**Briefing for Local Authorities and local partners - Designated Settings Indemnity Support**

We are writing to outline details of the newly launched indemnity support for care home providers that are operating as Designated Settings and to set out how the support will operate in practice.

These settings provide care for those ready to leave hospital for a care home (including to a care home where they normally reside) but who have previously tested positive and remain infectious. You will be aware that a number of care providers have pointed to an inability to secure adequate insurance (e.g. to indemnify themselves in the event of a successful clinical negligence, public and/or employer’s liability claim being brought against them) as a barrier to operating as a Designated Setting. The new support provides a carefully targeted, time-limited arrangement to remove this specific barrier. As such it is part of the wider efforts led by colleagues across Local Government, DHSC, NHSE/I and CQC to ensure sufficient Designated Settings capacity is in place across the country.

We are putting the support in place in order to help unlock capacity quickly where it is most needed. As such we are asking Local Authorities to play an important role (working with CCGs and local NHS provider partners) in helping us to target and operationalise the support over the coming days – because LAs are already at the centre of local discussions to mobilise designated settings capacity, and uniquely hold the key relationships necessary to put the support in place for individual care homes. We are grateful for the engagement of Local Government partners in setting up the support at pace, and for Local Authorities support in rolling it out.

**Outline of the Designated Settings Indemnity Support**

The key elements of the support are:

* Eligibility:
  + Designated Settings Indemnity Support will enable care homes assured by CQC as Designated Settings, and which are not able to obtain sufficient insurance, to overcome this barrier to accepting infectious COVID-19 positive patients from the NHS.
  + The support will be available (in principle) both to care homes already designated by CQC, and to those that are assured by CQC in the future. In all cases, support will be available only where the care home meets the various other criteria for the support.
  + The support is **NOT** available for care homes more widely – i.e., those not operating as Designated Settings.
* Scope:
  + The indemnity will cover Clinical Negligence, Employer’s and Public Liability where a care provider is unable to secure sufficient commercial insurance for those risks, or where an existing provider of a Designated Setting has been operating without sufficient cover.
  + The indemnity does not replace existing insurance for Designated Settings, but acts as a “gap-filler” to bring cover up to a sufficient level (i.e., in respect of Clinical Negligence, Public or Employer’s Liability as necessary).
* Operation:
  + Care providers will be sub-contracted for the Designated Settings service by relevant NHS Trusts (not local authorities). These sub-contracts will provide contractual indemnities to the designated care home setting:
    - Employer’s and Public Liability will be covered by a new indemnity scheme;
    - Clinical Negligence will be covered by the Clinical Negligence Scheme for Trusts, an existing state scheme.
  + This will not affect the CQC registration of either the care provider or the NHS trust.
  + [NHS Resolution](https://resolution.nhs.uk/) is administering the indemnity on behalf of DHSC. NHS Resolution is an arm’s length body of DHSC which is responsible for handling NHS indemnity claims, including claims arising from the Covid-19 pandemic
  + Designated Settings should report any claims to the sub-contracting Trust, which will in turn notify NHS Resolution.
* Timing:
  + The indemnity support will come into operation on 19 January and will run until the end of March 2021, with a review point in mid-February.
  + As with other NHS indemnities, claims made or paid months or even years later that stem from activity during the service period of the Designated Setting Indemnity Support will be covered by the indemnity.

**How we plan to target and communicate the support**

The scheme will be carefully targeted at Designated Settings for whom obtaining appropriate insurance cover is proving to be a barrier to operating. We are communicating carefully with local systems and the provider sector to articulate the purpose of the scheme, and help ensure only those for whom the scheme is intended make applications – to ensure the most efficient process possible when partners across the system are under such intense pressure.

We are prioritising our engagement to the following three categories:

1. **Approved Designated Settings not yet in operation:** We are aware of a small number of care homes that have already been assured by CQC as Designated Settings – but who, because of their inability to secure suitable insurance, have not yet been able to open for admissions. We will be reaching out (through the DHSC Regional Assurance Team) to the relevant Local Authorities for those care homes, to suggest that they open a conversation with the provider as to whether the support may be helpful.
2. **Designated Settings currently operating:** We will reach out– via CQC – to the care homes already assured by CQC as Designated Settings (142 as of 19th January). Some providers in this group have told us that they anticipate challenges as they come to renew their current insurance cover (with 31st January being a key date). It is also conceivable that a very small number of settings may currently be operating ‘at risk’ without suitable insurance in place. We will describe the new support offer, and suggest that if the care home believes the scheme may be necessary and suitable for them, to contact their commissioning Local Authority to discuss.
3. **Helping Local Authorities establish NEW Designated Settings:** We are keen that insurance issues do not hinder Local Authorities standing up further capacity quickly should they need to in response to rising local demand. We are therefore sharing information on the scheme and how we expect it to operate in order to help Local Authorities plan. And with the CQC we have set out how the support will align with the existing process by which CQC inspect and assure providers.

**How the application process will work in practice**

Please find attached a flowchart diagram that sets out what we anticipate the process will look like under each of the three scenarios described above.

Close working will be required with local NHS partners – both CCG and NHS Provider Trusts (Hospital and Community) - to put the arrangements in place. The reason for the involvement of the latter is that the Trust will need to sub-contract with the care home in order for Designated Settings to access the contractual indemnities being offered. The CCG will need to commission the service from the trust, and CCG will draw down from the £588m Discharge to Assess funding stream from which Designated Settings are funded.

DHSC will operate a swift process for approving all those who are able to benefit from the Designated Settings Indemnity Support, taking account of needs-led capacity requirement and proportionality of the request for state support (for example in the case of a provider operating a Designated Setting as one of multiple sites, whether their existing insurance arrangements will allow the Designated Setting to be treated separately, or if the indemnity will need to apply across the wider business). This process will operate alongside existing CQC assurance processes for all new Designated Settings.

We will keep the application process under review in the coming weeks, and may adapt if necessary as we draw on lessons from the operation of the new arrangements.

**Where to direct further questions**

We appreciate that there will be a number of outstanding issues and will provide further details and template documents in the coming days.

An information pack with further details about how the support will operate in practice can be requested for those providers eligible to access the scheme, and will be shared proactively with Local systems.

As we move into the operational phase, hands-on advice and support will be available to Local Authorities and their local partners via:

* Care and Health Improvement Advisors (CHIAs) from the ADASS/LGA programme, who will be able to make available bespoke support for local systems in taking action under three categories above, to ensure that local systems are aware of all relevant information and advice.
* NHSE/I who will be able to support through their regional teams and escalate issues nationally.
* The DHSC Regional Assurance Team – who can provide support to local systems to operationalise the indemnity support offer, and help ensure sufficient Designated Settings capacity more broadly.
* The Better Care Fund Team - who can provide further advice and guidance on the operation of the scheme. Information packs can be requested by local system partners from [england.bettercarefundteam@nhs.net](mailto:england.bettercarefundteam@nhs.net)