

# ADULTS CONTINUING HEALTHCARE AND CHILDREN AND YOUNG PEOPLE'S CONTINUING CARE EQUITY & CHOICE POLICY

<b>Subject and version number of document:</b>	<b>Equity &amp; Choice Policy V7.1 Adults Continuing Healthcare and Children and Young People's Continuing Care</b>
<b>Operative date:</b>	This policy is a revision and refresh of a policy that has been in operation since 2011. This policy has been reviewed to take into account revised national guidance (The National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care October 2018) and the changes in the NHS to Clinical Commissioning Groups. Further feedback has been sought from providers and patient groups to shape the content and language of the refreshed policy. This policy has been reviewed to encompass the National Framework for Children and Young People's Continuing Care - proposed operative date 1 <sup>st</sup> December 2019
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<b>Review date:</b>	March 2022
<b>For action by:</b>	Buckinghamshire Continuing Healthcare (CHC) Team
<b>Policy statement:</b>	This policy describes the way in which Buckinghamshire Clinical Commissioning Group (BCCG) and both the Buckinghamshire CHC Service (BCHCS) and Buckinghamshire Local Authority Commissioning Placement Team (CPT) on behalf of BCCG will equitably commission care for people who have been assessed as eligible for fully funded NHS Continuing Healthcare or Children and Young People's Continuing Care, while taking into account the choice and preferences of individuals, but balances these with the BCCG responsibility to commission care that is safe, effective and makes best use of available resources across the system.
<b>Responsibility for dissemination to new staff:</b>	CHC Head of Service / CCG Senior Commissioning Manager responsible for CHC and Specialist Commissioning Manager for placements, Buckinghamshire Local Authority
<b>Equality Impact Assessment completed?</b>	This is not applicable as each commissioning decision is bespoke for the individual.
<b>Approved by:</b>	CCG Executive Committee
<b>Date Approved for engagement:</b>	N/A
<b>Date Approved by BCCG</b>	February 2021

**Review Log:**

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V7.1	February 2021	James Limehouse	No changes to policy; Executive Committee Ratification not required. Noted by Deputy Chief Officer, BCCG 15/02/2021	Policy reviewed with no changes required. Review date extended.

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## **1. Introduction**

This policy describes the way in which Buckinghamshire Clinical Commissioning Group (BCCG) and both the Buckinghamshire CHC Service (BCHCS) and Buckinghamshire Local Authority Commissioning Placement Team (CPT) on behalf of BCCG will equitably commission care for people who have been assessed as eligible for fully funded NHS Continuing Healthcare or Children and Young People's Continuing Care, while taking into account the choice and preferences of individuals, but balances these with the BCCG responsibility to commission care that is safe, effective and makes best use of available resources across the system.

The Buckinghamshire CHC Service (BCHCS) delivers clinical assessment services for both adult CHC and Children's Continuing Care on behalf of BCCG.

The Buckinghamshire Local Authority Commissioning Placement Team (CPT) commissions packages of care for both adult CHC and Children's Continuing Care on behalf of BCCG.

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 or on the type of service delivery.

Parents or guardians of children with complex needs may need additional health support to that which is routinely available from GP practices, hospitals or in the community to assist them in meeting the assessed needs of the child. This additional package of care is called children's continuing care. The CCG has responsibility for assessing children and young people to see if they need such a package

Individuals receiving NHS Continuing Healthcare or Continuing Care 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 or Continuing Care funding. In the assessment and commissioning of CHC and Continuing Care, the BCHCS and CPT on behalf of BCCG has to ensure consistency in the application of the national framework whilst, implementing and maintaining good practice, ensuring quality standards are met and sustained.

This policy ensures that individuals who are in receipt of NHS Continuing Healthcare or Continuing Care in Buckinghamshire will receive care in line with the principles listed below:

1. The BCHCS and the CPT on behalf of BCCG has the duty to consider the best use of resources for the population of Buckinghamshire 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 or Continuing Care, and The BCHCS and CPT will always consider the most cost effective option to meet the patient's needs.
2. Equality of individuals will be upheld and any agreements will not be discriminatory.
3. The BCHCS and CPT on behalf of BCCG 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.

Personalisation of support and care for an individual, are central to decision making, once the other principles above have been assured.

It should be noted that Buckinghamshire County Council also have a "Choice and Top Up" Policy. It is necessary for health to have a separate choice policy from social care as the NHS Act 1948 specifically forbids the topping up of NHS Funded packages of care.

## **2. The National Frameworks**

### **2.1 The National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care October 2018 (Revised) 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)

### **2.2 The National Framework for Children and Young People's Continuing Care (2016):**

"CCGs have a legal responsibility for securing to a reasonable extent the health care which an individual needs, and this guidance is about the process which should be followed for the equitable discharge of that responsibility for children and young people with complex needs." (pg. 4)

"The CCG is responsible for leading the process of identifying if a child or young person for whom it has commissioning responsibility under section 3 of the NHS Act 2006 has a continuing care need." (pg. 11)

That the Assessment process should be "A multi-agency process in which the needs of a child or young person and their family are identified and their impact on daily living and quality of life is evaluated. The nominated children and young people's health assessor is responsible for undertaking a health assessment and collating existing assessments by

local authority children's and young people's services on behalf of the commissioners to present a holistic picture of the child or young person's continuing care needs." (pg. 48)

### 3. Roles and Responsibilities

- 3.1 BCCG has an on-going responsibility to fund under NHS Continuing Healthcare all adults outside hospital settings whose primary need is for healthcare. BCCG also has a responsibility to contribute funding towards meeting the healthcare needs of children who are eligible for Continuing Care. Anyone can qualify for NHS Continuing Healthcare or Continuing Care as long as their assessed needs meet the eligibility criteria. The CPT on behalf of BCCG will establish the costs for these services with the service provider in line with the care plan.
- 3.2 The **BCHCS clinical team** forms part of the multi-disciplinary team (MDT) from health and social care. They carry out the assessment for CHC and Continuing Care 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.
- 3.3 All cases are **Ratified** on behalf of BCCG by the CHC team who will ratify the MDT recommendations of eligibility recorded on the Decision Support Tool (DST).
- 3.4 The **Commissioning Placement Team (CPT)** will negotiate and set up all contracts for care in care homes or individuals' own homes. They will also ensure that service specifications are developed and reflect the NHS Continuing Healthcare or Continuing Care Frameworks. The CPT will work closely with the CHC clinical team to ensure the delivery of the agreed health and wellbeing outcomes of those eligible for CHC and Continuing Care, with the best use of available resources. Contracts with providers of NHS funded services will be monitored on a regular basis by the CPT.
- 3.5 The CCG scheme of delegation, which is part of its constitution published on its website, also details authorities to both named panels and individuals in respect of financial limits to approve individual patient agreements following assessment against national criteria
- 3.6 The CCG **Exceptions Panel** recommends whether there are exceptional circumstances which justify funding a package of care which is more than 10% above the notional budget. It may also recommend whether there are any exceptional reasons for the CCG to make a decision about an individual client outside the normal applicable policies. The Exceptions Panel is clinically led and ensures consistency in the implementation of relevant policies and schemes of delegation in an evidence-based, cost effective and safe manner. In making decisions regarding care packages funded under NHS Continuing Healthcare or Continuing Care the Exceptions Panel takes into consideration the issue of Human Rights. Specifically the right to respect for an individual's family life provided by Article 8 of the European Convention of Human Rights. The Exceptions Panel also has regard to the public sector equality duty introduced by The Equality Act 2010. In making decisions regarding NHS Continuing Healthcare or Continuing Care, the Exceptions Panel considers 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. The panel will also include consideration of the psychological and

social care needs and the impact on the home and family life as well as the individual's care needs. This does not necessarily require a specific psychological and social assessment, but can be based on the information contained within broader assessments. e.g. the DST. The outcome of this assessment will be taken into account in arriving at a decision.

#### **4. The Provision of Services for People who are eligible for NHS Continuing Healthcare or Continuing Care**

4.1 There is a need to balance personal choice alongside safety and effective use of finite resources in the provision of CHC and Continuing Care services. There should also be consistency and equitable decisions around the provision of care regardless of the person's age, condition or disability. All commissioning decisions need to provide transparency and fairness in the allocation of resources.

4.2 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;
- involve the person and their family/representatives views wherever possible;
- take into account the need for BCCG to allocate its financial resources in the most cost effective way;
- support choice to the greatest extent possible in view of the above factors.

4.3 The Department of Health guidance requires that once eligibility is confirmed for fully funded NHS Continuing Healthcare or Continuing Care, the CHC team should discuss with the individual and their family or carer where this service could be provided and take their views into account when arranging services.

4.4 Patients requiring placements through the Fast Track pathway will usually be offered choice however due to the required speed of the commissioning process and considering availability of providers at that time this may be restricted.

4.5 The CPT will consider available options for reliably meeting the assessed support and care needs of the individual. The CPT will, where possible, accommodate the wishes of the individual and their family or carer when arranging the location of care. However, The CPT 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.

As guidance, if the care package is more than 10% higher cost than the notional healthcare budget then this decision will be referred to The Exceptions Panel (for details of membership of this panel, please contact the CCG and ask for a copy of the current terms of reference).

- 4.6 Access to NHS services depends upon clinical need, not ability to pay. BCCG 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.
- 4.7 Where service providers offer additional services which are unrelated to the person's health needs as assessed under the National NHS CHC or Continuing Care framework, the person may choose to use personal funds to take advantage of these services. This will be considered as a private arrangement between the individual and the provider (usually a Care Home).
- 4.8 An individual retains the right to decline NHS services and make their own privately funded arrangements.
- 4.9 Everyone requiring a domiciliary care package in their own home who is in receipt of NHS Continuing Healthcare or Continuing Care funding will be offered a Personal Health Budget by default.

## **5. Change of Circumstance**

- 5.1 The BCHCS will ensure that individuals are reviewed at three months following becoming eligible and a minimum of annually thereafter. On occasions, the clinical review will conclude that health needs 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 NHS Continuing Healthcare or Continuing Care. Where eligibility ceases, BCCG will no longer be required to fund the service. The BCHCS will give 28 days' notice of cessation of funding to the individual or their representative and Buckinghamshire Local Authority. Any on-going package of care that is needed may qualify for funding by social services, subject to assessment according to The Care Act 2014 criteria or the cost of any on-going package of care may need to be met by the individual themselves. The transition of care should be seamless and will be co-ordinated by the case manager. The individual and or their representative will be notified of proposed reviews, and involved when appropriate. Changes to eligibility and funding entitlements will be notified by the BCHCS.
- 5.2 When an individual is receiving support from Social and Community Services via a 'Direct Payment' and they become eligible for NHS Continuing Healthcare, the responsibility for the total care passes to the NHS. Where appropriate and/or possible a Personal Health Budget (PHB) will be offered to a service user previously in receipt of a direct payment.

In the event that an individual becomes eligible for CHC or Continuing Care, who was previously funded by social services, the CCG will apply the same principles as for other patients. Namely, that the CCG has a duty to consider the best use of resources for their population whilst ensuring the healthcare needs of an individual are met. The CCG will seek to provide this care with the least disruption to the individual. Where possible the NHS community services will support a residential care home provider to meet the healthcare needs of the individual. However in the event that the CHC clinical team consider that these needs cannot be met safely or if the CPT team consider that the costs of continuing to meet these needs are in excess of the notional health budget then the CCG reserves the right to commission alternative care which

meets all reasonable requirements of a care package that fully meets the individual current assessed needs.

The CCG cannot currently make direct payments to individuals who have a traditional commissioned care package and the CCG can only commission care from agencies that are registered with the Care Quality Commission (CQC).

However patients can choose to have Personal health budgets (PHBs). A personal health budget (PHB) is an amount of money to support the identified healthcare and wellbeing needs of an individual, which is planned and agreed between the individual, or their representative, and the local clinical commissioning group (CCG).

At the centre of a personal health budget is the care and support plan. This plan will be completed in partnership with the individual and helps people to identify their health and wellbeing goals. The plan will set out how the budget will be spent to enable individuals to reach their goals and keep healthy and safe.

- 5.3 Mental capacity - If an individual's condition affects their ability to make decisions, a mental capacity assessment will be undertaken, in line with the guidance in the National Framework for NHS Continuing Healthcare and Funded Nursing Care, October 2018. If an individual is assessed as lacking capacity to make decisions and there is an LPA or Deputyship for health and welfare in place they 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. If the individual does not have the capacity to make an informed choice The CPT will commission 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.
- 5.4 An indicative level of funding will be identified by the CPT. If this conflicts with the wishes of the individual or their representative, the CHC team will refer the issue to the Exceptions Panel for a review of the CPT decision. If the decision of the CPT is upheld, the individual or their representative will be advised of this and of their right of complaint, through The BCCGs complaints process. If the complaint cannot be resolved locally the individual or their representative write directly to the Health Service Ombudsman.

## **6 Commissioning and Placement Options**

- 6.1 In instances where more than one suitable care option is available (i.e. a nursing home placement and a domiciliary care package) The CPT will consider the total cost of each package identifying the overall cost effectiveness in meeting the assessed needs. Wherever possible the CPT will support the individuals preferred place of care within the available notional budget. For patients who lack capacity options will be considered as part of a best interest meeting involving family members and other significant individuals in the decision.
- 6.2 Continuing Healthcare or Continuing Care Funded Nursing Home or Residential Placements.

Where an individual has been assessed as needing a nursing home or residential placement The CPT will work with the individual and family or carer to identify a suitable placement within the preferred provider network. The CPT will endeavour to provide a reasonable choice of placements and discuss the placements with the patient or family. A notional budget which the CCG reasonably considers sufficient to fund a care package to meet the individual's assessed needs will be identified.

The individual or their family/representative may wish to identify another placement which is within the individual's notional budget and the CCG 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 the CCG's terms and conditions.

Exceptional circumstances would be considered for providing funding above the agreed 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 Exceptions Panel.

### 6.3 Continuing Healthcare / Continuing Care Funded Packages of Care at Home.

People who are eligible for NHS Continuing Healthcare or Continuing Care 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 BCHCS 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(s). The risk assessment will include the availability of equipment, the appropriateness of the physical environment and the availability of appropriately trained care staff or other people to consistently deliver the care at the intensity and frequency required.

The following will be considered before commissioning a package of care at home:

- The individual's current and likely future needs;
- The individual's GP agrees to provide primary care medical support;
- The suitability and availability of alternative care options;
- The absolute cost of the package required to meet the assessed needs and the relative costs of providing the package of choice considered against the relative benefit to the individual;
- The psychological, social and physical impact on the individual;
- The willingness and ability of family, friends or informal carers to provide elements of care where this is part of the care plan and the agreement of those persons to the care plan.

6.4 Many individuals wish to be cared for in their own homes rather than in residential care, especially people who are in the terminal stages of illness. Patient's choice of

care setting should be taken into account. The option of a package of care at home should be considered, even if discounted, with documented reasons for not considering this option.

There will be circumstances whereby an individual's needs are most appropriately met within a care home setting. Placements are generally deemed more appropriate for individuals who have complex and high levels of need, clients benefiting from direct oversight by registered professionals or the 24 hour monitoring of individuals. The general assumptions are set out below. However, the CCG 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 care home placement.
- Individuals who need waking night care would generally be more appropriately cared for in a care home. The need for waking night care indicates a high level of supervision at night.

An alternative to care home placement could be the provision of a personal health budget to provide flexibility and choice in care provision within an agreed notional budget.

The above issues in each case will be considered by the Exceptions Panel.

Where a care at home package is agreed, the CCG may request that the individual or family enter into an agreement confirming the basis on which the package will proceed. This will set out the obligations and expectations on both sides.

In the event that the CCG considers that the safety of any member of its staff or any staff contracted to provide the care is at risk it shall take such action as it considers appropriate. Harassment or bullying, verbal or physical abuse of care workers will not be accepted and the CCG will take any action necessary including immediate withdrawal of services. Where in exceptional circumstances it is necessary to consider the withdrawal of services, the CCG will notify the individual of the risk and urgently consider how services can be offered.

## 6.5 Refusal of NHS Funding

The CCG 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 and the CCG has taken a decision that the package will not be commissioned but offered an alternative package of care).

Where there appears to be a refusal, the BCHCS on behalf of the CCG will write to the individual (and/or representative) with a final offer letter setting out the care packages that the CCG is willing to consider and the consequences of refusing a placement. In this letter the CCG will provide a period of no less than 14 days for confirmation of acceptance of a package.

If the individual does not respond within the stated time period then the CCG will provide a written notice confirming that NHS funding will cease on a specified date which will be no earlier than 28 days from the date of the notice.

If an individual has refused NHS Continuing Care, NHS Funded Nursing Care will not be provided.

The CCG 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 first consulting one another and the individual about the proposed change of arrangement. It is essential that alternative funding arrangements are agreed and put into effect before any withdrawal of existing funding, in order to ensure continuity of care. Any proposed change should be put in writing to the individual by the organisation that is proposing to make such a change. Therefore the CCG would not remove funding before the above actions have been progressed.

## **7 Monitoring Effectiveness of this Policy**

The effectiveness of this policy will be monitored through patient experience questionnaires by the BCHCS.

## **8 Associated Documentation**

- The National Framework for NHS Continuing Health Care and NHS Funded Nursing Care, Department of Health 2018 (including Practice Guidance) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/690426/National\\_Framework\\_for\\_CHC\\_and\\_FNC\\_-\\_October\\_2018\\_Revised.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690426/National_Framework_for_CHC_and_FNC_-_October_2018_Revised.pdf)
- National Framework for Children and Young People's Continuing Care 2016. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/499611/children\\_s\\_continuing\\_care\\_Fe\\_16.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/499611/children_s_continuing_care_Fe_16.pdf)
- CHC Patient Information Leaflet [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/193700/NHS\\_CHC\\_Public\\_Information\\_Leaflet\\_Final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/193700/NHS_CHC_Public_Information_Leaflet_Final.pdf)
- Personal Health Budgets, NHS England 2014 [http://www.personalhealthbudgets.england.nhs.uk/library/Resources/Personalhealthbudgets/2014/Personal\\_health\\_budgets\\_right\\_to\\_have\\_guidance.pdf](http://www.personalhealthbudgets.england.nhs.uk/library/Resources/Personalhealthbudgets/2014/Personal_health_budgets_right_to_have_guidance.pdf)
- Mental Capacity Act 2005 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/497253/Mental-capacity-act-code-of-practice.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/497253/Mental-capacity-act-code-of-practice.pdf)