

<b>Corporate</b>	<b>CCG CO29 – Choice &amp; Equity &amp; Policy</b>
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Version Number	Date Issued	Review Date
V1	September 2021	September 2023

<b>Prepared By:</b>	Debra Pease, Head of Service CHC
<b>Consultation Process:</b>	Head of Corporate Affairs Executive Committee Governing Body
<b>Formally Approved:</b>	September 2021
<b>Policy Adopted From:</b>	New policy
<b>Approval Given By:</b>	Executive Committee

### Equality Impact Assessment

Date	Issues
September 2021	See section 16

### POLICY VALIDITY STATEMENT

This policy is due for review on the latest date shown above. After this date, policy and process documents may become invalid.

Policy users should ensure that they are consulting the currently valid version of the documentation.

### ACCESSIBLE INFORMATION STANDARDS

If you require this document in an alternative format, such as easy read, large text, braille or an alternative language please contact [cdccg.enquiries@nhs.net](mailto:cdccg.enquiries@nhs.net)

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## **1. Introduction**

1.1 This policy describes the way in which NHS County Durham CCG will commission care for people who have been assessed as eligible for fully funded NHS Continuing Healthcare. The policy describes the way in which NHS County Durham CCG will commission care in a manner which reflects the choice and preferences of eligible individuals but balances the need for NHS County Durham CCG to commission care that is safe and effective and makes the best use of available resources.

1.2 In developing this policy, NHS County Durham CCG has had regard to the guidance set out in the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care (DH 2018) and is mindful of its obligations under the relevant legislation set out below.

1.3 The National Framework states that CCGs should take a strategic as well as an individual approach to fulfilling their NHS Continuing Healthcare commissioning responsibilities. The National Framework advises CCGs to consider commissioning NHS funded care from a wide range of providers, to secure high quality services that offer value for money.

## **2. The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care (DH 2007, revised 2009, 2012, 2018)**

2.1 The National Framework states:

“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 eligible 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 165).

Where a person qualifies for NHS Continuing Healthcare, the package to be provided is that which the CCG assesses is appropriate to meet all the individual’s assessed health and associated care and support needs. The CCG has responsibility for ensuring this is the case and determining what the appropriate package should be. In doing so, the CCG should have due regard to the individual’s wishes and preferred outcomes.

### **3. Context**

3.1 “NHS Continuing Healthcare” (CHC) means a package of continuing care arranged and funded solely by the NHS where the eligible individual has been found to have a ‘primary health need’ as set out in the National Framework. Such care is provided to an eligible individual aged 18 or over, to meet their reasonable health and associated social care needs that have arisen because of disability, accident or illness. 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.” (Definition's page 15)

3.2 This policy does not apply to packages of care for those under the age of 18, nor does it apply to the provision of aftercare services under s117 of the Mental Health Act. It only applies where individuals have been found to be eligible for NHS CHC and applies only to the commissioning of that CHC provision.

### **4. The Provision of Services for People who are Eligible for NHS Continuing Healthcare**

4.1 Many Individuals who require Continuing Healthcare will receive it in a specialised environment. The treatments, care and equipment required to meet complex, intense and unpredictable health needs often depend on such environments for safe delivery, management, and clinical supervision. Specialised care, particularly for people with complex disabilities may only be provided in Specialist Care Homes (with or without nursing), which may sometimes be distant from the Individual’s ordinary place of residence.

4.2. These factors mean that there is often a limited choice of clinically appropriate, safe, sustainable, and affordable packages of care.

4.3. CCGs commission in accordance with the NHS Constitution and the duties at s.14U (duty to promote Individual involvement) and 14V (duty to promote Individual choice) of the National Health Service Act 2006 (“the NHS Act”). The CCG fully recognises these obligations but must balance them against its other duties.

4.4. In commissioning CHC care, each CCG must have constant regard to its financial duties. In brief, section 223G of the NHS Act provides for payment to the CCG from the NHS Commissioning Board (“NHS England”) in respect of each financial year, to allow the CCG to perform its functions. Section 223I provides that, in summary, each CCG must break even financially each financial year. In the case of *Condliff v North Staffordshire Primary Care Trust* [2011] EWHC 872 (Admin), the Court stressed the fundamental challenge for commissioners in allocating scarce resources to best serve the local population, whilst also having due regard to eligible individual rights and choices.

4.5. The CCGs acknowledge that each CCG must also have due regard to the rights of eligible individuals under Article 8 of the European Convention on Human Rights to respect for private and family life, and any interference with this right must be clearly justified as proportionate, in accordance with *Gunter v South Western Staffordshire Primary Care Trust* [2005].

4.6. The CCG must also have due regard to its equality duties, both under s.14T of the NHS Act (duty to reduce inequalities) and the Public Sector Equality Duty under s.149 of the Equality Act 2010 (duty to eliminate discrimination and advance equality of opportunity between persons with and without protected characteristics). The CCG is guided in balancing obligations as in the case of *Condliff* in which the Court held that a policy of allocating scarce resources on the strict basis of a comparative assessment of clinical need was intentionally non-discriminatory and did no more than apply the resources for the purpose for which they are provided without giving preferential treatment to one Individual over another on non-medical grounds (para. 36).

4.7. In the light of these constraints, NHS County Durham CCG has developed this policy due to the need to balance personal choice and safety with the need to effectively use finite resources. It is also necessary to have a policy which supports consistent and equitable decision making about the commissioning of care regardless of the person's age, condition, or disability. These decisions need to provide transparency and fairness in the allocation of resources.

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

- be person centred by fully involving the eligible individual and their family/representative possible.
- be robust, fair, consistent, and transparent
- be based on the objective assessment of the eligible individual's clinical need, safety, and best interests
- have regard to the safety and appropriateness of care to the eligible individual and staff involved in the delivery
- Implement the principles and processes of Personal Health Budgets (PHBs) and ensure availability of information and support to allow take up of all options related to PHBs
- consider the need for NHS County Durham CCG to allocate its financial resources in the most cost-effective way
- support and offer choice to the greatest extent possible in view of the above factors

4.9 NHS County Durham CCG has a duty to commission care for an eligible individual with continuing healthcare needs to meet those assessed needs. An eligible individual or their family/representative cannot make a financial contribution to the cost of NHS Continuing Healthcare identified by NHS County Durham CCG as required to meet the eligible individual's needs. However, an eligible individual has the right to decline NHS services and make their own private arrangements.

4.10 Access to NHS services depends upon clinical need, not ability to pay. NHS County Durham CCG is only obliged to commission care if it is identified as the responsible commissioner, in line with the guidance, Who Pays? Establishing the Responsible Commissioner (DHSC revised 2020). NHS County Durham CCG will not charge a fee or require a co-payment from any NHS Individual in relation to their **assessed 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. NHS County Durham CCG are not currently able to allow eligible individuals to top up payments into the package of care assessed as meeting the needs of the eligible individual under NHS Continuing Healthcare and covered by the fee negotiated with the service provider (e.g. the care home) as part of the contract.

4.11 However, where service providers offer additional or other services which go beyond the eligible individual's needs as assessed under the NHS Continuing Healthcare Framework, the eligible individual may choose to use their own personal funds to take advantage of these additional or other services.

4.12 Examples of such services falling outside NHS provision include hairdressing, a bigger room, or a nicer view within a care home. Any additional services which are unrelated to the person's primary health needs will not be funded by the CCG as these are services over and above those which the service user has been assessed as reasonably requiring, and the NHS could not therefore reasonably be expected to fund those elements. In these circumstances the provider must be able to clearly separate the associated cost of these additional services. 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 NHS CCG contract with the care provider.

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

4.13 Where an eligible individual advises that they wish to purchase additional private care or services the CCG will discuss the matter with the eligible individual to seek to identify the reasons for this. If the eligible individual advises that they have concerns that the existing care package is not sufficient or not appropriate to meet their needs the CCG will offer to review the care package to identify whether a different package would more appropriately meet the eligible individuals assessed needs.

4.14 The decision to purchase additional private care services will always be a voluntary one for the eligible individual concerned. The CCG will not require the eligible individual to purchase additional private care services as a condition of the provision or continued provision of NHS funded services to them.

4.15 Unless it is possible to separately identify and deliver the NHS funded elements of a service it will not usually be permissible for eligible individuals to pay for higher cost services and/or accommodation.

4.16 NHS County Durham CCG will not be held responsible for the payment of additional private care services if the individual is no longer able to afford them.

4.17 In instances where more than one clinically effective care option is available (e.g. a nursing home placement and a domiciliary care package at home) the total cost of each care package will be identified and assessed for their overall cost effectiveness as part of the decision-making process. While there is no set upper limit on the cost of care, the expectation is that the most cost-effective option will be commissioned that meets the eligible individual's assessed health needs and circumstances.

4.18 The cost comparison must be based on the genuine costs of alternative models. A comparison with the cost of supporting a person in a care home should be based on the actual costs that would be incurred in supporting a person with specific needs in the case and not on an assumed standard care home cost.

4.19 Any assessment of a care option should include the psychological and associated social care needs of the eligible individual and the impact on their home and family life, as well as the eligible individual's care needs. The outcome of this assessment will be considered in arriving at a decision.

4.20 The setting in which CHC is provided will be decided by the CCG. The CCG **must** take into consideration its wider resources, other commissioned services and an equitable allocation of the same. However, this consideration will always be balanced against the factors set out above.

4.21 The CCG recognises that an individual's needs may change over time and there may be other changes that the CCG must 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. The CCG has no legal mandate to review a social care service and cannot amend any care plan without consultation with the Local Authority therefore this will be completed in partnership by arranging a joint review by the CCG and the Local Authority. 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 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 circumstance

## 5. Continuing Healthcare Funded Care Home Placements

5.1 Where an eligible individual has been assessed as requiring placement within a care home, NHS County Durham CCG operates a preferred provider list, and the expectation is that eligible individuals requiring placement will have their needs met in one of these homes. NHS County Durham CCG will endeavour to provide a reasonable choice of placements (generally three placements) and discuss the placements with the eligible individual and their family.

5.2 The individual may wish to move into a home outside of the preferred provider list, or their family/representative may wish to place the eligible individual in a home outside of the preferred provider list. If the fee for the bed is comparable to the fee agreed with the preferred provider and NHS County Durham CCGs are satisfied with the Care Quality Commission (CQC) inspection reports, their own CCG internal Quality contract monitoring of the care home and that the home can meet the eligible individual's assessed care needs NHS County Durham CCGs will consider this option.

5.3 NHS County Durham CCG will agree to fund the cost of a care home commissioned within the CCG's locality and look at reasonable costings for any out of area placements if the needs cannot be met within borough.

5.4 The provider will only be able to invoice the CCGs for the core care costs and reasonable accommodation costs and will have to invoice the individual separately for the non-core care costs and extra accommodation costs. The invoices will detail what the CCG and eligible individual is being charged for.

5.6 If the provider refuses to provide appropriate clarification as to the basis upon which their fees are charged, or to contract on this basis, NHS County Durham CCG are unlikely to purchase the care at this home and the eligible individual will be advised that they will need to consider choosing a home from those commissioned within the CCG locality.

5.7 Where there is a conflict between a high-cost placement outside of the fee agreed with the local commissioned providers and personal choice the case will be referred and discussed through the CCGs preferred governance process.

5.8 In all cases NHS CHC assessments will not be undertaken in the acute hospital setting and NHS County Durham CCG will access the Discharge to Assess (D2A) pathways in place to enable the assessment to take place at the right time, in the right place, outside of hospital.

5.9 If the eligible individual is unwilling to accept any of the offers made by the CCG, the CCG will have fulfilled its duties to the eligible individual and is not required to take further steps to provide services to him or her. This may trigger a safeguarding alert as the CCG has a Duty of Care to make sure the individual and others are safe from harm.

5.10 If the eligible individual's representatives 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 themselves, the CCG reserves the right to work

with the multi-disciplinary team involved in the eligible individual's care and to make a best interest's decision on behalf of the individual to secure a prompt discharge.

## **6. Continuing Healthcare Funded Packages of Care at Home**

**6.1 NHS County Durham CCG does not have the resources or facilities to provide either a 24-hour registered nursing service or the equivalent of nursing/residential care provision in a person's own home.** This level of care is unlikely to meet the necessity for cost effectiveness in comparison with other care settings which is a consideration that the CCG is legally bound to undertake. However, the CCGs will consider all requests for home care, on an eligible individual basis, having regard to assessed needs in accordance with the principles set out in the National Framework in every case.

6.2 NHS County Durham CCG will take account of the following issues before agreeing to commission a care package at home:

- the matters set out in paragraph 4 above and, in addition
- whether care can be delivered safely and without undue risk to the eligible individual. Safety will be determined by a written assessment of risk undertaken by an appropriately qualified professional in consultation with the eligible individual and/or their family. The risk assessment will include the availability of equipment, the appropriateness of the physical environment, potential adaptations, and the availability of appropriately trained care staff and/or other staff to deliver the care at the intensity and frequency required. Risks posed to carers or other members of the household (including children) will also be considered
- where equipment and/or assistive technology can be used to support the safe delivery of care at Home, it is expected that the eligible individual will accept this and use it appropriately.
- the acceptance by NHS County Durham CCGs and each person involved in the eligible individual's care of any identified risks in providing care and the eligible individual's acceptance of the risks and potential consequences of receiving care at home. Where an identified risk can be minimised through actions by the eligible individual or their family and carers, those eligible individuals agree (and confirm their agreement in writing) to comply with the steps required to minimise such identified risk
- the eligible individual's GP agrees to provide primary care medical support and the local provider of community services agrees to deliver the necessary community support.
- the suitability and availability of alternative care options

- the cost of providing the care at home in the context of cost effectiveness
- the relative costs of providing the package of care in line with the eligible individual's preference considered in line with the relative benefit to that eligible individual of doing so.
- the willingness and ability of family, friends, or informal carers to support elements of care where this is part of the care plan and the agreement of those persons to the care plan and a contingency plan if the family, friends or informal carers are no longer able to care for the individual and meet those needs.
- the outcome of the Carers Assessment referral

6.3 Many eligible individuals wish to be cared for in their own homes rather than in a care home, especially in the terminal stages of an illness. Where an eligible individual or their family expresses such a desire, NHS County Durham CCG will support this choice wherever possible considering the factors set out in paragraphs 4 and 6 of this policy. Any consideration of a package of care at an eligible individual's home will be considered, even if subsequently discounted with documented rationale.

6.4 It may be necessary to pay more to meet an eligible individual's assessed needs in a way that does not discriminate against them but there is no right for an eligible individual's care to be provided at home and as such the CCG does not have to commission a home care package if it is more expensive than providing care in a residential setting (subject to a proper consideration of the factors as outlined above).

6.5 Home care packages that exceed the cost of a preferred care home placement would be carefully considered, with a full risk assessment undertaken.

6.6 Persons who need waking night care might generally be more appropriately cared for in a residential placement. The need for waking night care indicates a high level of supervision day and night.

6.7 Residential placements may be deemed more appropriate for persons who have complex and high levels of need. Residential placements benefit from direct oversight by registered professionals and the 24-hour monitoring of persons.

6.8 If the clinical need is for registered nurse direct supervision or intervention throughout the 24 hours the care would normally be expected to be provided within a nursing home placement. This would include the requirement for 1-2 hourly intervention/monitoring for turning, continence management, medication, feeding, manual handling, and other clinical interventions or for the management of significant cognitive impairment.

6.9 There are specific conditions or interventions that it may not be appropriate to manage in a home care setting. In each case a comprehensive risk assessment

should be completed to determine the most appropriate place for care to be provided.

6.10 Each assessment will consider the appropriateness of a home-based package of care, considering the range of factors in paragraph 6.2 and any others deemed appropriate by the CCG in an eligible individual case and underpinned by the principles in 4.2

***Circumstances to be taken into consideration***

6.11 The CHC Service will seek to take account of the wishes expressed by eligible individuals and their families when making decisions as to the location(s) of care packages and residential placements to be offered to satisfy the obligations of the CCGs to commission NHS Continuing Healthcare. The CCGs accept that many persons with complex medical conditions wish to remain in their own homes and to continue to live with their families, with a package of support provided to the person in their own homes. Where a person or their family expresses such a desire the NHS CHC Service will investigate to determine whether it is clinically feasible and cost effective to commission a sustainable package of Continuing Healthcare for a person in their own home.

6.12 Packages of care in a person's own home are bespoke in nature and thus can often be considerably more expensive for the CCGs than delivery of an equivalent package of services for a person in a care home. Such packages have the benefit of keeping a person in familiar surroundings and/or enabling a family to stay together. However, the CCG needs to act fairly to balance the resources spent on an eligible individual with those available to fund services to other persons.

6.13 The CCG has resolved that, in an exceptional case and to balance these different interests it may be prepared to support a clinically sustainable package of care which keeps a person in their own home provided the anticipated cost to the CCG is not ordinarily higher than the anticipated cost delivered in an alternative appropriate location such as a care home. The CCG will consider the cost comparison based on the genuine costs of alternative models. A comparison with the cost of supporting a person in a care home should be based on actual costs that would be incurred in supporting a person with the specific needs in the case and not on an assumed standard care cost.

6.14 In situations where there is a home care package (with family support) and the family are unable to provide the agreed support, in those circumstances NHS County Durham CCG would need to reassess the appropriateness of a home package.

**Exceptional Circumstances**

6.15 NHS County Durham CCG recognises that exceptional circumstances may require exceptional consideration but will retain its obligation to make best use of NHS resources to meet the needs of the whole population served. Where the package of care is defined as exceeding the normal level of expenditure or includes exceptional features then the case may be referred to a Clinical Commissioning Group High-Cost Panel to consider the suggested package and any exceptional circumstances that are pertinent to the individual. As per paragraph 6.2 the CCG will pick up funding on a temporary basis whilst working on the agreed package of care

6.16 Exceptionality will be determined on a case-by-case basis and will require agreement by personnel at Director level or as determined by the Commissioner's Standing Rules and Financial Instruction.

6.17 Each assessment will consider the appropriateness of a home-based package of care, considering the range of factors in paragraphs 4 and 6 above.

6.18 The authorisation for the commissioning and funding of packages of care at home lies with NHS County Durham CCG. There will be a process for the authorisation of eligibility and the authorisation of care packages and placements.

6.19 Once a package of care at home has been agreed by NHS County Durham CCG the eligible individual may be given a notional weekly personal health budget (PHB), which is the cost of the care package. Eligible individuals and their families may be able to have some flexibility in the delivery of the care (for example, times) if the eligible individual's assessed care needs are being met. If the weekly cost of the care increases, apart from a single period of up to two weeks to cover either an acute episode or for end-of-life care to prevent a hospital admission, the care package will be reviewed, and other options (for example a nursing home placement) will be explored following consideration of the issues outlined in paragraph 6.

6.20 NHS rules allow NHS Commissioners to offer eligible individuals the opportunity to have their own PHB in certain situations. Eligible individuals and those supporting them, will know exactly how much funding is available for their care and they will be able to agree with the CCG the best way to spend it to meet their assessed needs and to achieve agreed outcomes.

## **Review**

6.21 The CCG will periodically review an eligible individual's needs within the context of CHC in line with the National Framework. This should be an initial three-month review, followed by a minimal of annual reviews (or following a change in circumstances) to ensure that the package of care still meets that eligible individual's needs at that time. The three-month and annual review will be undertaken by the CCG whether an eligible individual is receiving care at home or in a care home.

6.22 Eligible individuals and their families need to be aware that there may be times where it will no longer be appropriate to commission or provide care at home. For example, deterioration in the person's condition may result in the need for clinical oversight and 24-hour monitoring.

6.23 In line with the CCG's duties to commission appropriate health services to meet an eligible individual's assessed needs, the CCG will commission packages of care at home when the factors outlined in section 6 and underpinned by those principles outlined in section 4 render it appropriate.

6.24 By reason of such reviews it will sometimes be apparent that an eligible individual's needs have changed and consequently it will be necessary to undergo a review of the appropriateness of any package of care at an eligible individual's home in line with the decision-making process as outlined at paragraphs 4 and 6.

6.25 Any package of care provided in an eligible individual's home must therefore remain appropriate in line with that decision-making process for it to be continued following the CHC review. Should it be considered inappropriate, the CCG will not continue to fund any such package and will revise its offer accordingly, with reference to section 6 above.

6.26 If a home care package is not considered appropriate on review, the offer of residential care as an alternative, in accordance with this policy will be a discharge of the CCG's duty to make a reasonable offer, and, if not accepted, the package can be withdrawn taking into account the CCG's Duty of Care to safeguard an individual see paragraph 5.9

## **7. Right to Refuse**

7.1 An eligible individual is not obliged to accept NHS County Durham CCG's offer of care. Where an eligible individual chooses not to accept a package, the CCG will take reasonable steps to inform the individual that:

7.1.1 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

7.1.2 the Local Authority may not assume responsibility to provide care to the individual as anyone who has been assessed as CHC eligible will have a primary health need and as such their needs are above what the Local Authority can legally provide. As such the Local Authority cannot legally provide care.

7.2 The CCG will have discharged its duty to eligible individuals by making an offer of a suitable CHC care package whether individuals choose to accept the offer.

7.3 For example, the CCG may discharge its duty by offering to commission a package of services for an eligible individual in one or more appropriate care settings, irrespective of whether this is the individual's preferred location.

7.4 If the CCG's offers of appropriate care packages are refused by the eligible individual or someone with legal authority to act on behalf of the individual, the CCG may have recourse to local Safeguarding Policies and Procedures and the Mental Capacity Act 2005, as appropriate.

7.5 Where an eligible individual exercise their right to refuse, the CCG will ask the individual or their representative(s) to sign a written statement confirming that they are choosing not to accept the offer of care provision and will take into account paragraph 7.1.2.

7.6 Where an eligible individual refuses such care, they are entitled to re-engage with the CCG at any time, and, if they do so, the CCG will reconsider what offer should be made to that individual.

## **8. How Personal Health Budgets work**

8.1 A personal health budget (PHB) is an amount of money to support a person's identified health and wellbeing needs planned and agreed between the person and the NHS County Durham CCG team. The vision for PHBs is to enable people with long term conditions and disabilities to have greater choice, flexibility and control over the health care and support they receive. The CCG's PHB Policy should be referred to for more information and for a more detailed explanation of the various types of PHB available.

8.2 The budget set for an eligible individual will depend on their clinical and associated social care need and may be available for both care within an eligible individual's home and where care is provided within a residential setting. A PHB may only be spent on the services agreed between the eligible individual and their Care Co-ordinator in the care and support plan that will enable the eligible individual to meet their agreed health and wellbeing outcomes. For further information please see the CCG's PHB Policy.

8.3 Where a PHB is being agreed with an eligible individual, a support plan will be put into place which will include:

- issues of importance to the eligible individual
- changes to be achieved
- support to be provided to the eligible individual and how this will be managed
- how the budget will be used
- how the eligible individual will remain in control
- how the eligible individual will make it all happen

## **9. Fast Track**

9.1 The eligibility criteria for NHS CHC for Fast Track applications are defined within the National Framework for NHS Continuing Healthcare and NHS-Funded Nursing Care. Care provision for individuals assessed on the Fast Track will be subject to the same principles as set out in the relevant sections in this policy dependant on needs.

9.2 In urgent situations however, where services may need to be commissioned very quickly there may not be time to apply choice as described above, however the NHS CCG team will take reasonable steps to work in partnership with the eligible individual and their family / representative in all cases.

9.3 Since Fast Tracked individuals are deemed to be near End of Life, the CCG will support the principle of individuals having the right to choose the setting for their end-of-life care, so long as the care meets the needs of the individual and is equitable.

9.4 Following a review, if the individual is deemed no longer eligible for NHS CHC the offer of care may be amended and / or referred to the Local Authority in line with this Policy.

9.5 If following a review, the CHC Fast track is no longer applicable, the CCG will undertake a multidisciplinary team meeting and complete a Decision Support Tool to determine whether the eligible individual remains eligible for NHS Continuing Healthcare and if so the principles of The Choice and Equity policy will be part of the commissioning decision.

## 10. Capacity

10.1 NHS County Durham CCG will always consult directly with an eligible individual with regard to choose their care arrangements. In accordance with the Mental Capacity Act 2005, it will assume that the eligible individual retains the necessary capacity to make these decisions unless demonstrated otherwise via a formal capacity assessment.

10.2 If a formal capacity assessment is identified as being required it is the responsibility of the CCG to ensure that this is undertaken.

10.3 If an eligible individual lacks the capacity to decide about choice of care setting, NHS County Durham CCG will follow the processes set out in the Mental Capacity Act 2005 to commission the most clinically and cost effective, safe care available based on an assessment of the person's best interests, having regard to the factors set out in paragraphs 4 and 6 above, having regard to the Act and associated Code of Practice.

10.4 In considering the appropriate care setting and to make a reasonable offer of care for an eligible individual, NHS County Durham CCG will consider issues that may arise in relation to:

- Any valid and applicable **Lasting Power of Attorney** that may have been made by the eligible individual.
- Any valid and applicable **Advance Decision** (also known as a “living will” or “Advance Directive”) that may have been made by the eligible individual.
- Any financial planning made prior to becoming unwell to accommodate preferred place of care
- Any **Advance statement of wishes previously prepared by the eligible individual**

10.5 In the absence of any court appointed deputy or LPA, NHS County Durham CCG will make all decisions in the eligible individual's best interests in accordance with the Mental Capacity Act 2005 and the associated Code of Practice.

## 11. Review of NHS Funded Continuing Healthcare eligibility and care provision

11.1 The National Framework states that all eligible individuals should be reviewed no later than three months following the initial assessment and then annually as a minimum requirement to ensure that the package of care is still meeting the eligible individual's needs.

11.2 On review, the eligible individual's condition may have improved or stabilised to such an extent that they no longer meet the criteria for NHS Continuing Healthcare. Consequently, the Individual may become the responsibility of the Local Authority (LA) who will assess their needs against the Care Act eligibility criteria. This means the individual may be charged for their care.

11.3 Where the individual remains eligible for NHS Continuing Healthcare, the review may result in an increase or decrease in care based on the assessed need of the eligible individual at that time. Where care is provided at home the factors in paragraph 6.2 will again be considered and an alternative care option may be agreed if this is appropriate.

11.4 In order to meet its duty to commission health services to meet an eligible individual's needs appropriately and safely, the CCG **must** be afforded access to complete its review of an eligible individual's CHC when that package is provided in an eligible individual's home. In circumstances where access is not facilitated and the CCG cannot satisfy itself as to the safety, appropriateness, or cost efficiency of the current package of care, this will leave no option other than to revise the offer of care to be provided in a location that would facilitate the proper review of an eligible individual's needs which can then, in turn, potentially prompt an assessment process of where those needs ought to be met (in line with paragraphs 4.2 and 6.2 above).

## **12. Right of Appeal**

12.1 If the individual wishes to challenge the package of care provided / offered by NHS County Durham CCG, any complaint should be made via the NHS Complaints Procedure.

## **13. Policy Review**

13.1 This policy will be reviewed no later than 3 years after it has been approved or at any point within this time to reflect changes of NHS County Durham CCG circumstances/arrangements or changes in legislation/guidance.

## **14. Definitions**

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

**'NHS Continuing Healthcare (or "CHC")'** - refers to a package of continuing care that is commissioned (arranged and funded) by or on behalf of the NHS in accordance with Regulation 20 of The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (as amended).

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

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

### **Funded Nursing Care (or “FNC”)**

## **15. Guidance**

- The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care – October 2018 (revised)
- The NHS Continuing Healthcare (Responsibilities) Directions 2012
- Human Rights Act 1998
- Who Pays? Establishing the Responsible Commissioner (revised 2020)
- Care Act 2014
- Statutory guidance to support Local Authorities to implement the Care Act 2014

The Care and Support and After Care (Choice

## 16. Equality Analysis

### Equality Impact Assessment Initial Screening Assessment (STEP 1)

As a public body organisation we need to ensure that all our current and proposed strategies, policies, services and functions, have given proper consideration to equality, diversity and inclusion, do not aid barriers to access or generate discrimination against any protected groups under the Equality Act 2010 (Age, Disability, Gender Reassignment, Pregnancy and Maternity, Race, Religion/Belief, Sex, Sexual Orientation, Marriage and Civil Partnership).

This screening determines relevance for all new and revised strategies, policies, projects, service reviews and functions.

Completed at the earliest opportunity it will help to determine:

- The relevance of proposals and decisions to equality, diversity, cohesion and integration.
- Whether or not equality and diversity is being/has already been considered for due regard to the Equality Act 2010 and the Public Sector Equality Duty (PSED).
- Whether or not it is necessary to carry out a full Equality Impact Assessment.

#### Name(s) and role(s) of person completing this assessment:

**Name:** Debra Pease  
**Job Title:** Head of CHC Service  
**Organisation:** NECS

**Title of the service/project or policy:** Choice and Equity Policy

#### Is this a;

**Strategy / Policy**  **Service Review**  **Project**   
**Other** Durham CCG

#### What are the aim(s) and objectives of the service, project or policy:

The Choice and Equity policy describes the way in which NHS County Durham CCG will commission care for people who have been assessed as eligible for fully funded NHS Continuing Healthcare. The policy describes the way in which NHS County Durham CCG will commission care in a manner which reflects the choice and preferences of eligible individuals but balances the need for NHS County Durham CCG to commission care that is safe and effective and makes the best use of available resources.

In developing this policy, NHS County Durham CCG has had regard to the guidance set out in the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care (DH 2018) and is mindful of its obligations under the relevant legislation.

The National Framework states that CCGs should take a strategic as well as an individual approach to fulfilling their NHS Continuing Healthcare commissioning responsibilities. The National Framework advises CCGs to consider commissioning NHS funded care from a wide range of providers, to secure high quality services that offer value for money.

**Who will the project/service /policy / decision impact?**

(Consider the actual and potential impact)

- **Staff**
- **Service User / Patients**
- **Other Public Sector Organisations**
- **Voluntary / Community groups / Trade Unions**
- **Others, please specify** Providers of Care either via a residential setting or within an individual's own home

Questions	Yes	No
Could there be an existing or potential negative impact on any of the protected characteristic groups?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Has there been or likely to be any staff/patient/public concerns?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Could this piece of work affect how our services, commissioning or procurement activities are organised, provided, located and by whom?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Could this piece of work affect the workforce or employment practices?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the piece of work involve or have a negative impact on: <ul style="list-style-type: none"> <li>• Eliminating unlawful discrimination, victimisation and harassment</li> <li>• Advancing quality of opportunity</li> <li>• Fostering good relations between protected and non-protected groups in either the workforce or community</li> </ul>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**If you have answered no to the above and conclude that there will not be a detrimental impact on any equality group caused by the proposed policy/project/service change, please state how you have reached that conclusion below:**

This policy is in place to ensure all commissioning decisions are made on an equitable basis regardless of the equality group an individual belongs to. The policy being in place will reduce unwarranted variation and ensure commissioning principles are equal for everyone who receives CHC funding

If you have answered yes to any of the above, please now complete the 'STEP 2 Equality Impact Assessment' document

Accessible Information Standard	Yes	No
Please acknowledge you have considered the requirements of the Accessible Information Standard when communicating with staff and patients.  <a href="https://www.england.nhs.uk/wp-content/uploads/2017/10/accessible-info-standard-overview-2017-18.pdf">https://www.england.nhs.uk/wp-content/uploads/2017/10/accessible-info-standard-overview-2017-18.pdf</a>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Please provide the following caveat at the start of any written documentation:  <b>“If you require this document in an alternative format such as easy read, large text, braille or an alternative language please contact (ENTER CONTACT DETAILS HERE)”</b>		
<b>If any of the above have not been implemented, please state the reason:</b>  Click here to enter text.		

### Governance, ownership and approval

Please state here who has approved the actions and outcomes of the screening		
Name	Job title	Date
Executive Committee	N/A	September 2021

### **Publishing**

This screening document will act as evidence that due regard to the Equality Act 2010 and the Public Sector Equality Duty (PSED) has been given.

If you are not completing 'STEP 2 - Equality Impact Assessment' this screening document will need to be approved and published alongside your documentation.

**Please send a copy of this screening documentation to:  
NECSU.Equality@nhs.net for audit purposes.**