NHS Continuing Care Service
Choice & Equity Commissioning Policy

Improving our Approach to Best Value Care and Embedding the ICB Triple Aims

Version:	**V.9_Working Draft**
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Approved date:	
Review date:	
Target audience:	All Continuing Care Staff All Health Case Management Staff LA colleagues

Version	Date	Reviewer	Comments

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1. Introduction

1.1 This policy describes the way in which the NHS West Yorkshire Integrated Care Board ("the ICB") will commission care for people who have been assessed as eligible for fully funded NHS Continuing Healthcare ("CHC funding").

1.2 The policy describes the way the ICB will commission care, balancing the choices and preferences of eligible individuals with the requirement of the ICB to commission care that is safe and effective and makes the best use of available resources.

1.3 In developing this policy, the ICB has had regard to the guidance set out in the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care (DH 2022) and is mindful of its obligations under the relevant legislation set out in the Guidance referred to in this policy (p14).

1.4 The National Framework states that, amongst other considerations, ICB's should take a strategic as well as an individual approach to fulfilling their commissioning responsibilities for NHS Continuing Healthcare.

1.5 The National Framework also identifies it is the ICBs responsibility to plan strategically, specify outcomes and procure services, to manage demand and provider performance for all services.

2. Background

2.1 The All Age Continuing Care Service works to the guidance and principles set out in the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care (DH 2007, revised 2009, 2012, 2018, 2022)

2.2 The National Framework states:

"*Where an individual is eligible for NHS Continuing Healthcare, the ICB is responsible for care planning, commissioning services and for case management. It is the responsibility of the ICB 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 185).

2.3 *"Where a person qualifies for NHS Continuing Healthcare, the package to be provided is that which the ICB assesses is appropriate to meet all of the individual's assessed health and associated care and support needs. The ICB has responsibility for ensuring this is the case and determining what the appropriate package should be. In doing so, the ICB should have due regard to the individual's wishes and preferred outcomes"* (Paragraph 192).

3. Scope

3.1 This policy applies to all packages of care for people, aged 18 years and over that have been assessed as eligible for NHS Continuing Healthcare funding and it will continue to apply as long as the individual remains eligible for CHC funding and the ICB remains responsible for commissioning the package of care.

3.2 This policy does not apply to:

3.2.1 Children under 18 years of age

3.2.2 Aftercare services under s117 of the Mental Health Act

4. Policy

4.1 Many eligible 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 eligible 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 ICBs commission services in accordance with the NHS Constitution and the duties as set out in the National Health Service Act 2006 (“the NHS Act”)[1]. The ICB fully recognises these obligations but must balance them against its other duties and the “ICB Triple Aims” as laid out in the Health & Care Bill (March 2022):

4.3.1 Better health for everyone

4.3.2 Better care for all

4.3.3 Efficient use of public resources

4.4 In commissioning CHC care, each ICB must have constant regard to its financial duties. In brief, section 223G of the NHS Act provides for payment to the ICB from the NHS Commissioning Board (“NHS England”) in respect of each financial year, to allow the ICB to perform its functions. Section 223I provides that, in summary, each ICB 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 ICB must also have due regard to its equality duties under both the NHS Act[2] and the Equality Act 2010[3]. The ICB 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 patient over another on non-medical grounds (para. 38.

4.6 In the light of these constraints, the ICB 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.

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

4.7.1 be person centred by fully involving the eligible individual and where appropriate their family and/or representative;

4.7.2 be robust, fair, consistent and transparent;

4.7.3 be based on the assessment of the eligible individual’s clinical need and safety;

4.7.4 where the eligible individual lacks capacity to make decisions about their care package in accordance with their best interests;

4.7.5 have regard to the safety and appropriateness of care to the eligible individual and staff involved in the delivery of care;

4.7.6 consider the commissioning principles, e.g., appropriateness, effectiveness, cost- effectiveness, affordability and ethics;

4.7.7 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

4.7.8 consider the need for the ICB to allocate its financial resources in the most cost-effective way

4.7.9 support and offer choice to the greatest extent possible in view of the above factors

4.8 The ICB has a duty to commission care that will meet the assessed needs of a continuing healthcare eligible individual. The individual or their family/representative cannot make a financial contribution to the cost of NHS Continuing Healthcare identified by the ICB 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.

4.9 Access to NHS services depends upon clinical need, not ability to pay. The ICB will only commission care if it is identified as the responsible commissioner, in line with the guidance, "Who Pays? Determining which NHS commissioner is responsible for commissioning healthcare services and making payments to providers" (July 2022).

4.10 The ICB will not charge a fee or require a co-payment from any eligible 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.

4.11 The ICB is 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. 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. Examples of such services falling outside NHS provision include hairdressing, newspapers etc., within a care home.

4.12 Any additional services which are unrelated to the person's primary health needs will not be funded by the ICB as these are services over and above those which the eligible individual 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 ICB 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, the ICB will not assume responsibility for funding any additional services.

4.13 Where an eligible individual notifies the ICB that they wish to purchase additional private care or services the ICB 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 ICB will offer to review the care package in order 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 ICB 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 The ICB 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 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 ICB. The ICB **must** take into consideration its wider resources and an equitable allocation of the same. However, this consideration will always be balanced against the factors set out above.

5. Continuing Healthcare Funded Care Home Placements

5.1 Where an eligible individual has been assessed as requiring a nursing home placement , the ICB operates an approved provider list and the expectation is that eligible individuals requiring a nursing home placement will have their needs met in one of these homes. The ICB will endeavour to provide a reasonable choice of placements from the approved provider list (maximum of three placements) and discuss those placements with the eligible individual and where appropriate, their family.

5.2 The individual (or their family/representative) may wish to move into a home which is not on the ICB's approved provider list. As long as the fee for the bed is comparable to the fee agreed with the preferred providers and the ICB is satisfied with the Care Quality Commission (CQC) inspection reports, its own ICB contract monitoring of the care home and that the home can meet the eligible individual's assessed care needs the ICB will agree to commission this placement..

5.3 If an eligible individual, or someone acting on their behalf, requests a placement in a nursing home that would charge more than the nursing homes on the approved provider list, the ICB will consider requests on a case-by-case basis at the commissioning panel upon receipt of an application by the eligible individual's health case manager.

5.4 Where an eligible individual wishes to move to a care setting out of the ICB’s area, this may result in a transfer to a new commissioning ICB. If so commissioning decisions will be taken by that ICB in line with its own policy. The ICB will liaise with the receiving ICB to ensure a smooth transfer of responsibility.

5.5 The eligible individual or their representative(s) has the right to enter into discussions with any provider to supplement the care provision, over and above that required to meet their assessed needs. Any such costs arising out of any such agreement must be funded by the eligible individual or through third party funding. These costs may relate to, for example:

- Additional non-healthcare services, for example hairdressing, provision of a larger room, en-suite, or enhanced TV packages;
- Additional healthcare services, outside of the services the ICB has agreed to provide within the CHC package. These types of services may include things such as chiropractor appointments or additional physiotherapy sessions. The ICB will satisfy itself that these services do not constitute any part of the CHC identified need

5.6 The decision to purchase additional services to supplement a CHC package must be entirely voluntary for the eligible individual. The provision of the CHC package must not be contingent or dependent on the eligible individual or their representative(s) agreeing to fund any additional services. This means that the care home must be willing and able to deliver the assessed CHC needs to the eligible individual, without the package being supplemented by other services as described above

5.7 Any funding provided by the eligible individual for additional services should not count towards the costs of the assessed needs that the ICB has agreed to fund. Similarly, CHC funding should not in any way subsidise any private service that an eligible individual chooses outside of the identified support plan

5.8 Where an eligible individual is funding additional services, the associated costs must be explicitly stated and set out in a separate agreement with the provider. If the eligible individual chooses to hold a contract for the provision of these services, it should be clear that the additional payments are not to cover any assessed care needs funded by the ICB.

5.9 In order to ensure that there is no confusion between the NHS and privately funded additional services, the ICB will enter into a legally binding contract with the selected provider which details the provision by the provider of a defined level of health and social care to the eligible individual. This will expressly be independent of any arrangement between the care provider and the eligible individual or their representative(s) and will be expressed to continue notwithstanding the termination of any arrangements made between the eligible individual and the care provider. Any payments made under the contract directly between them and the care provider for additional services cannot be made under the ICB contract

5.10 If the eligible individual or their representative(s), for any reason, decides that they no longer wish to fund the additional services supplementing the care package, the ICB will not assume responsibility for funding those additional services. However, the ICB is required to be aware of additional services being provided to the eligible individual privately, so that it may satisfy itself that they do not constitute any part of the provision to meet assessed needs.

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

5.12 In most cases, the expectation is that NHS CHC assessments will not be undertaken in the acute hospital setting where patients are able to access the Discharge to Assess (D2A) pathways in place.

5.13 If the eligible individual is unwilling to accept any of the offers made by the ICB and has capacity to refuse the ICB's reasonable offers of care, the ICB will have fulfilled its duties to the eligible individual and is not required to take further steps to provide services to him or her. The ICB will notify the eligible individual in writing to the effect.

5.14 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 ICB reserves the right to work with the multi-disciplinary team involved in the eligible individual’s care and to make a best interest decision on behalf of the individual to secure a prompt discharge.

6. Continuing Healthcare Funded Packages of Care at Home

6.1 The ICB 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.

6.2 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 ICB will take into account. However, the ICB 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.

6.3 The ICB will take account the following issues before agreeing to commission a care package at home:

6.3.1 the matters set out in Section 4 above and, in addition;

6.3.2 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 including assistive technology, 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 taken into account;

6.3.3 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;

6.3.4 any identified risks in providing care at home 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;

6.3.5 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;

6.3.6 the suitability and availability of alternative care options;

6.3.7 the cost of providing the care at home in the context of cost effectiveness;

6.3.8 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; and

6.3.9 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 in the event that the family, friends or informal carers are no longer able to care for the individual and meet those needs.

6.4 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, the ICB will give particular consideration to the individual's preferences taking into account 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.

6.5 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 absolute right for an eligible individual's care to be provided at home and as such the ICB 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).

6.6 Home care packages that exceed the cost of a preferred care home placement would indicate a high level of need and would be carefully considered, with a full risk assessment undertaken.

6.7 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.

6.8 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.

6.9 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.

6.10 There are specific conditions or interventions that it may not be appropriate to manage in a home care setting. These would include but are not restricted to the requirement for sub-cutaneous fluids, continual invasive or non-invasive ventilation or the management of grade 4 pressure areas. In each case a comprehensive risk assessment should be completed to determine the most appropriate place for care to be provided.

6.11 Each assessment will consider the appropriateness of a home-based package of care, considering the range of factors in paragraph 6.3 and any others deemed appropriate by the ICB in an eligible individual case and underpinned by the principles in 4.2.

7. Exceptional Circumstances

7.1 The ICB 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 population it serves. Where the package of care is defined as exceeding the normal level of expenditure or includes exceptional features then the case will be referred to the ICB Commissioning Panel to consider the suggested package and any exceptional circumstances that are pertinent to the individual.

7.2 Exceptionality will be determined on a case-by-case basis by the commissioning Panel and will be documented on the appropriate form and within the case management system, with due regard to the applicable Commissioner's Standing Rules and Financial Instruction[4].

7.3 Each assessment will consider the appropriateness of a home-based package of care, taking into account the range of factors in paragraphs 4 and 6 above.

7.4 The authorisation for the commissioning and funding of packages of care at home lies with the ICB There will be a process for the authorisation of eligibility and the authorisation of care packages and placements.

7.5 Once a package of care at home has been agreed by the ICB the eligible individual may be offered a notional weekly personal health budget (PHB), which is the cost of the care package. Eligible individuals and their families will be able to have some flexibility in the delivery of the care (for example, times) as long as 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.

7.6 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 ICB the best way to spend it to meet their assessed needs and to achieve agreed outcomes.

8. Review

8.1 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.

8.2 In order to be satisfied that the commissioned care package continues to meet the eligible individual's assessed needs, the ICB or its representatives **must** be afforded access to complete its review of the care package. In circumstances where access is not facilitated and the ICB cannot be satisfied that the commissioned care package continues to meet the eligible individual's assessed needs, 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.

8.3 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 or need to self-fund their care depending on the outcome of the Local Authority's assessment.

8.4 Where the individual remains eligible for NHS Continuing Healthcare, the review may result in either 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.

8.5 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.

8.6 In line with the ICB's duties to commission appropriate health services to meet an eligible individual's assessed needs, the ICB 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.

8.7 Through these 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.

8.8 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 ICB will not continue to fund any such package and will revise its offer accordingly, with reference to section 6 above.

8.9 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 ICB's duty to make a reasonable offer, and, if not accepted, the package can be withdrawn.

8.10 If, following a review, an individual is found not to be eligible for NHS Continuing Healthcare the ICB will liaise with the local authority to ensure an alternative funding arrangement is agreed and put into effect before any withdrawal of existing funding, to ensure continuity of care.

8.11 The ICB recognises that an individual's needs may change over time and there may be other changes that the ICB 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 ICB and/or any services that are commissioned by the ICB 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. In line with the National Framework, the first review will take place within three months of the eligibility decision and thereafter on at least an annual basis.

8.12 The ICB 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.

9. Right to Refuse

9.1 An eligible individual is not obliged to accept the ICB's offer of care, where the individual has capacity to refuse an offer of care. Where an eligible individual chooses not to accept a package, the ICB will take reasonable steps inform the individual that:

9.1.1 the ICB is not required to make further offers to the individual or offer to fund care in a location of the individual's choice

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

9.2 The ICB will have discharged its duty to eligible individuals by making an offer of a suitable CHC care package whether or not individuals choose to accept the offer.

9.3 For example, the ICB 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

9.4 If the ICB’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 ICB may have recourse to local Safeguarding Policies and Procedures and the Mental Capacity Act 2005, as appropriate.

9.5 Where an eligible individual exercises their right to refuse, the ICB 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.

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

10. Personal Health Budgets (PHBs)

10.1 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 ICB. 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 ICB's PHB Policy should be referred to for more information and for a more detailed explanation of the various types of PHB available.

10.2 The budget set for an eligible individual will depend on their clinical 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 Health Case Manager (HCM) and as set out 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 ICB PHB Policy.

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

10.3.1 issues of importance to the eligible individual

10.3.2 changes to be achieved

10.3.3 support to be provided to the eligible individual and how this will be managed

10.3.4 how the budget will be used

10.3.5 how the eligible individual will remain in control

10.3.6 how the eligible individual will make it all happen

11. Fast Track

11.1 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.

11.2 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 service will take reasonable steps to work in partnership with the eligible individual and their family / representative in all cases.

11.3 Since Fast Tracked individuals are deemed to be near End of Life, the ICB 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.

11.4 If following a review, the CHC Fast track is no longer applicable, the ICB will undertake a multidisciplinary team meeting and complete a Decision Support Tool to determine whether the eligible individual remains eligible for NHS Continuing Healthcare.

11.5 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.

12. Capacity

12.1 The ICB will always consult directly with an eligible individual with regard to choice of care. In accordance with the Mental Capacity Act 2005, it will assume that the eligible individual has capacity to make these decisions unless demonstrated otherwise via a formal capacity assessment.

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

12.3 If an eligible individual lacks the capacity to make a decision about their assessed care needs or choice of care setting, the ICB 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.

12.4 In considering the appropriate care setting and in order to make a reasonable offer of care for an eligible individual the ICB will consider issues that may arise in relation to:

12.4.1 Any valid and applicable **Lasting Power of Attorney** that may have been made by the eligible individual or court order which appoints a deputy to make decisions on behalf of the eligible individual.

12.4.2 Any valid and applicable **Advance Decision** (also known as a “living will” or “Advance Directive”) that may have been made by the eligible individual.

12.4.3 Any Advance statement of wishes previously prepared by the eligible individual

12.5 In the absence of any court appointed deputy or LPA, the ICB 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.

13. Commissioning Principles

13.1 The Commissioning Principles to be adhered to by the Commissioning Panel can be found on the ICB website or a copy requested from the ICB

14. Right of Appeal

14.1 If the individual wishes to challenge the package of care provided / offered by the ICB an appeal request against the decision needs to be made within 14 days where the eligible individual / representative will have the opportunity to submit additional information, that will be considered by the Commissioning Panel. The full procedure can be found on the ICB website

15. Policy Review

15.1 This policy will be reviewed annually

Definitions

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

'NHS Continuing Healthcare (or "CHC")' - refers to a package of continuing care that is commissioned (arranged and funded) by or on behalf of the NHS 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 in regard to eligibility and setting out the systems and processes to be used by the NHS.

'**Eligible Individual'** - means a person who has been assessed as having a primary health need and is therefore eligible for NHS Continuing Healthcare Funding

'Funded Nursing Care' (or "FNC") - NHS-funded nursing care (FNC) is when the NHS pays for the nursing care component of nursing home fees. The NHS pays a flat rate directly to the care home towards the cost of this nursing care.

'Integrated Care Boards (ICBs) – are a statutory NHS organisation that is responsible for developing a plan for meeting the health needs of the population, managing the NHS budget and arranging for the provision of health services in a geographical area

Relevant Guidance

1. The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care –July 2022 (revised) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1170290/National-Framework-for-NHS-Continuing-Healthcare-and-NHS-funded-Nursing-Care_July-2022-revised_corrected-July-2023.pdf
2. The NHS Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 https://www.legislation.gov.uk/uksi/2012/2996/part/6/made
3. Human Rights Act 1998 https://www.legislation.gov.uk/ukpga/1998/42/contents
4. Who Pays? Establishing the Responsible Commissioner (revised June 2022) https://www.england.nhs.uk/who-pays/
5. Care Act 2014 https://www.legislation.gov.uk/ukpga/2014/23/contents/enacted
6. Statutory guidance to support Local Authorities to implement the Care Act 2014 (Updated Jan 2023) https://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance
7. The Care and Support and After Care (Choice of Accommodation) Regulations 2014 Relevant legislation https://www.legislation.gov.uk/uksi/2014/2670/contents/made

Other references:

[1] National Health Service Act 2006 ("the NHS Act")at s.14U (duty to promote patient involvement) and 14V (duty to promote patient choice)

[2] Section 14T of the NHS Act (duty to reduce inequalities)

[3] Section 149 of the Equality Act 2010 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)

[4] West Yorkshire Integrated Care Board Standing Financial Instructions July 2022 (West_Yorkshire_ICB_Standing_Financial_Instructions_01.07.22.pdf (wypartnership.co.uk))