

Bramley Health
Form 2: General Terms and Conditions
Service User Individual Placement Agreement

DEFINITIONS

The Act - refers to **The NHS Act 2006** which was amended by **The Health and Social Care Act 2012** and establishes the legal framework for the new commissioning architecture for the NHS in England, including the responsibilities of the NHS Commissioning Board - now known as NHS England - and Clinical Commissioning Groups (see CCGs below)

Section 3 (1A) of the Act (as inserted by the 2012 Act) sets out that a CCG has responsibilities for all people who are

- i) provided with primary medical services by GP practices which are members of the CCG **or**
- ii) usually resident in the area covered by the CCG and not provided with primary medical services by a member of any CCG - where 'usually resident' is defined in Annex B of the NHS England publication 'Who Pays' referred to in Form 2 hereof.

Clinical Commissioning Groups - 'CCGs' - are responsible for commissioning health services to meet all the reasonable health care requirements of their patients, and for meeting the urgent and emergency care requirements of everyone present in their geographical area. Certain services are commissioned directly by NHS England or by Local Authorities. See Rules and Protocols below

Bramley Health - 'The Provider' in this case, is a specialised provider of controlled care in a range of environments including low secure hospitals, locked rehabilitation hospitals and care homes for both detained and informal patients. Under the guidance of NHS England, it works closely with

- i) The Social Services departments and Health Commissioners of Local Authorities and
- ii) Clinical Commissioning Groups (CCGs) to provide high quality healthcare to those adjudged to be in need of their services.

Local Authorities - are responsible for providing 'health care providers' with funds where 'persons' within their jurisdiction are adjudged/deemed to be in need of SOCIAL care. Each Local Authority employs its own Social Services department responsible for assessing the extent to which persons within their jurisdiction require social care and supervision.

NHS England - is responsible for overseeing the operations of all aspects of HEALTHCARE in the United Kingdom. They are funded by the Government (and therefore the taxpayer) and are thus the central source of finance for the welfare of all patients within that jurisdiction.

Provider – is a registered provider/service of health care with the CQC suitable to provide a range of health care services (see Bramley Health above).

Purchaser - refers to the party responsible for paying the Provider for its services (which will be either NHS England Direct or a CCG or a Local Authority) – (the Responsible Party – see below) to be determined by direct reference to the Act/ fact sheets and NHS Protocols identified in Form 2 hereof.

Responsible Party – refers to the party responsible in law for paying the Provider for its services (the Purchaser - see above) and thus refers to either NHS direct, the relevant Local Authority or CCG.

Review – refers to a gathering of all parties interested in the welfare of the Service User and shall include the Provider, the treating physician, the relevant Responsible Party and where appropriate, any relation dealing with the long term care of the patient. In the absence of an agreed requirement to hold one more often, a review of a Service User's welfare whilst in hospital shall take place every 6 months.

Forms – Form 1 refers to the Funding and Placement Details Information and Form 2 refers to General Terms and Conditions attached hereto, each of which form part of this agreement.

Service User – refers to a person who is placed /admitted into the care of the Provider (as a patient) and who accordingly has the use and benefit of the Provider's services. Details of the particular Service User are identified in Form 1 attached hereto.

Service User ID number – refers to the number or code that may be used in exchanges between the Purchaser and Provider as and when required by **NHS publication Who Pays? Information Governance Advice for Invoice Validation** to identify a particular Service User without revealing his/her personal confidential data (PCD) and when supplied by the Purchaser should be used by the Provider to authenticate each invoice submitted for care and treatment of the same. Such number or code shall be submitted on the invoice where deemed necessary.

The Rules and Protocols – refer to the NHS guideline protocols as defined by the Act, the July 2012 NHS fact sheet and the NHS 2013 August publication **Who Pays?**, all of which set out the clear intention of the rules underlying the requirement to make sure that Providers are paid properly and promptly for the provision of their service to the service users/patients placed in their care.

PREAMBLE

- (1) This agreement sets out the circumstances in and terms upon which the Purchaser of the Provider's service on behalf of a Service User shall be responsible for paying the Provider.
- (2) Save in exceptional circumstances (as outlined in the NHS Protocol August 2013 Who Pays - paragraphs 38-46) referred to in Form 2 hereof, it is a fundamental and agreed principle that once the Provider is providing a care service it shall never, notwithstanding any change in the Service User's condition that might trigger a change in the source of payment as set out in the principles laid down in The Rules, be put in a position of having to wait for funds owing to it by the Purchaser responsible for paying for its service.
- (3) The purpose of this contract is thus not just to determine who is responsible for paying the Provider but for ensuring as a part of this agreement that where, in the hands of the Provider, there is a necessary change in the nature of the care of the Service User and such change gives rise to either an exception to the existing CCG's responsibilities and thus falls outside its scope or necessitates a move into a different geographical area outside that of the existing CCG, the current 'purchaser' establishes, by direct reference to the NHS Rules, the new Responsible Party and then effectively manages the transference of its own obligations to pay to that new 'Responsible Party' to ensure that the care for the Service User remains uninterrupted and the 'Provider' is paid for the continuing supply of its care service.
- (4) Change of circumstances which may cause a change in the 'payer' are identified in The NHS August 2013 publication Who Pays Rules.
- (5) Thus in signing this agreement the signatory acknowledges (subject only to the strictures imposed upon the Provider to present its invoices in the appropriate format as set out in NHS England December 2013 publication **Who Pays? Information Governance Advice for Invoice Validation**) not only its responsibility to pay in accordance with the terms hereof but also its responsibilities where a change of circumstances in the Service User's needs or requirements of treatment dictate a change of Responsible Party and thus payer to ensure that the flow of payment to the Provider is not interrupted.

IT IS ACCORDINGLY AGREED AS FOLLOWS

1. That on the admission date the Service User described in Form 1 hereto shall be admitted to the care of Bramley Health.
2. That subject to any change of circumstance not identified upon admission which necessitate a change to the standard review dates, a full review of the Service User's condition needs and treatment shall be carried out three months after admission and every six months thereafter to which all interested parties shall be invited.

3. That as of the admission date the Provider shall, subject to the terms hereof and any review dates agreed between the Provider and Purchaser referred to in Form 1 herein or agreed further between the parties from time to time, provide full time care for the Service User, that care incorporating any special needs or treatments agreed between the parties from outset or that may arise on medical advice during the Service User's sojourn with the Provider and are agreed as necessary by the relevant Purchaser.
4. That in consideration for this service the Purchaser agrees
 - i) to complete Form 1 attached hereto identifying the name and address of the paying entity to which the Provider should send its invoices and where appropriate, the Service User's ID reference number
 - ii) to pay the Provider @ the daily fee rate identified in Form 1
 - iii) that the fees are identified in Form 1 including any additional observation charges that are chargeable by the hour
 - iv) that invoices will be sent on a monthly basis in advance and are to be settled within 28 days of receipt
 - v) that all payments are to be made by BACS payment to the Payee identified in Form 1 as detailed on invoice and
 - vi) that in the event of the Service User being absent from the unit for any period of time, his/her place will remain open and fees will continue to be payable for a maximum of 28 days.
 - vii) that where it is agreed a Service User uses private funds to meet their fees and they fail to do so, the relevant purchasing authority undertakes to make up the shortfall.
 - viii) that where the Purchaser fails to pay the Provider within the time allowed by reference to 4. iv) above, the Provider reserves the right to claim statutory interest above the Bank of England interest base rate on the date the debt becomes overdue and at any subsequent interest rate change where the debt remains unpaid in accordance with the Late Payment of Commercial Debts Act 1998.

5. Additional Charges

- i) Within a minimum period of 24 hours post admission, a Service User in one of the Provider's services is medically assessed as requiring a prolonged period of special one to one observations, the Provider shall immediately inform the Purchaser of the requirement and will, from that day, automatically charge the Purchaser at the appropriate enhanced rate (as per Form 2) above to be invoiced on the following invoice date. The instigation of this enhanced rate shall trigger a review, to be held thereafter at the purchaser's discretion, at which a formal discussion with the purchasing commissioner will take place to determine the extent of any additional fees required to provide for the Service User's needs.
- ii) Should a patient require special observation in a general hospital this will also be chargeable per hour as stated in Form 1

- iii) Any exceptional items caring for physical health such as specialist CT and MRI scans or ECT will be charged at an additional cost.

6. Excluded Costs

Specialist Medication or/and Equipment	Excluded
Special observations or services, e.g. ECG, MRI, X-ray	Excluded
Escorted Special Leave (such as s. 17 leave, court appearances, hospital or out-patient appointments, elective or non-elective hospital admissions)	Excluded
Transport to and from Bramley Health Services upon admission and discharge	Excluded
Service User personal allowances	Excluded

7. That the Purchaser identified herein agrees to pay the Provider in accordance with clause 5 hereof and further agrees to ensure that following any change in the requirements for treatment of the Service User, which thereafter causes their care to fall outside the recognized responsibility of the Purchaser, the Purchaser shall, at that point, identify and liaise with the new party responsible for taking over payment for the Provider's service to ensure that the Service User's care continues uninterrupted and the Provider's service continues to be paid for.
8. Where the Purchaser fails to or fails to properly hand over its financial responsibility for the Service User to the new Responsible Party with the result that the Provider is not paid or is paid late as described in clause 5. iv) hereof by the new responsible party, then the Provider reserves the right to charge the Purchaser herein in accordance with clause 5. viii) hereof until such time as the new purchaser takes over payment to the Provider for its service.
9. This agreement shall continue until such time as
- i) either party terminates it by giving the other party **twenty eight days' notice** in writing or
 - ii) a change of circumstance to the Service User occurs, such as where a Service User might be detained under the Mental Health Act, necessitating an immediate interruption of and change to the source of payment or
 - iii) a breach of the standard of care provided by the Provider occurs considered serious enough by the Purchaser to necessitate the removal of the Service User.
10. Where a dispute arises between Purchasers, the NHS England publication '**Who Pays? Determining responsibility for payments to providers August 2013**' and any future amendments thereto shall be used to determine which purchaser shall be responsible for paying the Provider and in the event of an impasse, ultimately be put before NHS England for its determination.

11. If any provision or any part of this agreement is either void or rendered void for any reason, that provision or part shall be severed from the agreement without affecting the validity of the rest of the agreement.
12. The terms of this agreement may be varied where both parties agree in writing.
13. This agreement shall be governed by the Laws of England and Wales

The Acts, Rules and Protocols governing the responsibility for paying for a care service

- 1. Acts – The Health and Social Care Act 2012** amended the **NHS Act 2006 ('the Act') Section 3 (1A)** to establish the legal framework for the new commissioning architecture for the NHS in England, including the responsibilities of the NHS Commissioning Board – now known as NHS England – and clinical commissioning groups (CCGs)
- 2.** The rules and guidance for commissioners published by the NHS in August 2013 and headed **Who Pays? Determining responsibility for payments to providers** shall (including any amendments thereto) be the basis for ultimately deciding which 'purchaser' is responsible for paying the Provider and accordingly forms part of this agreement in the event of a dispute.

Section A of the publication sets out the guiding principle

Identifying which CCG is responsible for commissioning and paying for care

Paragraph 1

The General rules – subject to the rules on emergency care set out below – are as follows:

- *where a patient is registered on the list of NHS patients of a GP practice, the responsible commissioner will be the CCG of which the GP practice is a member;*
- *where a patient is not registered with GP practice, the responsible commissioner will be the CCG in whose geographic area the patient is 'usually resident'.*
- *'usually resident' is defined in Annex B of the August 2013 'Who Pays?' publication*

Paragraph 2

Even where a GP practice has patients usually resident in more than one CCG area, the responsible commissioner will be the CCG of which the GP practice is a member.

Paragraph 3

A CCG is responsible for commissioning emergency care for anyone present in its geographical area, regardless of where the person in question is usually resident or which GP practice (if any) they are registered with.

- 3.** The July 2012 NHS Commissioning fact sheet for clinical commissioning groups sets out the services to be commissioned by CCGs from April 2013.