



Corby

Clinical Commissioning Group



Nene

Clinical Commissioning Group

NHS Northamptonshire Clinical Commissioning Group

Continuing Healthcare and Complex Adults Patient Choice and Equity Policy

**Approved by the Joint Quality Committee
On behalf of the Governing Bodies of the
Northamptonshire Clinical Commissioning Groups**

Review Date: October 2020

PREFACE

The purpose of this policy is to detail the Continuing Healthcare and Complex Adults Patient Choice and Equity Policy within Northamptonshire.

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Policy statement:	This policy describes the way in which the Northamptonshire CHC Team on behalf of the Northamptonshire Clinical Commissioning Groups (NCCG) will commission care for people who have been assessed as eligible for fully funded NHS Continuing Healthcare and other individuals in scope. The policy describes the way in which the CHC team will procure care in a timely manner which reflects the choice and preferences of individuals, but balances these with the NCCG responsibility to commission care that is safe, effective and makes best use of available resources across the system.
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Equality Statement

Nene and Corby CCGs are committed to ensuring equality of access and non-discrimination.

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1 INTRODUCTION

- 1.1 This policy describes the way in which the Northamptonshire Continuing Healthcare Service (the '**CHC SERVICE**') on behalf of the Northamptonshire Clinical Commissioning Group will make provision for the care of people who have been assessed as eligible for fully funded NHS Continuing Healthcare. This policy is also applicable to individuals described within the scope at paragraph 2.1 below. This policy describes the ways in which the CHC SERVICE will procure and provide care in a timely manner that reflects the choice and preferences of individuals and balances the need for commissioners to procure quality care in line with best use of the resources available.
- 1.2 Throughout this policy, the term "NCCG" refers to either NHS Nene CCG or NHS Corby CCG depending on which CCG is applying the policy.

2 SCOPE

- 2.1 This policy is applicable to individuals who are eligible for care provision funded by the NHS and for whom the CCG is the responsible commissioner. This policy therefore applies to individuals funded through, but not exclusively:
- NHS Continuing Healthcare;
 - Individual Patient Placements i.e. rehabilitation placement;
 - Section 117 aftercare arrangements where there is a 100% contribution from the CCG;
 - Jointly funded packages of care with the local authority; and
 - Personal Health Budget
- 2.2 It is not expected that this policy would apply to individuals in receipt of Funded Nursing Care, as the registered nursing care contribution is a set amount and non-negotiable within a care home with nursing facility.
- 2.3 NHS Continuing Healthcare ('**CHC**') means a package of continuing care arranged and funded solely by the NHS where the individual has been found to have a 'primary health need' as set out in the National CHC Framework (2018). The actual services provided as part of that package should be seen in the wider context of best practice and service development for each client group. Eligibility places no limits on the settings in which the package of support can be offered, on the type of service delivery and including the use of assistive technology.
- 2.4 Individuals receiving CHC have some of the most clinically complex and severe health needs within the local population. Some are receiving end of life care and in other cases, people's needs may change to the extent that they are no longer eligible for CHC funding. In the delivery of CHC, the CHC SERVICE on behalf of NCCG has to ensure consistency in the application of the national framework whilst, implementing and maintaining good practice, ensuring quality standards are met and sustained.
- 2.5 This policy ensures that individuals in scope in Northamptonshire will receive care in line with the principles listed below:
- The CHC SERVICE on behalf of NCCG has the duty to consider the best use of resources for the population of Northamptonshire whilst meeting the assessed health needs of an individual. Therefore, options will always be considered to meet the identified health needs of an individual who is eligible for CHC, and the CHC SERVICE will always consider the most cost effective option to meet the patient's needs;
 - Equality of individuals will be upheld and any agreements will not be discriminatory;

- The CHC SERVICE on behalf of NCCG has a prime responsibility to ensure that services it procures are clinically appropriate and meet agreed quality standards. The safety, welfare and potential risks to the individual are taken into account in care purchased; and
- Personalisation of support and care for an individual, are central to decision making, once the other principles above have been assured.

2.6 Application of this policy will ensure that decisions about care will:

- Be robust, fair, consistent and transparent
- Be based on the objective assessment of the person's clinical need, safety and best interests
- Have regard for the safety and appropriateness of care to the individual and staff involved in the delivery
- Be person-centred focusing on individual circumstances
- Involve the person and their family/representatives views wherever possible
- Take into account the need for NCCG to allocate its financial resources in the most cost effective and equitable way
- Be compliant with the Human Rights Act 1998 and the Equality Act 2010
- Support choice to the greatest extent possible in view of the above factors.

3 THE NATIONAL FRAMEWORK FOR NHS CHC AND FUNDED NURSING CARE

3.1 The National Framework says:

“Where an individual is eligible for NHS continuing healthcare, the CCG is responsible for care planning, commissioning services and for case management. It is the responsibility of the CCG to plan strategically, specify outcomes and procure services, to manage demand and provider performance for all services that are required to meet the needs of all individuals who qualify for NHS continuing healthcare, and for the healthcare part of a joint care package. The services commissioned must include on-going case management for all those entitled to NHS continuing healthcare, as well as for the NHS elements of joint packages, including review and/or reassessment of the individual's needs.” (paragraph 108)

4 ROLE AND RESPONSIBILITIES

4.1 The CHC SERVICE on behalf of NCCG has an on-going responsibility to fund under continuing healthcare all individuals outside hospital settings whose primary need is for healthcare. Anyone can qualify for NHS Continuing Healthcare as long as their assessed needs meet the eligibility criteria. This care can be provided in any setting and includes funding for social, personal, nursing, medical care and, if within a care home, reasonable accommodation costs. The CHC SERVICE on behalf of NCCG will establish the costs for these services with the service provider in line with the care plan.

4.2 The CHC Clinical Team forms part of the multi-disciplinary team (**'MDT'**) from health and social care. They carry out the assessment for CHC within care homes and in the community and work with the Local Authority to collate assessments using the Decision Support Tool (**'DST'**) and are also responsible for on-going case management and review of eligible clients.

- 4.3 All cases are ratified by NCCG who will ratify the MDT recommendations of eligibility recorded on the DST.

5 MEETING ASSESSED CARE NEEDS

- 5.1 Where an individual is eligible for CHC, the NCCG agrees to commission a package of care which meets the individual's reasonable, assessed healthcare and associated social care needs.
- 5.2 Once an individual has been determined eligible to receive CHC, their allocated case manager will discuss options on how this is funded with the individual or, if they are assessed as lacking capacity to make decisions about their residence and/or care, with their representative (See Section 6).
- 5.3 The NCCG will take into account any reasonable request from the individual and their representative(s) in making the decision about which package(s) to offer.
- 5.4 Individuals requiring placements through the Fast Track pathway will usually be offered choice; however, due to the required speed of the procurement process time is of the essence along with considering availability and relative costs of providers at that time, this may be restricted.
- 5.5 There is a need to balance personal choice and person-centred decision-making alongside safety and the effective and equitable use of finite resources in the provision of CHC services. All decisions should be made in accordance with the Equality Act 2010.
- 5.6 All procurement decisions need to be able to demonstrate transparency and fairness in the allocation of resources.
- 5.7 NCCGs duty is to provide a care package to meet the needs of patients as assessed by the relevant professionals. When considering the options, the clinical feasibility (i.e. the ability of the package or placement to meet the care needs), safety, affordability and sustainability of the package or placement will be discussed with the individual/their representative.
- 5.8 The CHC SERVICE will consider available options for consistently meeting the assessed support and care needs of the individual. The CHC SERVICE will, where possible, accommodate the wishes of the individual and their family/carer when arranging the location of care. However, the CHC SERVICE is only obliged to provide services that meet all reasonable requirements of a care package that fully meets the individual's current assessed needs. They are also obliged to make best use of public funds and all family requests may not be agreed. This will always be explained to families.
- 5.9 A notional budget which NCCG reasonably considers sufficient to fund a care package to meet the individual's assessed needs will be identified by the NCCG. The CCG uses a PHB calculator based on local care costs to calculate this.

6 MENTAL CAPACITY

- 6.1 If an individual's condition affects their ability to make decisions, a mental capacity assessment will be undertaken under the provisions of the Mental Capacity Act 2005 and in line with the guidance in the National Framework for NHS Continuing Healthcare and Funded Nursing Care October 2018.
- 6.2 If an individual is assessed as lacking capacity to make decisions and there is Deputyship for Health and Welfare in place, the Deputy will make the choice on behalf of the individual or an independent advocate will be offered to support the user in this process, under the provisions of the Mental Capacity Act 2005.

- 6.3 If the individual does not have the capacity to make an informed choice the CHC SERVICE will deliver the most cost effective, safe care available based on an assessment of best interests and in conjunction with any advocate, close family member or other person who should be consulted under the terms of the Mental Capacity Act 2005.

7 PROCUREMENT AND PLACEMENT OPTIONS

- 7.1 There may be several options appropriate to meet the individual's needs and these are likely to take two main forms:
- a) A registered care setting (such as a care home, or an independent hospital), or
 - b) Care provided in an individual's own home. Everyone requiring a domiciliary care package in their own home and in receipt of NHS Continuing Healthcare funding will be offered a Personal Health Budget by default.
- 7.2 The CHC provider will discuss the personalised option(s) with the individual and/or their representative where appropriate. Discussions will include, but are not limited to:
- Suitability of the care package to meet the individual's current care needs;
 - Suitability of the care package to meet the individual's likely future care needs;
 - Safety of the placement;
 - Sustainability of the placement;
 - The individual's preferences and circumstances;
 - Quality of the package of care; the contribution the proposed care package will make to the person's health and well-being
 - If relevant the willingness and ability of family/informal carers to provide elements of care and the agreement of those persons that the provision of such care will form an integral part of the care plan (note there is no obligation for family members to provide care, the decision is not dependent on this, but where an offer is made, the NCCG will take this into account as part of the care planning);
 - Geographical location of the care package;
 - The accessibility of the care package, particularly where public transport is required for family members to visit;
 - The acceptance by the individual/their representative of any identified risks, where plans to minimise such risks can be put in place, which are agreed by the individual, the care provider(s) and the NCCG;
 - The necessity of appropriate registration of a provider with the Care Quality Commission and assurance that the provider is not subject to any current enforcement action or under suspension with the NCCG; or relevant local authority. The requirement for a provider to hold an appropriate contract with the CCGs where a service is directly commissioned (i.e. not via a direct payment/PHB);
 - Availability of primary health care support from GP;
 - The extent to which any proposed care package would interfere with an individual's rights and the rights of their family and carer under the ECHR and whether any interferences are lawful;
 - The public sector equality duty under s.149 of the Equality Act 2010; and
 - The cost of different options of meeting the specific needs of the individual patient

8 CARE PACKAGE AT A REGISTERED CARE SETTING

- 8.1 Where an individual has been assessed as needing a nursing home placement, the CHC SERVICE will work with the individual and family/ carer to identify a suitable registered care placement and will endeavor to provide a reasonable choice of placements and discuss the placements with the individual and/or family.
- 8.2 The individual or their family/representative may wish to identify another placement which is within the individual's notional budget and the NCCG will agree to this placement provided it can safely and sustainably meet the individual's assessed needs within the required quality criteria and the Provider signs up to NCCG's proposed terms and conditions for the placement.
- 8.3 Decisions on placements of the individual's' choice will take in to account the individuals assessed needs and personal circumstance, and the cost based on alternative equally suitable provision which is subject to capacity and availability.
- 8.4 NCCG can only commission care from providers that are registered with the Care Quality Commission (CQC).
- 8.5 The NCCG will not be prepared to fund a package of care in a registered care setting which the NCCG determines is unable to satisfy the individual's reasonable identified care needs.
- 8.6 Where, immediately prior to being found eligible for CHC, an individual is residing in such a care home and that individual does not wish to move, the CHC SERVICE will undertake a clinical assessment of the individual to consider the clinical or psychological risk of a move to an alternative placement and consider all areas detailed in this policy. However ability of the provider to safely meet assessed needs will also be considered, particularly where the person is residing in a residential care home has been assessed as requiring nursing care.
- 8.7 NCCG will not fund a placement where the requested care home is not the most suitable place for the provision of care and the care package can only be provided safely or resiliently at the current home with additional staffing at significant extra cost to NCCG.
- 8.8 Exceptional circumstances would, in general, be considered for providing funding 10% above the agreed notional budget. However, equity of provision and the wider community health needs cannot be ignored. Exceptionality will be considered on a case-by-case basis and through the CHC High Cost Panel.

9 CARE PACKAGE AT HOME.

- 9.1 People who are eligible for continuing healthcare funding have a complexity, intensity, frequency and/or unpredictability in their care needs which means it can be less common for care to be safely delivered at home. The CHC SERVICE will consider if care can be delivered safely to the individual and without undue risk to the individual, the staff or other members of the household (including children). Safety will be determined by a written assessment of risk undertaken by an appropriately qualified professional. The risk assessment will include the availability of equipment, the appropriateness of the physical environment and the availability of appropriately trained care staff and/or other people to consistently deliver the care at the intensity and frequency required.
- 9.2 Many individuals wish to be cared for in their own homes rather than in a care home, especially people who are in the terminal stages of illness. Individual's choice of care setting should be taken into account.

- 9.3 There will be circumstances whereby an individual's needs are most appropriately met within a care home setting. Placements in a registered setting may be more appropriate for individuals who have complex and high levels of need. Placements benefit from direct oversight by registered professionals and the 24 hour monitoring of individuals. The general assumptions are set out below. However, NCCG will take into consideration all relevant circumstances to establish whether these assumptions can be displaced:
- A package in excess of eight hours a day would indicate a high level of need which may more appropriately be met by a placement in a registered care setting;
 - Individuals who need waking night care would generally be more appropriately cared for in a registered care setting. The need for waking night care indicates a high level of supervision at night.
- 9.4 Where the individual has expressed a choice for a home package of care, and the total cost of this home package of care is more than 10% higher than other suitable alternatives in a registered care setting, the decision on whether to fund the home package of care will need to be considered and approved by CCG's CHC High Cost Panel;
- 9.5 Where the decision is made to refuse a home package of care, the decision-maker will need to be satisfied that any interference with the individual's right to a family and private life is necessary and proportionate taking into account the individual circumstances of the individual concerned, and the impact on NCCG's ability to meet other obligations on it in respect of patient care for others
- 9.6 NCCG can only commission care from care agencies that are registered with the Care Quality Commission (CQC).

10 NCCG PREFERRED HOME CARE PROVIDERS

- 10.1 The CCG has a list of preferred providers for home care packages. This has been compiled through a procurement process to determine their level of quality, safety and efficiency.
- 10.2 To assist in achieving consistent, equitable care, the CHC SERVICE will endeavor to offer and place individuals with the preferred providers.
- 10.3 Though all reasonable requests from individuals and their families will be considered, NCCG is not obliged to accept requests from individuals for home care providers which have not been procured as preferred providers.
- 10.4 Where a preferred provider is not available to meet the individual's reasonable requirements, the NCCG may make a specific purchase and commission another care provider who meets the individual's needs. Where such an arrangement has been agreed the NCCG reserves the right to review the individual circumstances of the care package at any time. Any subsequent decision to change the care provider to a preferred provider that is more cost-effective will only be made upon consideration of all the factors. The NCCG should notify the individual and/or their representative(s) that the care provider will be reviewed and the factors that will be considered in reaching a decision.

11 PROPERTY REQUIREMENTS FOR PACKAGES OF CARE

- 11.1 Where the individual requires any particular equipment then this must be able to be suitably accommodated within the home

- 11.2 NCCG is not responsible for any alterations required to a property to enable a home care package to be provided. For the avoidance of doubt, where an individual or representative has made alterations to the home but NCCG has declined to fund the package, NCCG will not provide any compensation for those alterations.
- 11.3 NCCG's duty to fund services does not extend to funding for the wide variety of different, non-health and non-associated social care related services that may be necessary to maintain the patient in their home environment. (E.g. Food, rent, mortgage interest, fuel, clothing and other normal household items) Should NCCG identify that such basic needs are not going to be (or have not been) properly met, NCCG may find that 'care at home' is not or no longer appropriate.

12 HIGH COST PANEL

- 12.1 The High Cost Panel constituting of senior clinician from the CHC provider and the CCG will meet weekly to consider funding using the factor identified on 7.2.
- 12.2 If the High Cost Panel upholds the decision of the CHC team, the individual or their representative will be advised of this by the CHC provider and of their right of complaint, through NCCG complaints process. If the complaint cannot be resolved locally the individual or their representative can be referred directly to the Health Service Ombudsman.

13 THIRD PARTY TOP UP FEES (PAYING FOR ADDITIONAL CARE)

- 13.1 Access to NHS services depends upon clinical need, not ability to pay. The CHC SERVICE will not charge a fee or require a co-payment from any NHS patient in relation to meeting the assessed health needs. The principle that NHS services remain free at the point of delivery has not changed and remains the statutory position under the NHS Act 2006.
- 13.2 An individual's health needs are assessed under the National NHS CHC framework; the person may choose to use personal funds to take advantage of other services. This will be considered as a private arrangement between the individual and the provider (usually a Care Home).
- 13.3 Where an individual wishes to augment any CHC funded care package to meet their personal preferences, they are at liberty to do so. However, this is provided that it does not replace or conflict with elements of care funded by CHC within the assessed care plan, or compromise the safety and well-being of the patient. Examples that may be permitted arrangements include hairdressing, massage reflexology, beauty therapies or perhaps sitting services if care is being delivered at home. If additional services are purchased outside of the care plan the individual has a duty to inform NCCG to ensure it can assess against any potential conflict of the care plan.
- 13.4 The decision to purchase additional private care services must be entirely voluntary for the individual. The provision of the CHC package must not be contingent on or dependent on the individual or their representative(s) agreeing to fund any additional services. This means that the package of care must be able to deliver the assessed CHC needs to the individual, without the package being supplemented by other services.
- 13.5 It is essential NCCG is aware of all top up arrangements made between the individual and the provider and that both the provider and individual are fully aware that this arrangement is separate from the CHC funded care package for assessed health need, this applies to care provided in a nursing home or the person's home.

14 REFUSAL OF NHS FUNDING

- 14.1 An individual retains the right to decline NHS services and make their own privately funded arrangements.
- 14.2 NCCG will consider that it is a refusal of NHS Services where the CCG has offered the individual what it considers is an appropriate care package to meet the individual's assessed needs and this is not accepted by the individual or their representative (including where the individual has requested a particular package or provider and NCCG has taken a decision that the package will not be commissioned but offered an alternative package of care or provider).
- 14.3 Where there appears to be a refusal, the NCCG will write to the individual (and/or representative) with a final offer letter setting out the care packages that NCCG is willing to consider and the consequences of not accepting these options. In this letter NCCG will provide a period of no less than 14 days for confirmation of acceptance of a package.
- 14.4 If the individual does not respond within the stated time period then NCCG will issue a Withdrawal of Care notice confirming that the NHS funding has been declined by the individual and NHS funding will cease from 28 days after the date of the Withdrawal of Care notice. This notice will be bespoke to each individual case and outline explicitly the reasons why payment is being withdrawn.
- 14.5 Where the individual or their family/representative choose to turn down CHC funding they will not be able to access local authority funding for the care and will need to make private arrangements.
- 14.6 If after a Withdrawal of Care notice the individual or their representatives want to access NHS services they remain entitled to do so and can re-enter the CHC process from the point of new referral.
- 14.7 NCCG will work within the guidance of the National Framework which states that neither the NHS nor a local authority should unilaterally withdraw from an existing funding arrangement without a joint reassessment of the individual, and without first consulting one another and the individual about the proposed change of arrangement.

15 REVIEW OF NHS CONTINUING CARE SUPPORT

- 15.1 All individuals will have their care reviewed at three months and thereafter on at least an annual basis or sooner if their care needs indicate that this is necessary. Individuals with palliative care needs will have their care reviewed more frequently in response to their medical condition if required.
- 15.2 The individual and/or their representative will be notified of proposed reviews, and involved when appropriate.
- 15.3 The review may result in either an increase or a decrease in support offered and will be based on the assessed need of the individual at that time.
- 15.4 On occasions, the individual's condition may have changed to such an extent that a different care package is required or that the individual no longer meets the eligibility criteria for CHC
- 15.5 Where eligibility ceases, the CHC SERVICE will no longer be required to fund the service. Where an individual is no longer eligible for CHC funding, NCCG will issue a Withdrawal of Care notice providing 5 days' notice of cessation of funding to the individual or their representative and the appropriate local authority. This notice will be bespoke to each individual case and outline explicitly the reasons why payment is being withdrawn.

- 15.6 Any on-going package of care that is needed may qualify for funding by the local authority and the individual will be referred to the local authority to assess their needs against the Care Act. This may mean that the individual will be charged for aspects of their ongoing care or may need to fully fund their ongoing care. Where possible, transition to local authority care will be managed by agreement between the respective authorities.

16 EXISTING ARRANGEMENTS

- 16.1 When an individual is receiving support from a local authority via a 'Direct Payment' and they become eligible for CHC, the responsibility for the total care passes to the NHS. A Personal Health Budget ('PHB') will be offered to a service user previously in receipt of a direct payment.
- 16.2 In the event that a patient becomes CHC eligible, who was previously funded by social services, NCCG will apply the same principles as for other patients and this Policy will apply. Namely, that NCCG has a duty to consider the best use of resources for their population whilst meeting the assessed healthcare needs of an individual. NCCG will seek to provide this care with the least disruption to the individual; however in the event that the CHC clinical team consider that these needs cannot be met safely or if the CHC team consider that the costs of continuing to meet needs is in excess of the notional health budget then NCCG reserves the right to commission alternative care to meet all reasonable requirements of the individuals care package and assessed need or to ask the NCCG's High Cost Panel to consider the matter.

17 APPEAL / COMPLAINTS

- 17.1 Appeals against an eligibility decision are outside the remit of this policy and will follow the individual challenge process as stated in the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care October 2018 (Revised)
- 17.2 If the High Cost Panel upholds the decision of the CHC team, the individual or their representative will be advised of this by the CHC provider and of their right of complaint, through NCCG complaints process. If the complaint cannot be resolved locally the individual or their representative can be referred directly to the Health Service Ombudsman.

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