the Clinical Commissioning Groups
for North Norfolk, South Norfolk
Norwich and West Norfolk

POLICY WITH REGARD TO NHS CHC CONTRACTS FOR CARE HOMES WITH NURSING AND RESIDENTIAL CARE HOMES

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1. INTRODUCTION AND PURPOSE OF THIS POLICY

This Policy sets out the principles that the NHS Norwich Clinical Commissioning Group (CCG), NHS North Norfolk CCG, NHS South Norfolk CCG, and NHS West Norfolk CCG will apply in commissioning NHS Continuing Healthcare (NHS CHC). As such, this policy relates to care commissioned by:

- NHS Norwich CCG
- NHS North Norfolk CCG
- NHS South Norfolk CCG
- NHS West Norfolk CCG

This Policy is applicable to both new and existing patients eligible for NHS Continuing Healthcare. This Policy applies once an individual has received a comprehensive, multidisciplinary assessment of his/her care and support needs and the outcome shows that s/he has a primary health need and is therefore eligible for NHS Continuing Healthcare funding.

The content of the Policy represents policy strands that CCGs had developed within a guide. This is to ensure appropriate patient care and is in line with the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care November 2012 (Revised) ("the Framework"). It has been developed to provide a common understanding of the CCGs' commitments with respect to NHS CHC.

This policy ensures that:

- the patient's assessed NHS CHC needs will be met by the NHS
- patients will not pay for NHS services at the point of delivery
- patients are safeguarded

2. CONTRACTUAL ARRANGEMENTS AND PATIENT PLACEMENT

2.1. INTRODUCTION

This section outlines the approach being taken by CCGs in Norfolk to ensure continuity of care for patients eligible for NHS Continuing Healthcare (NHS CHC) as they introduce a new contractual model for care homes. This policy will apply to residential care homes but not to home care provision. For the purposes of clarity and consistency, references in this document to "care homes" includes both care homes with nursing and residential care homes.

This policy has been drafted in order to address a number of scenarios for which both CCGs and the Commissioning Support Unit require an agreed approach that can be implemented by the CSU contracts team.

Key principles:

- CCGs will only place patients with providers with whom they hold a contract for the provision of NHS CHC and which meets the quality and patient safety standards within that contract.
- Policies will seek to ensure that existing NHS CHC patients, insofar as possible, are not moved between providers or their historically-provided NHS funded care disrupted.
- Patients will be informed, prior to check-listing, of the contractual status of their current care provider. If the care provider does not hold an NHS contract and does not wish to hold one, for the provision of NHS CHC, options for alternative settings will be discussed with the patient and their families.
- Those providers that do not wish to provide NHS CHC will be enabled over time to withdraw from the market in a managed way.
- Where a patient lacks capacity to make decisions about their future care options, a best-interest meeting will be called and contractual options available considered.

For providers that have signed the new contract for provision of NHS CHC the contracts will be mobilised as normal. This will provide continuity of care for existing NHS CHC patients and choice for new patients seeking placements funded by NHS CHC. The quality standards within the new contracts will ensure that the CCGs can hold providers to account for the quality of care they provide and ensure that the most complex and vulnerable patients are well cared for.

2.2. SCENARIO PLANNING FOR PROVIDERS WHO NO LONGER WISH TO PROVIDE NHS CONTINUING HEALTHCARE AND PROVIDERS WHO ARE OUT OF AREA

Two scenarios have been identified for which a policy is needed:

- An approach with regard to existing care homes that are no longer choosing to provide NHS Continuing Healthcare under contract to the NHS with regard to:
    - Existing long standing NHS funded patients
    - Residents of non-contracted care homes thinking about the implications of being assessed for NHS CHC.
    - Newly eligible patients

- An approach with regard to provision of NHS CHC funded care outside the CCGs' areas.

2.3. CARE HOMES THAT ARE CHOOSING TO NO LONGER HOLD A CONTRACT FOR THE PROVISION OF NHS CHC

Providers that choose **not** to continue to hold a contract with the NHS for the provision of NHS CHC will not be made available on the choice menu for new NHS CHC funded placements.

2.4. WITH REGARD TO EXISTING NHS CHC FUNDED PATIENTS ALREADY ON NAMED PATIENT CONTRACTS WITHIN THESE CARE HOME SETTINGS, AT THE POINT AT WHICH THE CURRENT CONTRACT CEASES, OR FOR WHOM A DATE IS TO BE AGREED FOR THE IMPLEMENTATION OF THIS POLICY THE PROCESS WILL BE:

- Patients may choose to remain within a care home which is no longer willing to hold a contract for provision for NHS CHC. Where this is the case a discussion will be held with the provider. Those patients who wish to stay will be documented as a list of NHS CHC residents on a Named Patient document where the CSU/ CCG will endeavour to secure continuing placements for any existing NHS CHC patients at their current contracted prices. Such providers with named-patient arrangements will be reviewed annually, as a minimum. CCGs will still need to ensure that minimum CQC standards of care are reached and that there are no patient concerns or complaints about the standards of care being provided. The provider will still be required to deliver the care requirements of the NHS CHC package.

- Without a formal NHS CHC contract in place CCGs have few levers to apply to ensure actions are taken to improve care overall but any concerns would be communicated to the CQC; NHS funded patients may wish to reconsider their ongoing placement with that provider. Providers who do not hold an NHS Contract for NHS CHC will still be required to deliver a degree of reporting and will still be required to meet CQC standards for Care Homes.

- Individual patients who choose to remain in homes that do not wish to continue with an NHS contract for NHS CHC will be individually and clinically reviewed in line with normal NHS CHC patient review schedules for contracted providers. This can be monthly to annual reviews dependant on clinical need.

- Individual applications from non-contracted providers for inflationary uplifts will be considered by the CCGs whose patients are placed. These are unlikely if placements are above normal NHS CHC base rates.

- Existing NHS CHC Patients in non-contracted homes will be informed of the non-contractual status on review. Patients will be offered the option to move if they wish to and the options can be explored with them. In exceptional circumstances, where patients wish to stay in a non-contracted care home, and this is in the best interests of the patient, discussions with that care provider will be held to see if they will accept continuation of that patient's care provision under named patient arrangements.

- The intention is to reduce activity in non-contracted care providers as patients move, become no longer eligible or come to the end of their lives. This provides a managed transition for providers who wish to withdraw from NHS provision of NHS CHC. The CSU clinical teams have lists issued at regular intervals to ensure they know which care homes are signed up to an NHS Contract for the provision of NHS CHC and those that are not.

- Homes can seek to discharge a resident who is entitled to NHS CHC where they do not wish to continue to provide NHS CHC. In these cases all steps will be taken to support that patient and their family to find alternative provision. Patients may be under pressure to refuse NHS CHC funding and continue to self-fund. Staff need to be aware of this and ensure that patients are given all the advice and support they need to make the right decision for them.

2.5. WITH REGARD TO RESIDENTS IN NON-CONTRACTED CARE HOMES

Patients within non-contracted care homes should be given access to information on the potential outcomes of an eligibility assessment prior to check listing. Patients need to accept that unless an exceptional case can be made (e.g. patient is in end stage care or there is limited alternative provision available) they will be required to move to a contracted NHS CHC provider.

If the patient wishes to stay in a care home which does not provide contracted NHS CHC services, then the patient may choose to decline the checklist completion and the assessment of eligibility for NHS CHC funding and continue to self-fund or, if eligible, be funded by the Local Authority. Where patients choose not to proceed with a checklist and potential eligibility assessment this should be documented and signed off by the patient and the Local Authority informed if LA funded care is being provided. This can be reviewed by the patient at any time in the future and they can ask to be moved to a NHS CHC contracted care home at a later point in time and

funded by the NHS from the point they move. Patients would be given personal contact details for the CSU clinical team and their CCG in case they wish to review.

2.6. WITH REGARD TO PATIENTS IN NON-CONTRACTED CARE SETTING WHO BECOME NEWLY ELIGIBLE FOR NHS CHC

The following process would be followed:

- The provider would be asked again if they wish to take up an NHS standard contract for the provision of care to patients eligible for NHS CHC.

If the provider declines then the following steps are followed:

- The patient is given a choice of homes in the area that provide NHS CHC under contract, from which to choose a new care setting. Once the patient has chosen their preferred option to move then the CSU NHS CHC team will facilitate this with communications to both the sending and receiving providers. If a chosen provider has no bed available then arrangements will need to be agreed to meet the costs of care while the patient is awaiting the move.

Note: It is a patient's right to be assessed for NHS Continuing Healthcare funding eligibility and, if eligible, they have a right to have their care funded by the NHS. However it is not compulsory to take up the assessment, funding and provision on offer if a patient chooses not to. From time to time patients do seek not to pursue NHS CHC as they may wish to continue in accommodation than the NHS is not able to afford or contract for. A small number of care homes have contracted for the provision of NHS CHC but will be able to apply to offer patients options for additional services to meet wishes (not health needs). This may be attractive to some patients looking to move from wholly non-contracted providers (see "Additional Services policy" which is currently in development).

If the patient declines to move when the provider has refused to accept an NHS Standard Contract, a CCG joint panel may be convened to discuss a way forward. This will ensure due process has been followed, offer a peer review opportunity, explore options available and inform future policy development. Each CCG will nominate a representative to attend. The panel will be advisory. Decisions will remain the responsibility of the funding CCG. Meetings will be held as required and formally documented.

There will be rare and exceptional cases where the NHS CHC clinical team may, as a result of a best interest meeting, propose that a patient needs to stay in a particular setting (e.g. terminal phase of end of life care or where

alternative provision is unavailable). Such cases will be presented to the appropriate CCG for a decision accompanied with relevant risk assessments.

2.7. PATIENTS IN "OUT OF AREA" CARE HOMES

A number of patients are currently cared for close to family in other parts of the country but funded by Norfolk CCGs.

Occasionally, patients may be placed out of county where specific clinical needs cannot be met locally. CCGs are involved in decisions about out of area placements where the patient requires a specialist placement. These will be reviewed annually to ensure needs continue to be met appropriately.

Norfolk has historically offered this option in exceptional circumstances and these contracts have been inherited as long standing arrangements or agreed by CCGs as short term arrangements for terminal phase of end of life care and undertaken on a non-contracted activity (NCA) basis for the benefit of families.

It is proposed going forward that:

- These contracts be managed on a named patient basis as "non-contracted activity".

  Provider's ongoing CQC registration would be monitored annually as a minimum via the national CQC website. The CSU is not currently resourced to physically visit the majority of NHS CHC patients placed out of area. Whilst teams may notify the local CCG of the presence of a Norfolk patient, many receiving areas are not set up to do anything with this information. The home in that area will register the patient with the local GP practice, enabling them to access local NHS services.

- Where a care home out of area is put under special measures or is closing, the Local Authority will generally contact all residents within that home. They will also contact those agencies that are funding care to notify them of the situation and the plan of action. Moves to alternative provision are normally handled in discussions with families, patients and commissioners by the Local Authority where the care home exists.

Example: This occurred in a care home in Lincolnshire where a care home closed and the residents were relocated in discussions with the patient, family, NEL CSU and the relevant CCG. The patient moved to a care home not far from the original setting in Lincolnshire at the same cost envelope.

- A placement with an out of area provider would be made based on an extended Individual Case Arrangement (ICA) which requires the provider to:

- Notify of any admission to hospital or death of the patient within 48 hours.
- Notify commissioner of any safeguarding or results of best interest meeting with regard to our patient.
- Notify commissioner of any complaints received from the patient and / or family and their response.
- Invoice the correct CCG for the agreed amount monthly.

- Pricing would be at the local CCG rate for the area in which the care setting sits. This is historically and nationally what CCGs currently do. This enables each CCG area to maintain reasonable market stability even if it means that more is paid for placements in an area which has agreed higher than Norfolk weekly rates for NHS CHC patients or conversely the cost may be less if they have local rates than in Norfolk.

- Families would be encouraged to let the CCG/ CSU in Norfolk know of any concerns regarding care home quality or problems as soon as possible so that discussions can be held with local services and registration bodies/ CQC. Contact information for their local commissioners would be provided.

Note: This out of area definition will apply to Great Yarmouth Nursing homes and residential homes that do not hold a contract with North Norfolk CCG, South Norfolk CCG, Norwich CCG, or West Norfolk CCG.

3. ADDITIONAL SERVICES CONTRACTS BETWEEN CARE PROVIDERS AND PATIENTS (AND/OR THEIR REPRESENTATIVES)

3.1. INTRODUCTION

This section has been developed to ensure that CCGs have a consistent and transparent approach to patients who wish to purchase additional services (over and above their assessed needs under NHS Continuing Healthcare. This is also intended to safeguard patients against unforeseen additional costs.

Additional Services, in this section refers to services which a patient who eligible for NHS CHC may choose to purchase directly from a Provider. These optional additional services must be over and above those identified as required to meet their Continuing Healthcare assessed needs. For clarity, this is distinct from social care arrangements which allow “top-ups”.

The relevant CCG will only provide and fund those services that are identified in an individual’s Complex Case Review Panel (CCRP) approved care plan and for which it has statutory responsibility.

3.2. ARRANGEMENTS FOR PATIENTS CHOOSING TO PAY FOR ADDITIONAL SERVICES

Patients may wish to make separate arrangements for additional services (such as aromatherapy, private garden area, manicures, sole use facilities which represent ‘wants’ not ‘needs’). Current case law supports this concept as acceptable. These additional services should be arranged and contracted for separately from the NHS contracts for NHS CHC services.

Patients are advised to inform CCGs in the first instance when they request additional services from a Provider. This is required to ensure patients are not paying for services to meet an assessed need.

Admissions into NHS CHC-funded care for nursing care, residential care or domiciliary care packages with a Provider are not conditional on a patient or their family entering additional services contracts.

Patients who cease any previously agreed additional services payment or contract should not be required to move to another nursing or residential care home following cessation of their contract for additional services. This does not exclude movement within a nursing home or residential care home.

An example of this would be where a nursing or residential care home has a luxury wing with rooms which have sole use private garden at a higher price than the NHS contracted rate. Under this arrangement, the NHS will pay the appropriate contracted rate and the patient will take out an additional service contract directly with the Provider for the sole use garden area on the understanding that if they become unable to pay for their the additional services then they would be moved to the standard NHS level of room within the same home.

The CCG does not accept liability for any failure by patients or families to pay for additional services, or upon cessation (either by the patient or Provider) of the additional services contract.

Patients must be made aware of the arrangement and consequences of cessation of their additional services contract by the Provider from the outset. This should be communicated in a professional, timely and transparent manner.

The commissioners will make an appropriate referral (e.g. to Adult Safeguarding, CQC, counter-fraud) if a provider is found to be charging for additional services and either:

- the services are not in place
- the amount of the charges outweighs the additional services being provided
- fraud or abuse is suspected

3.3. INFORMATION FOR PATIENTS, FAMILIES AND CARERS

Information explaining additional services must be clearly written and shared with patients and carers by the Provider. Patients and/or their representatives are required to sign to confirm that they understand and accept their private contractual arrangements regarding additional services and the consequences of cancelling any additional services payment agreement between themselves and the provider.

Failure of the Provider to communicate the nature, content and terms of the contractual arrangement to patients and/or their representatives, will result in CCGs/CSU making an appropriate referral as above.

4. STANDARD DECISION MAKING FRAMEWORK AND GOVERNANCE ARRANGEMENTS FOR CCGS WHEN COMMISSIONING AND REVIEWING NHS CHC PACKAGES

This section has been developed to provide a common understanding of the CCGs' commitments with respect to the funding of packages of care to meet an NHS CHC eligible individual's assessed health and associated social care needs.

This section is intended to assist the CCGs standardise the quality and consistency of care, and make decisions about clinically-appropriate care provision for individuals in a consistent way.

CCGs have identified the need for a clearly articulated policy regarding the commissioning and review of NHS CHC care packages. The key aim is to inform robust and consistent commissioning decision making by the CCGs using a locally developed standardised decision-making framework. This section relates to a standardisation of decision making on care packages for patients who are eligible for NHS CHC across all CCGs. Standardising governance arrangements will support CCGs in their oversight and decision making with regard to funding of individual NHS CHC packages of care.

The following norms are established in respect of when a CCG Complex Case Review Panel (CCRP) will convene to review a care package and what services NHS CHC should and should not fund:

- A CCRP will ensure all domains are considered at the point where there is a more than 5% difference in the options for care being considered
- Agreement of standard list of services which CHC packages will fund, and those which they won't (standard list of services on page 14 of Appendix I).

The following are standard domains that CCG CCRP's will take into consideration when making decisions regarding individual packages of care for patients eligible for NHS CHC:

- Patients' needs and the outcomes they wish to obtain from their care
- Patient and family preferences and views
- The Human Rights Act and any other Disability Rights legislation (see Appendix J)
- Clinical and safeguarding risks and patients/ families views on these. (Patient view would apply where a patient fully understands risks in the choices they would like to make but still wishes to take those risks.)

- The price and affordability of the various options for the provision of care in light of the need to ensure equitable use of limited NHS resources.
- Due to geographical gaps in some care services, panels will have to take into account the availability of services and choices for patients as this is a limiting factor for many. Reviews of current provision are taking into account current gaps in services in order to support commissioners to fill these.

Decisions regarding the setting of personal health budgets will be treated in the same way.

All existing NHS CHC patients will go through a review process, either at 3 months post eligibility decision, or annually. At that point for any home care packages in excess of the 5% of the equivalent Care Home package, a CCG CCPR will be convened to review the package of care taking into account the domains set out above. The CCRPs will be cognisant of the 5% figure but also required to take all of the other factors set out above in agreeing a care package, and reflect any exceptionality in circumstances.

This approach will be clearer for patients and families, result in CCGs having a more consistent approach, allow CCGs flexibility to reflect the unique nature of care packages and individual needs and ensure CCGs treat all patients fairly and comply with the law.

5. EXCEPTIONAL CIRCUMSTANCES

In exceptional cases, the relevant CCG, having regard to the individual's assessed health and associated social care needs, may be prepared to consider funding a package of care where the anticipated cost to the CCG is more than it would usually expect to pay; or elements of the care package are not usually funded from NHS CHC budgets.

The Commissioner recognises that exceptional circumstances may require exceptional consideration but will retain its obligation to make best use of NHS resources. Exceptionality will be determined by the relevant CCG on a case by case basis. The grounds for and appropriateness of exceptionality will be determined by the merits of each case by the Commissioner.

Exceptionality may include (but it not limited to):

- the provision of a care package to an individual who has an advanced, progressive, incurable illness;
- those cases in which consideration must be given to address the particular cultural and/or communication needs of the individual;

- those cases in which consideration must be given to address the particular clinical and/or physiological needs of the patient and/or the risks associated with meeting their needs
- those cases in which an individual in an existing out of area placement becomes eligible for NHS Continuing Healthcare and wishes to continue to be accommodated out of area.

In addition the CCGs recognise that there will be cases in which, as a consequence of the nature of the needs of the individual in that particular case, it may be necessary to fund a higher cost package of care for a limited period of time (for example, in cases where a high/intense level of staffing needs to be put in place to set up the care package). In such cases the CCG may be prepared to consider funding the higher cost package of care for a limited period of time.

6. REVIEW OF THIS POLICY

NHS Norwich CCG, as the coordinating commissioner, owns this policy. The policy sections will be reviewed as set out below. However, each time a section is reviewed, the full document must be reviewed to ensure consistency.

Section 1: Contractual Arrangements and Patient Placement

This section is to be reviewed in the first instance, by the CCG joint panel in six months on the basis that all parties will have more experience of working with patients and providers to see if this policy is working. Out of area placement arrangements will be reviewed as part of a wider discussion between CCGs and CSU regarding all patients placed out of area and how we can better monitor at a distance or resource the travelling.

Section 2: Additional Services contracts between care providers and patients (or families) for patients in receipt of NHS Continuing Healthcare

Review of this section will be annual or on receipt of relevant additional case law or guidance.

Section 3: Standard Decision Making Framework and Governance Arrangements for CCGs when commissioning and reviewing NHS CHC packages

Review of this section will be within 6 months of January 2016. This will submitted to HOSC and CCGs' GB meetings.

7. APPENDICES

Reference	Document title	Document location
1. Contractual Arrangements and Patient Placement		
A	Flow Chart	Appendix A - Flow chart.docx
B	Contract Offer Letter 1	Appendix B - Contract offer letter 1.docx
C	Contract Offer Letter 2	Appendix C- Contract offer letter 2.docx
D	Checklist Waiver	Appendix D - Checklist waiver.docx
E	Assessment Waiver	Appendix E- Assessment waiver.docx
Section 2: Additional Services contracts between care providers and patients (or families) for patients in receipt of NHS Continuing Healthcare		
F	Mills and Reeve summary	Appendix F - Mills and Reeves Summary.docx
G	Contract Variation	Appendix G - Contract Variation.docx
H	List of Additional Services	Appendix H - List of Additional Services.docx
Section 3: Standard Decision Making Framework and Governance Arrangements for CCGs when commissioning and reviewing CHC packages		
I	Central and West Norfolk Procedures for Staff on NHS CHC V11 (Final)	..\..\..\CHC Policy Development\Central and West Norfolk Procedures for Staff on NHS CHC V 11 (Final).docx
J	Guidance Sheet for Consideration of Human Rights in Complex Case Review Panel Decision Making	Appendix J- Guidance Sheet for Complex Case review Panels.docx
K	Consideration of Domains in Complex Case Review Panel Decision Making	..\..\..\CHC Policy Development\Complex Cases Panels\2016.03.09 CCRP - Decision MakingTemplate for Complex Case Review Panels (FINAL).docx
L	Central and West Norfolk Guide to NHS CHC for patients V 21 (Final)	..\..\..\CHC Policy Development\Central and West Norfolk Guide to NHS CHC for patients V 21 (Final).docx