



West Hampshire
Clinical Commissioning Group

COMMISSIONING POLICY FOR ADULT CONTINUING HEALTHCARE

(Version 8)

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CCG owner:	Director of Quality & Nursing (Board Nurse)
Links to other policies:	<ul style="list-style-type: none"> • Safeguarding Adult & Children's Policy: A Family Approach • Mental Capacity Act Policy • Personal Health Budgets Policy
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For action by:	NHS Continuing Healthcare Team
Policy statement:	This policy sets out the process that West Hampshire CCG will follow to commission and make provision for equitable, safe and effective care, for individuals who have been assessed as eligible for fully funded NHS Continuing Healthcare.
Responsibility for dissemination to new staff:	Line managers
Mechanisms for dissemination:	Line managers to new staff in the Continuing Healthcare team. All new and updated policies are promoted to CCG staff through the internal staff newsletter and the policy page on the CCG intranet. The policy will also be available on the WHCCG internet CHC page for external stakeholders.
Training implications:	There is no specific training in relation to this policy, however in order for this policy to operate an understanding of its contents will be required for CCG, provider and local authority staff.
Resource implications	There is no additional resource required to implement this policy.

Further details and additional copies available from:	Website: https://westhampshireccg.nhs.uk/document-tag/clinical-and-su-policies/
Equality analysis completed?	To ensure compliance with the CCG's public sector equality duty, an Equality Impact Assessment has been undertaken to support this policy development and to identify any potential negative implications of the implementation on particular groups, and any mitigation required. See Appendix 2
Consultation process	Hampshire CHC Performance & Governance Committee
Approved by:	West Hampshire CCG Clinical Governance Committee
Date approved:	9 January 2020

Website upload:

Website	Location in FOI Publication Scheme	https://westhampshireccg.nhs.uk/document-tag/clinical-and-su-policies/
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Amendments summary:

Amend No	Issued	Page(s)	Subject	Action Date
1	Jul 19		Review date deferred to December 2019 at which point a full review will be undertaken following completion of two service redesign pieces of work.	Jul 19
2	Dec 19		Review date now deferred to May 2020 as work ongoing to streamline / finalise processes.	10 Dec 19
3	Dec 19	AD NHS CHC & Placements	Complete re-write. Policy renamed from Choice & Equity Policy.	Dec 19
4				
5				

Review log:

Include details of when the document was last reviewed:

Version Number	Review Date	Reviewer	Ratification Process	Notes
	September 2013	Head of Mental Health	Reviewed as requested by March WHCCG Corporate Governance Committee. No changes Required.	
7	Nov 2014, further reviewed Apr 2015	Head of Mental Health	Reviewed in accordance with the WHCCG Policy for the Management of Policies	
8	Dec 2019	AD NHS CHC & Placements	Complete re-write / re-name of policy.	See amend 3

COMMISSIONING POLICY FOR ADULT CONTINUING HEALTHCARE

SUMMARY OF KEY POINTS TO NOTE

This policy sets out the process that West Hampshire CCG will follow to commission and make provision for equitable, safe and effective care, for individuals who have been assessed as eligible for fully funded NHS Continuing Healthcare (CHC).

- This policy is applicable to individuals deemed to be eligible for CHC funding. The CHC eligibility process is not within the scope of this document.
- Individuals who are eligible for CHC funding have a complexity, intensity, frequency and/or unpredictability in their overall care needs which means it is often difficult for care to be safely delivered at home on a sustainable basis. Although individual circumstances will be considered, it must be understood that it is usually not possible to replicate support services that are available within in-patient NHS settings and registered care or nursing home facilities, (e.g. 24-hour nursing care) and if this level of support is required it would usually not be possible to care for the individual at home.
- WHCCG will support an individual to play a full role in shaping a personalised approach to meeting their care needs, however if an individual is considered not to have the mental capacity to make key decisions in their life the CCG will act in accordance with that individual's best interests in line with the Mental Capacity Act and the Hampshire Mental Capacity Toolkit. Where the individual has appointed someone to act on their behalf through a lasting power of attorney, or the court has appointed a deputy to act on their behalf the CCG will work with the individual appointed.
- Many individuals wish to be cared for in their own homes rather than in a registered care home. Choice of care setting should be taken into account, but there is no automatic right to a package of care at home.
- All individuals in receipt of CHC who live at home will have a Personal Health Budget (PHB) to meet their assessed care needs.
- When the CCG pays for care in an individual's home it is important for everyone to be aware that a time may come when it will no longer be appropriate or safe for this to continue. WHCCG will keep the arrangement under review to make sure that it is still safe, sustainable and affordable.
- The care package will be reviewed initially at 3 months and then annually as a minimum to ensure that the individual's needs and personalised outcomes are being met and that it remains clinically safe, sustainable and within cost limits. It is important to recognise that the review may result in either an increase or decrease in support and will be based on the assessed needs of the individual at that time. If it is clear that an individual's needs have changed it may be necessary to re-consider the care options available.

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COMMISSIONING POLICY FOR ADULT CONTINUING HEALTHCARE

1. INTRODUCTION

1.1 The Hampshire Continuing Healthcare Team (CHC) is hosted by West Hampshire Clinical Commissioning Group (WHCCG) and has delegated responsibility for commissioning all NHS Continuing Healthcare packages of care for the five Hampshire CCGs through a Service Level Agreement. The five CCGs that this policy applies to are:

- South Eastern Hampshire
- Fareham & Gosport
- North Hampshire
- North Eastern Hampshire
- West Hampshire.

1.2 This policy sets out the process that WHCCG will follow to commission and make provision for equitable, safe and effective care, for individuals who have been assessed as eligible for fully funded NHS Continuing Healthcare. The NHS is committed to giving people more choice and control over their healthcare, but must balance this with its financial obligations to the whole population. CCGs also have to consider their financial responsibilities when making decisions about whether they will pay for specific care or treatment.

1.3 WHCCG will commission healthcare in a manner that reflects the choice and preferences of individuals, whilst ensuring a balance between choice, safety and the effective use of finite NHS resources. This policy should be read in conjunction with:

- National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care 2018
- The National Health Service Act 2006
- The Health and Social Care Act 2012
- The Care Act 2014
- Mental Capacity Act 2005
- The Human Rights Act 1998
- The Equality Act 2010
- WHCCG policies for Safeguarding, Mental Capacity Act and Personal Health Budgets.

2. PURPOSE AND SCOPE

- 2.1 The purpose of this policy is to set out the WHCCG process for commissioning CHC care and ensuring that commissioning is person centred, balances equity, equality and risk, and enables the CCG to demonstrate the effective use of finite NHS resources.
- 2.2 This policy is applicable to individuals deemed to be eligible for CHC funding. The CHC eligibility process is not within the scope of this document.

3. DUTIES AND RESPONSIBILITIES

- 3.1 WHCCG is responsible and accountable for system leadership for CHC including commissioning arrangements, both on a strategic and an individual basis.
- 3.2 "NHS Continuing Healthcare means a package of ongoing care that is arranged and funded solely by the National Health Service (NHS) where the individual has been assessed and found to have a 'primary health need' as set out in this National Framework. Such care is provided to an individual aged 18 or over, to meet health and associated social care needs that have arisen as a result of disability, accident or illness. The actual services provided as part of the package should be seen in the wider context of best practice and service development for each client group. Eligibility for NHS Continuing Healthcare is not determined by the setting in which the package of support can be offered or by the type of service delivery." (Para.10)
- 3.3 "Primary Health Need is a concept developed by the Secretary of State for Health to assist in deciding when an individual's primary need is for healthcare (which it is appropriate for the NHS to provide under the 2006 Act) rather than social care (which the Local Authority may provide under the Care Act 2014). To determine whether an individual has a primary health need, there is an assessment process, which is detailed in this National Framework. Where an individual has a primary health need and is therefore eligible for NHS Continuing Healthcare, the NHS is responsible for providing for all of that individual's assessed health and associated social care needs, including accommodation, if that is part of the overall need".
- 3.4 CCGs have an ongoing responsibility to fund the care for individuals outside hospital settings, where the individual has been assessed as eligible for CHC. This care can be provided in a variety of settings and in a manner that reflects the choice and preferences of individuals, however there is no legal obligation for the CCG to provide a package of care greater than the individual's assessed health and associated social care needs.

- 3.5 WHCCG has a responsibility to ensure that all commissioned services are safe, equitable, and any identified risks are appropriately and reasonably managed.
- 3.6 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. The services commissioned must include ongoing case management for all those eligible for NHS Continuing Healthcare, including review and/or reassessment of the individual's needs". (Para. 165) 2.2.
- "CCGs should operate a person-centred approach to all aspects of NHS Continuing Healthcare, using models that maximise personalisation and individual control and that reflect the individual's preferences, as far as possible, including when delivering NHS Continuing Healthcare through a Personal Health Budget, where this is appropriate (refer to paragraphs 296- 300)." (Para 166).

4. DEFINITIONS / EXPLANATIONS OF TERMS USED

NHS Continuing Healthcare

- 4.1 NHS Continuing Healthcare (CHC) means a package of ongoing care that is arranged and funded solely by the National Health Service (NHS) specifically for those individuals who are found to have a 'primary health need'. Further information on the Primary Health need test is to be found in the National Framework for CHC.

Decision Support Tool

- 4.2 The Decision Support Tool (DST) is a national tool which has been developed by the Department of Health and Social Care to aid consistent decision making. The DST supports practitioners in identifying the individual's needs. This, combined with the practitioners' skills, knowledge and professional judgement, should enable them to apply the primary health need test in practice.

NHS-funded Nursing Care

- 4.3 For individuals in care homes with nursing, registered nurses are usually employed by the care home itself. In order to fund the provision of such nursing care by a registered nurse, the NHS makes a payment direct to the care home. This is called 'NHS-funded Nursing Care' (FNC) and is a standard rate contribution towards the cost of providing registered nursing care for those individuals who are eligible.

Clinical Commissioning Group

- 4.4 Clinical Commissioning Groups (CCGs) are clinically-led statutory NHS bodies responsible for the planning and commissioning of healthcare services for their local area.

Multidisciplinary Team

- 4.5 In the context of assessing eligibility for CHC, a Multidisciplinary Team (MDT) is a team of at least two professionals, usually from both the health and the social care disciplines.

Fast Track NHS Continuing Healthcare

- 4.6 Individuals with a rapidly deteriorating condition that may be entering a terminal phase, can be 'fast tracked' for immediate provision of NHS CHC. The intention of the Fast Track Pathway is that it should identify individuals who need to access NHS CHC quickly, with minimum delay, and with no requirement to complete the Checklist or the Decision Support Tool (DST). The completed Fast Track Pathway Tool, which clearly evidences that an individual is both rapidly deteriorating and may be entering terminal phase, is in itself sufficient to establish eligibility for CHC.

5. CORE PRINCIPLES FOR DECISION MAKING

- 5.1 In view of the need to balance individual preference alongside safety and value for money, WHCCG has developed this policy to support consistent, transparent decision making, and an equitable distribution of NHS resources.
- 5.2 Application of this policy will ensure that decisions about care will:
- Be person-centred;
 - Be robust, fair, consistent and transparent;
 - Be based on objective assessment of the individual's clinical need, safety and best interests;
 - Have regard for the safety and appropriateness of care to the individual and those involved in care delivery;
 - Involve the individual and their appointed representative wherever this is possible and appropriate;
 - Take into account the need for the CCG to allocate its financial resources in the most cost effective way;
 - Support individual choice to the greatest extent possible in the light of the above factors.

- 5.3 In instances where more than one suitable care option is available, WHCCG will need to balance consideration of the individual's circumstances with the CCG's responsibility to provide care equitably for its entire population.
- 5.4 Many individuals wish to be cared for in their own homes rather than in a registered care home. Choice of care setting should be taken into account, but there is no automatic right to a package of care at home.
- 5.5 Individuals who are eligible for CHC funding have a complexity, intensity, frequency and/or unpredictability in their overall care needs which means it is often difficult for care to be safely delivered at home on a sustainable basis. Although individual circumstances will be considered, it must be understood that it is usually not possible to replicate support services that are available within in-patient NHS settings and registered care or nursing home facilities, (e.g. 24-hour nursing care) and if this level of support is required it would usually not be possible to care for the individual at home.
- 5.6 WHCCG will need to identify and assess each care option for cost effectiveness and consider this alongside the psychological and social care needs of the individual and the impact on their home and family life as well as the individual's care needs. In doing so WHCCG will take into account it's Public Sector Equality Duty under the Equality Act, and obligations under the Human Rights Act and Article 8 of the European Convention on Human Rights.
- 5.7 Further guidance on how the Public Sector Equality Duty, Human Rights Act and Article 8 of the European Convention on Human Rights apply to this policy is included in Appendix 1.

6. CONSENT AND CAPACITY TO MAKE DECISIONS

- 6.1 WHCCG will support an individual to play a full role in shaping a personalised approach to meeting their care needs, however if an individual is considered not to have the mental capacity to make key decisions in their life the CCG will act in accordance with that individual's best interests in line with the Mental Capacity Act and the Hampshire Mental Capacity Toolkit which can be found at the following link:

<https://documents.hants.gov.uk/adultservices/mental-health/MentalCapacityToolkitPartAPublished.pdf>

- 6.2 Where the individual has appointed someone to act on their behalf through a lasting power of attorney, or the court has appointed a deputy to act on their behalf the CCG will work with the individual appointed.

7. SAFEGUARDING

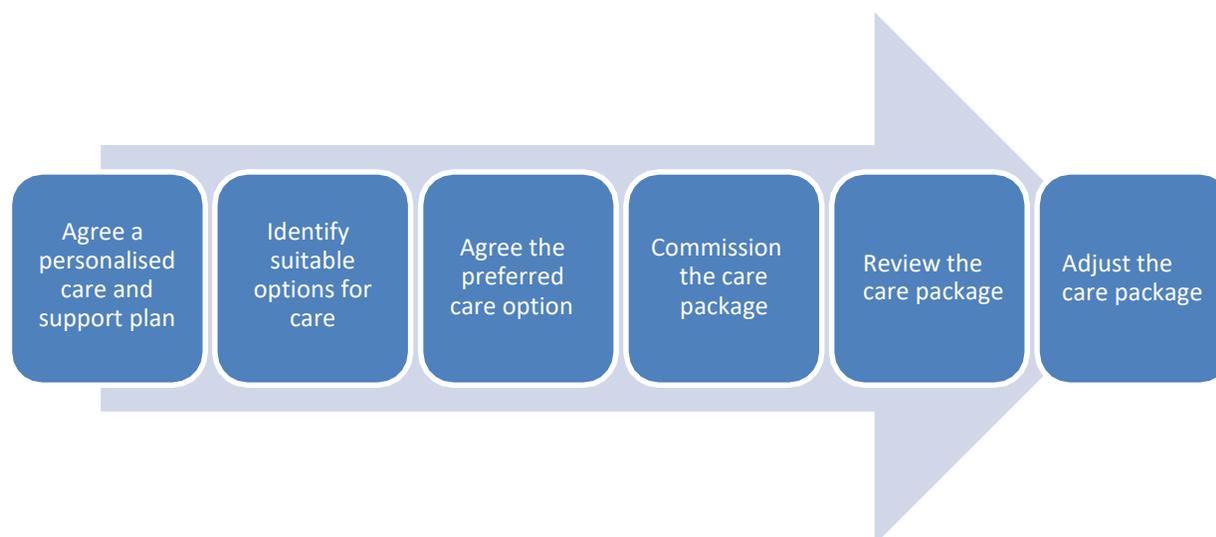
- 7.1 WHCCG will adhere to the statutory functions for safeguarding adults under the Care Act 2014 and safeguarding children under section 11 of the Children Act 2004. An adult is defined as anyone over 18yrs; all adults have the potential to be at risk of abuse or neglect. The safeguarding of individuals is integral to the CHC commissioning, quality assurance, clinical governance, performance management and finance audit arrangements. When commissioning CHC packages of care WHCCG will take all possible measures to ensure that the safeguarding of both children and adults is evidenced within contracts and that any arrangements minimise the risks of harm and promote the wellbeing of that individual.
- 7.2 The WHCCG Safeguarding Adult and Children's Policy can be found on the CCG website www.westhampshireccg.nhs.uk.

8. PERSONAL HEALTH BUDGETS

- 8.1 All individuals in receipt of CHC who live at home will have a Personal Health Budget (PHB) to meet their assessed care needs.
- 8.2 A PHB can be managed in three ways, or a combination of these:
- Notional budget – WHCCG is responsible for holding the money and arranging the agreed care and support
 - Third party budget – An organisation independent of both the individual and the CCG (for example an independent user trust or a voluntary organisation) is responsible for and holds the money on the person's behalf
 - Direct payment for healthcare – The PHB holder or their representative has the money on a prepaid card or into a bank account and takes responsibility for purchasing the agreed care and support.
- 8.3 Individuals will not be forced to take on more control over their care than they feel comfortable in taking, and support will be provided to help people work through the options available to them.
- 8.4 Throughout the process of developing a PHB the same process for developing and agreeing care options will be used, which is outlined below.
- 8.5 Where an individual is considered not to have the mental capacity to make key decisions in their life the CCG will act in accordance with that individual's best interests in line with the Mental Capacity Act. In such circumstances it may be more appropriate for the CCG to deliver the care package at home as a notional, or a third party budget.

- 8.6 If a PHB is set up and subsequently becomes untenable for any reason, then a traditional package of care at home, or placement within a registered care home will need to be considered in order to meet the individual's assessed needs.
- 8.7 Further detail on how the CCG operates PHBs can be found within the WHCCG Personal Health Budget Policy.

9. OVERVIEW OF THE CHC COMMISSIONING PROCESS



10. DEVELOPING OPTIONS FOR CARE

- 10.1 Once eligibility for CHC has been determined a CHC Specialist Practitioner will work with an individual to explore how care could be provided to meet their assessed needs. The discussions will help to clarify the individual's main wishes for their care and the outcomes that the person wants to achieve. This will be captured in a personalised care and support plan.
- 10.2 The Specialist Practitioner will then use the personalised care and support plan to identify suitable care options.
- 10.3 A person who lacks mental capacity to make decisions about their care will still be included in discussions as far as they are able to be, and the Specialist Practitioner will also discuss care options with others involved in the care of the individual, according to the principles of the Mental Capacity Act 2005.
- 10.4 There may be several options appropriate to meet an individual's needs, but these are likely to be either care at home, or a registered care setting, such as a nursing home, residential home or an independent hospital. When identifying suitable options for eligible CHC individuals WHCCG will consider the following:
- The individual's preference about where care is delivered, e.g. at home, or in a care home

- The effectiveness of proposed care options in meeting the individual's assessed health and social care needs
- The safety, quality, sustainability and feasibility of proposed care options
- The potential impact on the individual's human rights
- Whether the individual has a protected characteristic under the Equality Act 2010 and whether there are any steps that could reasonably be taken to promote equality of opportunity for that individual
- The Care Quality Commission registration status of potential care providers and whether there are any open suspensions or enforcement actions by the CCG or a Local Authority
- The overall cost of proposed care options and any concerns about value for money or affordability for the CCG
- Presence of informal carers to provide care. There is no obligation for family members to provide care, but where an offer is made, the CCG may take this into account as an integral part of the care package. In such circumstances the CCG will consider a referral to the Local Authority so that a carer's assessment can be considered and offered in line with the Care Act 2014
- Any concerns about contingency plans in terms of the support that may be required if a care option breaks down.

10.5 When the CCG pays for care in an individual's home it is important for everyone to be aware that a time may come when it will no longer be appropriate or safe for this to continue. WHCCG will keep the arrangement under review to make sure that it is still safe, sustainable and affordable.

10.6 WHCCG considers that in some circumstances an individual's needs may most appropriately be met within a care home setting. The general principles are set out below; however WHCCG will take into consideration all relevant circumstances to the individual to establish whether any of these principles can be displaced, or if any other factor is relevant.

- A package in excess of eight hours a day would indicate a high level of need which may more appropriately be met by a registered care / nursing home placement
- Individuals who need waking night care would generally be more appropriately cared for in a care / nursing home. The need for waking night care indicates a high level of supervision at night
- Individuals who may benefit from direct oversight by registered clinical professionals and 24-hour monitoring

- 10.7 There are specific conditions or interventions that may not be appropriate to manage at home. These may include (but are not limited to) the requirement for sub-cutaneous fluids, intravenous fluids, total parenteral nutrition (TNP), continual invasive or non-invasive ventilation or the management of grade 4 pressure injury.
- 10.8 WHCCG will generally only support a clinically safe and sustainable package of care within an individual's own home where the costs of doing so are in line with this policy. In assessing the comparative costs of different packages the CCG will use the costs of care in accordance with the personalised care needs of the individual and not a generalised cost of the type of care.

Residential Care

- 10.9 Where a person has been assessed as needing placement within a care home, the CCG operates a preferred provider framework and the expectation is that individuals requiring placement will have their needs met in one of these homes. The homes on the framework will be approached in the first instance, and the CCG will work with the individual or their family to identify an appropriate home from the available options.
- 10.10 The person may wish to move into a home outside of the framework or their family/representative may wish to place the individual in a home outside of the framework. As long as the fee for the assessed needs is comparable to the fee agreed with a framework provider and the home can meet the persons care needs the CCG will consider this option.

Fast Track CHC Care

- 10.11 The CCG have commissioned a number of providers to provide Fast Track CHC Care, safely and expediently in the community.
- 10.12 Where a person has been deemed eligible for Fast Track Care and requires a Nursing Home Placement, the CCG will first offer a placement in one of its block purchased, contracted beds. All block contract bed options must be exhausted first. In the instance that there are no block purchased beds within a reasonable distance available, then the CCG will approach its preferred providers on the Nursing Home Framework. Only when there is no appropriate contracted provision available, will spot purchasing be considered. Patients and families will be given the choice from the available commissioned options, where more than one appropriate option is available.
- 10.13 The CCG will work with the individual and the family to provide guidance and support in choosing an appropriate option. Considerations outside of the available options will be given in extenuating circumstances. Where an individual is already residing in a home, the CCG will seek to look for an available commissioned option, unless it is deemed clinically inappropriate for an individual to move. When spot purchasing, the CCG will first seek a provider who can

provide the care at an equitable cost (i.e. in line with other commissioned services). This will need to include a breakdown of costings from the provider. Comparable costs will be sought from alternative providers to ensure that the service is receiving value for money.

- 10.14 The CCG are commissioning providers for Fast Track Care at Home across Hampshire, to ensure swift and safe care delivery. All fast track referrals where the provider can meet the needs of the individual must go through the single procured provider where the provider has the capacity to deliver the package of care. If the provider does not have the capacity to deliver the package of care, then the CCG will seek to spot purchase from an alternative provider in the area. When spot purchasing from a provider, the CCG will seek to find a care at home provider who can provide the care for a price equivalent to the commissioned service. The CCG may request comparable costings from alternative providers in the area.

11. AGREEING A PREFERRED CARE OPTION

- 11.1 Care options identified by WHCCG will be provided to the individual or family/ carer/representative and the CCG will endeavour to offer a choice of more than one care option, although this may not be possible where there is limited availability of appropriate care provision.
- 11.2 Once the CCG has confirmed the available care options individuals will usually be asked to make a decision on their first choice within 48 hours. The CCG will then make the necessary arrangements with the individual and the care provider to confirm a suitable start date.
- 11.3 WHCCG may make additional time available for decisions to be reached by an individual or family/representatives where there are exceptional circumstances, but in such circumstances it may be necessary for the CCG to offer a temporary service to make sure that the individual is safe and their needs are met while they are making a decision.
- 11.4 Temporary arrangements may also be needed if the preferred option for care at home or the first choice of care home is unavailable, or in the event that an existing care arrangement breaks down. The temporary arrangement will always be one that meets the individual's assessed needs, but may not be the person's preferred choice. This may be necessary, for example, if an individual is medically ready to leave hospital but the preferred care provider is not immediately available.

12. CONSIDERING ALTERNATIVE REQUESTS FOR CARE

- 12.1 Where a person declines all of the options initially proposed by the CCG, they can suggest a different arrangement (including alternate temporary arrangements), as long as the care option meets the requirements and considerations outlined in [section 10](#) above.
- 12.2 Where a care option is requested by an individual, but is more expensive than the options offered by the CCG, the decision as to whether the CCG will fund the care option will be referred to the CHC Complex Case Panel for detailed consideration.
- 12.3 The CHC Complex Case Panel will take into account the core principles for decision making set out in section 5, and the key considerations for developing care options listed in [section 10](#). In addition the CCG will consider whether a decision not to pay for a more expensive option would be reasonable and proportionate given the potential effect on the individual and their family/carers/representative.
- 12.4 Individuals will be given the opportunity to submit a rationale as to why a more expensive care option should be funded by WHCCG. The panel decision will be clearly documented, shared with the individual or the representative/advocate acting on their behalf and details will be provided about how the person may appeal the decision.

13. APPEALING THE CCG'S DECISION

- 13.1 An individual, or carer/family/advocate acting on that individual's behalf, wishing to appeal the decision of the CHC Complex Case Panel will need to confirm this in writing to the CCG via either of the below addresses:

Email address: WHCCG.ContinuingCare@nhs.net

Post to: NHS Continuing Healthcare and NHS Funded Nursing Care
West Hampshire Clinical Commissioning Group
5th Floor, Civic Offices
Civic Way
Fareham
Hampshire
PO16 7AZ

- 13.2 It will be important that an individual appealing provides a clear rationale as to why the decision should be reviewed.
- 13.3 In such cases the decision of the CHC Complex Case Panel will be reviewed by the CCG's Associate Director, NHS Continuing Healthcare & Placements and/or the Director of Nursing. The review of the CHC Complex Case Panel decision will

be clearly documented and shared with the individual or the representative/ advocate acting on their behalf.

- 13.4 The option remains for any individual remaining unhappy with the decision to raise a formal complaint with WHCCG as below

Freephone: 0800 456 1622

Email: WHCCG.YourFeedback@nhs.net

Post: Patient Experience and Complaints, West Hampshire CCG, Omega House, 112 Southampton Road, Eastleigh, SO50 5PB

14. REFUSING CHC CARE

- 14.1 If an individual who has mental capacity to make decisions about their care refuses to accept any of the options offered by the CCG, the CCG will consider that it has fulfilled its legal duty toward the person. The CCG will inform the individual in writing that they will need to make their own arrangements for ongoing care within 28 days of the date of the letter. The letter will explain the risks of refusing the care and advise who they can contact if they change their mind in the future. The risks will also be documented in the individual's care record.
- 14.2 If the CCG is worried about serious risk to the person because they have refused care, it will consider whether it would be appropriate to follow adult safeguarding procedures including consideration of a referral to the local authority.
- 14.3 If the person lacks mental capacity to make decisions about their care and they or those involved in their care refuse to accept any options offered by the CCG, the CCG will proceed according to the requirements of the Mental Capacity Act 2005 being mindful of the deprivation of liberty safeguards, where appropriate.

15. INDIVIDUALS WITH EXISTING CARE ARRANGEMENTS

- 15.1 Where an individual with an existing home care package, or care home placement, becomes eligible for CHC, WHCCG will follow the process for identifying care options set out in [section 10](#) of this policy. This will involve a comparison of the current care package or placement against alternative care options, to ensure that the CHC care option meets the individual's reasonable assessed needs and correctly balances safety, quality, sustainability, risk and cost.
- 15.2 If an individual's existing care package is not identified by the CCG as a suitable care option, or is more expensive than the personalised options offered by the

CCG, then the case will be presented to the CHC Complex Case Panel for a decision following the process set out above in [section 12](#).

16. ENHANCED CARE

- 16.1 WHCCG will exercise firm financial control, accountability and quality assurance in respect of requests for enhanced care. Where an enhancement to a care package or care placement is requested, the CCG will require clinical evidence to support the request, as well as all appropriate risk assessments, behaviour charts, evidence of communication with the individual/relative, a proposed step down plan and any other relevant evidence deemed helpful to support the request.
- 16.2 Requests for enhanced care will be considered at the CHC Complex Case Commissioning Panel and subject to review.

17. ADDITIONAL PRIVATE CARE

- 17.1 WHCCG is obliged to provide services that meet the assessed needs and reasonable requirements of an individual eligible for CHC. These services, whether delivered within a registered care home, or at home must be free of charge to the individual.
- 17.2 The package of care which WHCCG has assessed as being reasonably required to meet the individual's assessed needs is known as the core package. WHCCG is not able to allow personal top-up payments into the CHC package of healthcare services, where the additional payment relates to the core package. This is because top up payments for CHC provision are not lawful.
- 17.3 If an individual or their carer want to make arrangements directly with a provider for additional services that are not within the CCG's core package, they should first notify the CCG (through the case manager). The CCG must make sure that the additional services do not replace or conflict with the care arranged by the NHS. Examples of permitted arrangements may include hairdressing, massage, reflexology, beauty therapies, and preference for a specific room or some sitting services.
- 17.4 Further guidance on this issue can be found in the National Framework for Continuing Healthcare and Funded Nursing Care at the following link:
<https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care>

18. REVIEW OF CARE PACKAGE

- 18.1 The care package will be reviewed initially at three months and then annually as a minimum to ensure that the individual's needs and personalised outcomes are being met and that it remains clinically safe, sustainable and within cost limits.
- 18.2 It is important to recognise that the review may result in either an increase or decrease in support and will be based on the assessed needs of the individual at that time. If it is clear that an individual's needs have changed it may be necessary to re-consider the care options available, following the process set out in [sections 10](#) and [11](#) of this policy.
- 18.3 Individuals and their carers/representatives must be aware that there may be times where it will no longer be appropriate to provide care in line with the individual's preferred choice based on safety concerns, sustainability or cost.
- 18.4 A care review may indicate that a full CHC assessment is required to confirm if the individual remains CHC eligible. Where an individual is no longer eligible for CHC WHCCG will no longer be required to fund the identified care.
- 18.5 WHCCG will give 28 days' written notice of cessation of funding to the individual or their representative and the relevant Local Authority. Any ongoing package of care may qualify for funding by social services, subject to any Local Authority assessment criteria. Alternatively the cost of any ongoing package of care may need to be met by the individual themselves. The transition of care should be seamless and will be coordinated by the CCG before transferring to a Local Authority representative. The individual and/or their representative will be notified of the proposed changes to funding and involved by the organisations as appropriate.

19. COUNTERING FRAUD

- 19.1 The CCG is committed to reducing fraud in the NHS to a minimum, keeping it at that level and putting funds stolen through fraud back into patient care. Therefore, we have given consideration to fraud and corruption that may occur in this area and our responses to these acts during the development of this policy document.
- 19.2 Any individual eligible for CHC found to be misrepresenting their clinical needs, or misusing a PHB will be referred by WHCCG to NHS Counter Fraud for investigation.

20. TRAINING

- 20.1 In order for this policy to operate an understanding of its contents will be required for CCG, provider and Local Authority staff.

21. EQUALITY ANALYSIS

- 21.1 To ensure compliance with WHCCG's public sector equality duty, an Equality Impact Assessment has been undertaken to support this policy development, and to identify any potential negative implications of the implementation on particular groups, and any mitigation required. It is summarised as follows:
- **Patient Safety:** There is no expected impact on patient safety as a result of implementing this policy.
 - **Clinical Effectiveness:** There is no negative expected impact on clinical effectiveness as a result of implementing this policy. There is potential to improve clinical effectiveness of CHC provision by ensuring individuals receive care in the most appropriate setting, and by increasing the level of scrutiny given to complex and challenging cases.
 - **Patient Experience:** The implementation of the CHC Commissioning Policy may impact on patient choice around access to services. There may be an impact on the service user experience where the CCG is unable to support choice around the location of care provision. Mitigations to minimise negative impact in patient experience are set out in [section 12](#).

22. SUCCESS CRITERIA / MONITORING THE EFFECTIVENESS OF THE POLICY

- 22.1 Reports on CHC packages of care are reviewed in detail at monthly meetings. Each individual package has sign-off both clinically and financially before being approved.
- 22.2 This policy will be audited to demonstrate that WHCCG is being effective at ensuring choice and equity in the delivery of CHC to individuals across Hampshire. Exception reports on delivery of equity and choice in CHC will be taken to the WHCCG Clinical Governance Committee.

23. POLICY REVIEW

- 23.1 This document may be reviewed at any time at the request of either the staff forum or management, or in response to changes in legislation, but will automatically be reviewed on a biennial basis.

24. REFERENCES AND LINKS TO OTHER DOCUMENTS

- National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care 2018
- The National Health Service Act 2006
- The Health and Social Care Act 2012
- The Care Act 2014
- The Mental Capacity Act 2005
- The Human Rights Act 1998
- The Equality Act 2010
- WHCCG policies for Safeguarding, Mental Capacity Act and Personal Health Budgets.

Appendix 1 Additional Guidance on the Human Rights Act and Public Sector Equality Duty

Human Rights Act

In adopting this policy WHCCG has taken into account the issue of human rights, and specifically the right to respect for an individual's private and family life provided by Article 8 of the European Convention of Human Rights (ECHR).

There is an obligation under Article 8 to respect an individual's private and family life, home and correspondence. Family life should be interpreted widely and may include persons who are not related or married, depending on the circumstances.

When making decisions under this policy regarding an individual, WHCCG will need to consider the individual's circumstances and the impact of any care package on the individual's Article 8 rights. Any impact identified should be documented.

The Human Rights Act requires that any interference with an individual's Article 8 rights must be necessary, reasonable and proportionate. Where a decision regarding a care option is likely to impact on an individual's right to private and family life, WHCCG will consider whether any adverse impact on the individual is necessary, reasonable and proportionate given their circumstances; the clinical appropriateness, safety and sustainability of the proposed care package and other alternatives; and, also their obligations to their entire population.

Where an individual is already receiving care in their own home and a move to other accommodation is being considered, the WHCCG will need to assess the impact on the individual's needs (including physical, psychological and emotional needs) that a move to a different care setting may have.

Article 8 may also be engaged in the context of an ability to maintain family and social links. If the WHCCG proposed solution would be more remote from the individual's family, this will need to be taken into account in any decision making process. For example, if an individual is active within their local community and has many friends and family in the local area, a move to accommodation in a different geographical area is likely to have a material impact on the individual's Article 8 rights. Given the impact on this individual's Article 8 rights, the CCG may consider it is appropriate to commission a more expensive care option closer to the individual's community to minimise the impact on the individual's Article 8 rights.

In contrast, if an individual has limited interaction within their community and has no friends or family locally, WHCCG may take the view that the impact on the individual's Article 8 rights of a move to a different community area is proportionate, reasonable and necessary given the CCG's duty to provide resources for its entire population.

The above examples are provided for illustration purposes only. Each case will need to be decided upon its individual circumstances in line with this policy.

Public Sector Equality Duty

The Equality Act 2010 introduced the public sector equality duty. In relation to implementation of this policy, WHCCG has a duty to have regard to the need to:

- Advance equality of opportunity between people who share a protected characteristic and people who do not share it;
- Remove or minimise disadvantages suffered by people due to their protected characteristics; and
- Meet the needs of people with protected characteristics (e.g. where the needs of a disabled person may be different from those of a non-disabled person).

Protected characteristics include age, disability, gender reassignment, pregnancy and maternity, race (including ethnic or national origins, colour or nationality), religion or belief (including lack of belief), sex, and sexual orientation.

In making decisions regarding care options, WHCCG must consider whether the person affected by the decision has any protected characteristics and if so, whether any reasonable adjustments should be made available, which are proportionate in the circumstances.

Decisions about proportionality of adjustments can take into account WHCCG obligations to its entire population; however, decisions must be taken on the individual circumstances of each situation considering whether it would be reasonable to make additional resources available in each case.

Equality analysis

Title of policy, project or proposal:
Commissioning Policy for Adult Continuing Healthcare

Lead manager: Associate Director, NHS Continuing Healthcare and Placements
Directorate: Quality

<p>Q1 What are the intended outcomes of this policy, project or proposal?</p> <p>To set out the process that WHCCG will follow to commission and make provision for equitable, safe and effective care, for individuals who have been assessed as eligible for fully funded NHS Continuing Healthcare (CHC).</p>

<p>Q2 Who will be affected by this policy, project or proposal?</p> <p>People eligible for NHS Continuing Healthcare Funding aged 18 and above.</p>
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Evidence

<p>Q3 What evidence have you considered?</p> <p>CHC data on care groups and funding.</p>

<p>Age</p> <p>Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.</p>

<p>Disability (physical and mental)</p> <p>Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.</p>
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<p>Dementia</p> <p>Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.</p>
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<p>Gender reassignment (including transgender)</p> <p>Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.</p>

<p>Marriage and civil partnership</p> <p>Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.</p>
<p>Pregnancy and maternity</p> <p>Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.</p>
<p>Race</p> <p>Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.</p>
<p>Religion or belief</p> <p>Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.</p>
<p>Sex (gender)</p> <p>Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.</p>
<p>Sexual orientation</p> <p>Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.</p>
<p>Carers</p> <p>Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.</p>
<p>Serving Armed Forces personnel, their families and veterans</p> <p>Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.</p>
<p>Meeting psychological needs</p> <p>Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.</p>
<p>Other identified groups</p>
<p>Involvement and consultation</p>
<p>Q4 How have you involved stakeholders with an interest in protected characteristics in gathering evidence or testing the evidence available?</p> <p>No</p>

Q5 How have you involved stakeholders in testing the policy or programme proposals?

No

Q6 For each involvement activity, please state who was involved, how and when they were engaged, and the key outputs:

No

Equality statement

Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.

Positive impacts

Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.

Negative impacts

Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.

Health inequalities

Each package of care is individually commissioned to meet the assessed health and social care needs of the individual.

Action planning for improvement, and to address health equalities and discrimination

Please give an outline of the key actions based on any gaps, challenges and opportunities you have identified. Include here any general action to address specific equality issues and data gaps that need to be addressed through consultation or further research.

Action	Person responsible	By date	Progress/ review (Add new actions if required)

For your records

Person who carried out this assessment: Associate Director, NHS Continuing Healthcare and Placements

Date assessment completed: January 2020

Date to review actions: N/A

Responsible Director: Director of Quality & Nursing

Date assessment was approved: