

Factsheet #8: Social care assessments and duties: Young people over 18

Young people with SEN or disabilities over 18 may be eligible for adult social care services, regardless of whether they have an EHC plan or whether they have been receiving services from children's social care previously.

The Care Act 2014 and the associated regulations and guidance set out the requirements on local authorities when young people are approaching, or turn, 18 and are likely to require an assessment for adult care and support. For those already receiving support from children's services, the Care Act makes it clear that local authorities must continue to provide children's services until adult provision has started or a decision is made that the young person's needs do not meet the eligibility criteria for adult care and support following an assessment.

Any adult social care provision required to meet eligible needs for young people over 18 (as set out in an adult care and support plan) under the Care Act 2014 should be included in section H2 of the EHC plan.

Adult Social Care Assessments under section 47 of the NHS and Community Care Act 1990

The Care Act 2014 does not come into force until April 2015.

In the meantime, the existing law in relation to adult social care assessments is set out in section 47 of the National Health Service and Community Care Act 1990 ("NHSCCA 1990"), which creates a statutory duty on local authorities to assess those who appear to be in need of community care services.

Under section 47(1)(a), an assessment must be carried out wherever there is an appearance of need. Under section 47(1)(b), local authorities must make a service provision decision to meet a need once assessed.

In accordance with the Supreme Court judgement in R (KM) (by JM) v Cambridgeshire County Council [2013] UKSC 23, the local authority is required to assess the individual's presenting needs without taking into account its resources and then go on to consider which of the individual's needs is eligible for support, in accordance with the local authority's adult social care policy and the current Prioritising Need Guidance (2010).

Having carried out an assessment under section 47(1)(a), section 47(1)(b) requires that the authority decide whether the individual's needs call for the provision by them of any services.

A lawful assessment when completed should record all presenting needs, record the unmet needs and each identified need should be clearly identified within the terminology originally from the FACS guidance of being 'low', 'moderate', 'substantial' or 'critical', and therefore whether the authority accepts that it falls within its current policy as being a need that it is obliged to meet.

Duty to meet 'eligible' needs

Section 2 of the Chronically Sick and Disabled Persons Act 1970 imposes a duty to provide services if, subsequent to the assessment of an individual's needs, a local authority considers it 'necessary' to provide such services in order to meet a person's needs. This duty is mirrored in the Care Act 2014 from April 2015. The CSDPA 1970 currently works in the same way for children and adults and will remain the duty applicable to children even after the Care Act comes into force.

In deciding whether support is 'necessary' a local authority is allowed to take into account its resources, so that more adults will get support when more money is available. A local authority does this by adopting one of the four bands from the statutory guidance – 'critical', 'substantial', 'moderate' or 'low' as the threshold for eligibility. There will be some cases where the needs are so great that it is obviously 'necessary' for the local authority to provide services no matter how little money it has – these will be adults with 'critical' needs. Also, once a local authority accepts that it is necessary to provide support under section 2 then it must fund a sufficient level of services to actually meet the needs identified through the assessment

The current guidance on eligibility criteria for adult social care is called 'Prioritising need in the context of Putting People first: A whole system approach to eligibility for social care' (Prioritising Need).

Personal budgets

To help support personalisation of care services, local authorities must produce a 'personal budget' as part of all care and support plans in order to allow the service user to identify how much money is available to meet their eligible needs, and often to purchase services themselves to meet these needs. This could be in the form of direct payments, made under section 57 of the Health and Social Care Act 2001.

Direct payments

Where a local authority has decided under s47 NHSCCA 1990 that a person's needs call for the provision of community care services, in most circumstances they will be required to offer a cash sum as a 'direct payment' to the person (or a representative if they lack capacity) to purchase the services rather than providing services themselves or arranging them through a third party ('commissioning').

The amount of the direct payments provided to an individual must meet the reasonable cost of securing the services which that individual has been assessed as needing. This means a direct payment "should be sufficient to enable the recipient lawfully to secure a service of a standard that the council considers reasonable to fulfil the needs for the service to which the payment relates" (Department of Health, Guidance on direct payments, England 2009 (as amended), para 111).

Transition to adult social care

Once the Care Act 2014 comes into force, the local authority must carry out a child's needs transition assessment where there is significant benefit to a young person or their carer in doing so and they are likely to have needs for care or support after turning 18.

Further information regarding transition assessments is provided in a separate factsheet entitled "Preparing for adulthood".

Assessments under the Care Act 2014

The duty in the Care Act 2014 from April 2015 to assess adults in need is triggered by the appearance of need and arises regardless of the 'level' of those needs or the person's financial resources.

The assessment must have specific regard to the 'well-being criteria' under the Care Act and must involve the adult and any carer. This includes personal dignity, physical and mental health and emotional well-being; protection from abuse and neglect; control over day-to-day life; participation in work, education, training or recreation; social and economic well-being; domestic, family and personal relationships; suitability of living accommodation; and 'the individual's contribution to society'.

When discharging any obligation under the Care Act 2014, including when carrying out assessments and providing services, the local authority must have regard to:

- the individual's views, wishes, feelings and beliefs;
- the need to prevent/ delay the development of needs for care and support;
- the need to make decisions that are not based on stereotyping individuals;
- the importance of individual's participating as fully as possible in relevant decisions (including provision to them of necessary information and support);
- the importance of achieving a 'balance between the individual's wellbeing and that of any friends or relatives who are involved in caring for the individual';
- the need to protect people from abuse and neglect;
- the need to ensure that restrictions on individual rights /freedoms be kept to the minimum necessary.

Decisions as to whether an individual is eligible for support following an assessment will depend upon their needs satisfying a national eligibility criteria.

Once an eligible need is identified, the local authority will then have a duty to meet that need, subject to a financial assessment being imposed.