provider (2gether NHS Foundation Trust) and the establishment of an Integrated Care Organisation (ICO), which will require significant changes to the underlying schedules of the current Section 75 agreement, and the development of new S75 agreements.
- The two new provider agreements will provide for jointly designed and managed services hosted by the Integrated Care Organisation and 2gether. The Council will, via these arrangements, direct the allocation of its resources including financial, staff, employment practices and physical assets, and will include details on the secondment of staff. The agreements will enable the Council to maintain clear lines of accountability for monitoring of spend against outcomes, and regarding the fulfilment of any Director of Adult Social Services statutory responsibilities through provider bodies.
- The Section 75 arrangements are being developed alongside the plans to take forward the new 'Vision for Adult Social Care'. These include the implementation of a new resource allocation system, our market development plans and greater alignment between our Continuing Health Care and Social Care assessment processes, all of which are aimed to support an increased uptake of personal budgets. Strengthening the Section 75 arrangements to support and take account of these developments will be essential to ensure improvements in these areas. The agreements will also be central elements in delivering changes to our care pathways that will lead to improved user outcomes and experiences.

Alternative Options

1. The existing agreement does not reflect changes to the provider environment, and must be revised to support these new arrangements when they come into effect in April 2011.

Reasons for Recommendations

2. To ensure clear governance and accountability in respect of use of resources and delivery of agreed outcomes.

Introduction and Background

3. Section 75 of the NHS Act (2006) (previously S31 of Health Act 1999) provides Local Authorities and NHS Bodies with the power to pool budgets, delegate commissioning powers

and integrate provision of a service. Effectively the two organisations are sharing the cost and any associated risk to deliver a joint service.

4. An overarching Section 75 partnership agreement was signed on 1st April 2009 outlining a structural framework, financial framework, what constitutes financial reviews (Annual Development Reviews) and joint performance management, between Hereford Council and NHS Herefordshire. This overarching agreement was effective from 1st April 2009, expires on 31st March 2014 and is reviewed annually.
5. The agreement is supplemented by a number of schedules addressing specific elements of service, and reflecting the amount of money pooled and staff involved in respect of each service provided. The key service related schedules are:
 - Learning Disability (approximate current monies in pooled fund – circa £16 million)
 - Mental Health (circa 35 million)
 - Hillside Intermediate Care (1.3 million) (*services included are a Intermediate Care Service, and a multi-disciplinary residential rehabilitation service*)
 - Integrated Community Equipment Stores (500k) (*equipment & minor adaptations to prevent injury and keep people out of residential care combined in one unit*)
 - Kington Court (900k) (*Provides adults with intermediate care, palliative care, clinical and social care, reablement and adults and children needing minor injury outpatient services*)
 - Children with complex needs (1.2 million) (*includes children and young people assessed as needing additional support, medical needs not being met by schools, support for families and schools to prevent breakdown of local provision*)
 - Free nursing care (currently a Section 256 Agreement)
6. To support the delivery and the management of the services covered by the agreement there are four supporting schedules which outline how the agreement will be performance managed and reviewed. These are:
 - Integrated Commissioning Structural Framework
 - Financial Framework
 - Annual Development Agreements
 - Integrated Performance Management Framework
7. The creation of an ICO to provide hospital, community health and adult social care services in a joined-up way across care pathways is a central tenet of NHS Herefordshire and Herefordshire Council's plans to reform its provider services to ensure there is a renewed focus on improved user outcomes and experience. This development is essential in ensuring that Herefordshire is in a position to transform the services delivered for the benefit of its residents. The future demographic challenge faced in the coming years requires radical reform, including the delivery of targeted services through improved pathways of care, the development of integrated locality teams, and the development of a more robust provider market.
8. A further element of transformational change has been the selection by NHS Herefordshire of 2gether NHS Foundation Trust to deliver and modernise Mental Health (health & social care) services & Learning Disability (health care) services for the people of Herefordshire. This will provide greater opportunities to redesign care pathways more efficiently and effectively.

9. Section 75 arrangements will therefore be key to ensuring that Herefordshire residents receive high quality services, within the monies available. The arrangements will detail the resources (financial, staffing and physical assets) to be utilised and will outline clearly what is expected both in relation to performance and governance arrangements. Accountabilities will be made clear, which is particularly important in regards to risk sharing and how any Director of Adult Social Services statutory responsibilities are to be discharged through the provider organisations. They will also outline secondment arrangements for Council staff into the ICO and 2gether.

Key Considerations

10. There is already a requirement to review and extend the Section 75 agreements annually to accommodate organisational change and local or national policy changes. The last year has seen significant change which will require more fundamental change than was the case in 2010/11. Changes over the last year that need to be considered in the revised and new agreement (s) for 2011/12 include:

Changes to local provider market e.g.:

- Procurement of a new Mental Health Provider
- Establishment of the Integrated Care Organisation.

Changes to local commissioning infrastructure e.g.:

- Development of GP Consortia
- Establishment of a Health and Wellbeing Board

New National Policy Agenda e.g.

- New 'Vision for Adult Social Care and new Health and Social Care Reform Bill
- New national performance and planning regimes i.e. new NHS and Adult Social Care Outcomes frameworks and QIPP plans (and demise of World Class Commissioning and Local Area Agreements)
- Changes in regulatory environment i.e. demise of Comprehensive Area Assessment and Annual CQC self assessment

Other Local Developments e.g.

- Implementation of the new Resource Allocation System (RAS)
- Local market development plans.
- Plans to integrate and streamline processes for approval of and increasing use of individual health and social care budgets , continuing health care, joint funding of health and social care support and community purchasing
- The agreement will also need to consider any arrangements for any assets owned by Herefordshire Council.

11. The new Section 75 Agreements will cover the following areas, building on good practice elsewhere and advice from external legal advisors:

- Aims and intended outcomes (e.g. care pathways)
- Relationships to Corporate Plan
- Performance Management and governance arrangements
- Overview of services and legal framework
- Discharge of and accountability for statutory responsibilities
- Arrangements for financial management

- Arrangements for use of Council Assets

12. Staff secondment arrangements will also be outlined in the Section 75 agreements. It is intended that affected Council staff will receive letters outlining secondments arrangements with regard to the new provider organisations by early March at the latest.
13. There will need to be significant changes to the overarching agreement between Herefordshire Council and NHS Herefordshire to reflect the new provider environment. Once completed and signed off locally, all the agreements will need to be lodged with the Department of Health, and therefore delegated authority is sought to ensure that this is completed in time for commencement of the new arrangements with the Integrated Care Organisation and 2gether in April 2011.
14. Moving forward, further revisions may need to be put in place in time for 2012/13 as the new health successor organisations emerge e.g. GP Consortium, thus the new revisions this year will need to be mindful of these changes.

Community Impact

15. Modified and new Section 75 Agreements will ensure public resources are best used to deliver key front line services for the community, by ensuring certain providers are managed robustly and proactively to protect vulnerable people and focus on improved outcomes for Herefordshire residents.

Financial Implications

16. The monies invested into the pooled arrangements will follow the delegation of functions as outlined in the NHS Act 2006 which allows for the delegation of functions from one statutory authority to another, creating a joint commissioning arrangement or integrating the provision of care. The finance schedule will contain further issues regarding the management of the pool, corporate governance, financial management, efficiencies, audit and VAT. This will also include risk sharing agreements for each Section 75.
17. The total monies to be covered by the revised S75 are circa £55m, of which £19m is Herefordshire Council resource (this excludes Learning Disabilities funding transferred to Herefordshire Council of £3.5m) The resources are allocated across the three agreements as follows:
 - £9m – ICO
 - £8.8m – 2gether
 - £1.3 NHS Herefordshire pooled commissioning
18. The changes in the agreements are in line with the overall budget allocation for the service 2011/12, as agreed by Council on 4th February 2011.

Legal Implications

19. Section 75 of the NHS Act (2006) (previously S31 of Health Act 1999) provides Local Authorities and NHS Bodies with the power to pool budgets, delegate commissioning power and integrate provision of a service, this is therefore a key mechanism by which public services operated and commissioned in partnership in Herefordshire are managed within a robust legal and financial framework.

Risk Management

20. There is a robust project plan in place to ensure that a revised Section 75 Agreements and new Section 75 Agreements are lodged with the DH in an appropriate and timely way.
21. To provide an ongoing level of risk assurance over pooled budgets and to maintain trust in the service for both partners regular monitoring will take place of the agreements. Annually Commissioners and finance colleagues will work together to write an annual agreement for each service that reflects the commissioning plans and priorities of both partners for the year ahead, and the financial context of the service. This will then be reflected in the proposed pooled budgets for the following financial year and set the direction of travel for the following year.
22. Monitoring reports and annual updates will be provided within the corporate performance reporting framework.

Consultees:

23. Detailed consultation and discussion will take place between the council, NHS Herefordshire and service providers to ensure consensus and alignment with the business cases under development with the new providers.

Appendices

None

Background Papers

- None identified