Thinking Differently

NHS
Dudley
Clinical Commissioning Group

NHS CONTINUING HEALTH CARE:

CHOICE AND RESOURCE ALLOCATION POLICY

DOCUMENT STATUS:

Draft Approved by Commissioning Development Committee 17 October 2018 and reported to Governing body on 8 November 2018.

NHS Continuing Health Care:

Choice and Resource Allocation Policy

1. Introduction and Scope of Policy

1.1. This Policy:

1.1.1. Sets out the commissioning principles that the CCG will work to when commissioning individual packages of continuing healthcare for patients eligible for NHS Continuing Healthcare ("CHC") funding by the NHS[1].

1.1.2. Should be read in conjunction with the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care (October 2018, Revised) ("**National Framework**"). The National Framework has informed the terms of this Policy, with this Policy setting out how the matters described in the National Framework will be balanced in individual decision-making by the CCG.

1.1.3. Will apply to all commissioning decisions to commence providing an individual package of continuing healthcare from the date that it is adopted.

1.2. The CCG is entitled to depart from the Guidance set out in the National Framework where it considers appropriate to do so. The CCG acknowledges that parts of this policy could be considered to depart from the Guidance set out in the National Framework. The CCG has carefully considered the Guidance contained within the National Framework and has balanced that Guidance against the legal requirement on the CCG to act efficiently, effectively and fairly in allocating its limited resources between all of the patients for whom the CCG has commissioning responsibility. This means that this is the right policy for this CCG. This policy reflects the best assessment made by the CCG as to how it should make decisions in an attempt to be fair to all patients for whom it has commissioning responsibility.

[1] CHC is sometimes referred to as "fully funded" NHS care or "fully funded CHC". This policy does not cover the approach used by the CCG to calculating its appropriate contribution to meet the costs of medical services provided to patients as part of predominantly social care funded package of care.

1.3. For existing packages of continuing healthcare, this Policy will be applied and the decision making process set out hereafter will be followed when the care provided to existing CHC patients is first reviewed following the adoption of the policy.

1.4. This Policy **does not apply** to minor children under the age of 18 or to section 117 aftercare under the Mental Health Act. The policy will not directly apply to packages of care under section 117, but the CCG will discuss with its relevant Local authority partners whether it is appropriate to apply the same principles as set out in this policy to those packages of care and, if agreement can be reached, will develop a separate policy to implement the principles in such packages.

1.5. This Policy applies after (a) the CCG has made the decision that the CCG is the responsible commissioner for the patient and (b) the CCG has made a decision that the patient is eligible for CHC. The policy does not seek to define the processes that the CCG will follow to determine whether it is the responsible commissioner or to determine whether a patient is eligible for CHC.

1.6. Outside of the types of cases identified in paragraph 1.4, the CCG may be called upon to make arrangements for packages of services to be delivered to patients in circumstances which are similar to patients who are eligible for CHC. Whilst this policy cannot be used to increase the level of obligation owed to patients outside of those who are eligible for CHC, in order to ensure there is equitable use of the CCG resources and fairness between patients in such cases, the CCG will apply this policy to any decision making processes.

2. Definitions

2.1. The definitions used in this policy are as follows:

20% Cost Ceiling

This term has the meaning set out at paragraph 8.5 of this policy.

Best Value

The most advantageous combination of cost, quality and sustainability of care provision commissioned to meet the individual's needs.

Care Coordinator

A professional who coordinates the assessment and care planning process; usually the central point of contact for the individual.

Care/Support Package

The services commissioned by the CCG to meet a CHC eligible individual's assessed health and social care needs.

Care Plan or Support Plan

A document outlining the health and social care needs of the individual and setting out the services that the CCG proposes to commission to meet those reasonable needs which the CCG has agreed to provide services to meet, together with any outcomes which are intended to be achieved for that individual.

Care Planning or Support Planning

A process of planning the level and type of support services required to meet identified outcomes based upon an assessment of the individual's needs. This process should be undertaken by CCG staff, other NHS staff, clinicians and individual/family/carer, working in partnership.

The Clinical Commissioning Group (CCG)

The Dudley Clinical Commissioning Group.

Commissioning

The process of planning and procuring services for individual patients or groups of patients in order to meet the statutory obligations owed by the CCG to those patients for whom it has statutory responsibility.

CHC

CHC means NHS Continuing Healthcare, as that term is defined in the Regulations. Regulation 20 of the Regulations defines CHC as "a package of care arranged and funded solely by the health service in England for a person aged 18 or over to meet physical or mental health needs which have arisen as a result of disability, accident or illness". The Regulations also define the decision making process that the CCG is required to follow to determine who is eligible for CHC. A person is not eligible for CHC within the meaning of this policy unless the CCG has followed the decision making process under the Regulations and reached a decision that person is eligible for CHC.

CHC Eligibility

A decision made by the CCG that a person is entitled to CHC funded care following the process described in Regulation 20 of the Regulations.

National Framework

The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care (October 2018, Revised).

Funded Nursing Care or FNC

Funded Nursing Care Payments made in accordance with Regulation 28 of the Regulations.

Home Care

The provision of a package of CHC assessed by the CCG as reasonable to meet an individual's assessed health and associated social care needs in the individual's home or the home of a family member or any other location proposed by the individual where the owner and/or operator of the location is not registered with the Care Quality Commission to provide the relevant health or social case services.

Individual

The individual is the service user who has been assessed for a care/treatment package or placement.

Individual Funding Request

A request for funding by a clinician on behalf of an individual for a care treatment or service that is not routinely commissioned by the CCG.

Personal Health Budget

A sum of money made available to the individual (or their representative) or a Third Party in order to procure services to meet the individual's specific needs in accordance with their care/support plan.

Procurement

The process of selecting a provider with whom the CCG should contract to provide care to one or more individuals.

Protected Characteristics

Protected characteristics are defined by the Equality Act 2010. The following are protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief sex and sexual orientation.

Provider

A person or organisation who provides health and/or social care services to individuals which is funded by the CCG.

Residential Care

A residential care home, a residential nursing home or a hospital (as defined in section 275 of the National Health Service Act 2006) each of which is registered with the Care Quality Commission and which is able to offer a package of support including accommodation, health and social care to an individual. This includes a supported living setting as defined below.

The Regulations

The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012.

Representative

Any family member, friend or unpaid carer who is supporting the individual in the process of securing NHS funding for a care or treatment package or placement, as well as anyone acting in a more formal capacity (e.g. welfare deputy or power of attorney, or any organisation representing the individual). Where an individual has capacity, s/he must give consent for a representative to assist the individual and to be provided with information by the CCG relating to the individual.

Supported Living

Supported living in this policy has the same meaning as in the Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014 namely “accommodation in premises which are specifically designed or adapted for occupation by adults with needs for care and support to enable them to live as independently as possible” or “accommodation which is provided (i) in premises which are intended for occupation by adults with needs for care and support (whether or not the premises are specifically designed or adapted for that purpose), and (ii) in circumstances in which personal care is available if required”.

3. Purpose of the Policy

3.1. The Policy has been developed to ensure, so far as possible within the policy structure set out hereafter and in as much as it is as far as is reasonably practicable:

3.1.1. Any package of services which is offered to be commissioned by the CCG is sufficient to meet the reasonable requirements of an individual who is eligible for CHC;

3.1.2. A person-centred approach is taken by the CCG in making decisions about any offer of health and/or social care services to be funded by the CCG for that individual;

3.1.3. Decisions are made in accordance with choices expressed by individuals and their representatives;

3.1.4. Decisions are made in a transparent manner;

3.1.5. Decisions are made in a way that is fair, balancing the CCG's duties to the individual and to all the other patients for whom the CCG has commissioning responsibility;

3.1.6. Where the CCG uses financial limits which may constrain the choices of types or locations of services that the CCG is prepared to fund, any decisions about those financial limits have been reached using a fair and transparent process, based on the individual's care/support plan.

3.2. Robust implementation of this Policy will require:

3.2.1. Commissioning arrangements (contracts) with providers that achieve the CCG's specified minimum quality standards and deliver cost-effectiveness;

3.2.2. The regular review of care and treatment packages/placements (as a minimum in accordance with National Framework expectations). The CCG reserves the right to review the care and treatment package/placement at any time and as and when clinically required;

3.2.3. In those cases where a review has identified the individual's needs have changed, the care provision will be adjusted promptly, according to the assessment and in accordance with the principles of this policy;

3.2.4. The use of interim or Discharge to Assess placements upon discharge from hospital, as required, to avoid delayed discharges;

3.2.5. Early determination of the responsible commissioner; ;

3.2.6. That where an individual is no longer eligible for CHC, the CCG will work with the individual and any other potential funders of care to exit from any CHC arrangements within 28 days or as quickly as is reasonably practicable.

4. Key Principles

4.1. Where a person qualifies for CHC, the responsible CCG has a duty to offer to provide a package of health and social care services to meet the individual's reasonable assessed health and associated social care needs. The duty to make and maintain the offer and, if accepted to commission care in accordance with the offer, continues for as long as the individual is eligible for CHC.

4.2. Standard NHS or social care services which can be accessed by the individual in the usual way (such as GP services or the services of an Accident and Emergency Department) can form part of an offer of a package of health and social care services under paragraph 4.1 provided, in the case of social care services, such services can be accessed by an individual without the need for payment to be made by the individual (unless covered by NHS Charging Regulations).

4.3. The CCG will seek to commission services using models that are person-centred. This means including considering the following elements in commissioning decisions:

4.3.1. Ensuring that the individual and/or their representative is or are fully and directly involved in the assessment process where possible;

4.3.2. Taking account of the individual's own views and wishes, ensuring that their perspective is incorporated in the assessment process;

4.3.3. Addressing, as far as reasonably practicable but having made reasonable adjustments where needed, the patient's communication and language needs;

4.3.4. Making reasonable adjustments to the type of services that are offered to be commissioned for an individual to take account of any protected characteristic of the individual or any other feature which makes it appropriate to adapt the offer to the individual's personal circumstances;

4.3.5. Complying with the CCG's obligations under the Equality Act 2010;

4.3.6. Obtaining consent to assessment and sharing of records (where the individual has mental capacity to give this);

4.3.7. Dealing openly with issues of risk; and

4.3.8. Keeping the individual (and/or their representative) fully informed.

4.4. The CCG recognises that an individual's needs may change over time and there may be other changes that the CCG has to take account of, including other demands on its budgets, technology changes or other factors that may change commissioning decisions related to the services that are reasonably required to meet the needs of an individual. Consequently any offer made by the CCG and/or any services that are commissioned by the CCG does not constitute any promise that the services will continue to be offered or commissioned in that manner in the future. Regular case reviews should be undertaken in order to reassess an individual's care needs and eligibility for NHS funded services and/or to determine what services should be offered or commissioned for an individual. The CCG reserves the right to reassess any package of health and/or social care services and/or an individual's CHC eligibility at any time and to amend care plans or any commissioned services in the light of any relevant circumstances.

4.5. The CCG has a statutory duty to break-even financially. When making decisions about commissioning services, the CCG must balance a range of factors including individual choice and preferences, quality/safety and value for money. Throughout the decision making process the CCG needs to recognise the need to achieve best value in its use of financial resources, in order that it can share finite NHS resources equitably across all patients for whom it has commissioning responsibility.

4.6. Other CCG policies may become relevant in individual cases. Where there is a conflict between the requirements on CCG decision makers in different policies, CCG decision makers will seek to follow whichever policy appears to them to be most appropriate in the individual circumstances of the case.

4.7. This policy sets out the principles that the CCG will follow to take decisions but it does not describe all of the internal procedures that the CCG will follow when making relevant decisions. The CCG will make decisions using its existing decision making processes including:

4.7.1. Continuing Healthcare Panel;

4.7.2. Personal Health Budgets Individual Cases Panel;

4.7.3. Individual Funding Requests Panel.

5. Mental Capacity

5.1. If there is concern that an individual may not have capacity to make a decision about any aspect of their care or the location in which their care is to be provided, the CCG will arrange an assessment of the individual's capacity to make the decision in question in accordance with the Mental Capacity Act 2005 and the associated Code of Practice (and taking full account of any changes to the mental capacity statutory framework).

5.2. Where it is assessed that an individual lacks the relevant capacity, the CCG needs to follow the processes under the Mental Capacity Act 2005 in devising options for providing services to the individual including involving the individual (if possible) and those who have an interest in the individual (including relatives) to understand the individual's wishes, feelings, beliefs and values and the views of others.

5.3. The CCG will have 2 different types of decision for a person who lacks capacity to make their own decision, namely:

5.3.1. First, the CCG makes decisions as a commissioner of NHS services as to whether the individual is eligible for CHC and, whether eligible or not, what offer should the CCG make to the individual to commission NHS services for that individual; and

5.3.2. Secondly, the CCG makes “best interests” decisions on behalf of the individual as to what services should be accepted on behalf of that individual by selecting between the options identified by the CCG at the first stage under paragraph 5.3.1 above. Those decisions need to be taken by the CCG after following the structured decision making process under the Mental Capacity Act 2005 having regard to the associated Code of Practice.

5.4. Where appropriate in accordance with the Mental Capacity Act 2005 and having regard to the associated Code of Practice, a best interests decision can be referred by the CCG or others to the Court of Protection.

6. Care Planning

6.1. If an individual is eligible for CHC and there is a need for an individual package of care or placement, the individual’s Care Coordinator will discuss care options with the individual and/or his/her representative/s (where the individual gives consent for such a discussion or where the individual lacks capacity).

6.2. In all instances, the CCG will need to satisfy itself that any health and social care services that are to be commissioned by the CCG for an individual are to be provided in a location which is:

6.2.1. Clinically appropriate to provide the package of health and social care which the CCG has assessed is reasonably required to meet the individual’s assessed health and associated social care needs; and

6.2.2. Able to provide a safe and sustainable package of care.

6.3. These considerations apply both when commissioning services for a patient who is eligible for CHC and on every review. Any review must consider whether the location at which health and social services are provided continues to meet the criteria set out at paragraph 6.2 above.

6.4. **The identification of Care Planning Options and patient choice:** In most circumstances CCG staff will work with the individual and/or their representatives to seek to identify a range of potential locations and service options which are appropriate to

meet the individual's reasonable assessed needs and will communicate those potential options to the individual and any representative identified by the individual.

6.5. The experience of the CCG is that the options for commissioning appropriate packages of care for patients who are eligible for CHC can, in suitable cases, include the following:

6.5.1. Health and social care services provided in Residential Care (as defined above);

6.5.2. Health and social care services provided by way of domiciliary care in an individual's own home or in the home of a relative or other person, and referred to in this document as "Home Care", as further described in paragraph 8 below.

6.6. A package of care in either Residential Care or as part of Home Care provision may include the provision of specialist equipment.

6.7. The individual and any representative identified by the individual will be invited to indicate the individual's choice between the potential options (including any Home Care or Residential Care options that are put forward by the CCG as potential options). Any expression of choice by or on behalf of the individual between the available options will be carefully considered by the CCG and, subject to the terms of this policy, the CCG will seek to commission care at a location and/or from a care provider:

6.7.1. Which accords with the terms of this policy; and

6.7.2. Which accords with choices expressed by or on behalf of the individual (unless a different decision is required because of the application of the terms of this policy).

6.8. Where urgent decisions need to be made for a CHC eligible patient, because, for example, an individual is in urgent need of a residential care placement or is occupying a hospital bed when fit for discharge, the range of immediate options may be more limited. Whilst the CCG will seek, as far as is reasonably practicable and consistent with the exigencies of the situation, to give effect to choices made by or on behalf of the patient, an urgent decision may not give full effect to the CCG's choice commitment as set out above. However, any such urgent placement will be reviewed by the CCG and effect will be given to the provisions set out at paragraphs 6.4 and 6.7 above in later decisions.

6.9. The CCG may also discharge its duties by offering the patient a “discharge to assess” placement as an interim placement in advance of any final decision being taken as to whether the patient is eligible for CHC and/or, where the patient is CHC eligible, where the patient should receive services on a longer term basis.

7. Residential Care

7.1. Where the CCG is exploring a potential option of offering care for the individual in Residential Care, the CCG will ensure any proposed providers:

7.1.1. Are registered with the Care Quality Commission (or any successor organisation) to provide the appropriate form of care to meet the individual’s needs; and

7.1.2. Are not subject to an embargo by the CCG or the relevant Local Authority which has been imposed arising out of or related to concerns about the quality of care being provided.

7.2. Wherever possible and subject to this paragraph, the CCG will offer a reasonable choice of Residential Care providers to the individual together with such information about the Residential Care options as the individual may reasonably require to assist him or her to express a choice. Reasonable, in this context, normally means a choice of up to three providers who have established contractual relationships with the CCG that are capable of meeting the individual’s needs and that have vacancies at that time. The CCG will be prepared to consider another clinically appropriate location identified by the individual or his or her representatives (unless the proposed change of location materially adds to the costs of providing services to the individual).

7.3. The CCG recognises that most Residential Care placements are run by private businesses and that facilities and costs vary between different such placements. Where the CCG has agreed a framework or other arrangements with local Residential Care providers, the CCG shall be entitled to use that framework or other arrangements to set the costs of any proposed provision.

7.4. The CCG shall not be obliged to offer to commission care for an individual in Residential Care where the CCG concludes that it is likely to be charged more than 20% above the cost of the lowest cost of the other available options. In some circumstances, it may only be possible to offer the choice of one provider.

7.5. When comparing costs of Residential Care providers, any costs comparison can be undertaken based on an estimate of the costs made by the CCG based on such inquiries as are reasonable and the CCG's knowledge of the cost of providing the care to other patients. As these costs can be accurately predicted by experienced CCG commissioning staff, there is no requirement for the Residential Care placement in question to have carried out an individual assessment and then provide an individual costed plan before the CCG can come to an estimate of likely costs of a clinically appropriate alterative package.

7.6. The CCG will notify an individual (and/or his or her representative/s) of any Residential Care setting where the CCG is prepared to offer to fund a package of care for the individual and, if requested by the individual or representatives, will provide details of any Residential Care settings that have been excluded by the application of the tests in paragraph 7.4 above.

7.7. In the event that individual or their representatives wishes to challenge the decision to exclude a Residential Care setting as an option , the individual or their representatives should make representations within 14 days to explain why the individual or their representatives considers that the Residential Care setting should not have been excluded and the CCG will reconsider the relevant decision. Any reconsidered decision will be a final decision and will be communicated to the individual or their representatives as appropriate.

7.8. Where an individual is eligible for CHC and is currently in a hospital or other care setting and is medically fit to be discharged, the individual (and/or his/her representative/s) will be given a reasonable choice of provider (which, in certain circumstance, may be no choice) and will be given 48 hours to make their choice. This time-limit is necessary in order to avoid delays to discharge and to avoid prejudicing the interests of other patients. Where no decision is communicated within this timescale, the CCG, in conjunction with the hospital, has the right to offer to move the individual to an appropriate interim care setting in order to free up the hospital bed. If this offer is declined, the individual will have no legal right to remain in a hospital bed and may be evicted from the hospital with or without a court order.

7.9. The CCG recognises that, for various reasons, it may not always be possible to accommodate an individual in a care setting in accordance with his or her first choice. If an individual's first choice accommodation is no longer available, the CCG will offer

support to the individual to assist him or her to select another available provider as soon as possible. If an individual is placed in a home which is not their first choice, the CCG will consider whether it is possible to move the individual to the home of their choice if and when a vacancy arises.

7.10. If the individual who is eligible for CHC is unwilling to accept any of the offers made by the CCG, the CCG will have fulfilled its duties to the individual and is not required to take further steps to provide services to him or her.

7.11. If the individual's representative/s are delaying placement in a care setting due to non-availability of their first choice and the individual does not have the mental capacity to make decisions him/herself, the CCG reserves the right to work with the multi-disciplinary team involved in the individual's care and to make a 'Best Interests' decision on behalf of the individual in order to secure a prompt discharge.

7.12. Where an individual or their representative declines all of the care settings proposed by the CCG, the individual or their representative can suggest a different care setting so long as it satisfies the following criteria:

7.12.1. The individual's or their representative's preferred care setting satisfies the criteria set out at paragraphs 6.2 and 7.1 above; ; and

7.12.2. The cost of making arrangements for the individual at his/her preferred care setting meets the criteria set out at paragraph 7.4 above.

7.13. In exceptional cases, the CCG may be prepared to fund package of Residential care where the anticipated cost to the CCG is more than it would expect to pay under the terms of this part of the policy having regard to the individual's assessed health and associated social care needs. Very compelling or very compassionate circumstances will need to be shown to justify a higher cost.

7.14. The CCG will take account of an individual's views and wishes, including the individual's particular reasons and family circumstances, in determining whether there are very compelling or very compassionate circumstances that justify a higher cost being incurred to provide care. However, in reaching this decision, the CCG must be satisfied that the proposed overall cost of the Residential Care package is proportionate and a justifiable

use of CCG funds in comparison to the cost of commissioning a package of care for the individual in another Residential Care setting.

8. Provision of Care in an Individual's own home or other location outside Residential Care (Home Care)

8.1. The CCG acknowledges that many individuals wish to remain in their own homes with a package of care in place to meet their assessed health and care needs. While an individual's views and wishes will be the starting point, the CCG must also ensure fairness across client groups, having regard to the need to share finite NHS resources equitably, and the need to provide value for money from the tax payers' purse.

8.2. The CCG recognises that family members and others may be willing and able to provide elements of care to the individual without funding being provided by the CCG, particularly if the individual continues to live in the same house as family members. The CCG also accepts that individuals are fully entitled to use their own resources or resources provided by others to provide any element of health or social care to them. The CCG fully accepts that family members, friends and any informal carers are under no legal obligation to offer to provide such care to an individual. Equally, the CCG recognises that, even where an individual is eligible for CHC, family members, friends or other paid carers may have become expert carers and both the individual and/or the individual may wish to continue existing care arrangements.

8.3. As part of the care planning process, the CCG will follow good health and social care practice by asking the individual, his or her family members and any other persons who provide or may be prepared to provide informal or formal care:

8.3.1. whether any such person wishes to provide care to the individual or wishes to continue to provide care; and

8.3.2. whether the individual is prepared to receive care from any such family member or any other person who provides or indicates a willingness to provide care to the individual.

If both the individual and the carer wish an existing care arrangement to continue or wishes to put a proposed future care arrangement in place, in assessing the individual's reasonable needs, the CCG will be entitled to take such care arrangements fully into

account. Accordingly, the CCG shall, as a starting presumption, look to provide a package of health and care services to meet those needs which are not met by such care arrangements.

8.4. In the event that the CCG assesses that part of the individual's overall needs will be met by a care arrangements as set out at paragraphs 8.2 and 8.3 above:

8.4.1. The CCG will consider the extent to which additional care should be provided so as to relieve those providing such care to have, for example, regular breaks. Any family members or other informal carers will normally be asked to undergo a carer's assessment by the Local Authority before any respite care is agreed. The outcome of any carer's assessment will determine the need for potential respite provision and whether this should be funded by the CCG or a local authority. The CCG shall take into account the carer's assessment when determining any funding to be given for respite care; and

8.4.2. The individual will have the right to inform the CCG of a change in circumstances in relation to the provision of any care arrangements relating to care for the individual which is not commissioned by the CCG (including any decision by a family member that they wish to reduce or cease providing voluntary care) in which case the CCG will, as soon as is reasonably practicable, reassess the situation and will consider whether alternative arrangements are required in order to deliver on the CCG's statutory duties.

8.5. In order that respect is accorded to an individual's views and wishes to receive Home Care, the CCG will normally agree to commission a domiciliary care package to support the individual by way of a Home Care package in the individual's chosen location provided:

8.5.1. The proposed Home Care package satisfies the criteria set out at paragraph 6.2 above;

8.5.2. The CCG is satisfied that a Home Care package is an appropriate and sustainable option for providing health and social care services to the individual; and

8.5.3. Unless the CCG make a decision under paragraph 9 below, the weekly average cost of doing so is able to be up to 20% higher than the lowest cost of providing equivalent care within Residential Care setting ("**the 20% cost ceiling**").

8.6. In considering whether any proposed Home Care package is an appropriate and sustainable option for providing health and social care services to the individual as required under paragraph 8.5 above, the CCG will make an assessment based on all relevant factors. Those factors may include the following:

8.6.1. The extent of the individual's health or social care needs and the sustainability of delivering care to the individual outside a specialist care setting;

8.6.2. The history of success or otherwise of delivering a Home Care package to the individual;

8.6.3. Whether care can be delivered safely to the individual without undue risk to him or her, and to any family members or staff engaged to provide the care. Safety will be determined via a formal risk assessment undertaken by an identified professional. The risk assessment will consider the availability of suitably skilled carers and/or equipment and the appropriateness of the environment;

8.6.4. The acceptance by the individual of any identified risks, notwithstanding any plans which are approved by the CCG which are intended to minimise any risks; and

8.6.5. Whether and how the CCG would be able to discharge its duties to the individual if the chosen domiciliary care provider pulls out of any arrangements and the chance of that happening.

8.7. When comparing the cost of equivalent care, the costs comparison will be on the basis of the CCG's estimated cost of providing the care reasonably assessed to meet the individual's assessed health and social care needs in a Residential Care or suitable alternative setting.

8.8. In the event that the CCG is considering not offering to discharge its statutory duties by offering to fund a Home Care package for the individual, the CCG will notify the individual (and/or his/her representative/s) of the estimated cost of providing care in Residential Care or other appropriate care setting prior to making a decision on whether to provide

Home Care, in order to allow the individual (and/or his/her representative/s) to make representations as to the amount of such costs and/or to make representations in favour of extending the 20% cost ceiling.. A minimum period of 14-days will be provided for such representations to be made.

8.9. At any time the individual shall be entitled (but not in any way obliged) to suggest that a greater part of all or part of his or her needs for health or social care services shall be provided by persons who are not funded by the CCG, as explained in paragraph 8.2 above. In the event that the individual makes proposals that any elements of care from any other source shall be provided, the CCG shall fully take that proposal into account in making decisions under this policy. The CCG shall have no obligation to plan to include any third party offers of care in the care planning process where the CCG has reasonable grounds for considering that the third party offers of care are inappropriate, not sustainable or will not meet the individual's reasonable needs.

9. Decisions to Fund a Home Care package in excess of the 20% cost ceiling.

9.1. In exceptional cases, the CCG will consider providing Home Care at a cost which exceeds the 20% cost ceiling.

9.2. In making such decisions the CCG will take account of an individual's views and wishes, including the individual's particular reasons and family circumstances, in determining whether there are very compelling or very compassionate circumstances that warrant providing a higher cost package of Home Care than the CCG would be prepared to support in the case of another patient in similar clinical and personal circumstances.

9.3. Very compelling or very compassionate circumstances may arise if it can be clearly established that not providing Home Care would be significantly detrimental to an individual's health or there are other circumstances which make the individual's case very significantly different to the case of another individual with similar clinical needs.

9.4. If the CCG takes the decision that very compelling or very compassionate circumstances exist in the case of an individual and thus, in principle, the CCG is prepared to consider funding a Home Care package which exceeds the 20% cost ceiling, then the following criteria must be satisfied before the CCG takes the decision to fund a Home Care package above the 20% cost ceiling.

9.4.1. The proposed Home Care package must satisfy the criteria set out at paragraph 6.2 above;

9.4.2. The CCG is satisfied that a Home Care package is an appropriate and sustainable option for providing health and social care services to the individual having regard to the factors at paragraph 8.6 above; and

9.4.3. The CCG must be satisfied that the proposed overall cost of the Home Care package is proportionate and a justifiable use of CCG funds in comparison to the cost of commissioning a package of care for the individual in Residential Care.

10. Temporary Arrangements whilst a Home Care package is implemented.

10.1. In some cases, even where the CCG agrees to fund a Home Care package, the CCG may discharge its duties to the individual by offering to fund care for the individual in Residential Care for a limited period whilst arrangements can be put in place to implement any proposed Home Care package. This may be needed if time is required, for example to:

10.1.1. Run a procurement or other process to select an appropriate domiciliary care provider;

10.1.2. To set up a contract with the chosen domiciliary care provider;

10.1.3. To permit time to allow the chosen domiciliary care provider to recruit and train staff.

10.2. Where there is a delay in setting up a Home Care package as envisaged in paragraph 10, the CCG will discharge its duties by offering Residential Care to the individual in accordance with the procedures set out at paragraph **Error! Reference source not found.**.

10.3. Where the CCG decides to offer a package of Home Care, the individual's home becomes the place of work of any staff member/s engaged to provide care. Employee safety is a key consideration and the individual's home must be a reasonably safe environment to work and deliver care.

11. Equipment and Wheelchairs

11.1. The CCG routinely commissions a range of equipment and wheelchairs from its core commissioning portfolio. Where the individual's assessed need is for equipment or a wheelchair of this nature, this will be provided through core contracts.

11.2. 'Bespoke' equipment that is not commissioned through the core commissioning portfolio may form part of an individual's assessed health need and be reflected in their care/support plan. Where this is the case, three quotes will be required from suppliers (wherever possible). The quote that reflects best value for money, in terms of maintenance and supply (including guarantee) will be recommended for approval by the CCG at the appropriate panel meeting.

11.3. Requests for equipment and wheelchairs for individuals placed out of area (i.e. not within Dudley CCG will be considered on an equivalent basis to in-area provision, with individuals receiving the same nature/type of equipment in accordance with the paragraphs above.

12. Additional Services in residential care placements or as part of a domiciliary care service.

12.1. The CCG will only commission and fund those health or social care services that are (a) identified in an individual's care plan and (b) are considered by the CCG to be reasonably required by the individual to meet his reasonable needs. This may result in the CCG taking the decision not to provide services to meet every need for an individual identified in a care plan in the same way that the CCG does not fund services to meet every other health need for patients for whom it commissions services. For the avoidance of doubt, the CCG confirms that any care plan produced by the CCG for an individual will only list those services that the CCG considers are reasonably required by the individual. This can include services provided by relatives and other carers arranged by or on behalf of the individual.

12.2. The individual (and/or his/her representative/s) has the right to enter into an agreement with any care provider to provide additional services over and above the package of care that the CCG has agreed to fund and has assessed is required to cover the individual's

reasonable care needs. Any costs arising out of any such agreement must be funded by the individual or through third party funding. These costs may, for example, relate to:

12.2.1. Additional non-healthcare services to the individual. For example, hairdressing, provision of a larger room, provision of an en-suite room or enhanced TV packages.

12.2.2. Additional healthcare services to the individual outside of the services that the individual has been assessed as reasonably requiring as part of their NHS funded care/treatment package. For example, the CCG may not consider that the individual reasonably requires a chiropractor or additional physiotherapy sessions but the individual may wish to fund these elements of care themselves.

12.3. Further the CCG respects the fact that an individual and a Residential Care provider or other care provider are entitled to set up arrangements between themselves and a service user or patient in any lawful manner, save that any such arrangements cannot have the effect of increasing the amount that the CCG is obliged to pay to commission care for the individual. The CCG thus recognises that an individual and Residential Care provider may take specified elements of the service to be provided to the individual out of the overall package required to be funded by the CCG by making separate provision to fund those elements of the overall package. Whilst the CCG does not seek to encourage these types of arrangement, the CCG will respect the rights of individuals and care providers to enter into such arrangements where they occur and will seek to commission a package of health and/or social care services to meet any services that are reasonably required by the individual and are not covered by any such arrangements. However, where such arrangements are proposed as part of an overall care package:

12.3.1. The CCG will require complete transparency from both the individual and any care provider in relation to such arrangements;

12.3.2. The arrangements will need to be properly documented to show precisely what services are the subject of the said arrangements; and

12.3.3. The CCG will have to be satisfied that the individual has properly consented to entering into a bona fide arrangement for part of the services to be provided by

the care provider to fall outside of the services that the CCG is being required to fund.

12.4. The decision to fund any additional non-healthcare or healthcare services must be entirely voluntary for the individual. The provision of any NHS funded care package must not be contingent on the individual (and/or his/her representative/s) agreeing to fund any additional services.

12.5. In order to ensure that there is no confusion between the NHS and the privately funded services, the CCG will enter into a legally binding service agreement with the selected care provider which details the provision by that provider of a defined level of health and social care to the individual. This will expressly be independent of any arrangement between the selected care provider and the individual (and/or his/her Representative/s). It will include the right for both the CCG and the care provider to review the placement in the event that any agreement between the care provider and the individual comes to an end for any reason.

12.6. Any payments made by the individual (and/or his/her representative/s) under a contract with a care provider for services cannot relate to any services to be provided under the CCG contract.

12.7. If the individual (and/or his/her representative/s) decides for any reason that the funding of the additional services is to be terminated, the CCG will not assume responsibility for funding any additional services.

13. The consequences of a refusal to accept an offer of a package of CHC support

13.1. An individual is not obliged to accept an offer of an NHS funded care package. Where an eligible individual chooses not to accept a package, the CCG will take reasonable steps to make the individual aware that:

13.1.1. The CCG is not required to make further offers to the individual or offer to fund care in a location of the individual's choice; and

13.1.2. the Local Authority may not assume responsibility to provide care to the individual.

An individual who has refused NHS funded care is entitled to re-engage with the CCG at any time and, if the individual does so, the CCG will reconsider what offers of services should be made to the individual.

14. Reviews

14.1. Individuals who are eligible for CHC will have both their eligibility and any care packages provided to meet their reasonable needs reviewed by the CCG:

14.1.1. Within 3 months of the date of the eligibility decision; and

14.1.2. Thereafter at least annually, although a review may be conducted more frequently where this is justified by, for example, the changing clinical situation of an individual.

14.2. If the case review demonstrates that the individual's needs have changed to the extent that s/he is no longer eligible for CHC:

14.2.1. The CCG will inform the individual and relevant local authority of that ; and

14.2.2. The CCG will substitute the current care package with a care package which is appropriate for a person with the individual's health needs who is not eligible for CHC. This will usually mean that the extent of the CCG's responsibility will be limited to providing:

14.2.2.1. FNC (where appropriate); and

14.2.2.2. The services of appropriate medical professionals,

but will not usually extend to continuing to fund social care and/or accommodation for the individual.

14.3. Where a review demonstrates that the individual continues to be eligible for CHC, the CCG will review the care package provided to the individual. That review may identify that the individual's needs have changed to an extent that his or her care package may need adjusting. In such a case:

14.3.1. Where an individual is receiving a package of Home Care and the individual wishes to remain living at home, the relevant CCG will consider whether an enhanced Home Care package should be provided to the individual applying the criteria set out at paragraphs 8 and, if relevant, 9 above;

14.3.2. If, after applying the criteria set out at paragraphs 8 and, if relevant, 9 above, the CCG considers that it is not appropriate to offer to provide an enhanced Home Care package, the CCG will offer to discharge its duties to the individual by way of a Residential Care package applying the procedures in paragraph 7 above. If the individual declines the offer of a Residential Care package, the CCG will follow paragraph 13 above.

14.3.3. Where the individual is accommodated in Residential Care, the relevant CCG will ensure that the care setting is able to deliver such revised package of care as is required to meet the individual's reasonable needs. Where the care setting is unable to deliver the revised package of care, the CCG will offer to accommodate the individual in an alternative care setting (which is able to deliver the revised package of care) in accordance with paragraph 7 above;

14.3.4. Where the individual is accommodated in Residential Care and the case review has identified a decreased need, the CCG will consider whether it is cost effective for the revised package of care to be delivered in the current care setting. The CCG may discharge its obligations to the individual by offering to re-locate the individual to an alternative care setting (which is able to deliver the revised package of care) in accordance with paragraph 7 above.

14.4. The CCG may withdraw a package of care funded for an individual where there is a substantial risk of danger or violence to or harassment of the staff who are delivering the package of care. Alternative packages of care will be considered and may be offered where there are alternative options available for the CCG to commission. Any offer of an alternative package of care may be subject to the performance of such conditions as the CCG may reasonably require of the individual, including an Acceptable Behaviour Contract.

14.5. The CCG may also withdraw the provision of an NHS funded package in a particular location where the CCG assesses that the clinical risks are too high for a safe and sustainable package to be appropriate to be delivered in that location. Where a care

package is delivered in a Home Care setting, the CCG may offer to discharge its duties by offering a package of care in a registered care setting in accordance with paragraph 7 above as an alternative if the Home Care package is assessed by the CCG to be unsafe or ceases to be sustainable.

15. Complaints

15.1. Any person who is aggrieved by any decisions made under this policy may raise a complaint about the decision.

15.2. Any such complaint will be investigated and considered by the CCG through the NHS Complaints Procedures.

15.3. Save in exceptional circumstances, the fact that a complaint has been made about a decision made under this policy will not delay the implementation of the decision. However if the complaint is subsequently upheld, the CCG will consider what (if any) action should be taken to recompense anyone who has been adversely affected by a decision that is changed as a result of the outcome of an NHS complaint.

15.4. If a complaint is not upheld by the CCG, subject to further review, the individual has the right to present their complaint to the Parliamentary and Health Service Ombudsman.

16. Personal Health Budgets

16.1. The CCG is committed to using personal health budgets where appropriate and recognises that the use of a personal health budget can enable an individual to have greater choice, flexibility and control over the care and support s/he receives.

16.2. Personal health budgets can operate in a number of different ways, including:

16.2.1. A ‘notional’ budget held by a CCG commissioner;
16.2.2. A budget managed by a third party on the individual’s behalf;
16.2.3. Via a payment to the individual (a healthcare direct payment).

16.3. Where individuals wish to consider having a Personal Health budget, the CCG will follow its established processes leading to a decision whether to offer a Personal Health Budget to the individual.

17. Out of area placements

17.1. If a patient wishes the CCG to consider a Residential Care placement or a Home Care package outside of the CCG's geographical area, the CCG will be prepared to consider the request. However the CCG is not obliged to offer to commission care for an individual outside of the CCG's geographical area and may decline to do so if it considers that it is inappropriate to do so.

17.2. If the CCG agrees to offer a Residential Care placement in an area outside the CCG area as suggested by the individual, the CCG will liaise with relevant CCG (for the area where the care home is located as appropriate.

17.3. If the CCG agrees to offer a Home Care placement at a location suggested by the individual outside the CCG area, the CCG will liaise with CCG local to the proposed placement concerning the proposed Home Care placement.

17.4. Where an individual who is eligible for CHC chooses to move to a different part of the country or is placed there because of an arrangement made by the local authority and then registers with a GP practice which is local to the individual's new home, this will not be a placement by the CCG. In such a case, the individual's NHS responsible commissioner is likely to change to the CCG of which that GP practice (CCG) is a member. Where this happens the CCG will liaise with the CCG which has become responsible for commissioning NHS care for the individual.

[End of Policy]