

Section 117 Aftercare for Adults

What is Section 117 Aftercare?

Section 117 places an enforceable duty on both Health and Social Services to provide aftercare to a mental health patient who has been detained on discharge from hospital.

Who is eligible for Section 117 Aftercare?

If an adult has been detained in Hospital under Sections 3 (for treatment), 37, 45a (ordered to go to Hospital by a court), 47 or 48 (transferred to hospital from prison) of the Mental Health Act ("MHA") 1983, they are automatically entitled to non-means tested Section 117 Aftercare upon discharge from Hospital. The duty to provide Section 117 aftercare services is triggered by discharge from hospital, however as soon as an individual is detained under the MHA planning for discharge should begin.

Is a patient under Section 2 MHA 1983 eligible for Section 117 Aftercare?

No. The patient will not be eligible for aftercare services unless the patient is transferred to Section 3 (detention for treatment).

What is the purpose of "Aftercare Services"?

- a) Meet a need arising from or related to a person's mental disorder, and
- b) Reduce the risk of the person requiring admission to Hospital for treatment of a mental disorder.

What does "Aftercare Services" include?

Counselling or therapy, assistance to manage finances, social care support, help with work or education, specialist accommodation or housing, and care home fees.

Assessment of Aftercare Needs

The Care Programme Approach ("CPA") should be used to assess, plan, review and coordinate the range of treatment, care and support to meet the patient's needs.

A Care Co-ordinator should pull together the completion of a Care Plan. The Care Plan must be prepared in consultation with the patient, the patient's representative, and treating clinicians to ensure it is reflective of the patient's needs.

The Care Plan should set out the practicalities of how the patient will receive treatment, care and support day to day to meet:

- Continuing mental health care needs;
- The psychological needs of the patient, and where appropriate, the carers;
- Physical healthcare needs;
- Needs for assistance with daytime activities or activities of daily living;
- The need for appropriate and safe accommodation;
- Identified risks and safety issues;
- Any specific needs arising from any co-existing physical disabilities, impairments, learning disabilities;

- Any specific needs arising from drug, alcohol or substance misuse;
- Any social, cultural or spiritual needs; and
- Provide contingency plans in the event that the patient's mental health should deteriorate rapidly.

The Care Plan should be recorded in writing. A copy must be provided to the patient and the Care Plan should be kept under review.

What does the duty to provide 'Specialised Accommodation' mean?

Case law confirms that accommodation is a common need for all people. Therefore, in order for accommodation to be an aftercare need, the patient must have a need for 'Accommodation Plus'. This means the patient needs specialised, enhanced accommodation to meet needs arising from or related to their mental disorder. The need must be as a direct result of the reason the patient was detained. The accommodation must reduce the risk of a deterioration in the patient's mental health that may result in potential re-admission to Hospital for treatment.

Will the patient and/or their representative be given a Choice of Accommodation? In what circumstances are "top-up" fees payable?

If it is agreed that a patient requires 'specialised accommodation' in order to meet their aftercare needs, the CCG and Local Authority must provide a choice of accommodation. The authorities must indicate a preference from the choices provided. If the patient and/or their representative decides on the option contrary to the expressed preference, and this option is more expensive than the authorities would usually expect to pay for accommodation of that kind, the patient or a third party may be asked to "top-up" the difference between what the authorities would expect to pay and the actual cost. If no choice of accommodation is offered, "top up" fees cannot be charged to the patient or a third party.

When can a patient be discharged from Section 117 Aftercare?

The circumstances in which it is appropriate to end Section 117 aftercare will vary from person to person and is dependent on the nature of the services provided. The most clear-cut situation in which Section 117 Aftercare could be stopped is if the patient's mental health has improved to a point where services to meet the needs arising from or related to the patient's mental disorder are no longer required.

Section 117 cannot be withdrawn solely because:

- The patient has been discharged from the care of specialist mental health services (such as the Community Mental Health team);
- An arbitrary period has passed since the care was first provided;
- The patient is deprived of their liberty under the Mental Health Act;
- The patient has returned to hospital informally under Section 2;

- The patient is no longer on a Community Treatment Order or Section 17 leave; or
- The patient is well-settled into the community. Aftercare may still be needed to prevent a relapse or further deterioration in the patient's condition.

In a situation where a CCG and Local Authority deem it appropriate to discharge a patient from Section 117 aftercare, the individuals needs must be formally re-assessed before a joint decision is made by a multi-disciplinary team to discharge.

Retrospective Section 117 Aftercare claims

If a patient has been detained under Section 3, but discharged from Hospital without a Section 117 aftercare plan, and in consequence, the patient has self-funded care, the patient is entitled to a retrospective assessment and potentially reimbursement of all monies paid. The retrospective assessment must consider what the aftercare needs of the patient were at the time of discharge, and whether the provision obtained privately by the patient was necessary.

What issues commonly occur?

- Section 117 Aftercare is often not considered at the point of Hospital discharge. This can leave patients without the funded care required to meet needs.
- Many patients self-fund care in circumstances where the NHS and Local Authority have a duty to fund and provide Section 117 Aftercare.
- Disputes arise in relation to whether a patient requires 'specialised accommodation' to meet aftercare needs.
- There are instances where there is alleged premature discharge from Section 117 because a patient is well settled into the community.
- There can be difficulties in navigating the interaction between the Mental Health Act 1983 and the Mental Capacity Act 2005.
- There can be a need to make best interests decision on behalf of individuals who lack capacity with regard to care, support and accommodation options.

How can Lester Aldridge assist?

At Lester Aldridge we are highly experienced in representing individuals and their families in the relation to Section 117 Aftercare matters. We can provide:

- An initial free assessment to determine the availability of Section 117 Aftercare.
- Advocacy at care or CPA reviews, needs assessments, and care planning meetings to ensure a patient's on-going need for Section 117 Aftercare support is clearly articulated to health professionals.
- Advice regarding how to challenge refusals to provide Section 117 Aftercare or decisions to prematurely or arbitrarily withdraw Section 117 Aftercare funded packages of care. This may require us to obtain an independent Expert's report.
- On-going support to negotiate care packages.
- Advice at each key stage in the process.