

GUIDANCE: LOCAL AUTHORITY CHARGING FOR PUBLIC HEALTH ACTIVITY

The Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 (Subject to Parliamentary approval)

1. From April 2013 upper tier and unitary local authorities in England have a new duty under section 2B of the National Health Service Act 2006 (“the 2006 Act”) to take such steps as they consider appropriate for improving the health of the people in their areas. Other new public health functions will also be conferred on local authorities. As a result, they will inherit responsibility, and funding, for a range of public health services previously provided by the NHS – sexual health, for example, and drug or alcohol misuse.
2. LAs can also be required by regulations made under section 6C of the 2006 Act to take particular steps in exercise of their public health functions (including under section 2B to improve health), or to undertake aspects of the Secretary of State’s public health functions under the 2006 Act, including his duty as to protecting public health under section 2A of the 2006 Act.
3. While this does not mean that LAs have become part of the NHS, it does mean that when they are providing services under their new functions they do so as part of the comprehensive health service provided for under the 2006 Act. This means that those services must be free at the point of use except in some limited circumstances set out in legislation, just as they were when provided by the NHS.
4. Sections 2A, 2B and 6C of the 2006 Act were inserted by sections 11, 12 and 18 of the Health and Social Care Act 2012.

What health improvement activity can LAs charge for?

5. There are various sets of regulations that define NHS charges – prescriptions, for example – and where appropriate these have been updated to maintain the status quo and to continue to apply to health services that LAs commission or provide.
6. The range of activity that LAs might decide to engage in under their new health improvement duty is wide and goes beyond health services for individuals. To recognise this, regulation 9 of the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 (“the 2013 Regulations”) permits local authorities to charge for certain activity carried out under section 2B, in two circumstances:

- where the activity relates to an organisation, not an individual – private companies, academic institutions, etc.; and
- where the activity relates to an individual, but is not for the purpose of improving that individual's health – training an individual to provide public health advice, for example. The regulations provide specifically that an individual cannot be charged for any service or facility provided to them, or any other step taken in relation to them, if that service, facility or other step is for the purpose of improving their health.

7. The regulations specify that the kinds of activity that LAs can charge for in those permitted circumstances are:

- providing information and advice;
- providing services or facilities designed to promote healthy living;
- providing or participating in the provision of training for persons working in, or seeking to work in, the field of health improvement; and
- making available the services of any person or any facilities (for example, providing staff and facilities to enable a company to conduct public health research).

8. The regulations specify that a LA can charge for such activity only where the information, advice or other service or facility has been requested by, or agreed with, the recipient. A LA cannot, for example, send unsolicited advice or information to an organisation and then impose a charge.

9. The effect of the regulation is that anyone who was receiving a health improvement service, designed to improve their personal health, from the NHS free of charge should continue to receive it free of charge where responsibility for it transfers to LAs. For example, providing someone with information and advice to help them give up smoking is a service intended to improve that individual's health, so could not be charged for. Where a LA is providing a company with advice on the working environment of its staff, on the other hand, the LA would be able to charge the company. In either case the LA could be acting under section 2B.

10. An additional exception to this power to charge is that a LA may not charge for any step that it is required to take by Part 2 of the 2013 Regulations. The effect is that the services set out in that Part 2 may not be charged for in any circumstances, whether they are for organisations or individuals, or steps to improve or protect health. In particular, this prevents LAs charging for public health advice services provided to clinical commissioning groups.

11. The powers to charge apply only to LA functions under section 2B of the 2006 Act (health improvement). A LA may not charge for any activity under these other functions:

- dental public health functions under regulations under section 111 of the 2006 Act;

- arranging the weighing and measuring of children at school under paragraph 7A of Schedule 1 to the 2006 Act;
- provision of contraceptive services under the Secretary of State's duty under paragraph 8 of Schedule 1 to the 2006 Act (which LAs must exercise under regulation of the 2013 Regulations); and
- provision of information and advice with a view to promoting local health protection arrangements (LAs must provide such information in exercise of the Secretary of State's duty under section 2A of the 2006 Act, as required by the 2013 Regulations).

12. Charges made under the 2013 Regulations may be calculated so as to cover the costs of the LA in providing the service or facility in question. LAs should not however make charges on a commercial basis (i.e. in order to generate a profit).

13. District councils do not have functions under sections 2B or 6C and are not affected by the 2013 Regulations.

What is a health improvement service?

14. If a service is not provided under section 2B or any other public health function under the 2006 Act, then regulation 9 does not apply and local authorities may continue their existing charging arrangements. Whether a service is provided under section 2B depends on whether the provision of that service is a step which the LA considers appropriate for improving public health. If the LA considers a service to be appropriate for improving public health, it has a duty to provide that service.

15. There is, however, no precise description of 'health improvement' in legislation or guidance (although section 2B does list examples of steps that LAs can take under their new duty). In addition, it is for the LA to determine whether any particular step is appropriate, and in doing so it may have regard to matters such as the priority to be given to that service as compared with other health improvement activity, the availability of resources and the extent of existing NHS services.

16. This flexibility gives LAs the appropriate level of discretion in deciding how best to meet local needs, but LAs will only have to provide a service or activity under section 2B if its purpose is to improve health.

17. LAs have always provided services that can have a bearing – sometimes a significant one – on the health of the local population. Currently they include social care, leisure, housing, planning, refuse collection and many more. It does not follow that such services now have the purpose of improving health in terms of the 2012 Act. Social care is still social care, not health improvement. LA-run sports facilities may have the *incidental* benefit of improving health for some of those who use them but they can continue to be a leisure service - except when a LA arranges access to them for certain individuals specifically to improve their health. Where a service has a number

of purposes, LAs should consider the primary purpose – if health improvement is only an incidental effect or ancillary purpose, the service should continue to be carried out under other LA powers.

18. If, on the other hand, a LA was providing a service under pre-existing powers that does have health improvement as its primary purpose (smoking cessation, for example) and continues to provide that service from April 2013, then it must do so under its new duty in section 2B and will no longer be able to charge for it (except in the limited circumstances described above).