South West London
Clinical Commissioning Group

South West London CCGs NHS Continuing Healthcare and Funded Nursing Care Choice and Equity Policy

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1. Introduction

1.1. This policy describes the way in which South West London (SWL) Clinical Commissioning Groups (CCGs) will make provision for the care of people who have been assessed as eligible for fully funded NHS Continuing Healthcare. It describes the process of decision making for provision after an assessment of eligibility under the National Framework.

1.2. It should be read in conjunction with:

- The National Framework for NHS Continuing Healthcare revised (2012)
- The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 ("the Regulations")

2. Context

2.1. Continuing Healthcare is a general term defined as:
Care provided over an extended period of time to a person aged 18 or over, to meet physical or mental health needs which have arisen as a result of disability, accident or illness. It may require services from the NHS and/or social care and can be provided in a range of settings. Access to these services is based on assessed need.

2.2. Fully funded NHS Continuing Healthcare describes a package of on-going care arranged and funded solely by the NHS.

2.3. The term 'Continuing Healthcare' is used in this policy as an abbreviation of 'fully funded NHS Continuing Healthcare'.

3. Choice and Person-Centred Care

3.1. The National Framework for NHS Continuing Healthcare & NHS funded-nursing care (2012, Department of Health) states: -
"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 social care needs."

3.2. Whilst the CCGs will take into account the views of the individual so far as is possible, the CCGs must consider a range of factors and must comply with its statutory financial obligations. The final decision as to the care package is one for the CCG; however, it will act on all reasonable requests to the best of its ability.

3.3. SWL CCGs will commission the provision of NHS funded Continuing Healthcare (CHC) in a manner which reflects the choice and preferences of individuals as far as is reasonably possible, ensuring patient safety, quality of care and making best use of resources. Cost has to be balanced against other factors in each case, such as a patient's desire to live at home.

3.4. Patient safety will always be paramount in planning a care package and will not be compromised.

3.5. SWL CCGs are required to balance the patient's preference alongside safety and value for money. Patients will have a choice, whenever possible, from providers who have a contract with SWL CCGs (or through our agreed Pan London Procurement Frameworks) and has agreed to SWL CCGs quality and pricing structure. This applies equally to home care packages as well as placements.

3.6. The SWL CCGs have a duty to provide care to a person with continuing healthcare needs to meet those assessed needs[1]. An individual or their family/representative cannot make a financial contribution to the cost of the care identified by the CHC team as required to meet the individual's core needs (see paragraph 3.12). An individual however, has the right to decline NHS services and make their own private arrangements.

3.7. SWL CCGs are not able to allow personal top up payments into the package of healthcare services under NHS CHC, 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 (e.g. the care home) as part of the contract.

3.8. The funding provided by SWL CCGs in NHS continuing healthcare packages should be sufficient to meet the needs identified in the care plan, based on the CCG's knowledge of the costs of services for the relevant needs in the locality where they are to be provided. It is also important that the models of support and the provider used are appropriate to the individual's needs and have the confidence of the person receiving the services.

[1] See the Regulations, paragraph 21.

3.9. Unless it is possible to separately identify and deliver the NHS-funded elements of the service, it will not usually be permissible for individuals to pay for higher-cost services and/or accommodation (as distinct from purchasing additional services).

3.10. In some circumstances individuals become eligible for NHS continuing healthcare when they are already resident in care home accommodation for which the fees are higher than the CCG would usually meet for someone with their needs. This may be where the individual was previously funding their own care or where they were previously funded by a Local Authority and a third party had 'topped up' the fees payable.

3.11. 'Topping-up' is legally permissible under legislation governing Local Authority social care but is not permissible under NHS legislation. For this reason, there are some circumstances where a CCG may propose a move to different accommodation or a change in care provision. In such situations, SWL CCGs may consider whether there are reasons why they should meet the full cost of the care package, notwithstanding that it is at a higher rate, such as that the frailty, mental health needs or other relevant needs of the individual mean that a move to other accommodation could involve significant risk to their health and well-being.

3.12. However, where service providers offer additional services which are unrelated to the person's needs as assessed under the NHS CHC framework, the person may choose to use personal funds to take advantage of these services but only so far as these costs can be clearly separated and invoiced. Any additional services which are unrelated to the person's primary healthcare needs will not be funded by CCGs 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.

4. The provision of Continuing Healthcare

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

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

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

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

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

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

4.7. In the light of these constraints, SWL CCGs have agreed this policy to guide decision making on the provision of Continuing Healthcare. The policy sets out to ensure that decisions will:

- be robust, fair, consistent and transparent,
- be based on the objective MDT assessment of the patient's clinical need

- be “person-centred”, which means that the decision will involve the individual and their family or advocate to the fullest extent possible and appropriate,
- take into account the need for the CCG to allocate its financial resources in the most cost-effective way,
- offer choice where available in the light of the above factors.

4.8. Once a decision on eligibility is agreed, an offer of a Personal Health Budget will be made to the patient (or their representative). Where such an offer is accepted, please refer to the individual CCG Personal Health Budgets Policy. A personal Health Budget will enable more a flexible approach to meeting the individual assessed needs outlined on the Support Plan.

5. Collaborative commissioning arrangements

5.1. SWL CCGs are part of a collaborative procurement arrangement - the Pan London Continuing Healthcare ‘Any Qualified Provider’, managed by the London Purchased Healthcare Team.

6. Continuing Healthcare funded care within a placement

6.1. Where a care home (with or without nursing) is the most appropriate option, the allocated CHC Nurse Assessor will work together with the patient and their representatives (where indicated) to identify establishments which can meet the assessed needs, and which are able to provide a place within a reasonable space of time in line with the brokerage criteria set out in bullet point below

6.1.1. The CHC teams operate a preferred provider list, and the expectation is that individuals requiring placement will have their needs met in one of the care homes on the AQP framework subject to bed availability and capacity to meet the needs of the assessed individual.

6.1.2. The CHC teams will source a care home (with or without nursing) which is an accredited member of the Pan London AQP (Continuing Healthcare) Framework

6.1.3. The CHC teams will seek to source a care home (with or without nursing) which accepts the standard terms of the AQP Framework. In the exceptional circumstances were the

costs of care are above the threshold for AQP tier 2 rate (by more than 6%) funding approval will be sought from each SWL CCG's Head of CHC.

6.1.4. High cost and cases outside AQP threshold will be referred to the Exceptions Panel

6.1.5. The SWL CCGs' approval process will consider the patient's assessed needs and the resources deemed adequate to meet the individual assessed needs. In the event that the assessed individual wishes to move into a home outside of the preferred provider list, the CHC team will be required to liaise with the receiving care home and confirm local contracting arrangements (to include any potential contract suspensions). As long as the fee for the bed is comparable to the fee agreed with the preferred AQP provider and the home can meet the patients care needs the CHC team will consider this option, accepting our partner agencies local contractual arrangements in relation to good governance. Where there is a conflict between cost of care and personal choice, SWL CCGs will refer to the CCG exceptions panel for a decision.

6.1.6. In the event that the assessed individual is already in a care home which is not under the AQP contract, the CHC team will undertake the due diligence process described above. A standard NHS contract will be put in place and efforts made to align the CHC contract weekly costs with the AQP Framework rates.

7. Continuing Healthcare Funded Packages of Care at Home

7.1. Many people wish to be cared for in their own homes rather than in residential care, especially people who are in the terminal stages of illness. A person's choice of care setting should be taken into account but there is no automatic right to a package of care at home. The option of a package of care at home should be considered, even if it is later discounted, with documented reasons.

7.2. In situations where the model of support preferred by the individual will be more expensive than other options offered by the CHC Team, SWL CCGs will take comparative costs and value for money into account when determining the model of support that will be provided. It may be necessary to pay more to meet an individual assessed need in a way that does not discriminate against them but the NHS does not have to provide a home care package if it is disproportionately more expensive than providing care in a care home setting.

7.3. The CHC team operates a preferred provider list, and the expectation is that individuals requiring care at home will have their needs met by a provider on the AQP framework subject to availability and capacity to meet the needs of the assessed individual. It is important to note that there may be exceptions where it would be appropriate to commission outside of the AQP framework. For instance, if a patient already had a care package with a provider that is off the AQP framework before becoming CHC eligible which effectively meeting all their needs.

7.4. The CHC team will take account of the following issues before agreeing to commission a care package at home:

7.4.1. Care can be delivered safely and without undue risk to the person, the staff or other members of the household (including children).

7.4.2. Safety will be determined by a written assessment of risk undertaken by an appropriate referring clinician, and ratified by the CHC Lead, in consultation with the person or their family for patients having a full CHC assessment. The proposed plan of care will then be checked by the relevant CHC clinical lead to ensure it is appropriate to meet the identified needs. For fast track assessment, the initial risk assessment is completed by the clinician making the referral which will then be checked before ratification and finalisation of the proposed care plan by the selected domiciliary care provider, checked to ensure it safely meets the needs identified.

7.4.3. The commissioned care home or domiciliary care provider will be expected to conduct their own risk assessment which 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.

7.4.4. The acceptance by the CHC team 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.

7.4.5. 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 confirmed in writing with the steps required to minimise such identified risk.

7.4.6. The person's GP agrees to provide primary care medical support.

7.4.7. Care packages or care home placements that exceed the set out funding threshold (7.5.4) will be considered on assessed needs through the Resource Allocation function on a case by case basis to ensure adequate care commissioned for the individual deemed eligible for CHC.

7.4.8. The cost of the care package will be considered in line with paragraph 7.4.

7.5. The SWL CCGs will take into account the following factors when considering the cost of a home placement:

7.5.1. The cost comparison will consider the genuine, rather than assumed costs of alternative models, so far as this is possible.

7.5.2. Where a person prefers to be supported in a certain location which is not the most cost effective model, the CCG will work with that person to identify if care can be delivered in their preferred location in a more effective way.

7.5.3. The cost will be balanced against other factors in the individual case, such as the individual's preference as to location.

7.5.4. Where the total cost of providing care is above 10% of the equivalent cost of an AQP Care Home (with or without nursing) placement (i.e. the cost of the care home (with or without nursing) placement + 10%) the CCG will not fund the placement, save as where the circumstances have been assessed by the CCG Exceptions Panel as being so exceptional that the costs are justified in the public interest.

7.6. SWL CCGs must consider risks that could potentially cause harm to the individual, any family, and the staff. Where an identified risk to the care providers or the individual can be minimised through actions by the individual or his/her family and/or carers, those individuals must agree to comply with the steps required to minimise such identified risk. Where the individual requires any particular equipment then this must be able to be suitably accommodated within the home.

7.7. SWL CCGs are not responsible for any alterations required to a property to enable a home care package to be provided, save for where these are agreed in accordance with the

criteria above. For the avoidance of doubt, where an individual or representative has made alterations to the home but SWL CCGs has declined to fund the package, SWL CCGs will not provide any compensation for those alterations.

7.8. The suitability and availability of alternative care options:

7.8.1. SWL CCGs can only provide services in accordance with assessed need following a decision on the appropriate allocation of the finite resources available to the CCGs for all patients it has responsibility for.

7.8.2. Where there is a conflict between cost of care and personal choice, SWL CCGs will ask its own internal Exceptions Panel to consider the factors set out above, in addition to:

- The cost of providing the care at home in the context of cost effectiveness.
- The relative costs of providing the package of choice considered against the relative benefit to the person. Examples of situations requiring careful consideration are as follows:
  - Home care packages in excess of eight hours per day would 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.
  - Persons who need waking night care would generally be more appropriately cared for in a care home placement. The need for waking night care indicates a high level of supervision day and night and usually care home placements are deemed more appropriate for persons who have complex and high levels of need. Residential placements benefit from direct oversight by registered professionals and the 24 hour monitoring of persons.
  - If the clinical need is for registered nurse direct supervision or intervention throughout the 24 hours the care would normally be expected to be provided within a nursing home placement.

8. Out of Area Care at Home and the Responsible Commissioner

8.1. If a person is deemed eligible and the choice is to move to a family home in another area, the responsible commissioner will be the receiving CCG (GP registration applies) but the

two CCGs need to positively discuss the transfer to allow the receiving CCG to assess and manage the care package.

9. Choice and the Mental Capacity Act 2005

9.1. SWL CCGs will always consult directly with the patient over Choice of Care. In accordance with the Mental Capacity Act, we will assume that the individual retains the capacity to make decisions over every aspect of their life, unless demonstrated otherwise through formal processes.

9.2. The patient may consciously delegate their decision-making function to another nominated deputy. SWL CCGs will be under duty to consult with this person directly.

9.3. Where an individual lacks the capacity to make such a decision then the registered deputy with the Lasting Power of Attorney for Health and Welfare will be nominated as he Decision Maker. N.B While the Decision Maker will speak with the authority of the patient, the NHS via the CCG retains responsibility for the final offer of care delivery.

9.4. Where no Deputy has been appointed then all decisions will be made in the Best Interest of the patient in accordance with the Mental Capacity Act.

9.5. All decisions will be recorded on the appropriate documentation

10. Review of NHS Continuing Healthcare support

10.1. All service users will have their care reviewed at three months and thereafter on an annual basis or sooner if their care needs indicate that this is necessary.

10.2. The review may result in either an increase or a decrease in support offered and will be based on the assessed need of the individual at that time. Reviews will involve the individual, their family or advocate as possible and appropriate.

10.3. Where the individual is in receipt of a home support package and the assessment determines the need for a higher level of support, this may result in care being offered

from a care home (with or without nursing), whichever best meets the patient's overall needs and in line with the Choice and Equity thresholds of SWL CCGs

10.4. The individual's condition may have improved or stabilised to such an extent that they no longer meet the criteria for NHS fully funded Continuing Healthcare. Consequently, the individual will become either self-funding or the responsibility of the Local Authority who will assess their needs against the Fair Access to Care criteria. This may mean that the individual will be charged for all or part of their on-going care.

10.5. Where the review of need results in the patient no longer meeting the CHC eligibility criteria, SWL CCGs will issue a 28 day notice of transfer of care to both the patient (or their nominated representative) and our partners in Local Authorities.

10.6. In line with the National Framework for CHC, SWL CCGs will ensure that no gap in service exists and that any transfer of responsibilities maintains the patient's safety as paramount. Neither SWL CCGs nor any Local Authority should unilaterally withdraw from an existing funding arrangement without a joint re-assessment of the individual's needs or without first consulting one another and the individual about the proposed change of arrangement.

10.7. All decisions will be transparent and shared with the patient and their nominated representatives where indicated.

11. Choosing to have a personal health budget

Choosing to have a personal health budget

Is this a legal right?	You have a legal 'right to have' a personal health budget (with some exceptions) from October 2014, for people receiving NHS Continuing Healthcare (including children). NHS Continuing Healthcare is a package of care arranged and funded solely by the NHS and provided free to the patient. This care can be provided in any setting – including an individual's own home. An assessment is carried out by the clinical commissioning group using a multi-disciplinary team of health and social care professionals. You can find more about NHS Continuing Healthcare at NHS Choices: www.nhs.uk. Clinical commissioning groups will also be able to provide personal health budgets to other groups of patients on a voluntary basis, if they recognise that there is a benefit to the patient and the NHS from offering packages of care in this way.
What choices do I have?	For some NHS services (including Continuing Healthcare provided at Home), you can choose to have a personal health budget if you want one. A personal health budget is an amount of money and a plan to use it. The plan is agreed between a patient and their health care professional or clinical commissioning group. It sets out the patient's health needs, the amount of money available to meet those needs and how this money will be spent. With a personal health budget, you (or your representative) can: • agree with a health care professional what health and wellbeing outcomes you want to achieve; • know how much money you have for this health care and support; • create your own care plan if you wish, with the help of your health care professional or others; • choose how to manage your personal health budget; • spend the money in ways and at times that makes sense to you, in line with your care plan. Once you have a care plan agreed, you can manage your personal health budget in three ways, or a combination of these:

	• **a 'notional budget'**: the money is held by your clinical commissioning group or other NHS organisation who arrange the care and support that you have agreed, on your behalf; • **a 'third party budget'**: the money is paid to an organisation which holds the money on your behalf (such as an Independent User Trust) and organises the care and support you have agreed. • **direct payment for health care**: the money is paid to you or your representative. You, or your representative, buy and manage the care and services as agreed in your care plan. In each case there will be regular reviews to ensure that the personal health budget is meeting your needs. You do not have to have a personal health budget if you do not want one.
When am I not able to make a choice?	You will not be able to have a personal health budget for all NHS services (for example, acute or emergency care or visiting your GP). A few individuals or groups of people may not be eligible for a personal health budget or a direct payment.
Who is responsible for giving me choice?	Your local clinical commissioning group is responsible for giving you choice.
Where can I get information and support to help me choose?	If you would like to manage your own personal health budget: • contact your local clinical commissioning group. You can find out more about personal health budgets from: • NHS England 'Personal health budget learning network', at: http://www.personalhealthbudgets.england.nhs.uk/index.cfm • NHS Choices: www.nhs.uk

12. Public Information and Choice

12.1. **The NHS Choice Framework: My NHS care: what choices do I have?** This is a guide to your choices about your NHS care and treatment. It explains:

- When you have choices about your health care
- Where to get more information to help you choose

- How to complain if you are not offered a choice

For some health care services, you have the legal right to choose and must be provided with choices by law. For other health care services, you do not have a legal right to choose, but you should be offered choices, depending on what is available locally. The full document can be accessed here: https://www.gov.uk/government/publications/the-nhs-choice-framework/the-nhs-choice-framework-what-choices-are-available-to-me-in-the-nhs

12.2. **NHS Choices**: www.nhs.uk. This website can help you make important health decisions, including which GP surgery you register with and which hospital you attend for treatment. It provides tools and resources that help you look at your options and make the right decision.

12.3. **Care Quality Commission** checks many care organisations in England to ensure they are meeting national standards. They share their findings with the public, which can be found at: www.cqc.org.uk or call their National Customer Service Centre: Tel: 03000 616161 (Mon to Fri, 8.30am - 5:30pm).

12.4. **The NHS Constitution** tells you what you can and should expect when using the NHS. Visit www.nhs.uk and search for 'NHS Constitution'. The Handbook to the NHS Constitution provides additional explanation about the rights and pledges set out in the NHS Constitution.

12.5. **Healthwatch** is an independent consumer champion for health and social care in England. It operates as Healthwatch England at national level and local Healthwatch at local level. Visit www.healthwatch.co.uk for more information.

13. What can I do if I am not offered these choices?

First, you can speak to your **GP or the health care professional who is referring you**, as set out in the boxes above.

If you are still unhappy that you have not been offered these choices, you can make a complaint. You can complain to the **organisation that you have been dealing with** or you can make a complaint to your **local clinical commissioning group**. Clinical commissioning

groups must publish their complaints procedure. If they agree with your complaint, the clinical commissioning group must make sure that you are offered a choice for that health service.

To contact your local clinical commissioning group:

- Ask your GP practice, they can tell you how to contact your local clinical commissioning group; or
- Visit NHS Choices, www.nhs.uk click on the 'Health services near you' section on the homepage. If you are unhappy with the decision from the clinical commissioning group, NHS England or Monitor you have the right to complain to the independent **Parliamentary and Health Service Ombudsman**. The Ombudsman is the final stage in the complaints system. To contact the Ombudsman:
- visit www.ombudsman.org.uk;
- call the Helpline: 0345 015 4033;
- use the Textphone (Minicom): 0300 061 4298;
- text 'call back' with your name and your mobile number to 07624 813 005; you will be called back within one working day during office hours (Monday to Friday, 8.30am - 5:30pm).

You can also contact an NHS complaints advocacy service if you have concerns regarding your right to choose. Contact your local Healthwatch to find out your local advocacy service. Visit http://www.healthwatch.co.uk/find-local-healthwatch and search for your clinical commissioning group by your postcode or location.

14. References

Department of Health, November 2012 (revised), The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care
DH Practice Guidance for NHS Continuing Healthcare and NHS Funded Nursing Care 2013
Guidance on Direct payments for Healthcare; Understanding the regulations (DH March 2014)
NHS England Operating Model for Continuing Healthcare 2015
NHS England Compassion in Care Assurance Framework 2014
Who Pays? Determining responsibility for payments to providers August 2013 DH