

NHS Continuing Healthcare - Equity and Choice Policy



NHS Oxfordshire Clinical Commissioning Group (OCCG)

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Policy Statement:	<p>This policy has been developed to support a consistent approach that provides a framework for Oxfordshire CCG (OCCG) to deliver a transparent, fair and equitable process for approving and determining reasonable cost to meet an individual’s needs in a safe and effective way.</p> <p>The policy aims to ensure that an individual’s choice and preference is considered throughout the process of care provision to meet their assessed needs.</p> <p>It does not attempt to cover any aspect of an individual’s eligibility to NHS Continuing Healthcare.</p>
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Document Control

Reviewers & Approvals

This document requires the following reviews and approvals.

Name	Position	Version Approved	Date Approved
Finance Committee (OCCG)		V 1.0	20 Nov 2019
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Revision History

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Acknowledgement of External Sources:

List any documentation that has been used to inform the development of this policy.

Title/Author	Institution	Comment / Link
Oxfordshire Joint Protocol of Choice for Good Practice to Facilitate Timely Discharge for People needing Long Term Care	Oxford Health NHS Foundation Trust: Oxford University Hospitals NHS Foundation Trust and Oxfordshire County Council	V9 dated June 2016

Links or overlaps with other key documents & policies:

Document Title	Version and Date	Issue	Link/Document
National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care October 2018 (Revised)	October 2018		https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746063/20181001_National_Framework_for_CHC_and_FNC_-_October_2018_Revised.pdf
Oxfordshire County Council accredited provider list for care homes and domiciliary care providers	April 2019		
The Care Act 2014	May 2014		http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted
The Mental Capacity Act 2005	2005		http://www.legislation.gov.uk/ukpga/2005/9/pdfs/ukpga_20050009_en.pdf

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This document has been distributed to the following people for consultation

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Document versions numbered “0.1, 0.2, and 2.4”, are draft status and therefore can be changed without formal change control. Once a document has been formally approved and issued it is version numbered “Issue 1.0” and subsequent releases will be consecutively numbered 2.0, 3.0, etc., following formal change control.

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[Table of Contents](#)

1. Introduction	5
2. National Framework for NHS CHC	5
3. Context.....	6
4. The provision of services for people who are eligible for NHS CHC	6
5. Continuing Healthcare Funded Care home Placements	8
6. Continuing Healthcare Funded packages of Care at Home.....	9
7. Circumstances to be taken in to consideration.....	10
8. Review.....	11
9. Appeal regarding Care Provision.....	12

10. Capacity.....	12
11. Refusal of NHS Continuing Healthcare Funding.....	12
12. Glossary.....	13

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Foreword

It is the statutory responsibility of Oxfordshire Clinical Commissioning Group (OCCG) to provide and fund a package of care that meets all assessed health, personal care and associated social care needs for those individuals found eligible for NHS Continuing Healthcare funding. The Oxford Health NHS Foundation Trust has been commissioned to provide the Continuing Healthcare Service (CHC) in Oxfordshire.

1. Introduction

This policy describes the way in which the CCG will commission care for people who have been assessed as eligible for fully funded NHS Continuing Healthcare.

When considering a package of care to be commissioned for an individual the OCCG must balance the need to commission safe, effective and clinically appropriate care that makes the best use of available resources and in a manner that reflects the choice and preferences of individuals. Whilst agreeing a package of care for individual's that meets their assessed needs the OCCG also has a statutory duty to consider the available resources.

This Policy applies to CHC funded individuals regardless of the commissioning mechanism.

2. The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care October 2018

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 individuals who qualify for NHS Continuing Healthcare The services commissioned must include ongoing case management for all those eligible for NHS Continuing Healthcare, including review and/or reassessment of the individual's needs. (Paragraph 165)

CCGs should operate a person-centred approach to all aspects of NHS Continuing Healthcare, using models that maximise personalisation and individual control and

that reflect the individual's preferences, as far as possible, including when delivering NHS Continuing Healthcare through a Personal Health Budget, where this is appropriate (paragraph 166)

3. Context

NHS Continuing Healthcare means a package of ongoing care that is arranged and funded solely by the National Health Service (NHS) where the individual has been assessed and found to have a 'primary health need' as set out in this National Framework. Such care is provided to an individual aged 18 or over, to meet health and associated social care needs that have arisen as a result of disability, accident or illness. The actual services provided as part of the package should be seen in the wider context of best practice and service development for each client group. Eligibility for NHS Continuing Healthcare is not determined by the setting in which the package of support can be offered or by the type of service delivery. (*National Framework 2018, page 7*)

There is no legal definition of the term '*Associated social care need*' in the context of NHS Continuing Healthcare. However, the Care Act 2014 introduced National Eligibility Criteria for care and support to determine when an individual or their carer has eligible needs which the local authority must address, subject to means where appropriate. These criteria set out that an individual has eligible needs under the Care Act 2014 where these needs arise from (or relate to) a physical or mental impairment or illness which results in them being unable to achieve two or more of the following outcomes which is, or is likely to have, a significant impact on their wellbeing:

- *managing and maintaining nutrition;*
- *maintaining personal hygiene;*
- *managing toilet needs;*
- *being appropriately clothed;*
- *being able to make use of the home safely;*
- *maintaining a habitable home environment;*
- *developing and maintaining family or other personal relationships;*
- *accessing and engaging in work, training, education or volunteering;*
- *making use of necessary facilities or services in the local community, including public transport and recreational facilities or services; and carrying out any caring responsibilities the adult has for a child. (National Framework 2018 Page 17)*

In the context of NHS Continuing Healthcare, therefore, a '*social care need*' can be taken to relate to the *Care Act 2014* eligibility criteria outlined above.

4. The Provision of Services for People Who are Eligible for NHS Continuing Healthcare

4.1 OCCG and the CHC Service have developed this policy in light of the need to balance personal choice alongside safety and effective use of finite resources. It is also necessary to have a policy which supports consistent and equitable decisions about the provision of care regardless of the person's age, condition, disability or the location of care. These decisions need to provide transparency and fairness in the

allocation of resources. In addition a Decision Making Forum is held at least Bi-monthly to review decision making for highly complex matters in relation to CHC funding. This has representation from the OCCG, CHC, and independent representation. Through this forum the OCCG can review complex matters and ensure consistent decision making.

4.2 Application of this policy will ensure that decisions about care provision will:

- be person centred, involving the person and their family/representative wherever possible and maximising individual control;
- be based on the objective assessment of the person's clinical and associated social care needs and potential health and wellbeing outcomes, safety and best interests reflecting individual choice and preference;
- be robust, fair, consistent and transparent;
- have regard for the safety and appropriateness of care to the individual and staff involved in the delivery whilst ensuring that it is the least restrictive option;
- be clear about the extent and nature of the need; for example, where individuals are described as requiring nursing care, the CHC Service should identify whether this requires the actual presence of a qualified nurse, or whether the needs are for specific tasks or to provide overall supervision which may be delivered through universal services.
- apply equally to the principles and processes of Personal Health Budgets (PHBs)
- take into account the need for the OCCG to allocate its financial resources in the most cost-effective way.

4.3 Access to NHS services depends upon clinical need, not ability to pay. OCCG will not charge any individual in relation to their assessed health and associated social care 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.

4.4 Services which are unrelated to the person's assessed health and associated social care needs will not be funded by OCCG. Where service providers offer additional services outside the person's needs, as assessed under the NHS CHC framework, the person or family member may choose to use personal funds to take advantage of these services. Examples of such services falling outside NHS provision include hairdressing, beauty treatment, entertainment, requests for a larger room (where the need for a larger room is not related to their assessed needs) or a nicer view. The individual or their family are also able to contribute towards funding where they wish for the individual to receive a better place of care. The provider will need to separate out the costs of the assessed needs and the extra's chosen by the

individual or their family such as larger room, a newer care home with a nicer view & better furnishing etc. Please also refer to section 5.4.

4.5 In instances where more than one suitable care option is available (i.e. a nursing home placement and a package of care at home) the total cost of each package will be identified and assessed for the overall cost effectiveness; this includes taking account of each option available to meet the assessed needs of the individual and weighing this up against risk, effectiveness and cost. 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 individual's assessed health and associated social care needs and circumstances.

4.6 The cost comparison must be based on the genuine costs of alternative models for example 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 their specific needs and not on an assumed standard care home cost.

4.7 Any assessment of care options will include the impact of any psychological and social care needs of the individual; the effect on the home and family life as well as the individual's assessed care needs. The outcome of this assessment will be taken into account when arriving at a decision.

4.8 When determining the Service provision for an individual the primary consideration is to ensure the individual's safety and it is essential that all risks are identified and managed. Risk management must be proportionate. Individuals with capacity have the right to manage their own risk and make unwise choices.

4.9 The OCCG will fully consider the individuals preferences when considering the setting in which the care is to be delivered, however the final decision rests with the OCCG. An individual has the right to decline NHS services and / or funding and make their own private arrangements if they wished to do so. The individual can also contribute towards the funding as mentioned in 4.4.

5. Continuing Healthcare Funded Care Home Placements

5.1 Where a person has been assessed as needing placement within a care home, the CHC Service will commission a placement in accordance with Oxfordshire County Council's processes and, by using local intelligence to ensure the most suitable option is selected to meet the individual's assessed needs.

5.2 Care home placement will ideally be within the county of Oxfordshire. However, where the assessed needs are not able to be met in a placement within the County the CHC team will work with local authorities in other counties to identify a suitable care home which is accredited to meet the person's needs.

5.3 A care home placement is expected to be made using the accredited provider list. If an individual or their family wish to use a different home the CHC will consider this option if the care home is able to meet the assessed needs of the individual and

the care home agrees to similar costs as agreed with care homes on the provider list. OCCG will make the final decision taking account of the issues above.

5.4 Where a person wishes to move into a care home where the fee is not comparable to the care homes on the provider list then this will be assessed taking account of the following:

- If a proportion of the fee relate to additional private services outside the person's assessed needs under the NHS CHC framework and which do not constitute care, treatment or support
- These costs can be clearly separated and invoiced separately to the individual.
- In such circumstances the care home should not require the individual to purchase additional private care services as a condition of providing, the NHS-funded services to them.
- Assessed care needs and related accommodation costs will be invoiced to OCCG and a separate invoice to the individual / family for additional accommodation and/or private services. If the provider refuses to enter into the OCCG's contract on this basis, the CCG will not be able to purchase the care at this home and the family will be advised that they need to consider other homes that are on the preferred provider list.

6. Continuing Healthcare Funded Packages of Care at Home (including those provided via Personal Health Budget)

6.1 The CHC Service will take account of the following issues before agreeing to commission a care package at home:

- the matter set out in paragraph 4.2 and in addition;
- Care can be delivered safely and without undue risk to the person, the staff or other members of the household (including children);
- Safety will be determined by a written assessment of risk undertaken by an appropriately qualified professional in consultation with the person or their family. The risk assessment will include the availability of equipment, the appropriateness of the physical environment and the availability of appropriately trained care staff and/or other staff to deliver the care at the intensity and frequency required;
- Where there are identified risks in providing care at home, all parties involved including: the individual and / or their family, any care provider and the CCG, must:
 - Understand and agree to accept the risks and potential consequences of receiving care at home
 - implement and monitor any steps to minimise these risks
- Where equipment and/or assistive technology can be used to support the safe delivery of care at home, it is expected that this will be accepted and used appropriately;

- The person's GP agrees to provide primary care medical support;
- The suitability and availability of care options at home;
- Where the care plan includes elements of care to be delivered by family, friends or other informal carers, those people are willing and able to do so.

Each assessment will consider the appropriateness of a home-based package of care, taking into account the range of factors above.

6.2 Many people wish to be cared for in their own homes rather than in a care home, especially people who are in the terminal stages of illness. Where an individual or their family express such a wish, OCCG will support this choice wherever possible, taking into account the factors set out in paragraphs 4 and 6 of this policy.

6.3 Once a package of care at home has been agreed and the cost to deliver this authorised, this information will be shared with the individual and / or their family in the care and support plan. If the weekly cost of the care increases, with the exception of a single period of up to 2 weeks to cover an acute episode, the care package will be reviewed and all options will be explored as outlined in paragraph 6.1.

7. Circumstances to be taken into consideration

7.1 The CHC Service will endeavour to take account of the individual's preferences and that of their families when agreeing the location(s) of care delivery to meet an individual's assessed needs.

7.2 The CCG accepts that many individuals with complex medical conditions wish to remain in their own homes and to continue to live with their families. Where a person or their family express such a desire, the CHC Service will review this taking account of paragraph 6.1. It will assess whether it is clinically feasible and cost effective to provide a sustainable package of care for a person in their own home.

7.3 Packages of care in a person's own home can often be considerably more expensive for the CCG than delivery of equivalent services in a care home. Such packages have the benefit of keeping a person in familiar surroundings and / or enabling a family to stay together. The CCG however needs to fairly balance the resources spent on an individual person with those spent on other individuals who meet the CHC eligibility criteria and have similar needs.

7.4 It may be appropriate to review some home care packages if the care is not sustainable at home. Such examples include:

- Home care packages which require intensive care indicating a high level of need which may be more appropriately met within a care home placement;
- People who need waking night care indicates that a high level of supervision is required day and night which may be more appropriately met within a care home placement
- People who require a high level of direct supervision across a 24-hour period

- Where the clinical need is for a registered nurse to provide supervision or intervention throughout the 24 hours

7.5 The CCG will attempt to balance the individual's preferences and the need to allocate available funds equitably. For high cost packages for people with complex needs it will be prepared to consider a clinically sustainable package of care which keeps a person in their own home in exceptional circumstances and it will carry out a cost comparison based on the genuine costs of alternative models. This means comparing the actual costs to support the specific needs of a person and not an assumed standard care cost.

7.6 Exceptionality is determined on a case by case basis and any final decision lies with OCCG. The authorisation for the commissioning and funding of packages of care at home lies with OCCG. There is a process for the delegated authorisation of care packages and placements referenced in the CHC Authorisation Policy.

7.7 Where a package of care at home is agreed, OCCG may request that the individual and / or their family enter into an agreement confirming the basis on which the package will proceed and this will set out the obligations and expectations on both sides. An example of such agreement may be the personal health budget support plan.

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

8. Review

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

8.2 The care package will be reviewed three monthly and then annually as a minimum requirement alongside the continuing healthcare review to ensure that it is still meeting the person's needs at that time.

8.3 If the weekly cost of the care increases due to an Individual's deteriorating condition and consequent increase in health needs the care package will be reviewed and all other options will be explored following consideration of the issues outlined in paragraph 6.1. The only exceptions will be a single period of up to two weeks to cover an acute episode or for end of life care to prevent a hospital admission. Following a review a package of care may also be reduced if appropriate.

8.4 Individuals who move to Oxfordshire and funding is transferred to OCCG, their needs may be reviewed by the local CHC team and a package of care will be offered in line with this assessment which may be different to what was being provided by another CCG.

9. Appeal regarding care provision

9.1 By reference to the Individuals' personalised care plan, also known as the care support plan, an indicative level of funding/care setting can be identified by the CHC Service.

9.2 If this conflicts with the wishes of the Individual or their representative and this is unable to be resolved by the CHC Service, a complaint may be raised with the OCCG via their internal process in the first instance. If the matter cannot be resolved at this stage the individual is entitled to escalate the matter to Parliamentary and Health and Services Ombudsman (PHSO).

10. Capacity

10.1 If a person does not have the mental capacity to make a decision about the location of their commissioned care package and suitable placement the CHC team will consult any person who has the power under a Lasting power of Attorney, Social and Welfare, or as a Court Appointed Deputy to take personal care decisions on behalf of the patient in the same way that they would consult the individual. An individual's past wishes and preferences will also be taken in to account when making a decision on behalf of someone that lacks capacity.

10.2 A Best Interest Meeting should take place, and views of those with a genuine interest in the welfare of the individual concerned should be taken in to account. The Best Interest meeting will determine the most appropriate discharge destination, and care setting. The Best Interest Meeting will also identify the least restrictive option for the individual and will also take account of past views/wishes. Subsequently the CHC Service will commission the most appropriate, safe and cost effective care available. This will be carried out in consultation with any appointed advocate, Attorney under a Lasting Power of Attorney or a Court Appointed Deputy or the Court of Protection directly, family member or other person who should be consulted in line with guidance within the Mental Capacity Act 2005.

10.3 The assessment process should include identification of any deprivations of liberty; ensure these are the least restrictive options and that a formal DOLs assessment is in place. (Also known as Liberty Protection Safeguards once the MCA Amendment Act is enacted in 2020).

11. Refusal of NHS Continuing Healthcare Funding

11.1 The CCG will consider that it is a refusal of NHS Services where the CCG has offered the individual what it considers is an appropriate care package to meet their assessed needs and this offer is not accepted by the individual or their representative. This includes situations where the individual has requested a particular package and the CCG has taken a decision that the chosen package will

not be commissioned and has offered an alternative package of care. It is expected the individual or their family will respond to this offer in a timely manner.

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

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

11.4 An individual retains the right to refuse NHS Continuing Healthcare funding and make their own arrangements for care to meet the assessed needs. This must not be confused with an individual who is in disagreement with the package of care that is being offered. If there is a disagreement this should be managed via an appeal or complaint as outlined in section 9.

12. Glossary

OCCG - Oxfordshire Clinical Commissioning Group
CHC - NHS Continuing Health Care Service/Team
OH- Oxford Health Foundation Trust
PHSO- Parliamentary and Health Services Ombudsman
PHB - Personal Health Budgets
Primary Health Need- This is ascertained through the completion of the Decision support tool.

Monitoring Effectiveness of this Policy

This document will be reviewed by the OCCG after 1 year Jan 2021