

**Policy Statement No. Salford Clinical Commissioning Group****Policy on the Commissioning of****NHS Continuing Healthcare for Adults:****Assuring Equity, Choice and Value for Money**

Lead for development & revisions to this policy	Jacque Purser
Executive sponsor	Anthony Halsall
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## 1. Introduction

The context for this Policy is provided in the form of The National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care (Department of Health, 2009).

*Salford Clinical Commissioning Group* (the “Commissioner”) will continue to apply the principles and guidance within The National Framework in its assessment and decision making processes with regard to the eligibility of individuals to have their care needs met through the use of NHS funding.

This Policy recognises that the Commissioner has an obligation to commission care for adults eligible to have such care fully funded by the NHS under the Continuing Healthcare (Responsibilities) Directions 2009.

This Policy sets out how the Commissioner will meet this obligation in a manner which appropriately balances the choices that may be offered to Eligible Individuals and the preferences expressed by such individuals with the duties of the Commissioner to make best use of NHS resources.

This Policy provides the basis on which the Commissioner will commission NHS Continuing Healthcare in a manner to ensure equity of access to care services which are appropriate, safe and compliant with relevant quality standards.

This Policy promotes consistency of decision making and transparency in how the Commissioner will comply with its obligations as a commissioner of NHS funded services.

## 2. Definitions

**‘Continuing Care’** - refers to care provided over an extended period of time to a person aged 18 or over, to meet physical and/or mental health needs which have arisen as a result of disability, accident or illness.

**‘NHS Continuing Healthcare (or “CHC”)**’ - refers to a package of continuing care that is commissioned (arranged and funded) by or on behalf of the NHS.

**‘The National Framework’** – refers to The National Framework for NHS Continuing Healthcare and NHS funded Nursing Care (published by the Department of Health 2009) which provides the context for the commissioning of NHS Continuing Healthcare, providing clarity and consistency of decision making in regard to eligibility and setting out the systems and processes to be used by the NHS.

**‘Eligible Individual’** - shall within this Policy refer to an individual who has been assessed by the commissioner under The National Framework to qualify to have their assessed health and social care needs met and fully funded by the NHS.

## 3. Principles

When commissioning care services for Eligible Individuals, the Commissioner will apply the following principles:

- i. That care needs assessed under the CHC National Framework will be met;

- ii. That there will be non-discriminatory equity of access to care services;
- iii. That the safety and welfare of individuals will be assured through care services which are clinically safe and compliant with good practice and essential standards;
- iv. That legal obligations will be fulfilled including specifically the NHS Continuing Healthcare (Responsibilities) Directions 2009;
- v. That individuals' views as to their choice of care setting, particularly when nearing the end of their life will be fully considered;
- vi. That good practice will be followed with regard to the commissioning of personalised support and care; and
- vii. That NHS resources will be utilised effectively and efficiently to commission in the most cost effective manner, care services which are reasonable and affordable.
- viii. The 'fast track' pathway tool will be applied where the Eligible Individual's clinical condition is either rapidly deteriorating or may be entering a terminal phase.

## 4. Roles and Responsibilities

### 4.1 The Commissioner

The Commissioner has an obligation to meet the assessed care needs of Eligible Individuals in a way that is considered to be reasonable and affordable whilst also in accordance with the Commissioner's relevant legal obligations.

The Commissioner will maintain transparent and robust processes to ensure that the assessment of an Eligible Individual's care needs complies with the National Framework.

When considering how and what care services can be commissioned, the Commissioner has a responsibility toward taxpayers to comply with its own Standing Financial Instructions to ensure that commissioning decisions take full account of the most cost effective options available, whilst also ensuring the assessed care needs of Eligible Individuals are met.

The Commissioner will consider the appropriateness of funding care services from a variety of care settings which may include an individual's own home or a residential setting. In the case of a residential setting, such as for example a Care Home, the Commissioner will also fund reasonable accommodation (board and lodging) costs.

The Commissioner will make a reasonable offer of care to Eligible Individuals, which is able to meet care needs assessed under The National Framework, complies with its own Standing Financial Instructions and takes account of the rights and preferences of the individual.

The Commissioner will undertake audits of this Policy to determine the extent to which it is delivering choice, equity and value for money in the delivery of NHS Continuing Healthcare to Eligible Individuals.

## 4.2 Delegation of Roles

### 4.2.1 Continuing Healthcare / Complex Care Team

The Commissioner delegates responsibility to a Senior Clinician with a responsibility for CHC to head a Continuing Healthcare / Complex Care Team.

The Senior Clinician ensures that with regard to the commissioning of CHC:

- The Commissioner complies with The NHS Continuing Healthcare (Responsibilities) Directions 2009 and specifically The National Framework and relevant decision support tool;
- There is adherence to this Policy and other policies of the Commissioner;
- Where there is a need to assess an individual's eligibility to have their needs fully funded by the NHS, that arrangements are made for a multi-disciplinary team (the 'MDT') to undertake such assessment, ensuring that such assessments are:
  - coordinated by the Continuing Healthcare/Complex Care Team;
  - undertaken by an MDT having the appropriate mix of clinicians and practitioners from health and social care relevant to the individual's circumstances;
  - undertaken in line with The National Framework and using associated statutory documentation; and
  - are referred in good time to the Commissioner.

### 4.2.2 Multi-disciplinary Team (MDT)

The MDT undertaking an assessment of an individual's eligibility to have their care needs met fully through NHS funding will:

ensure that the assessment is conducted thoroughly in line with the National Framework and relevant legislation (such as Mental Capacity Act 2005):

include an appropriate mix of clinicians and practitioners representing health and social care interests relevant to the individual's circumstances, notifying the Senior Clinician responsible for CHC where further input is identified as necessary in order to comprehensively complete the assessment;

use statutory documentation to formally record each assessment;

Take account of all relevant factors including where appropriate risk assessment: and

provide full documentary evidence of the assessment and a clear recommendation as to whether, in the assessment of the MDT, an individual should have their care needs met through NHS funding.

### 4.2.3 Commissioner Review

The Commissioner will consider the evidence for and appropriateness of individuals' eligibility to have their assessed care needs met through NHS funding.

The Commissioner will scrutinise the evidence gathered and reported by the MDT following their assessment process and give careful consideration to the recommendation made by the MDT. Where considered necessary, the Commissioner may request the MDT to undertake further assessment or to provide further evidence in regard to individuals' assessed needs.

The Commissioner carries the legal responsibility to make a decision regarding individuals' eligibility and will provide a reasoned decision. Where in the exception the recommendation of the MDT is not followed, the commissioner will provide reasons as to why that is the case.

## 5. Provision

### 5.1 Decision Making Principles

The Commissioner is committed to commissioning care services that meet clinically acceptable quality of care standards and that evidence value for money.

The Commissioner intends to make decisions with regard to Eligible Individuals that:

- are robust, fair, consistent and transparent;
- are based on objective assessments of individuals' clinical needs and safety;
- have regard for the safety and appropriateness of care services to those involved in delivery of such care;
- take into account all relevant factors
- involve the individual and family or appointed representatives wherever this is appropriate and possible;
- take account of the need to utilise NHS resources in the most cost effective manner;
- strive to support the offering of choices to individuals where it is reasonable and affordable to do so having regard to the above factors; and
- comply with relevant and applicable legislation (such as Mental Capacity Act and the Disability Discrimination Act).

### 5.2 Assessment of Provision

In line with The National Framework, the Commissioner will establish and operate assessment and decision making processes that are person centred.

The Commissioner will take account of the wishes, expectations and preferences of Eligible Individuals as to how and where their care is delivered. The

Commissioner will also take account of any risks associated with the care options proposed, as well as how the provision of care may impact upon the equity of access to NHS resources by the whole of the population for which the Commissioner is responsible.

Where appropriate Commissioners will take account of the views of the relevant family, carers or other individuals involved with the Eligible Individual

## 5.3 Arranging Provision

### 5.3.1 Framework for Decisions

Within the law, the Commissioner is the appointed body to determine the appropriate setting in which care may be provided for Eligible Individuals, but in so doing will take account of and consider all reasonable requests.

Whilst the NHS is responsible for funding care services to meet the assessed needs of Eligible Individuals, individuals or their family may decide that they wish to supplement the care being commissioned by directly funding additional services such as hair dressing; social outings; enhanced living accommodation (for example, where the NHS has commissioned care from a residential setting such as a Care Home).

The NHS Continuing Healthcare (Responsibilities) Directions 2009 provide that NHS Continuing Healthcare may be provided from any care setting. The Commissioner recognises its responsibility to ensure that care services commissioned for an Eligible Individual are safe, appropriate, meet assessed need and are reasonable and affordable.

The Commissioner will discuss care provision options including care settings with Eligible Individuals and where appropriate their family, carer, appointed representative or other relevant individuals and will take their views and preferences into account. Consideration will be given to any care options proposed on behalf of the individual which address the assessed care needs of the individual. Where there is a variation in the costs associated with different care options, the Commissioner will seek to accommodate the preferences of the individual as far as is considered reasonable and affordable to do so, to ensure that the obligation to meet the individual's assessed needs is met.

In considering the appropriate care setting and in order to make a reasonable offer of care for an Eligible Individual, The Commissioner will consider issues that may arise in relation to:

- Any valid and applicable **Lasting Power of Attorney** that may have been made by the Eligible Individual;
- Any valid and applicable **Advance Decision** (also known as a "living will" or "Advance Directive") that may have been made by the Eligible Individual.
- Any **Advance statement of wishes previously prepared by the Eligible Individual**

### 5.3.2 Domiciliary Care

Where consideration is being given to the commissioning of care from a proposed domiciliary care setting such as an Eligible Individual's own home, the Commissioner will consider the following factors before making a reasonable offer of care:

- Whether it is possible to commission care services within the proposed domiciliary care setting, which meet the assessed care needs of the Eligible Individual to standards acceptable to the Commissioner;
- Whether such care services can be delivered safely and without presenting an unacceptable level of risk to either the Eligible Individual or to those involved in the delivery of such care, or to any other person, including reference to the:
  - Availability of necessary equipment;
  - environment and the impact upon and of the location where care is to be provided; and the
  - availability of appropriately trained carers to deliver the required care.
- The extent to which such domiciliary care can reasonably be expected to benefit and enhance the quality of life of the Eligible Individual;

And

- To what extent if any, the delivery of care services within the proposed domiciliary care setting may incur additional costs to the NHS, such costs being over and above those that would otherwise be incurred through the provision of alternative care services such as residential care services and, whether such additional costs are considered to be reasonable and affordable.

Where the above factors within 5.3.2 have been carefully considered by the Commissioner and the case for care services being commissioned within a domiciliary care setting is not supported, the Commissioner will liaise with the Eligible Individual and where appropriate the family / advocate to consider an appropriate placement within a residential care setting, such as a registered Care Home.

### 5.3.3 Residential Care

When considering appropriate residential care settings such as a registered Care Home, the Commissioner has a responsibility to commission care that:



- is delivered from a provider suitably qualified and registered with the appropriate authorities to offer such care;
- is able to meet essential quality standards which are clinically acceptable;
- is able to provide the level of care that will sufficiently meet the assessed needs of the Eligible Individual;
- represents value for money to taxpayers; and
- can be commissioned using NHS contract terms and conditions which have been created to provide necessary safeguards for both the Eligible Individual and the NHS.

The Commissioner will use the above criteria to identify appropriate providers of care services and work with such providers in a timely manner to determine whether they are able to meet the assessed needs of the Eligible Individual including having the current capacity to offer accommodation.

Where there are two or more care providers able to meet the above criteria, the Commissioner will discuss the available choices with the Eligible Individual and where appropriate their family/carers.

Where the Commissioner determines that there is only one care provider able to meet the above criteria, a reasonable offer of care will be made to the Eligible Individual.

At all times, Eligible Individuals with capacity to make decisions about their residence, care and treatment retain their right to decline any offer made by the Commissioner and to make and fund their own private arrangements.

The Commissioner recognises that exceptional circumstances may require exceptional consideration but will retain its obligation to make best use of NHS resources on behalf of taxpayers. The Commissioner will consider **exceptionality** on a case by case basis.

#### **5.3.4 Change of Circumstance**

The NHS has a responsibility to regularly review the care needs of Eligible Individuals in, order to ensure that the care services being commissioned for them remain appropriate or to consider how those services may need to change. An initial review should take place 3 months after the first assessment. Thereafter care plans should be reviewed as a minimum on an annual basis. The outcome of such reviews should be adequately communicated to the Eligible Individual and where appropriate their family or carer.

Eligibility to have care funded by the NHS is not a permanent arrangement and remains subject to regular reviews and confirmation of continuing eligibility. The health and/or health needs of Eligible Individuals may improve or stabilise to the extent that they no longer meet the eligibility criteria for NHS Continuing Healthcare.



Where evidence no longer supports an individual's eligibility for NHS Continuing Healthcare, the Commissioner will review the case before making a decision and communicating this to the individual and or where appropriate their family or carer.

Details of individuals no longer eligible for NHS Continuing Healthcare will, with the consent of the individual, be forwarded to the Adult Social Services within the Local Authority so that an assessment can be arranged to determine the extent to which the individual may qualify for Social Services funded care. The Commissioner will liaise effectively and with sufficient notice with the Local Authority to ensure that any transition of responsibilities for commissioning care services are coordinated effectively by an appointed Case Manager and that there are no gaps in care provision.

Individuals no longer eligible for NHS Continuing Healthcare may be eligible for NHS Funded Nursing Care which will be considered by the Commissioner in accordance with The Framework.

### **5.3.5 Personal Health Budgets**

NHS rules allow NHS Commissioners to offer Eligible Individuals the opportunity to have their own Personal Health Budget (PHB) in certain situations.

#### **How PHB work**

The budget set for an individual will depend on their clinical need and may be available for both care within an individual's home and where care is provided within a residential setting. The principles of the CCG needing to demonstrate "Best Value" consideration will be given to the value of the PHB and whether the costs are reasonable and affordable.

Where a PHB is being agreed with an Eligible Individual, a support plan will be put into place which will include:

- Issues of importance to the individual;
- Changes to be achieved;
- Support to be provided to the individual and how this will be managed;
- How the budget will be used;
- How the individual will remain in control;
- How the individual will make it all happen.

There are three choices as to how a PHB may be managed:

- a) 'Direct Payment' – the money allocated to the individual's budget is given directly to the individual or their own representative who then uses that money to arrange the care required. This choice is currently only available to those NHS Commissioners that are involved in piloting PHBs.
- b) 'Virtual Notional Budget' – the individual is advised how much money is available for their care. The individual liaises with their Case Manager to

agree the best way to spend their budget. The Case Manager then arranges the care accordingly.

- c) 'Third Party Payment' – a 'third party', being separate from the NHS Commissioner and from the individual, manages the individual's budget on behalf of the individual.

### **5.36 Direct Payments**

Whilst government authorisation has been given to Social and Community Services within Local Authorities to make direct payments to individuals who qualify to receive Social Care funding, the NHS is not permitted within currently law to make direct payments to Eligible Individuals to enable them to directly purchase care services (except in the case of certain NHS Commissioners participating in the piloting of such Personal Health Budgets – see below).

The Commissioner can however, in the light of the preferences of Eligible Individuals, consider making arrangements to use Third Party Intermediaries or Independent Service User Trusts (as set out at 5.3.5 options a) and b) above) to facilitate continuity of care and flexibility in the provision where the Commissioner considers this to be clinically appropriate and reasonable to do so.

### **5.3.7 Mental Capacity**

Where there are concerns that an individual may not have capacity to make decisions with regard to how their care needs can be met, the Commissioner will arrange for a mental capacity assessment to be undertaken in accordance with the Mental Capacity Act 2005 and The National Framework.

Where an individual lacking capacity has no immediate family to support the decision making process, the Commissioner will offer, under the provisions of the Mental Capacity Act 2005 where appropriate, support from and consult with an independent advocate as part of its assessment of best interests (ordinarily this will either be an IMCA<sup>1</sup> or a suitable person from the local advocacy services, dependent upon the nature of the decision to be made).

Where the Eligible Individual is assessed to lack capacity to make decisions regarding their care, treatment and or residence, where appropriate and in accordance with the relevant legislation, the Commissioner will make decisions on their behalf on a best interests basis, As part of that process the Commissioner will follow the best interests checklist <sup>1</sup> set out under the Mental Capacity Act 2005 and will consult with all relevant individual, including the Eligible Individual before coming to a decision.

Where it is considered that a deprivation of liberty is required to provide the Eligible Individual with care services, an authorisation sought before any placement goes ahead.

### **5.3.8 Exceptional Circumstances**

The Commissioner accepts that on occasion there are exceptional circumstances which can affect the normal decision making process as outlined within this Policy. The grounds for and appropriateness of exceptionality will be determined by the merits of each case by the Commissioner.

## **6. Appeal**

In line with its legal obligations, Government guidance and this Policy, the Commissioner will make a reasonable offer of care to Eligible Individuals.

In the case of such offer either being considered to be inappropriate, unreasonable and/or unacceptable to the Eligible Individual, this should be notified to the Commissioner as soon as possible outlining the reasons or objections to the offer of care.

Upon receipt of a request to reconsider its offer of care, the Commissioner will arrange for a timely review to take place in regard to the decision making process for that particular case and the relevant factors informing the decision.

Following its review, where the Commissioner determines to uphold its decision and offer of care, this will be confirmed to the Eligible Individual, advising of the right to make a formal complaint and how such complaint may be made in accordance with the NHS complaints process.

## **7. Review**

This policy will be reviewed once every three years or sooner where relevant changes occur in regard to the law, national policy or guidance.

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*End*