



Deprivation of Liberty Safeguards (DOLS)

Funding Fact-Sheet for 2013/14

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Policy	Clinical	Estates
HR / Workforce	Commissioner Development	IM & T
Management	Provider Development	Finance
Planning / Performance	Improvement and Efficiency	Social Care / Partnership Working

Document Purpose	For Information
Gateway Reference	17062
Title	Deprivation of Liberty Safeguards: Funding Fact Sheet 2012
Author	DH/ Social Policy/Quality and Safety/ Mental capacity
Publication Date	24th September 2012
Target Audience	PCT Cluster CEs, NHS Trust CEs, SHA Cluster CEs, Local Authority CEs, Directors of Adult SSs
Circulation List	
Description	Local Authorities will take on the Supervisory Body (SB) function for the Deprivation of Liberty safeguards (DOLS) in hospitals from 1st April 2013. Additional resources are being made available to local authorities. Hospitals remain responsible for MCA and DOLS compliance and knowing when to make DOLS referrals.
Cross Ref	N/A
Superseded Docs	N/A
Action Required	N/A
Timing	N/A
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Deprivation of Liberties Safeguards (DOLS)

Funding Fact-Sheet for 2013/4

Prepared by

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Executive summary

The new DOLS role and funding

Local authorities will take on the Supervisory Body (SB) function for Deprivation of Liberty Safeguards (DOLS) in hospitals from Primary Care Trusts (PCTs) on the 1st of April 2013. As a result, local authorities will be the only Supervisory Bodies, authorising deprivations of liberty outside of the Court of Protection.

Additional resources of £5.4m are being made available to local authorities for the new DOLS in hospitals role.

Hospitals remain responsible as managing authorities, for compliance with the DOLS legislation, for understanding the DOLS and knowing when and how to make referrals. Hospitals also remain responsible for ensuring that all care and treatment in hospitals is Mental Capacity Act (MCA) compliant. Clinical Commissioning Groups (CCGs) will oversee these responsibilities in the NHS; all CCGs are required to have a named MCA lead and relevant MCA policies.

What is the new DOLS funding for?

Introduction

Local authorities will take on the Supervisory Body (SB) function for Deprivation of Liberty Safeguards (DOLS) in hospitals from Primary Care Trusts (PCTs) on 1st of April 2013.

As a result, local authorities will be the only Supervisory Bodies. They will be the only organisation authorising and assessing deprivations of liberty outside of the Court of Protection. Additional resources of £5.4m are being made available.

Hospitals remain responsible as managing authorities for compliance with the DOLS legislation, for understanding DOLS and knowing when and how to make referrals. Hospitals remain responsible for ensuring that all staff in hospitals are Mental Capacity Act (MCA) compliant.

Clinical Commissioning Groups (CCGs) will oversee these responsibilities; and be responsible for training and MCA compliance. All CCGs must have a named MCA lead and MCA policies to support their responsibilities.

1. What is the funding for?

Funding of £5.4m is being made available in April 2013 to local authorities to support them in extending their statutory role in the deprivation of liberty safeguards (DOLS) to include assessing and authorising DOLS in hospitals.

This is in addition to the existing local authority MCA and DOLS funding which is part of general local government allocations.

2. How is the funding allocated?

Funding for existing MCA and DOLS responsibilities

Funding for existing MCA and DOLS responsibilities for local authorities is contained within the general local government Formula Grant. Since 2011/12, Formula Grant has included around £29 million of funding for these functions.

From next year, the Business Rates Retention Scheme (BRRS) will replace Formula Grant as the main source of funding for local government. The funding within Formula Grant is un-hypothecated (ie not ring-fenced).

Funding for new responsibilities for DOLS in hospitals

£5.4 million will be allocated to local authorities for DOLS in hospitals in 2013/14.

- £1.35 million of the £5.4m will be allocated as part of the Business Rates Retention Scheme. It will be contained within the Learning Disability and Health Reform funding stream, but will not be separately identified.
- £4.05 million of the £5.4m will be allocated as part of a new grant from the Department of Health. It will not be separately identified within the grant allocations.

To help local authorities to understand the resources they have available for DOLS in hospitals, we have provided indicative allocations at the end of this fact sheet. These should be treated as a guide only. They use data from the 2012/13 grant calculation, which will be updated prior to the 2013/14 allocations.

3. Are these resources ring-fenced?

No. Local authorities will be expected to risk assess this policy area and make decisions as part of their overall responsibilities to fund services to meet the needs of local people and communities.

4. What information is available to local authority senior managers who need to understand the policy area and know the funding that will be made available?

(1) The DOLS are part of the Mental Capacity Act (MCA) and the MCA Code of Practice is the foundation for all DOLS work. The five statutory principles remain very important. Local authority staff are expected to be confident and competent in assessing capacity; in carrying out Best Interests decisions with considerable input from family and friends; and understanding the practical meaning of the MCA requirement that all acts and decisions need to be done in ways that are less 'restrictive of a person's rights and freedom of action'. Local authorities should regularly audit their compliance with the MCA.

(2) The Deprivation of Liberty Code of Practice is still the most comprehensive description of the DOLS policy area. Additionally managers need to be up-to-date with current case law, as set out for example in the *Neary* case*. Managers need to review whether their DOLS offices meet all requirements, including the need for DOLS assessors and authorisers to be independent from service delivery; the ability for people who are deprived of their liberty to have access to meaningful reviews and whether learning from DOLS is fed back to senior managers and front line staff.

(3) The Information Centre publishes annual statistics on DOLS referrals and authorisations; these currently show a national year on year increase and also show comparative local authority statistics.

(4) This Funding Fact-sheet provides information on funding for DOLS.

5. How has the figure of £5.4m been arrived at?

The figure of £5.4m is based on current data on DOLS assessments in hospitals, our best estimate of future trends and a DOLS unit cost of £1200.

The unit cost is not the cost of each assessment; it is the total estimated cost of providing the DOLS service. This includes wider costs such as training BIAs and authorisers, awareness raising, mediation, DOLS audits of managing authorities, reviews of the DOLS-Supervisory Body service and Court of Protection costs where necessary.

This figure is greater than the figure published in the original impact assessment for DOLS. This is because at the time the impact assessment was carried out, there was no factual evidence on numbers or costs of unlawful detentions on which to base estimates of the cost. There is now better information available on which to base revised estimates.

Local authorities will be receiving their proportion of the £5.4m as set out in the Annex to this fact-sheet, as well as funding for existing MCA & DOLS responsibilities within general local government allocations.

6. What funding will be available to local authorities for DOLS in hospitals in 2014/15?

The provisional additional allocation for DOLS in hospitals for 2014/15 is £6.2m. Funding for DOLS from 2015 onwards will be determined as part of the next spending review.

7. Will the NHS continue to receive resources for MCA and DOLS?

The allocation to the NHS for assessing and authorising patients for the DOLS will cease. The NHS allocation for MCA (which is the larger component of the MCA-DOLS resources) will continue.

Hospitals remain responsible for being compliant with and having a good understanding of their statutory responsibilities in the MCA and DOLS, including making relevant and timely referrals to Supervisory Bodies for the DOLS and adhering to any DOLS conditions set.

Clinical Commissioning Groups will be responsible for commissioning MCA-DOLS compliant hospital care and will be responsible for ensuring that hospitals meet their statutory responsibilities to the two million patients who are without capacity to consent to care and treatment.

8. What makes a good Supervisory Body and a good DOLS Service?

Indicators of Quality

i) **Structural governance** – Is there clarity about who holds corporate responsibility for MCA / DOLS functions; and clarity that the DOLS supervisory body functions need to be independent of service delivery?

ii) **Regulatory compliance** – Is there good understanding and compliance with regulations? Are assessors trained, supervised and commissioned in accordance with regulatory requirements? Is information available on how many times a managing authority has been asked to extend an urgent authorisation and the reasons for this? Do Local Authority contracts specify compliance with the DOLS regulations? How are unauthorised deprivations of liberty managed (ie where best interests assessments find that deprivation is occurring though not in P's best interests)?

iii) **Use of case law** – Is there evidence that case law decisions are incorporated into assessments and authorisations and training?

iv) **Monitoring and evaluating the DOLS process** –Is this done, possibly by peer authorities with an independent component, for example an IMCA? Are the results of the process shared with senior management and concerns acted on? How is it evidenced that the signatory has scrutinised the authorisation forms? Is information kept on instances where the signatory has varied conditions or timescales? Is information kept on referrals and outcomes of assessments of unauthorised deprivations of liberty?

v) **Do the assessments demonstrate empowerment?** Is there evidence that P has been empowered and assisted to share his/her views; that P's wishes and feelings have been listened to and actively considered as key components of each assessment and review? How empowering is the DOLS process for 'P' and the family? Do capacity assessments and best interests assessments record attempts made to maximise residual capacity and involvement in care/treatment arrangements?

vi) **Reviews** - Is the DOLS service certain that P and the RPR understand that they can request reviews of any of the assessments at any time? Does the DOLS service facilitate such requests eg by accepting telephone requests? Does the DOLS service offer reviews where assessors, the managing authority, s39D IMCA, P or relatives, friends, RPRs show disquiet? Does the DOLS service have a policy of sending different assessors to review? Is information available on how many reviews are requested, how many carried out, and how many result in changes such as lifting of the authorisation?

vii) **Partnership working** - Is there evidence of good relationships/ partnerships with P, RPRs and IMCAs? Does the DOLS office inform and support RPRs and IMCAs to carry out their roles? Does the supervisory body check with the managing authority that the RPR role is being

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fulfilled in practice? What support is offered to RPRs who may have difficulty fulfilling the requirements of the role? How is the appointment of the RPR scrutinised by the Supervisory Body signatory? Are section 39D IMCAs commissioned for each authorisation granted?

viii) **Feedback/ & Learning for local authorities**– Is the learning from MCA and DOLS identified? Is this learning fed back into care management by authorisers and others, to improve social work and care management in local authorities? How is data on DOLS activity shared and used within the organisation?

ix) **Feedback & Learning for Managing Authorities:** Is the learning fed back into improving the care offered in managing authorities - in both care homes and hospitals? Does it become part of MCA training? What mechanisms are used to facilitate learning in managing authorities?

x) **Is there joint local strategic leadership from LAs, CCGs, Hospital Clinical Governance teams and the CQC, related to the MCA and DOLS?** Does this leadership provide clear messages on the importance of using a human rights framework within both health and social care? Are there forums to facilitate relationships and the on-going implementation of the DOL safeguards?

* www.judiciary.gov.uk/media/judgements/.../neary-judgement-090620

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Illustrative allocation of additional DOLS funding for 2013/14.

There will be a total of £5.4m funding for the new LA DOLS SB role in relation to hospitals in 2013/14, and the table below provides illustrative allocations. These should be treated as a guide by local authorities, as they use data from the 2012/13 grant calculation which will be updated prior to the 2013/14 allocations. This funding is in addition to the funding for the LA MCA role and the LA DOLS SB role in relation to care homes, both of which will continue within general local government allocations.

<u>ACCT</u>	<u>Local authority</u>	<u>Illustrative Allocation</u>
R383	Barking and Dagenham	£19,959
R384	Barnet	£32,337
R349	Barnsley	£28,390
R602	Bath & North East Somerset	£16,455
R679	Bedford	£14,076
R385	Bexley	£20,016
R358	Birmingham	£127,230
R659	Blackburn with Darwen	£16,854
R660	Blackpool	£20,120
R334	Bolton	£30,815
R622	Bournemouth	£19,216
R642	Bracknell Forest	£8,087
R365	Bradford	£52,096
R386	Brent	£28,048
R625	Brighton & Hove	£27,129
R603	Bristol	£46,344
R387	Bromley	£26,395

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R633	Buckinghamshire	£37,858
R335	Bury	£18,458
R366	Calderdale	£21,078
R663	Cambridgeshire	£52,396
R371	Camden	£28,594
R680	Central Bedfordshire	£18,942
R677	Cheshire East	£32,593
R678	Cheshire West and Chester	£32,900
R370	City of London	£2,000
R672	Cornwall	£64,635
R359	Coventry	£35,083
R388	Croydon	£30,877
R412	Cumbria	£57,943
R624	Darlington	£11,347
R621	Derby	£26,557
R634	Derbyshire	£83,427
R665	Devon	£80,743
R350	Doncaster	£33,732
R635	Dorset	£42,868
R360	Dudley	£35,573
R673	Durham	£64,151
R389	Ealing	£30,861
R610	East Riding of Yorkshire	£33,272
R637	East Sussex	£57,311
R390	Enfield	£28,825

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R666	Essex	£134,856
R353	Gateshead	£25,346
R419	Gloucestershire	£56,435
R372	Greenwich	£28,908
R373	Hackney	£30,343
R650	Halton	£14,278
R374	Hammersmith and Fulham	£20,546
R638	Hampshire	£105,873
R391	Haringey	£24,566
R392	Harrow	£21,599
R606	Hartlepool	£10,967
R393	Havering	£22,156
R656	Herefordshire	£19,733
R422	Hertfordshire	£91,870
R394	Hillingdon	£22,649
R395	Hounslow	£21,252
R601	Isle of Wight Council	£17,786
r403	Isles of Scilly	£2,000
R375	Islington	£26,927
R376	Kensington and Chelsea	£22,797
R667	Kent	£135,860
R611	Kingston upon Hull	£33,911
R396	Kingston upon Thames	£12,636
R367	Kirklees	£41,671
R344	Knowsley	£22,578

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R377	Lambeth	£32,922
R668	Lancashire	£124,843
R368	Leeds	£77,699
R628	Leicester	£35,303
R639	Leicestershire	£53,850
R378	Lewisham	£30,306
R428	Lincolnshire	£75,821
R345	Liverpool	£67,186
R619	Luton	£17,020
R336	Manchester	£61,305
R658	Medway	£21,486
R397	Merton	£17,024
R607	Middlesbrough	£17,267
R620	Milton Keynes	£20,221
R354	Newcastle upon Tyne	£34,253
R398	Newham	£29,363
R429	Norfolk	£95,043
R612	North East Lincolnshire	£17,486
R613	North Lincolnshire	£17,007
R605	North Somerset	£21,308
R355	North Tyneside	£23,290
R618	North Yorkshire	£55,125
R430	Northamptonshire	£61,057
R674	Northumberland	£34,524
R661	Nottingham	£35,356

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R669	Nottinghamshire	£80,373
R337	Oldham	£25,218
R434	Oxfordshire	£51,074
R649	Peterborough	£17,300
R652	Plymouth	£29,458
R623	Poole	£14,140
R626	Portsmouth	£20,102
R644	Reading	£12,725
R399	Redbridge	£24,284
R608	Redcar and Cleveland	£16,310
R400	Richmond upon Thames	£14,667
R338	Rochdale	£24,818
R351	Rotherham	£30,514
R629	Rutland	£3,001
R339	Salford	£29,993
R361	Sandwell	£41,106
R347	Sefton	£34,449
R352	Sheffield	£63,178
R675	Shropshire	£31,217
R645	Slough	£11,362
R362	Solihull	£19,152
R436	Somerset	£56,311
R604	South Gloucestershire	£21,038
R356	South Tyneside	£20,738
R627	Southampton	£25,813

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R654	Southend-on-Sea	£18,441
R379	Southwark	£35,675
R346	St Helens	£21,997
R640	Staffordshire	£79,977
R340	Stockport	£29,063
R609	Stockton-on-Tees	£18,986
R630	Stoke-on-Trent	£30,542
R438	Suffolk	£73,547
R357	Sunderland	£36,046
R439	Surrey	£88,173
R401	Sutton	£16,482
R631	Swindon	£16,944
R341	Tameside	£26,381
R662	Telford and the Wrekin	£17,646
R655	Thurrock	£15,182
R653	Torbay	£19,301
R380	Tower Hamlets	£30,837
R342	Trafford	£21,501
R369	Wakefield	£38,205
R363	Walsall	£31,973
R402	Waltham Forest	£22,847
R381	Wandsworth	£28,518
R651	Warrington	£18,722
R440	Warwickshire	£50,399
R643	West Berkshire	£10,958

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R441	West Sussex	£73,137
R382	Westminster	£32,432
R343	Wigan	£36,264
R676	Wiltshire	£40,363
R646	Windsor and Maidenhead	£10,355
R348	Wirral	£40,760
R647	Wokingham	£8,900
R364	Wolverhampton	£31,076
R671	Worcestershire	£54,142
R617	York	£16,688