

NHS Dorset Clinical Commissioning Group

NHS Personal Health Commissioning Choice & Equity Policy



Supporting people in Dorset to lead healthier lives

PREFACE

The policy describes the way in which the Personal Health Commissioning (PHC) Team will commission care which reflects the choice and preferences of individuals but balances the need for the CCG to commission care that is safe, effective and makes the best use of available resources.

This policy applies to the application of the CCG's Policy for NHS Continuing Healthcare, Interim care (previously Funded out of Hospital Care), Fast Track and Jointly funded packages. Together these funding streams are termed 'Personal Health Commissioned Care'.

All managers and staff (at all levels) are responsible for ensuring that they are viewing and working to the current version of this policy. If this document is printed in hard copy or saved to another location, it must be checked that the version number in use matches with that of the live policy on the CCG intranet.

All CCG policies are published on the staff intranet and communication is circulated to all staff when new policies or changes to existing policies are released. Managers are encouraged to use team briefings to aid staff awareness of new and updated policies.

All staff are responsible for implementing policies as part of their normal responsibilities, and are responsible for ensuring they maintain an up to date awareness of policies.

A	SUMMARY POINTS
	<ul style="list-style-type: none"> Supports the commissioning of Personal Health Commissioned Care which reflects the choice and preferences of individuals but balances the need for Dorset CCG to commission care that is safe, effective and makes the best use of available resources.

B	ASSOCIATED DOCUMENTS
	<p>Policy for NHS Continuing Healthcare and NHS-funded Nursing Care Leaving Hospital Policy Policy on Joint decision making [get correct title here] Manual Handling Policy Lone Worker Policy Personal Health Budgets Policy</p>

C	ACKNOWLEDGEMENTS
	<p>This policy has been developed from a policy developed by East Lancashire CCG.</p>

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G	SUPPORTING DOCUMENTS/EVIDENCE BASED REFERENCES		
Evidence	Hyperlink (if available)	Date	
The New National Framework for NHS Continuing Healthcare		2018	
Equality Act		2010	
Human Rights Act		1998	
The NHS Constitution		2013	
NHS England Operating Model for NHS Continuing Healthcare		2015	
Mental Capacity Act		2005	

H	DISTRIBUTION LIST			
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1. Relevant to

- 1.1 All staff employed by the CCG who undertake activity in relation to Personal Health Commissioning.

2. Introduction

- 2.1 This policy has been developed as a part of the governance framework in relation to the CCG's duties relating to NHS fully funded Continuing Health Care (CHC), , Interim/Funded out of Hospital Care, Fast Track and jointly funded packages (jointly termed 'Personal Health Commissioned Care'). This policy has been developed in line with the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care October 2018 (Revised).

3. Scope

- 3.1 This Policy applies when people have Personal Health Commissioned Care which is the responsibility of Dorset CCG, including but not limited to:

- NHS Continuing Healthcare
- Interim Care (previously Funded out of hospital care)
- Fast track
- Named patients
- Jointly funded packages of care

- 3.2 This policy will not apply to:

- People receiving Funded Nursing Care as the registered nursing care contribution is nationally agreed by the Department of Health and Social Care

- 3.3 This policy will be applied when:

- a person receives Personal Health Commissioned Care for the first time from Dorset CCG, or
- a person's care is reviewed, or
- there is a significant change in the cost of care

4. Purpose

- 4.1 The Personal Health Commissioning Team (PHC) on behalf of NHS Dorset CCG will use this policy to provide care for people who have been assessed as eligible for Personal Health Commissioned Care.

- 4.2 The policy describes the way in which the PHC team will commission care in a manner which reflects the choice and preferences of individuals but balances the need for Dorset CCG to commission care that is safe, effective, sustainable and makes the best use of available resources.

5. Equality Impact Assessment

5.1 An equality impact and human rights assessments has been undertaken.

6. National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care October 2018 (Revised)

6.1 The National Framework says:

“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)

“Where a person qualifies for NHS Continuing Healthcare, the package to be provided is that which the CCG assesses is appropriate to meet all of the individual’s assessed health and associated care and support needs. The CCG has responsibility for ensuring this is the case, and determining what the appropriate package should be. In doing so, the CCG should have due regard to the individual’s wishes and preferred outcomes. Although the CCG is not bound by the views of the local authority on what services the individual requires, any local authority assessment under the Care Act 2014 will be important in identifying the individual’s needs and in some cases the options for meeting them. Whichever mechanism is used for meeting an individual’s assessed needs, the approach taken should be in line with the principles of personalisation” (Paragraph 172)

7. Context

7.1 “NHS Continuing Healthcare” means a package of continuing care arranged and funded solely by the NHS where the individual has been found to have a ‘primary health need’ as set out in the National Framework. The actual services provided as part of that package should be seen in the wider context of best practice and service development for each client group. Eligibility places no limits on the settings in which the package of support can be offered or on the type of service delivery.

7.2 The Secretary of State has developed the concept of a ‘primary health need’. Where a person’s primary need is a health need, the NHS is regarded as responsible for providing for all their needs, including accommodation, if that is part of the overall assessed need, and so they are eligible for NHS Continuing Healthcare.

8. The Provision of Services for People who are Eligible for Personal Health Commissioned Care

- 8.1 This policy has been developed considering the need to balance personal choice alongside safety, clinical effectiveness and appropriate use of finite resources. It is also necessary to have a policy which supports decisions that are consistent, equitable and compliant with the CCG's obligations under equality legislation. These decisions need to provide transparency and fairness in the allocation of resources.
- 8.2 Application of this policy will ensure that decisions about care will:
- Be person centred
 - Be robust, fair, consistent and transparent
 - Be based on the assessment of the person's clinical need, safety and (where a person lacks mental capacity to make decisions about their care) their best interests
 - Have regard to the safety and appropriateness of care to the individual and staff involved in the delivery
 - Involve the person and their family / representative wherever possible
 - Consider the need for the CCG to allocate its financial resources in the most cost-effective way
 - Support individual choice and preference to the greatest extent possible in view of the above factors
 - Comply with relevant legal duties
- 8.3 The CCG has a duty to provide care to a person eligible for Personal Health Commissioned Care to meet assessed needs. An individual or their family/representative cannot make a financial contribution to the cost of the care identified by the CCG as required to meet the individual's needs. An individual or their family/representative however, has the right to decline NHS services and make their own private arrangements. The level of need is determined upon a comprehensive, multi-disciplinary assessment of the totality of health and social care needs that contribute to the decision-making process of eligibility for NHS funded healthcare.
- 8.4 Access to NHS services depends upon clinical need, not ability to pay. The CCG will not charge a fee or require a co-payment from any NHS patient in relation to 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. The CCG is not able to allow personal 'top up' payments into the package of health care services, where the additional payment relates to core services assessed as meeting the needs of the individual and covered by the fee negotiated with the service provider (for example, the care home) as part of its contract with the CCG. If the individual or their representative considers that an existing care package is insufficient or inappropriate to meet needs, they should notify the CCG who will offer to review the care package (paragraph 272, NF 2018).
- 8.5 However, where service providers offer additional services which are unrelated to the person's needs as assessed under the NHS CHC

framework, and can be purchased and delivered separately to the services funded by the NHS, the person may choose to use personal funds to take advantage of these services.

- 8.6 Examples of such services which will in most cases fall outside NHS provision as they are unrelated to the person's primary healthcare needs include hairdressing, a bigger room or a better view. Any such additional services will not be funded by the CCG as these are services over and above those which the service user has been assessed as requiring, and the NHS could not therefore reasonably be expected to fund those elements.
- 8.7 In instances where more than one suitable care option is available (such as a nursing home placement and a domiciliary care package) the total cost of each package will be identified and assessed for the overall cost effectiveness as part of the decision-making process.
- 8.8 Any assessment of a care option will include consideration of the wishes of the individual, their psychological and social care needs and the impact on the home and family life as well as the individual's health needs.
- 8.9 The setting in which Personal Health Commissioned Care is commissioned is ultimately a decision for the CCG. The CCG must take into consideration its wider resources and an equitable allocation of the same. The CCG will carefully consider the views of the individual, their family or others as appropriate and act on all reasonable requests to the best of their ability, including working with the relevant Local Authority to keep couples together where practically possible.
- 8.10 Personal Health Commissioned Care decisions will be made by the Care Co-ordinator with support from their Team Manager. In all circumstances, funding decisions will be made by the Quality Assurance Panel in line with standing financial instructions.

9. Personal Health Commissioned Care Home Placements

- 9.1 Where a person has been assessed as needing a placement within a care home, the PHC team operates a provider framework list and the expectation is that individuals requiring placement will have their needs met in one of these homes. Within this policy the term "care home" includes care home, nursing home and specialist setting.
- 9.2 The person may wish to move into a home outside of the provider framework list or their family/representative may wish to place the individual in a home outside of the provider framework list. The CCG will consider this in line with the factors set out at paragraph 8.2.
- 9.3 If the fee for the requested home is higher than the fee charged by a care home on the provider framework list the PHC team would require clarification as to whether the extra fees are for services or facilities

unrelated to the person's primary health care need. The provider will only be able to invoice the CCG for the care and reasonable accommodation costs associated with the person's assessed needs, and the services to be funded and/or provided by the NHS will be identified in the individual client's care plan. The CCG is not required to fund any additional services unrelated to the client's reasonable health and social care requirements, and the provider will have to invoice the client separately for any such services. The invoices will detail what the CCG and client are being charged for respectively.

- 9.4 If the provider refuses to provide appropriate clarification as to the basis upon which their fees are charged, the CCG are unlikely to purchase the care at this home and the client or their family as appropriate will be advised that they will need to consider other homes, including those on the CCG's framework.
- 9.5 If an individual is already resident in a care home that is not on the framework when they become eligible for Personal Health Commissioned Care or where the costs exceed framework price, the CCG will take due consideration of all relevant factors prior to a decision being made, including the wishes of the individual and the likely effect of any move upon the individual's physical and mental well-being.

10. NHS Funded Packages of Care at Home

- 10.1 The CCG will seek to take account of the wishes expressed by individuals and their families when making decisions as to the location of care packages and care home placements to be offered to satisfy the obligations of the CCG to provide continuing healthcare. The CCG accepts that many people with complex medical conditions wish to remain in their own homes and to continue to live with their families, with a package of support provided. Where an individual or their family expresses such a desire the CCG will investigate to determine whether it is clinically feasible, safe and cost effective to provide a sustainable package of continuing care for a person in their own home or whether a care home is the only safe and realistic option.
- 10.2 Packages of care in an individual's own home are bespoke in nature and thus can often be considerably more expensive for the CCG than delivery of an equivalent package of services for a person in a care home. Such packages have the benefit of keeping the individual in familiar surroundings and/or enabling a family to stay together. However, the CCG needs to act fairly to balance the resources spent on an individual with those available to fund services to the population it serves.
- 10.3 People who are eligible for NHS funded continuing healthcare have a complexity, intensity, frequency and unpredictability of health needs which can present challenges to the safe delivery of care in their own homes.
- 10.4 The CCG will take account of and balance the following issues when considering whether to commission a care package at home:

- The wishes of the individual or their representative
- The psychological, social and physical impact on the person
- Whether 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
- The acceptance by the CCG and each person involved in the person's care of any identified risks in providing care and the person's acceptance of the risks and potential consequences of receiving care at home
- Where an identified risk to the care providers or the person can be minimised through actions by the person or their family and carers, those individuals agree to comply and confirm in writing their agreement with the steps required to minimise such identified risk.
- The person's GP agrees to provide primary care medical support
- The suitability and availability of alternative care options
- The cost of providing the care at home in the context of cost effectiveness and the need to make the best use of resources for the population of Dorset.
- The relative costs of providing the package of choice considered against the relative benefit to the person
- The willingness and ability of family, friends or informal carers to provide elements of care where this is part of the care plan and the agreement of those persons to the care plan.
- The availability of assistive technology or other models to meet support or supervision needs.
- In the case of a person with nursing needs, whether the needs require the presence of a nurse at all times, or whether the needs are for qualified nursing staff or specific tasks or to provide overall supervision.
- The person's right to family life.
- The quality of services that are available from suitable domiciliary care agencies.

10.5 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. The CCG will carefully consider a person's preference about their care setting but it cannot be guaranteed that the CCG will commission a package of care at home. Any request for a package of care at home will be considered, and if discounted, the reasons for this will be documented and communicated to the individual and their representatives.

- 10.6 Home care packages of more than eight hours per day are likely to indicate a high level of need which may be more appropriately met within a care home placement. These cases would be carefully considered and a full risk assessment undertaken.
- 10.7 It is likely to be more appropriate to provide waking night care to a person in a care home placement. The need for waking night care indicates a high level of support day and night.
- 10.8 Care home placements may be more appropriate for persons who have complex and high levels of need. Care home placements benefit from direct oversight by registered professionals and the 24-hour monitoring of residents.
- 10.9 If the individual's clinical need is for direct supervision or intervention from a registered nurse throughout 24 hours, the care would often be expected to be provided within a care home placement. This would include the requirement for 1-2 hourly intervention/monitoring for turning, continence management, medication, feeding, manual handling or for the management of significant cognitive impairment.
- 10.10 There are specific conditions or interventions that it would not generally be appropriate to manage in a home care setting. These would include but not be restricted to: the requirement for sub-cutaneous fluids, continual invasive or non-invasive ventilation or the management of grade 4 pressure areas.
- 10.11 Safety of the package will be determined by a formal assessment of risk undertaken by appropriately qualified professionals. The risk assessment will include the availability of equipment, the appropriateness of the physical environment and availability of appropriately trained carers and/or staff to deliver care whenever it is required.
- 10.12 The CCG will consider commissioning care at home where this is in accordance with the individual's wishes. However, the CCG will only commission care that is safe and sustainable, and will therefore need to be satisfied that the individual's needs can be safely met with a care package in the home environment. The CCG will decide whether care can be safely provided at home, and in reaching that decision, will consider the views of the individual's GP, primary care team, or responsible MDT, and the risk assessment carried out. The professionals with responsibility for case management will be expected to advise the CCG of the safety or otherwise of the package, as well as any changes required to ensure that the package is safe, and if necessary, they will need to provide information and documentation to enable the CCG to commission in an alternative setting.
- 10.13 The resilience of the package will be assessed and contingency arrangements will need to be put in place for each component of the package in case any component of the package fails.

11. Risk Assessment of Packages of Care at Home

11.1 Environmental Risk Assessment

The risk assessment must consider all risks that could potentially cause harm to the individual and their representatives and the staff. Where an identified risk to the care providers or the individual can be minimised through actions by the individual or their representatives, they must agree to comply with the steps required to minimise such identified risk. Where the individual requires any equipment then this must be able to be suitably accommodated within the home.

For the avoidance of doubt, where an individual or their representatives has made alterations to the home but the CCG has declined to fund the package, the CCG will not provide any compensation for those alterations. Included in the risk assessment will be a robust Safeguarding Adult Assessment to assess whether there are any actual or potential risks to the individual. Funding for adaptations to the home environment may be available from the local authority subject to their local criteria.

11.2 Clinical Assessment

When considering whether a package of care is suitable, the CCG will request support and involvement from the District Nurse to undertake a clinical assessment of the individual's needs and the extent to which that clinician considers that the proposed domiciliary care package meets those needs. The clinical assessment will consider the benefits of a 'Care at Home' package against the benefits of a care home placement.

A nurse and the individual's GP will be asked to consider the proposed arrangements to determine whether it is the most appropriate care package. This will include current and likely future clinical needs and psychological needs. Where part of the package is based on care being provided by the individual's representatives it will also include consideration of how needs will be met if the carer is temporarily unable to provide the care.

11.3 Staffing Assessment

The CCG will assess the care need and the input required by the individual to meet those needs. The CCG shall consider the qualification of any required staff and the sustainable availability of appropriately qualified staff including appropriate contingency arrangements.

11.4 The CCG has a duty to its staff to assess any potential harm and take steps to prevent it. This covers both physical risks and any potential psychological risks that may arise. The commissioned provider is responsible for assessing the environment and the care required in line

with their organisation's Health and Safety policies and procedures will apply. This includes Manual Handling policies and Lone Worker policies.

- 11.5 The individual and their representatives are responsible for ensuring that the environment is safe for the provision of the care package. Where the safety assessment identifies a potential risk associated with the home, the individual and their representative is responsible for remedying that. The individual and their representatives are also responsible for ensuring that the environment is appropriate for the provision of the care package by staff. This includes ensuring staff can have access to toilet, bathroom and kitchen areas and such areas are kept in a clean state and ensuring that staff are treated with dignity and respect.
- 11.6 When working within an individual's own home, staff does not have access to the full range of support services that are available within a hospital or nursing home environment, and in most cases staff will be working in isolation. This issue needs to be acknowledged and the implications of not having such support services needs to be identified, fully understood and Contingency plans put in place. It needs to be understood that it is not possible to replicate support services that are available within the NHS and nursing home facilities and if this level of support is required it may not be possible to safely care for the patient at home.

Due to the nature of the individual's condition, their high health needs and the care necessary, the NHS is required to ensure only appropriately trained staff are employed to care for patients and that those staff have the specialist skills they need to meet the patient's individual needs. The CCG is responsible for commissioning care in accordance with its Quality and Value Framework and in accordance with an agreed Health Outcome Plan in relation to the skill level of the staff required.

- 11.7 The provider will ensure that any necessary specialist training is given to staff and that staff employed on the package of care are confident at working without the support services normally available in hospital or nursing home environments. Training must also be given by the provider in the use of all necessary equipment. Where the individual's representatives wish to assist in the care of the patient, they will have to be trained and deemed competent to carry out agreed tasks safely.
- 11.8 In any circumstance where the CCG considers that the safety of its staff or its agents/contractors are at risk it shall take such action as it considers appropriate to remove that risk. Where this relates to the conduct of the individual, their representatives or the home environment it shall request that the individual and their representatives take the necessary action to remove the risk.
- 11.9 Where a review identifies, or the CCG otherwise becomes aware, that an action to reduce an identified risk to either the people involved providing care to the individual or to the individual has not been observed and such failure may put those individuals providing care at risk or may significantly

increase the cost of the package then the CCG will take the necessary steps to protect the individual and their representatives and staff involved with a view to ensuring the safety of all concerned. Harassment or bullying of care workers by the individual and their representatives will not be accepted and the CCG will take any action considered necessary to protect their staff and contractors in line with the NHS stand on Zero Tolerance.

11.10 Where safety of the individual and/or those people involved in providing care is likely to be compromised without such action and the individual or representative does not take the required action then the CCG may write formally to the individual or representative. Where there is a threat to the safety of CCG Staff or agents then the CCG retains the right to take any action it considers necessary to remove the threat including, in exceptional circumstances, the immediate withdrawal of the care provision. Where it is necessary to withdraw services, the CCG will urgently consider how else (if at all) services can be offered. Please see the CCG's policy on acceptable behaviour and breakdown of care.

11.11 Where the individual is in receipt of a Home Care Package and an assessment determines that this is no longer appropriate for any reason (including increase in care needs, inability for the individual's representatives to provide agreed care or identified risk) then an alternative package will be discussed and agreed.

12. Important Legal Considerations

12.1 The UN Convention of the Rights of Person with Disabilities reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms.

12.2 Article 8 of the European Convention on Human Rights requires a respect for an individual's private and family life, home and correspondence. Refusing an individual's request for a package of care at home is an interference with this right. The weight to be given to this in deciding on the appropriate course of action may be considerable.

12.3 However, the Article 8 right is a qualified right, which means that interferences with this right can be permissible, but must be justified. This may be for instance because the package of care has become unsafe or unsustainable, or on the grounds of cost effectiveness. The CCG may therefore decide that a refusal to fund care in a particular setting is justified, but each case will require careful analysis in line with the criteria set out in this policy, including the impact on the individual's needs (including psychological and emotional needs) that a move to a different care setting may have.

12.4 The CCG will also consider Article 8 rights in relation to whether the individual is able to maintain family and social links in any proposed alternative care setting.

12.5 Under the Equality Act 2010, assessment and decision-making should be fair and consistent without discrimination. The Public Sector Equality Duty requires the CCG, in exercise of its functions, to have due regard to the need to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- foster good relations between people who share a protected characteristic and those who do not

having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

13. Personal Health Budgets

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

13.2 From April 2019, any individual who is eligible for NHS Continuing Healthcare or S117 after-care services will be offered a personal health budget by default.

13.3 Personal health budgets will be calculated based on what the CCG would usually pay to commission the package against personal budget rates and will reflect the principles in paragraph 11.2. This money will then be offered

to the patient/their representative in line with NHS Dorset CCG PHB Policy.

13.4 A personal health budget is an amount of money to support a person's identified health and wellbeing needs, planned and agreed between the individual and the CCG.

13.5 A personal health budget helps people to get the services they need to achieve their health outcomes, by allowing them control over how money is spent on their care/support as is appropriate.

13.6 Personal health budgets can work in many ways, including:

- a notional budget held by the CCG commissioner
- a budget managed on the individual's behalf by a third party, and
- a cash payment to the individual (a 'healthcare direct payment').

13.7 Where Personal Health Commissioned care is commissioned directly by the CCG, it will do so in line with its quality and value framework. However, Individuals and their representative should be aware that if their preference is for a package of care that falls outside of the CCG's quality and value framework, a personal health budget may allow the exercise of choice by allowing the individual/representative greater control over how an agreed budget is allocated. The CCG will still need to be assured that the care package under a personal health budget can safely meet the individuals' commissioned needs, and retains oversight over the management of the allocated funds.

13.8 Further information is available from the PHC assessor and www.personalhealthbudgets.england.nhs.uk

13.9 Decisions in respect of the award of a Personal Health Budget will be made in accordance with the CCG PHB Policy

13.10 The CCG will work closely together with the relevant Local Authority regarding the personalisation of care and support to share expertise and develop arrangements that provide for smooth transfers of care where necessary.

14. Memorandum of Understanding for Care at Home and Personal Health Budgets

14.1 Where the CCG agrees to fund a 'care at home' package or meet assessed need by way of a personal health budget, the individual (if appropriate) and/or representatives may be required to enter a Memorandum of Understanding ("Memorandum") confirming that they accept the terms on which any care is provided.

14.2 This Memorandum will set out what the CCG will provide and what the individual and representatives have agreed to provide.

14.3 This Memorandum will also confirm that the individual and representatives understand that the care package or Personal Health Budget is agreed

based on the assessed health and personal care needs and the required input as at the date of the Memorandum. Where the cost of meeting the assessed care needs increases for any reason, or the assessed needs change such that the individual is no longer eligible for Personal Health Commissioned Care, or care can no longer safely be delivered at home, the individual and representatives acknowledge that existing arrangements may no longer be appropriate and where that is the case, they will work with the CCG, and where relevant the Local Authority, to agree an alternative care package.

14.4 The Memorandum will set out the agreed alternative arrangements should the care package breakdown.

15. Capacity

15.1 If a person over the age of 16 does not have the mental capacity to decide about the location of their commissioned care package and suitable placement, the CCG will commission the most cost effective, safe care available. The CCG will then assess what is in the person's best interests from among the available commissioning options. This will be carried out in consultation with the following so far as is reasonably practicable:

- The individual themselves
- Any appointed advocate
- Any attorney under a Lasting Power of Attorney which does not authorise the attorney to decide by themselves as to where the person should live (see xx below)
- A Court Appointed Deputy whose terms do not authorise the attorney to decide by themselves as to where the person should live (see xx below)
- Family members
- Any other person who must / may be consulted under the terms of the Mental Capacity Act 2005

15.2 If there is an intractable dispute between any of those referred to in the preceding paragraph about where the person should live, the CCG shall take advice as to whether the matter must/may be referred to the Court of Protection.

15.3 Alternatively, if the terms of a Lasting Power of Attorney or Deputyship grant authority for the Attorney/Deputy to make decisions about where a person lives, the CCG will advise the Attorney/Deputy as to what they consider to be the most appropriate placement. The Attorney/Deputy will then decide whether to accept that placement as being in the person's best interests. However, as with any other situation, if there is ultimately a dispute about the person's best interests, the matter may still need to be referred to the Court of Protection.

15.4 The above position does not relate to the situation for children and young persons under the age of 16, for whom a different legal framework applies.

However, the CCG will still consider the child's best interests under the Children Act 1989. Please see separate policy regarding Children's CHC.

16. Review

- 16.1 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 that can only be provided in a care home setting.
- 16.2 The care package will be reviewed in line with the National Framework in relation to NHS Continuing Healthcare (or other statutory requirements as appropriate) and then annually as a minimum requirement alongside the Personal Health Commissioned Care eligibility review to ensure that it is still meeting the person's needs at that time. The package will also be reviewed if the person's needs change significantly at any point.
- 16.3 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, the care package will be reviewed and other options (for example a nursing home placement) may be explored following consideration of the issues outlined in paragraph 10.2.
- 16.4 Any decision that a person is no longer entitled to Personal Health Commissioned Care will be taken by the CCG, but this will usually be done in consultation with the individual and their representative. If there is a possibility the CCG will be withdrawing funding it will consult with the individual and their representative and local authority before removing any package. Following a review, as described in section 15, the individual's condition may have improved to an extent that they are no longer eligible for Personal Health Commissioned Care. In these circumstances, the CCG is obliged to review the eligibility decision. In these cases the CCG will carry out a joint review with the local authority in line with the National Framework.
- 16.5 The individual and their representative will be notified they may no longer be eligible for Personal Health Commissioned Care; at this point the local authority has 28 days from the date of the letter confirming the outcome of non-eligibility to review the individual's requirements. In suitable cases, CCG funding for an individual's care may be continued on a 'without prejudice' basis for 28 days where a local authority is undertaking such a review. The CCG retains the right to seek reimbursement for care costs from the date of the MDT decision that the individual was not eligible for Personal Health Commissioned care from the local authority and/or the individual, subject to liability for contribution following the local authority's financial assessment. The CCG may nonetheless contribute to further packages of care according to need.
- 16.6 Should the individual or their family/representative on their behalf be unhappy with a decision about eligibility for Personal Health

Commissioned Care then they may request a local review of that decision in line with Dorset CCGs Appeals Policy.

16.7 Where there are disputes between the CCG and the Local Authority on care provision, the CCG will follow the Dispute Resolution protocol agreed with the Local Authority.

16.8 The CCG may also substitute or change Personal Health Commissioned Care services where the clinical risks become too high; this can be identified through, or independently of the review process. Where clinical risk has become too high in a home care setting, the CCG will offer Personal Health Commissioned Care in a care home or specialist setting.

17. Guidance

The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care – October 2018 (revised)

The NHS Continuing Healthcare (Responsibilities) Directions 2012

Human Rights Act 1998

Who Pays? Establishing the Responsible Commissioner (revised 2013)

Care Act 2014

Statutory guidance to support Local Authorities to implement the Care Act 2014

The Care and Support and After Care (Choice of Accommodation) Regulations 2014