Livewell Southwest

Guidance document to support the application for funding and requirements to review after care under Section 117 (Mental Health Act 1983)

Version No 1

Notice to staff using a paper copy of this guidance.

The policies and procedures page of LSW intranet holds the most recent version of this document and staff must ensure that they are using the most recent guidance.

Author: **Policy Ratification Group (PRG)**

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Reader Information

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1	New guidance	September 2015	Deputy Director of Operations	New guidance

Section 117: After-Care under the Mental Health Act (MHA) 1983

Assurance Statement

This guidance aims to ensure that staff are aware of the requirements of Section 117 (S117) and that they are observed in clinical practice. It also aims to give guidance on how S.117 arrangements are made e.g. through the Care Programme Approach (CPA).

1. Introduction

Section 117 of the Mental Health Act 1983 (MHA) places upon Health and Local Authorities a statutory duty to work together to provide or arrange after-care services for all those who have been detained in hospital under a treatment section of the MHA (i.e. Sections 3, 37, 47 and 48). This includes all those subject to Supervised Community Treatment. This duty is not to be interpreted only in general terms i.e. through the borough-wide provision of services for mentally ill people in general, but individually i.e. the after-care needs of each individual to whom Section 117 applies must be considered and met. Health Authorities should now be understood to mean Clinical Commissioning Groups (CCGs) who have taken over the funding and commissioning responsibilities of Health Authorities.

2. Aims and Objectives

2.1 To ensure that staff are aware of S.117 responsibilities.
2.2 To ensure that local interpretation of S.117 is in line with the legal requirements of the MHA.
2.3 To integrate practice with the Local Authority (LA)
2.4 To integrate decision making about S.117 with the Care Programme Approach.
2.5 To provide specific guidance about how to apply for S117 funding and when it is appropriate to discharge patients from S.117.
2.6 To clarify the relationship between S.117 and Supervised Community Treatment.
2.7 To ensure that packages of care provide value for money and good outcomes for the person in receipt of them.
2.8 To provide a clear and timely process for care coordinators to be able to apply for funding.

3. Duties and Responsibilities

3.1 Responsible Clinician

To observe S.117 responsibilities and, in particular, to make decisions about discharging patients from S.117.

3.2 Social Workers

To observe S.117 responsibilities and to liaise with Livewell Southwest (LSW) and the L.A about not charging S.117 patients for services that are otherwise means tested.

3.3 MHA Manager

To support clinical staff with advice and raise concerns as necessary with senior managers within LSW, the CCG or Social Services. To record S.117 status on SystmOne and to give advice to clinical staff about the legal implications of S.117.

4. Implementation of Section 117

4.1 In practice since most mental health services, at any rate for detained patients and patients subject to Supervised Community Treatment including those provided by Social Services, are provided within the framework of the Care Programme Approach (CPA), it is through CPA that after-care under Section 117 is provided.

4.2 The need for after-care for those on Section 117 should therefore be assessed as part of the CPA process and considered at CPA Care Planning meetings. The differences should be that:

4.2.1 Contributors to the CPA process should be aware of the individual's Section 117 status and the additional statutory duty to provide aftercare services that this entails.

4.2.2 The CPA meeting should specifically be described as a CPA/S.117 meeting.

4.2.3 The CPA Care Plan should indicate that Section 117 applies.

4.2.4 Any care package for a patient, including residential care should be drawn up in awareness of Section 117 rights and responsibilities.

4.2.5 The S117 panel should be approached as soon as S117 entitlement is identified.

4.2.6 The panel will be a joint venture between Health and The Local Authority.

5. Charging for Services

5.1 One of the major differences between those subject to Section 117 and others is that the statutory duty to provide after care to those on Section 117 means it is not lawful to charge for services provided to them as part of an aftercare package designed to support the patient in the community and prevent readmission to hospital due to mental disorder and associated problems.

5.2 In practice this does not directly affect LSW health services since NHS Funded services are provided free at the point of use. It does make a significant difference to Local Authorities (LA) funded services as they can be charged for, subject to means tests. It must be clear then, and is accepted by the Local Authorities LSW works, that they must waive their normal charges if patients are covered by Section 117 for as long as the Section 117 is considered still to apply (see below). This should be taken to apply to both residential and non-residential services.

5.3. The full implications for charging arrangements within Local Authorities are necessarily outside of the scope of this procedure and are a matter for the charging authority. However the following should be noted:

5.3.1 Social Workers involved in arranging or providing a CPA package for a Section 117 patient should ensure that the Local Authority Finance Department is aware of the patient's legal status and that after-care services cannot be charged for.

5.3.2 The Care Co-ordinator should ensure that the application of Section 117 to a patient is written on claim forms sent to the local Benefits Agency when any claim for means-tested benefits is made.

5.3.3 Even though someone is subject to Section 117 there may be occasions when they are charged for a service if they are no longer assessed as needing it e.g. someone who is assessed as no longer needing residential care but who refuses to move from it could be charged.

5.3.4 The provision of after-care services under Section 117 should not be confused with providing for the essentials of life, such as food, clothes, accommodation, heating etc. These remain the responsibility of the individual except in the very special cases where accommodation, heating etc., are provided as part of a residential placement and are an inseparable part of the placement.

5.3.5 The provision of after-care services under S.117 should not be subject to questions about the citizenship status of the recipient. If a patient has been admitted under a treatment section of the MHA they are entitled to receive S.117 aftercare. Questions about their right to reside in this country should be resolved between the patient and the appropriate authority. It may be that in the case of patients subject to a Hospital Order with restrictions the Ministry of Justice will exercise its power under Section 86 of the MHA to remove someone who is neither a British nor Commonwealth citizen to another country. This lies within the remit of the Ministry of Justice who by definition would know of such restricted cases. Other patients necessarily fall into one of two groups. The first is where there has been an application for British Nationality or asylum but this has to be decided upon; this can take some time and is subject to rights of appeal; S.117 should be assumed to apply during this period. The second is where an application has not yet been made but is due to be made; again S.117 should be assumed to apply during this period.

5.3.6 The above paragraph should not be interpreted to mean that there is anything to prevent Mental Health or Social Services informing the Immigration Authority or other official body of a person who is believed to have no legal right to be in this country. Such a referral may be made as a normal part of the CPA process and be integral to care-planning for that individual.

5.3.7 Appendix 1 must be completed and sent to the Individual Purchase Placement Panel (IPP) following a S117 meeting for those in receipt of this for the first time or a new application.

5.3.8 Reviews must also be documented on Appendix 1 and submitted to the S117 Panel.

6. Discharge from Section 117

6.1 Section 117 makes it a duty for CCG's and Local Authorities to provide after care services for patients who have been subject to a treatment section, and to continue to provide aftercare services for as long as the patient is in need of them. Once the person is no longer in need of any aftercare services they can be discharged from Section 117 and their exemption from charges will therefore cease to apply.

6.2 Discharge from Section 117 is therefore of importance. Decisions about discharge should be individual ones based on the circumstances of a particular case and will normally be taken as part of the CPA process.

6.2.1 It follows that the Care Co-ordinator under CPA will have a particular responsibility for considering the question of discharge from Section 117 and bringing it to the attention of the multi-disciplinary team at CPA reviews. The actual decision to discharge from CPA will normally be made by the full multi-disciplinary team (see Appendix 2).

6.3 Although decisions will be individually based it is helpful to have some guidelines and the following are agreed as suitable to inform decision-making.

6.3.1 If the patient is no longer in need of mental health treatment – it will normally follow that they are also discharged from Section 117. However the following important points must be noted:-

6.3.1.1 A patient (who is not subject to Supervised Community Treatment (SCT) who needs but is refusing treatment in the community may be discharged from treatment if they are not considered to be 'in contact' with services. If this position changes because they relapse or are re-referred or refer themselves they are likely still to be covered by Section 117 if it is considered that the resumption of a service to them is the resumption of aftercare. Any unwillingness to receive after care should not be equated with the absence of need for after care; therefore Section 117 remains applicable.

6.3.1.2 A patient discharged from hospital to a nursing home will often be discharged from Mental Health Services after their admission to the home. This is because it is the home not the specialist mental health service which is now providing all of the patient's after-care. In some cases where there is still a direct input from LSW to the

patient's care in the home they will remain on SystmOne. (This will be the case with all patients who have been assessed and accepted against the NHS continuing care eligibility criteria and whose placement is funded by their local CCG). Where there is no input from LSW, however, and the person is discharged, if the nursing home placement still constitutes after-care directly following on from the patient's treatment in hospital the nursing home episode must be covered under Section 117 provisions and cannot be charged for.

6.3.2 There may be occasions when patients continue to receive services from LSW but because of a substantial improvement in and stabilisation of their mental health they are nevertheless discharged from Section 117. Examples where this may apply include cases where all of the following are met:-

- The patient has settled into the community, even though they continue to receive an agreed level of continued support.
- This has continued for a reasonable period of time.
- There is no foreseeable need for readmission bearing in mind the reasons for the original admission to hospital.

On this basis it may be concluded that the provision of a service which is likely by then to be a greatly reduced level of service such as depot medication/ periodic attendance at psychiatric outpatient clinics has ceased to be after-care as such i.e. that the service is no longer to follow-up hospital care and prevent readmission but has become continuing community care without reference to the need for readmission to hospital.

6.3.3 Any decision to discharge a patient from Section 117 must be:-

- Discussed fully with the patient so that their views are taken into account.
- Jointly agreed by the multi-disciplinary team, including both the health and social services representatives.
- Recorded in writing, including the names of those taking the decision and the reasons for the decision (*see suggested Form in Appendix 2).*
- Recorded on CPA documentation and in the clinical notes including not just the decision, but the reasons for the decision.
- Communicated verbally and in writing to the patient, as part of the CPA review process
- Followed up with the patient with information and explanation about how it will affect their right to care/benefits.

6.3.4 Someone discharged from Section 117 will only come back under its provision if they are re-admitted to hospital under a treatment section of the MHA.

6.3.5 No one can be discharged from Section 117 if they are still subject to Supervised Community Treatment or a restriction order (Section 41 or 49) or Section 7 (Guardianship); or if they are on Section 17 Leave.

7. Register of Section 117 Patients

7.1 A Register of Section 117 patients will be kept by LSW and this will form a sub-set of the electronically recorded data maintained on SystmOne. This means that SystmOne will always identify whether a patient is subject to Section 117.

7.2 Entry to the Section 117 Register will, therefore, be through the CPA Care Plan.

7.3 Removal from the Section 117 Register will be through the CPA Review process (*see 6.3.3 above*).

7.4 Audits of SystmOne MHA compliance will be organised regularly by the MHA Manager. This will include whether Section 117 status is recorded appropriately.

8. Local Authority/CCG Responsibilities

8.1 Normally Health and The Local Authority have legal responsibility for after-care under Section 117.

8.2 If a patient is discharged to a different area from the one they were resident in at the time of admission, the CCG and Local Authority where they were resident before admission retain funding responsibility and must make necessary arrangements under Section 117 unless the transfer of financial responsibility to a new Authority is agreed between them.

8.3 If the patient is of No Fixed Abode at the time of admission to hospital the CCG responsible for the admission and hospital episode is the one where the hospital is situated. However if the patient is discharged to a different area, the responsibility falls to the CCG and Local Authority for the area the patient is discharged to.

9. Local Authority Responsibilities

9.1 Local Authorities are jointly responsible with CCGs for the arrangement of aftercare services under Section 117.

9.2 Local Authorities therefore need to ensure that social workers, housing officers and others as necessary are available and willing to participate in CPA/Section 117 care planning meetings.

9.3 Local Authorities also need to ensure that any services identified as necessary for a particular patient on Section 117 are provided when the provision of those services are within its responsibility.

9.4 Local Authorities need to provide an adequate mechanism so that patients subject to Section 117 are not charged for services for as long as the Section 117 is deemed to be in place.

9.5 Decisions to end the Section 117 status of a particular patient are joint Health/Social Service decisions (see 6 above). Local Authorities must therefore ensure that social workers and others as necessary are available and willing to participate in CPA/Section 117 meetings to review and if appropriate discharge patients.

10. Voluntary Sector Responsibilities

10.1 Section 117 specifies the duty of CCGs and Local Authorities to provide after care services under Section 117 'in co-operation with relevant voluntary agencies'.

10.2 The voluntary sector therefore has a duty to co-operate with the provision of services where they fall within the agreed remit for a particular voluntary organisation.

10.3 It may be that particular services for which the CCG or Local Authority has responsibility are in practice contracted for with a voluntary organisation. These services could therefore be provided under Section 117 by the Voluntary Sector.

11. Section 117 and Section 17 Leave

11.1 It should be noted that patients on Section 17 leave under the Mental Health Act 1983 are covered by the Section 117 criteria. For any longer period of leave therefore there should be a Section 117 care plan to cover the period of leave and providing as necessary for:-

- Supply of medication
- Emergency contact
- Any necessary support
- Leave address and any care arrangements

11.2 This is now particularly important since the Courts have signalled to Mental Health Providers their acceptance that S.17 leave can form part of inpatient treatment lasting for months and continuing even when contact with a hospital has become minimal.

12. Section 117 and Care Programme Approach (CPA)

12.1 This procedure throughout is based on the principle that the responsibilities of Health Authorities and Local Authorities under Section 117 can be discharged through the correct application of the CPA.

12.2 Section 117 discharge planning meetings will therefore be the same as CPA care planning meetings though the special legal status of the meeting and the additional responsibility to attend must be highlighted.

12.3 Section 117 care plans will be standard CPA Care Plans though the Section 117 status of the patient will be stated on the form.

12.4 Review of the progress of care under Section 117 will be carried out at CPA Review meetings.

12.5 Decisions to discharge patients from Section 117 will be made at CPA Review meetings.

12.6 A register of Section 117 patients will be kept up-to-date by LSW.

13. Section 117 Information to Patients

13.1 It is implicit in this procedure that patients must be made aware of their Section 117 status and their rights under it. This will be communicated to them after the application for Section 3 is made and discussed at CPA meetings.

13.2 Appendix 3 to this procedure has a leaflet, which will be given to patients as appropriate to inform them of their rights specifically. It will be sent to patients by the MHA Administrator when patients are discharged from Section 3, 37,47,48, including when such patients are discharged from hospital onto SCT (i.e. and remain potentially subject to detention).

14. Section 117 and Advocacy

14.1 Throughout the process described in this procedure patients are entitled to advocacy representation. This is particularly important at CPA/Section 117 care planning meetings, including anywhere a decision to discharge a patient is due to be made.

14.2 The LSW accepts that on occasions a solicitor will attend the CPA/S.117 meeting in place of an advocate. This is particularly likely when it is a S.117 meeting.

15. Section 117 and Supervised Community Treatment (SCT)

15.1 All patients who are subject to SCT are covered by S.117 because SCT can only follow on from Section 3 or 37.

15.2 Patients on SCT are not discharged from S.3 or 37, which is suspended only, but they are discharged from hospital and from immediate detention. Therefore S.117 applies.

15.3 Patients cannot be discharged from S.117 whilst still subject to SCT since by definition the need for aftercare still applies.

15.4 Patients discharged from SCT may still be subject to S.117 i.e. the requirement to receive aftercare subject to liability to be recalled to hospital may be necessary, but some form of treatment and care that amounts to continuing aftercare may still apply.

16. Process for Implementation

16.1 The guidance will be discussed and kept under review at the MHA Scrutiny Committee.

16.2 The guidance will be placed on the LSW intranet site, so that all staff can access it.

17. Monitoring

17.1 Any concerns about patients discharged from S.117 will be raised at the MHA Committee.

18. Equality Statement

18.1 S.117 and decisions to discharge patients from it should apply irrespective of ethnicity, gender, age, sexual orientation. However, it is acknowledged that patients from BME communities are more likely to be detained.

19. Training

19.1 Training on S.117 will also feature in LSW CPA training.

20. Appeal

Where a decision has been made not to fund a healthcare intervention, the individual or the referrer may appeal against the Panel decision.
An appeal can be made by the individual or referrer within three months of the decision being communicated. Any appeal should clearly state the grounds for doing so.

The individual and/or referrer will be notified of the date of the Appeal Panel and be invited to submit supporting statements.

The Panel will have access to all relevant documentation about the application, but will not consider new evidence.

The Appeal Panel will consist of different members to the original Panel:

- Chair - layperson (voting member with casting vote)
- Head of Governance and Patient Experience (voting member)
- Consultant Psychologist (voting member)

The Chair and Joint Programme Lead from the original Panel may be invited to attend at the start of the meeting to provide clarification, but will not be present for the decision making process.

The Panel will consider whether:

- Due process was followed
- All information available at the time was taken into account
- The decision was reasonable

The Appeal Panel can:

- Uphold the original decision
- Reverse the original decision
- Refer the application back to the original Panel for reconsideration

All policies are required to be electronically signed by the Lead Director. Proof of the electronic signature is stored in the policies database.

The Lead Director approves this document and any attached appendices. For operational policies this will be the Locality Manager.

The Executive signature is subject to the understanding that the policy owner has followed the organisation process for policy Ratification.

Signed: Director of Operations

Date: 7th December 2015

APPENDIX 1

Section 117 Application and Review

No review will be accepted without all aspects of this form being fully completed

Service User Details

Name:	Date Discharged from Hospital:
NHS Number:	Diagnosis:
Present Address:	Date of Review
Date of Birth:	Date of Last Review
GP:	Care Coordinator/Keyworker Name and Contact Number:

Costing Information:

Cost of placement/package:	
Decreased cost proposed:	
Increased cost proposed:	
To note: any increase in costs requires a full needs analysis below that outlines the changes in need and clarifies what the extra funding will be used for	
Current funding split:	

Section 117 Review Checklist Questions Response

What are the service user's current mental health needs and to what extent, if any, have these improved or stabilised since discharge from hospital?	
What is the current mental health after care provided?	
To what extent is the provision of mental health aftercare preventing a return to hospital or relapse?	
What is the proposed new plan?	
Is the service user regularly seeing a GP and, if so, what treatment or medication, if any, are they receiving?	
Is provision being made by Livewell Southwest, the CCG or Local Authority If so, what is the provision and how frequently is it being made?	
What is the likelihood of the service user returning to hospital and/or suffering relapse?	
Are the needs of the person no longer the needs which caused the person to be detained under the MHA?	
Has there been a continued period of stability in the person's mental state? If Yes; why? If No; why?	
Is there a shared agreement with the service	

user with regard to their Recovery/Care plan?	
Could any such treatment or medication be safely (from the point of view of both the service user and others) conveniently and effectively be administered in a non-nursed environment?	
Is the service user in a specialist mental health placement or a general needs placement?	
Are they receiving purchased or other domiciliary care services?	
Does Section 117 still apply If Yes; why? If No; why?	
Detail any residual risk issues, likely to lead to relapse	
Views of Service User/Carers/Other relevant staff	
Name and Signature of person completing review:	
Occupation and role:	
Date:	

APPENDIX 2. Section 117 Service User Leaflet

USEFUL CONTACTS:-

Your local user/advocacy Group
Name:
Address

Tel:

Care Coordinator:

Mental Health Act Commission
Maid Marian House
56 Houndsgate
Nottingham
NG1 6BG

Mental Health Act 1983

Section 117

What it means for patients and their relatives

NTRODUCTION

The Mental Health Act 1983 exists to enable people with a mental disorder to be assessed and treated in hospital, even when their illness prevents them from accepting that they need treatment. It provides a framework for treatment to be carried out within proper controls and safeguards.

WHAT IS SECTION 117?

Section 117 is a part of the Mental Health Act that concerns the care of people once they have been discharged from a psychiatric hospital.

DOES IT APPLY TO EVERYONE DISCHARGED FROM HOSPITAL?

No; it does not even apply to everyone detained under the Mental Health Act. It only applies to people who have been treated under one of the longer-term treatment sections e.g. Section 3 or Section 37.

WHAT DOES SECTION 117 MEAN FOR THEM?

Section 117 means that once patients are discharged from hospital the Local Authority and the local Health Authority (i.e. the Primary Care Trust) have a legal duty to provide any after-care services that are assessed as necessary for the patient's after-care.

HOW WILL THIS HAPPEN?

Before patients e.g. on Section 3 are discharged there will be a Section 117 planning meeting. This will be the same as a care Programme Approach meeting, but everyone will be conscious of the special legal responsibilities that apply to Section 117 patients.

WHAT WILL BE THE RESULT OF THE MEETING?

An individual care plan will be drawn up describing the services to be provided. This will then be worked to by LSW, local Social Services and, if necessary, others such as the Housing Department. It may also involve Voluntary Organisations.

WHAT IF THE SERVICES DESCRIBED IN THE CARE PLAN ARE NOT PROVIDED?

Patients or their relatives should raise this with their Care Co-ordinator as a matter of serious concern. Remember that if someone is on Section 117 Local Authorities and Health Authorities are legally required to provide services that are assessed by professionals as essential to that individual's care plan.

DOES THE AVAILABILITY OF RSOURCES NOT COME INTO IT?

Yes, but the resources necessary to provide services should normally be available.

CAN PATIENTS BE CHARGED FOR SSERVICES PROVIDED UNDER SECTION 117?

No. NHS Funded services are always free of charge at the point of use. Local Authorities can normally charge for some services subject to a means test, but they cannot charge people who are on Section 117 for any service provided as part of their aftercare plan as these services for them are provided free. This includes residential or nursing home care and services provided at home. However such services do not include the normal essentials of life such as food and clothes.

IF A PERSON IS ON SECTION 117 WILL THEY ALWAYS BE ON IT?

No, not always. This will depend on how well they are. If they are well enough for all community treatment provided by the mental health care provider to be ended, they will normally be discharged from Section 117. However there are exceptions to this e.g. if they are living in a residential or nursing home they may be discharged by the Trust, but continue in the home covered by Section 117. No-one will be discharged from Section 117 whilst they are still on a community treatment order.

HOW WILL DECISIONS TO DISCHARGE BE MADE?

Any decision to discharge a person from Section 117 will be made at a CPA meeting involving health and social services staff and the client themselves, who will be able to have their say.