

# NATIONAL HEALTH SERVICE ACT 2006

## The Delayed Discharges (Continuing Care) Directions 2007

The Secretary of State for Health makes the following Directions in exercise of the powers conferred on him by sections 8, 272(7) and (8) and 273(1) of the National Health Service Act 2006(a).

### Commencement, application and interpretation

1.—(1) These Directions come into force on 1<sup>st</sup> October 2007 and apply to every English NHS trust and Primary Care Trust.

(2) In these Directions—

“the Act” means the Community Care (Delayed Discharges) Act 2003(b);

“care home” has the same meaning as in section 3 of the Care Standards Act 2000(c);

“the criterion” means the criterion in direction 2(6)(b) of having a primary health need;

“Decision Support Tool” means the Decision Support Tool for NHS Continuing Healthcare issued by the Secretary of State as amended from time to time(d);

“English NHS trust” means an NHS trust all or most of whose hospitals, establishments and facilities are situated in England;

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

“multi-disciplinary team” means a team consisting of at least two professionals from different health or social care professions;

“Needs Checklist” means the NHS Continuing Healthcare Needs Checklist issued by the Secretary of State as amended from time to time(e);

“NHS body” means an English NHS trust or a Primary Care Trust;

“patient” means someone who is or expected to become a “qualifying hospital patient” as defined in section 1(1) of the Act;

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

“the Responsibilities Directions” means the NHS Continuing Healthcare (Responsibilities) Directions 2007;

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

“social care profession” means the profession of being a social worker within the meaning of section 55(2)(a) of the Care Standards Act 2000(f);

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(a) 2006 c.41.

(b) 2003 c.5.

(c) 2000 c.14.

(d) At the date of making these Directions, the current version of the tool is dated 26<sup>th</sup> June 2007 (Gateway reference 8457) and it can be found at [www.dh.gov.uk/en/PolicyandGuidance/Organisationpolicy/IntegratedCare/Continuingcarepolicy/DH\\_073912](http://www.dh.gov.uk/en/PolicyandGuidance/Organisationpolicy/IntegratedCare/Continuingcarepolicy/DH_073912). Future versions of the tool will be published on the Department of Health’s website.

(e) At the date of making these Directions, the current version of the checklist is dated 26<sup>th</sup> June 2007 (Gateway reference 8457) and it can be found at [http://www.dh.gov.uk/en/Policyandguidance/Organisationpolicy/IntegratedCare/Continuingcarepolicy/DH\\_073912](http://www.dh.gov.uk/en/Policyandguidance/Organisationpolicy/IntegratedCare/Continuingcarepolicy/DH_073912). Future versions of the tool will be published on the Department of Health’s website.

(f) 2000 c.14. Section 55 has been previously amended by the Adoption and Children Act 2002 (c.38), section 139(1) and Schedule 3, paragraphs 103 and 115; by the Health and Social Care (Community Health and Standards) Act 2003 (c.43),

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

### **Duties of NHS bodies**

2.—(1) Before an NHS body gives notice of a patient’s case to a social services authority in compliance with its duty under section 2(2) of the Act, it must comply with paragraphs (2) to (9).

(2) The NHS body must take reasonable steps to ensure that an assessment for NHS Continuing Healthcare is carried out in all cases where it appears to the body 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 body must consult with the patient and, where it considers it appropriate, the patient’s carer when carrying out the assessment.

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

- (a) complete and use the Needs Checklist to inform that decision;
- (b) inform that person of the decision as to whether to carry out an assessment of his eligibility for NHS Continuing Healthcare (including the matters referred to in paragraph (9)); and
- (c) make a record of the decision in the patient’s notes.

(5) An NHS body must ensure that a multi-disciplinary team undertakes an assessment that is to be used to inform a decision as to a person’s eligibility for NHS Continuing Healthcare.

(6) Following an assessment by a multi-disciplinary team in accordance with paragraph (5), the NHS body must—

- (a) ensure that the Decision Support Tool is completed; and
- (b) use the completed Decision Support Tool to inform the decision as to whether that person has a primary health need,

and if that person does have a primary health need, the NHS body must decide that the person is eligible for NHS Continuing Healthcare.

(7) In deciding whether a person has a primary health need in accordance with paragraph (6), the NHS body must consider whether the nursing or other health services required by that person are—

- (a) where that person is going to be accommodated in a care home, more than incidental or ancillary to the provision of accommodation which a social services authority is, or would be but for a person’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 determines that the nursing or other health services required do, when considered in their totality, fall within paragraph (a) or (b), it must determine that the person has a primary health need.

(8) Where an assessment for NHS Continuing Healthcare has been carried out in respect of any person, the NHS body shall—

- (a) notify the person assessed in writing of the decision made about his eligibility for NHS Continuing Healthcare, the reasons for that decision and the matters referred to in paragraph (9); and
- (b) make a record of the decision in the patient’s notes.

(9) Where the NHS body has decided that a person is not eligible for NHS Continuing Healthcare pursuant to paragraph (4) or (6), it must inform the person (or where relevant someone

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section 147 and Schedule 9, paragraphs 16 and 28; and by the Education and Inspections Act 2006 (c.40), section 157, Schedule 14, paragraphs 38 and 52.  
(a) 1970 c.42. See section 1.

acting on that person's behalf) that he may apply for a review of the decision pursuant to direction 4(3) of the Responsibilities Directions if he is dissatisfied with—

- (a) the procedure followed by the NHS body in reaching a decision as to that person's eligibility for NHS Continuing Healthcare; or
- (b) the application by the NHS body of the criterion in relation to such a decision.

**Revocation**

- 3. The Delayed Discharges (Continuing Care) Directions 2004 are revoked.

Signed by authority of the Secretary of State

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a series of horizontal and vertical strokes.

Member of the Senior Civil Service  
Department of Health

30 August 2007