



East Leicestershire and Rutland Clinical Commissioning Group  
Leicester City Clinical Commissioning Group  
West Leicestershire Clinical Commissioning Group

## **HEALTH OVERVIEW AND SCRUTINY COMMITTEE: 23 January 2017**

### **REPORT OF Leicester, Leicestershire and Rutland Clinical Commissioning Groups**

#### **Settings of Care Policy Update**

##### **Purpose of report**

1. The purpose of this paper is to invite comments from the Health Overview and Scrutiny Committee on the draft Settings of Care Policy for the Leicester, Leicestershire and Rutland Clinical Commissioning Groups' (LLR CCGs'). This policy is for the commissioning of services for people who have been assessed as eligible for NHS Continuing Healthcare (CHC) and Personal Health Budgets (PHBs). The policy sets out a common and shared approach to the CCGs' commitments in relation to individual choice and resource allocation.

##### **Background**

2. NHS Continuing Healthcare is a package of care which is arranged and funded solely by the NHS for individuals, not in hospital, who have on-going health care needs outside of hospital usually as a result of disability, accident or illness. Patients may receive this care at home, in a care home or a specialist home.
3. Where patients receive care is called "a setting of care." When a person has been assessed as eligible for NHS Continuing Healthcare their care needs are then set out in a care plan and this is then discussed with them and/or their family and carer(s).
4. Personal Health Budgets (PHBs) provide an amount of money to individuals with identified health and wellbeing needs to support care. The care is planned and agreed between individuals, families and their local NHS team.
5. Packages of NHS Continuing Healthcare are subject to a cost-effectiveness test in the same way as all other NHS services. Whilst agreeing a package of care for individuals eligible for CHC funding the CCGs have a statutory duty to consider the available resource. However, in coming to a decision on a package of care to be commissioned for an individual, the CCGs need to ensure clinically appropriate care provision for individuals in a robust way and within the available financial envelope whilst ensuring a quality service is delivered.

6. The purpose of the Settings of Care Policy is therefore to:
- Define how and when the CCGs will support choice of care setting in relation to clinically appropriate packages of care for individuals within the available financial envelope and to ensure that care is provided equitably across the CCGs
  - Ensure that the clinically assessed care needs of eligible individuals are met in a manner which supports consistent and equitable decisions about the provision of that care regardless of, for example but not limited to, the person's age, condition or disability.
7. As the Settings of Care policy has not been updated since 2011 it is due for review, update and formal adoption and application of the new policy by the CCGs. In addition the policy needs revising to include Personal Health Budgets (PHBs).
8. The key feature of the 2011 Settings of Care policy is the 25% financial threshold which enables CCGs to fund a clinically sustainable package of care, delivered in the individual's setting of choice (e.g. home), where the anticipated cost of that package does not require more than 25% additional funding compared to the cost of equivalent care in an alternative setting. Exceptional circumstances, such as the individual being at the end of their life, are considered in order to enable CCGs to fund packages of care exceeding this financial threshold.
9. LLR CCGs are outliers in relation to both the high number of CHC packages of care and the high cost of those packages. This outlying position is not sustainable for the local health economy and does not arguably demonstrate the most effective use of resources for the local population.
10. In reviewing the policy, the LLR CCGs engaged with people receiving CHC funding, their carers, families and key condition-specific support groups. Members of the HOSC were provided with the outcome of the engagement event at their meeting on 14 September 2016.

### **Consultation**

11. As there are proposed changes to the policy, the LLR CCGs will be formally consulting on those changes to provide further opportunity for people who could be affected (including patients, families and carers) to share their views before any final decision is made.
12. The consultation questions and documents have been approved by all three CCG Governing Bodies and NHS England has provided comments. Although delayed, the consultation commenced on 6 January 2017 and the consultation period is six weeks.
13. All individuals in receipt of fully-funded NHS CHC/PHBs who could be affected by changes to the Settings of Care policy (circa 1,300 people) and their families/those important to them are being given the opportunity to complete and return a survey and participate in an event on the 19<sup>th</sup> January 2017. Letters have been sent to each individual with a copy of the survey and an invitation to the consultation event. A FREEPOST return address has been provided.

14. The consultation and draft policy are featured on the CCG's website and a media release has been issued inviting members of the public to complete the survey and to attend a consultation event.
15. People also have the opportunity to complete the survey online should they prefer and easy read versions and translations will be available on request.
16. A number of support groups/charities and other identified stakeholders have been invited to comment and attend the event.
17. A telephone number has been provided for anyone with questions or concerns and those needing assistance in completing the form.
18. On conclusion of the consultation, the feedback received will be independently analysed.

### **Timetable for Decisions**

19. On conclusion of the consultation, the feedback will be considered by the LLR CCG and public feedback taken into account.
20. A final decision is scheduled to be made in March 2017 by the LLR CCG Governing Bodies.

### **Conclusions**

21. The Health Overview and Scrutiny Committee are asked to contribute to the consultation and comment on the draft policy documents.
22. The LLR CCGs are committed to listening to the views of the public and to implementing a policy which ensures clinically appropriate, high quality and affordable care provision for individuals.

### **Officer to Contact**

Noelle Rolston, Senior Contracts and Provider Performance Manager, LLR CCGs  
Telephone: 0116 295 3405  
Email: [noelle.rolston@eastleicestershireandrutlandccg.nhs.uk](mailto:noelle.rolston@eastleicestershireandrutlandccg.nhs.uk)

### **List of Appendices**

Appendix 1 – Consultation documents  
Appendix 2 – Draft Settings of Care Policy

East Leicestershire and Rutland Clinical Commissioning Group  
 Leicester City Clinical Commissioning Group  
 West Leicestershire Clinical Commissioning Group

## Have your say on Settings of Care policy

**Your three local Clinical Commissioning Groups are inviting you to have your say on the Settings of Care policy which ensures clinically appropriate, high quality and affordable care provision for individuals who are eligible for NHS Continuing Healthcare (CHC) funding.**

A 'setting of care' is the location where a patient receives a package of care arranged and funded solely by the NHS for a person aged 18 and over, to meet physical and/or mental health needs which have arisen as a result of disability, accident or illness. It is based on the patient's clinical needs and safety.

When a person has been assessed as eligible for CHC funding their care needs are set out in a care plan and this is then discussed with them and/or their family and carer(s).

The Settings of Care policy is used to guide the CCGs in deciding the limit of additional funding for providing care in an individual's preferred setting and includes criteria which ensure that individual clinical circumstances are taken into account.

### What you need to know and do

We are inviting you to take part in a public consultation by answering a few questions on proposed changes to the policy. You may have taken part in our previous survey during the summer, which we looked at carefully, before reviewing the policy and proposing some changes. We are now urging you to comment on the proposed changes before a decision is made. Changes to the policy could mean



changes to the care you receive in future, so it is important that you have your say.

### Why the policy needs to change

The current policy is outdated and doesn't reflect developments such as Personal Health Budgets, a new scheme that provides an amount of money to support a patient's identified healthcare and wellbeing needs.

Sometimes, a patient's preferred setting of care (e.g. at home) can cost more than the same level of care in a different setting. If the CCGs spend more money in some cases for a patient's preferred choice, this can reduce the overall amount of funding available to care for all patients. We fund more CHC packages of care and of higher costs than most other areas in the country - in 2015/16 we spent £73.5 million.

### Fairer and sustainable Continuing Healthcare

Our current position is not sustainable for the local health economy and does not demonstrate that we are spending money in the best way for you and other patients. We have a set budget that has to cover the healthcare needs of all local people. We also

have to make decisions fairly and ensure that all those eligible for CHC have equal access to healthcare funding.

### The proposed changes

Based on feedback from the survey, we are proposing:

- **A reduction to the current 25% spending limit** - the current policy allows the CCGs to spend up to 25% more than the most cost effective option to provide care in a setting of a patient's choice. We are proposing two options for you to consider.
- **The introduction of clearer exceptionality criteria** - such as someone at the very end of their life.
- **The implementation of guidelines to reduce clinical risk** - 24-hour care from a registered nurse would only be provided in a nursing home and hospital level care would only be provided in a specialist unit.
- **Use of registered care settings** - we will try to offer and place patients with preferred care providers. If their choice is not available, to meet reasonable assessed care needs, we may place people with an alternative care provider who meets the requirements.

### Your voice counts

Your views matter to us and we consider them carefully when making decisions. We invited you to take part in a survey during the summer:

- Most people felt it was important that there was consistency of care and that care was delivered in a clinically safe and appropriate environment.
- Most people felt that the affordability of care to the NHS was important in some way.
- Almost everyone thought that it was important that patients and/or their

families had a choice in their setting of care.

- Most people agreed that end of life care was an exceptional circumstance.

You can view the full findings of the survey [here](#).

### How the changes could affect you

Once the policy has been refreshed and approved, any changes would be applied at the patients' next annual review or, in the case of new patients, at the point people are determined eligible for Continuing Healthcare funding.

Patients who receive packages of care funded by the Local Authority will not be affected by the Settings of Care policy review.

### What next?

Please answer the consultation questions and return to the FREEPOST address below:



### Freepost NHS QUESTIONNAIRE RESPONSES Settings of Care LLR

Alternatively, you can take part by answering the questions online:

[www.surveymonkey.com/r/SettingsofCare2017](http://www.surveymonkey.com/r/SettingsofCare2017)

**By telephone:** 0116 295 3405

**By email:**

[listening@eastleicestershireandrutlandccg.nhs.uk](mailto:listening@eastleicestershireandrutlandccg.nhs.uk)

Or by attending our consultation event at:  
**Leicester Racecourse, Oadby, Leicester, LE2 4AL on Thursday 19 January between 10am and 12pm.**

You can also contact us if you would like this information in another language or if you have another specific request.

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**Please detach and return this form by Monday 20 February 2017 to:**

**Freepost NHS QUESTIONNAIRE RESPONSES**

**Settings of Care LLR**

**1. Firstly, please tell us by ticking the box(es) that apply, if you are:**

- An individual receiving CHC funded care
- A carer for an individual receiving CHC funded care
- A family member of/someone important to an individual receiving CHC funded care
- A representative from a patient or carer support group
- A member of staff involved in caring for an individual receiving CHC
- A member of the public                      Other, please specify .....

**2. Please tell us which of the following options being considered by the LLR CCGs you prefer. (Please tick one option)**

- Option One** - spending no more than the most cost effective setting to care for an individual in their preferred setting
- Option Two** – spending up to an additional 10% to care for an individual in their preferred setting compared to the cost of the same level of care in the most cost effective setting

**3. The exceptionality criteria we are proposing is care for a patient at the end of their life. Is there anything else you think should be considered as an exceptional circumstance? Please explain in the box below.**

**4. Sometimes the care provider and/or the setting might need to change for an individual for a number of reasons. If the CCG deems that a provider is not providing care of an acceptable standard, patients will be moved as soon as possible to ensure their safety.**

**Please select one of the following options to indicate the minimum notice period you think the CCG should give to in relation to changes to their setting of care, where a move does not compromise the quality of service provided: (Please tick one option)**

- Seven days' notice to the individual
- Two weeks' notice to the individual
- One month's notice to the individual

### 5. How satisfied are you with the way this consultation is being run?

- Very satisfied
- Satisfied
- Neither satisfied or dissatisfied
- Dissatisfied
- Very dissatisfied

### Equalities monitoring

We recognise and actively promote the benefits of diversity and we are committed to treating everyone with dignity and respect regardless of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) or sexual orientation. To ensure that our services are designed for the population we serve, we would like you to complete the short monitoring section below. The information provided will only be used for the purpose it has been collected for and will not be passed on to any third parties.

### 6. Please state the first letters and numbers of your postcode, e.g., LE1.

### 7. What is your gender?

- Male    Female    Transgender    Prefer not to say

### 8. What is your age?

- Under 16    16-24    25-34    35-59    60-74    75+    Prefer not to say

### 9. What is your ethnic group?

- Asian or Asian British    Black or Black British
- Chinese    Mixed dual heritage
- White or White British    Gypsy/Romany/Irish traveller
- Arab    Other (please specify)
- Prefer not to say .....

### 10. Do you consider yourself to have a disability?

- Yes    No    Prefer not to say

### 11. What is your sexual orientation?

- Bisexual    Heterosexual/straight    Gay    Lesbian    Prefer not to say
- Other (please state) .....

## 12. What is your religion and belief?

- No religion       Baha'i  
 Buddhist       Christian (including Church of England, Catholic, Protestant and all other Christian denominations)  
 Hindu       Jain  
 Jewish       Muslim  
 Sikh  
 Other (please specify).....  
 Prefer not to say

**Thank you for helping us with this consultation.**

**Please return this form by Monday 20 February, 2016 to the address on the top of this form.**

We can provide versions of this document in other languages and formats such as Braille and large print on request. Please contact the Engagement and Involvement department, telephone **0116 295 4183**.

### **Somali**

Waxaan ku siin karnaa bug-yarahaan oo ku qoran luqado iyo habab kale sida farta indhoolaha Braille iyo daabacad far waa-wayn markii aad soo codsato. Fadlan la soo xiriir qaybta Ka-qaybgalka iyo Dhex-gelidda, lambarka telefoonka waa 0116 295 4183.

### **Polish**

Jeżeli chciałby Państwo otrzymać kopię niniejszej ulotki w tłumaczeniu na język obcy lub w innym formacie, np. w alfabecie Braille'a lub w powiększonym druku, prosimy skontaktować się telefonicznie z zespołem ds. zaangażowania (Engagement and Involvement) pod numerem telefonu 0116 295 4183.

### **Cantonese**

如有要求，我們可以將本宣傳手冊用其他語言或格式顯示，如盲文或大號字體。請致電我們的“參與部門” (Engagement and Involvement Department) 0116 295 4183.

### **Gujarati**

અમે આ ચોપાનિયાનું ભાષાંતરો બીજી ભાષાઓમાં અને શૈલીઓમાં જેમ કે બ્રેઇમાં અને વિનંતી કરવાથી મોટા અક્ષરોમાં છાપેલા પૂરાં પાડી શકીએ છીએ. ઇંગેજન્ટ અને ઇન્વોલ્વમેન્ટ વિભાગનો ટેલિફોન 0116 295 4183 દ્વારા સંપર્ક કરો.

### **Hindi**

हम आपको यह परचा दूसरी भाषाएँ में और ब्रेल एवं बड़े अक्षरों जैसी रूपरेखा में निवेदन करने पर प्राप्य कर सकते हैं। कृपया कर के इन्गेज्मन्ट और इन्वाल्वमन्ट विभाग में टैलिफॉन द्वारा 0116 295 4183 पर संपर्क कीजिए।

### **Urdu**

ہم درخواست کرنے پر لیلیٹ کے اس ترجمے کو دیگر زبانوں اور صورتوں مثال کے طور پر بریل اور بڑے حروف میں بھی فراہم کر سکتے ہیں۔ براہ کرم اس ٹیلی فون نمبر 0116 295 4183 پر اینگیجمنٹ اینڈ اینوالومنٹ ڈیپارٹمنٹ کے ساتھ رابطہ قائم کریں۔

### **Arabic**

یمکننا تقدیم نسخ من هذه النشرة بلغات أخرى وصیغ مثل برایل والطباعة الكبيرة في الطلب. يرجى الاتصال انخراط وإشراك وزارة، والهاتف





Leicester City Clinical Commissioning Group  
West Leicestershire Clinical Commissioning Group  
East Leicestershire and Rutland Clinical Commissioning Group

# **DRAFT Settings of Care Policy**

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## NHS Continuing Healthcare and Personal Health Budgets

### 1. Introduction

This policy describes the way in which the three Clinical Commissioning Groups (CCGs) of Leicester, Leicestershire and Rutland (LLR) who are East Leicestershire and Rutland CCG, Leicester City CCG and West Leicestershire CCG, will plan and commission services for people who have been assessed as eligible for an episode of fully funded NHS Continuing Healthcare (CHC) and agree the level of a Personal Health Budget (PHB).

CHC is a package of care (PoC) or placement arranged and funded solely by the NHS for a person aged 18 and over to meet physical and/or mental health needs which have arisen as a result of disability, accident or illness. A PHB is an amount of money to support an individual's identified healthcare and wellbeing needs, planned and agreed between the individual, or their representative, and the local NHS team.

The CCGs have developed this policy to help inform a common and shared understanding of CCG commitments in relation to individual choice and resource allocation.

As per the National Framework for NHS Continuing Healthcare, the process of assessment and decision-making should be person-centred. This means placing the individual, their perception of their support needs, and their preferred models of support at the heart of the assessment and care-planning process. When deciding on how their needs are met, the individual's wishes and expectations of how and where the care is delivered, and how their personal information is shared, should be documented and taken into account, along with the risks of different types of provision and fairness of access to resources.

The CCGs' responsibility to commission CHC services derives ultimately from s3 National Health Service Act 2006. This places a duty on the CCGs to arrange for the provision, to such extent as it considers necessary to meet the reasonable requirements of the persons for whom it is responsible, of:

- [non-hospital] accommodation for the purpose of any service provided under the Act;
- medical and nursing services; and
- such other services or facilities for the prevention of illness, the care of persons suffering from illness and the after-care of persons who have suffered from illness as it considers are appropriate as part of the health service.

The CCGs are also under a statutory duty to break even financially (s223H).

Accordingly, while the CCGs will endeavour to respect the individual's preferences in commissioning CHC services, CCGs are obliged to take into account the cost of services, as well as the clinical risks inherent therein, when planning how to meet assessed needs and making an offer of a package of such services, in order to ensure that the best use is made of the limited resources available.

The CCGs will commission care to meet clinically assessed care need in an appropriate way. These packages of care are also subject to a cost-effectiveness test, in the same way as all other NHS services are. In deciding what an appropriate PoC is for eligible individuals, the CCGs have a statutory duty to consider the overall resource available to them to provide services to all the patients for whom they are responsible. In coming to a decision on the PoC for a particular individual, the CCGs need to ensure they are commissioning clinically appropriate and sustainable care within the available financial envelope, so ensuring that a high quality service is delivered while financial governance is maintained.

It is recognised that a PoC in an individual's own home, or alternative forms of supported living, are often bespoke in nature and thus can often be considerably more costly than the delivery of an equivalent PoC for an individual in an alternative setting (e.g. a care home). The CCGs are obliged by law to seek to balance the realisation of patient choice with the need to work within the financial allocations provided. This policy seeks to assist the CCGs to do this in a rational and practical manner.

## **2. Scope**

This policy applies to:

- all CCG staff who are required to make decisions about the level of packages of care for individuals that are eligible for an episode of fully funded NHS CHC or a PHB
- any staff across the health economy who are contracted to determine eligibility or broker placements under the terms of the NHS national standard contract or a service level agreement
- all adults aged 18 years and over who are eligible for funding of an episode of fully funded NHS CHC or a PHB
- individuals and/or their representative(s) who request a PoC that could be provided in a more cost-effective alternative setting and still meet the individual's clinically assessed care needs in a clinically safe and appropriate manner.

## **3. Purpose, Aims and Principles**

### **The Purpose**

The purpose of this policy is to:

- define how and when the CCGs will support choice of care setting in relation to clinically appropriate packages of care for individuals within the available financial envelope and ensure that care is provided equitably across the CCGs
- ensure that the clinically assessed care needs of eligible individuals are met in a manner which supports consistent and equitable decisions about the provision of that care regardless of, for example but not limited to, the person's age, condition or disability.

The intentions of this policy are to:

- inform robust, fair and consistent commissioning decisions by the CCGs
- ensure that there is consistency in the local area in the packages of care that individuals are offered

- ensure the CCGs achieve value for money in the purchasing of packages of care for individuals
- facilitate effective partnership working between healthcare providers, NHS bodies and the Local Authorities (LAs) in the area
- promote individual choice as far as is reasonably possible.

## **The Aims**

This policy aims to assist the CCGs to:

- provide guidance for those staff who are designing the PoC with the eligible individual, so that all parties understand that the cost of the POC provided must be proportionate for similar levels of care need regardless of the setting in which the PoC is provided, whilst meeting all of the individual's clinically assessed and eligible health and associated social care needs
- take account of the wishes expressed by individuals and their representatives when making decisions as to the settings of packages of care to be offered
- promote the individual's independence and to support individuals to take reasonable risks whilst ensuring that care provided is clinically safe, including through the use of a PHB, taking into consideration the factors set out below:
  - the individual's safety
  - the individual's choice and preference
  - ensuring services are of sufficient quality
  - the individual's right to respect for their personal family and private life, free from unwarranted state interference
  - ensuring services are culturally sensitive
  - ensuring services are personalised to meet individual clinically assessed care need
  - best use of resources for the population of the CCGs.
- make decisions about a clinically appropriate PoC in a fair and cost-effective way, within the available financial envelope
- understand the CCG's legal responsibilities in commissioning a PoC that meets the clinically assessed care needs of the individual
- meet the responsibilities set out in the law and guidance listed in Appendix B

## **The Principles**

The principles of this policy are:

- a. The CCGs understand that many individuals with complex medical conditions wish to remain in their own homes and to continue to live with their families/those important to them with a PoC to aid them to do this.
- b. Similarly, the CCGs accept that many individuals might prefer other care options including other forms of supported living or registered care homes.
- c. Where an individual or their family/those important to them expresses such a desire, the CCG will investigate whether it is clinically feasible to provide a sustainable PoC for the individual that is consistent with their preferences.
- d. The CCGs need to act fairly to balance the resources spent on an individual patient with those available to fund services to other patients and the wider health economy.

- e. In an attempt to balance the different interests (available resources vs meeting the desire for bespoke services at home or in an alternative setting), the CCGs are prepared to support a clinically sustainable PoC which keeps an individual in their preferred setting of care, where the anticipated cost to the CCG is not more than TBC% above the anticipated cost of the provision of a broadly similar PoC to be delivered in an appropriate alternative setting. This TBC% financial threshold limit will be applied consistently to every PoC across the three CCGs unless exceptional circumstances apply as defined in section 12 below.
- f. Where an individual lacks capacity and a best interest decision has to be made, it will be made in accordance with the financial threshold limit outlined in (e) above.
- g. Exceptionality as identified in the policy will be determined on a case by case basis.

#### **4. Mental Capacity and Representation**

Where there is reason to believe that an individual may lack the capacity to make a decision relating to the provision of (or change to) their PoC and/or accommodation, a Mental Capacity Assessment (MCA) must be undertaken. If the assessment confirms that the individual lacks the relevant capacity, a 'best interest decision' should be undertaken in accordance with the Mental Capacity Act 2005 and the related Code of Practice. Where appropriate, the CCG will appoint an Independent Mental Capacity Advocate (IMCA) to support the individual in decision making in accordance with the 2005 Act.

In some circumstances in advance of losing capacity, the individual may have given another person formal authority to make a decision on their behalf once capacity is lost. Where the CCG is made aware of this, and a best interest decision is required in respect of an offered PoC, it will ask to see the original or a certified copy of one of the following documents:

- A Lasting Power of Attorney which has been registered with the Office of the Public Guardian. This could be a Health and Welfare Lasting Power of Attorney and/or a Property and Financial Affairs Lasting Power of Attorney depending on the circumstances under discussion.
- An Enduring Power of Attorney which has been registered with the Office of the Public Guardian.
- An order of the Court of Protection appointing the representative as Deputy and the order enables them to decide on the PoC or accommodation of the individual.
- An order from the Court of Protection, in respect of the PoC or accommodation of the individual.

Where one of the above documents is provided to the CCG, it will decide how to involve the bearer in any best interest decisions. The CCG will make this decision in accordance with the Mental Capacity Act Code of Practice referenced in [Appendix B](#).

#### **5. Equality, inclusion and human rights**

##### **5.1 Equality commitment statement**

LLR CCGs aim to design and implement policy documents that meet the diverse needs of our services, population and workforce, seeking to ensure that none are placed at a disadvantage by comparison with others. We take into account current statutory duties, including those enshrined in the Equality Act 2010 and the Human Rights Act 1998, and we promote equal opportunities for all.

This document has been designed to ensure that no-one receives less favourable treatment due to their personal circumstances i.e. their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity. This has been considered in the purpose of this policy which includes ensuring that the clinically assessed care needs of eligible individuals are met in a manner which supports consistent and equitable decisions about the provision of that care regardless of, for example but not limited to, the person's age, condition or disability (section 3, page 4).

## **5.2 Public Sector Equality Duty**

This policy has been reviewed in relation to compliance with the Public Sector Equality Duty (PSED) set out in the Equality Act 2010, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct; to advance equality of opportunity; and to foster good relations between those who share a relevant protected characteristic and those who do not.

The protected characteristics of individuals will be considered in the application of this policy with packages of care minimising disadvantages suffered by eligible individuals due to their protected characteristics and encouraging eligible individuals with protected characteristics to participate in public life wherever possible. For example, but not limited to, enabling an individual to continue to parent their dependent children and enabling an individual to continue to practice their religion/belief.

The National Constitutional duty for the CCGs to protect and promote Human Rights for every individual has been considered in this policy as below:

- The principles of this policy includes the CCGs understanding that many individuals with complex medical conditions wish to remain in their own homes and to continue to live with their families/those important to them with a PoC to aid them to do this (section 3, page 5).
- The CCGs must consider commissioning on a case by case basis, via a specific purchase, for an individual to be located near specific places in the local community and/or in a place that enables family/those important to them to visit easily. This might be a relevant consideration where the CCGs' preferred available care homes are not within a reasonable travelling distance. This would enable the individual to be accommodated in their preferred area despite the fact that the anticipated cost to the CCG may be up to TBC% more than the available CCG-preferred accommodation (based on CCG agreed standard rates for equivalent levels of care need). Such requests must be guided by the factors set out in section 12 of this policy. The individual must also understand that where such an arrangement has been agreed this arrangement will be subject to regular review and may change (section 6.1.1, page 8).

## **6. Identification of Care Provision**

Where an individual is eligible for an episode of fully funded NHS CHC or a PHB, the CCG will commission the PoC that meets the individual's clinically assessed care needs. In other words, the CCG will fund a PoC that is needed to meet the individual's care requirements. This may or may not be in the individual's preferred setting of care.

## 6.1 The role of the CCGs

The CCGs must:

- seek to take into account any reasonable request from the individual and their representative(s) in making the decision about the PoC, subject to the factors set out in sections 3 and 12 of this policy
- endeavour to offer a reasonable choice of available, preferred providers to the individual
- where the individual wishes to receive their care from an alternative provider, the CCG will consider this preference, subject to it satisfying the following criteria:
  - the individual's preferred care setting is considered by the CCG to be suitable in relation to the individual's care needs as assessed by the CCG
  - the cost of making arrangements for the individual at their preferred care setting would not require the CCG to pay more than they would usually expect to pay having regard to the individual's clinically assessed care needs (and having regard to the average cost of the packages of care offered by the CCG and rejected by the individual)
  - the individual's preferred care setting is available
  - the preferred care setting is able to provide the required care to the individual subject to the CCG's usual terms and conditions, having regard to the nature of the care setting for such an individual in receipt of an episode of fully funded NHS CHC or a PHB
- take account of the wishes expressed by individuals and their representative(s) when making decisions as to the setting of care to be offered to individuals.

### 6.1.1 The CCG and Registered Care Settings

Where care is to be provided in a registered care setting (i.e. one that provides accommodation, such as a nursing home, residential home and some supported living schemes), the CCGs will only place individuals with providers which are:

- a. registered with the Care Quality Commission (CQC – or any successor) as providing the appropriate form of care to meet the individual's clinically assessed care needs; and
- b. not subject to an embargo by the CCGs or LAs, including the host CCG or LA if the provider is not located in LLR
- c. contracted to the LLR CCGs to provide nursing care at the standard rate. (Note: Contracted providers are also eligible for the Commissioning for Quality and Innovation [CQUIN] quality premium, subject to achieving the required quality standards);
- d. contracted to the CCGs to provide care at an enhanced rate, where the CCGs determine that enhanced care is required.

The CCGs must:

- consider providing a placement in a registered care setting not contracted to the CCGs in exceptional circumstances. This will only be approved when the provider complies with paragraphs **a** and **b** above.



- approve requests for a preferred setting of care, where reasonably possible, provided that the criteria set out at sections 3 and 12 of this policy are satisfied.
- where a care home that was not originally offered is requested by the individual, consider accepting the individual's preferred setting of care providing it complies with the criteria set out in sections 6.1 and 12 of this policy.
- consider commissioning on a case by case basis, via a specific purchase, for an individual to be located near specific places in the local community and/or in a place that enables family/those important to them to visit easily. This might be a relevant consideration where the CCGs' preferred available care homes are not within a reasonable travelling distance<sup>1</sup>. This would enable the individual to be accommodated in their preferred area despite the fact that the anticipated cost to the CCG may be up to TBC% more than the available CCG-preferred accommodation (based on CCG agreed standard rates for equivalent levels of care need). Such requests must be guided by the factors set out in section 12 of this policy. The individual must also understand that where such an arrangement has been agreed this arrangement will be subject to regular review and may change.
- bear in mind that if an individual or their representative(s) exercise individual choice and prefer a care home in another area, the CCG must consider placing the individual there, subject to the factors in sections 3, 6.1 and 12.

### **6.1.2 The CCG and preferred provider placements**

To assist the CCGs in achieving consistent, equitable packages of care, the CCGs will endeavour to offer and place individuals with preferred providers. These are those providers that have undergone a procurement exercise with the CCG.

Where a preferred provider is not available to meet the individual's clinically assessed care needs, the CCG may make a specific purchase and place the individual with another care provider who meets the individual's care needs. Where such an arrangement has been agreed the CCG reserves the right to move the individual to a suitable preferred provider when capacity becomes available, where this will provide better value for money to the CCG. For example, if an individual has a specific care need which cannot be met in the available preferred accommodation, the CCG will need to specifically commission accommodation for the individual, potentially through an individually negotiated agreement. The CCG should notify the individual and/or their representative that they may be moved should a suitable preferred provider subsequently have capacity. In such circumstances, the CCG will give a minimum of TBC notice to the individual.

Though all reasonable requests from individuals and their representative(s) will be considered, the CCG is not obliged to accept requests from individuals for specific care providers which have not been classed as preferred providers.

Where the CCG deems that a provider is not providing care of an acceptable standard, the CCG reserves the right to move the individual to an alternative provider.

The CCGs contract with different providers to meet the care needs of different service users. Where an individual's assessed care needs change, the CCG may offer a PoC with

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<sup>1</sup> Reasonable travelling distance will be based on a case by case assessment of an individual's circumstances, and must take into account factors such as ability of family/those important to the individual to visit, which may include consideration of public transport links and mobility of the family/those important to the individual in question.

a different provider. In such circumstances, the CCG will give a minimum of TBC notice to the individual.

### 6.1.3 The CCG and domiciliary care providers

The CCGs acknowledge that:

- the provision of domiciliary care for an individual requiring care across the 24 hour period is likely to be more costly than care provided to that same individual in a residential or nursing home placement. However, the anticipated cost to the CCG **must not be** more than TBC% above the anticipated cost of the provision of a broadly similar PoC to be delivered in an appropriate alternative setting unless exceptional circumstances apply as defined in section 12 below.
- many individuals with complex healthcare needs wish to remain in their own homes, with support provided in that setting. Where an individual or their representative(s) express such a desire, the CCG will investigate to determine whether providing a PoC in the home is clinically and financially sustainable.
- where the CCG decides to offer domiciliary care to an individual, the individual's home becomes the care providers' place of work. Employee safety is an important consideration in domiciliary packages of care. The individual's home must be a reasonably safe environment in which to work and deliver care to the individual. The cleanliness of the environment, and the nature of interactions between the individual, family/those important to them/carer and the employee are just two examples of factors to be taken into account in considering whether the setting is safe or not.

Where domiciliary care is to be provided, the CCGs will:

- benchmark the cost of a PoC against the cost of a suitable PoC in a registered care setting that will meet the clinically assessed care needs of the individual
- when an individual expresses the preference to receive care at home, set the cost of domiciliary care provision at no more than TBC% above the anticipated cost of the provision of a broadly similar PoC in an appropriate registered care setting
- ask family members/those important to the individual if they are willing and able to supplement support and, if they agree, the CCGs will assume that family members/those important to the individual will provide the agreed level of support when designing any domiciliary care package. However, no pressure should be applied on them to offer such support as family members/those important to the individual are under no legal obligation to offer care

### 6.1.4 The CCG and preferred providers

Though all reasonable requests from individuals and their representative(s) will be considered, the CCG is not obliged to accept requests from individuals for specific care providers which have not been classed as preferred providers.

Where the CCG deems that a provider is not providing care of an acceptable standard, the CCG reserves the right to move the individual to an alternative provider.

The CCGs contract with different providers to meet the assessed care needs of different individuals. Where an individual's needs change, the CCG may offer a PoC with a different provider.

A PHB may be provided to an individual in a registered or a non-registered setting of care. It may cover all or part of the care needed by the individual. It may only be used to pay for care agreed as part of a PoC by the CCG.

## 6.2 The CCG and Personal Health Budgets

Since October 2014, all individuals eligible for CHC and children eligible for Continuing Care have had a “Right to Have” a PHB, save to the extent that this is not appropriate or is otherwise precluded by the statutory framework. In line with the 2015/16 Five Year Forward View, the CCGs have made a commitment to expand their ‘local offer’ to more patients with complex needs. Where the CCG decides to offer an individual a PHB, it will benchmark the cost of such a PoC against alternative packages of care.

The requirements for PHBs are laid down in the CCGs’ PHB Policy:

## 6.3 The role of the Care Co-ordinator

The individual’s Care Co-ordinator will effect the following:

- discussion of the proposed PoC with the individual and their representative(s) (where the individual gives consent for such a discussion or where the individual lacks capacity) including how and where the care and support may be provided.
- identification of different options for packages of care and securing an indication as to which PoC and/or setting of care is preferred by the individual.
- preparation of a written care plan that must clearly identify and articulate the clinical outcomes that the individual wishes to achieve and what actions need to take place to seek to enable those health improvements to be realised.
- using an agreed NHS Funding Request Form, set out the details of the requested PoC and any associated information. The form must be completed in full for every proposed PoC.

## 7 Availability of care provision

To enable individuals to *receive* the correct PoC promptly, they must be *offered* care as soon as possible. If an individual’s first choice from the CCGs’ preferred provider range is not available, they will be offered another CCG preferred provider to ensure provision as soon as possible. The CCGs will offer packages of care from preferred providers before any others, unless exceptional circumstances apply as detailed in section 12 below.

If the individual requests a setting of care that is currently unavailable and/or is unwilling to accept the CCG’s offer of a PoC, there are several options available to the CCGs:

- Temporary placement of the individual with an alternative care provider until the CCG’s preferred provider is available. For example, an alternative home care provider, alternative care home, respite care or a community bed
- The individual may choose to go to their own or a relative’s home without the assessed PoC until the preferred setting/care provider is available. The terms set out in section 9 of this policy will apply. The individual will, however, retain the right subsequently to change their mind and accept the PoC offered by the CCG. If the individual does not

have mental capacity to make this decision, the CCG will exercise its duties under the Mental Capacity Act 2005 to ensure that a best interests decision is made.

- If it has been agreed with the individual that the clinically assessed care needs can best be met through a care home placement, the CCG may choose to provide home care until the preferred care home is available, but cost implications to the CCG must be considered when identifying the level of a PoC to be provided. This will be in accordance with sections 3 and 12 of this policy.

Where the CCG provides an individual with a PoC that is more expensive than the standard cost due to, either unavailability in the market, or the inability of the CCG to commission at the standard cost, the additional cost will be funded by the CCG. Where such an arrangement has been agreed, the CCG reserves the right to move the individual to a suitable preferred provider when one becomes available where this will provide better value for money to the CCG. The CCG must notify the individual, and/or their representative(s), that their provision may be moved should a preferred provider subsequently have capacity. In such circumstances, the CCG will give a minimum of TBC notice to the individual.

If an individual's representative(s) are delaying placement in a care home due to non-availability of a preferred care home provider, and the individual does not have the mental capacity to make a decision themselves, the CCG will have recourse to the Vulnerable Adults Policy, local safeguarding procedures and the Mental Capacity Act 2005, as appropriate.

If the individual is in an acute healthcare setting, they must move to the most appropriate setting of care as soon as they are medically fit for discharge, even if their preferred setting/care provider is not available. The individual's preference must be considered in line with sections 3 and 12 of this policy, when the CCG is deciding which PoC to offer to them. Where the individual's preferred setting is not available, but an alternative setting that will meet their clinically assessed care needs is available, they must move and cannot remain in an acute healthcare setting once they are medically stable.

## **8 Acceptance of care provision**

An individual is not obliged to accept an episode of fully funded NHS CHC. Once an individual is eligible and offered a PoC and they choose not to accept this, the CCG must (in appropriate cases) take reasonable steps to make the individual aware that the LA does not assume responsibility to provide care to the individual. The CCG will work with the individual to help them understand their available options and facilitate access to appropriate advocacy support. As appropriate, the CCG will have recourse to the Vulnerable Adults Policy, local safeguarding procedures and the Mental Capacity Act 2005.

## **9 Withdrawal of care provision**

The NHS discharges its duty to individuals by making an offer of a suitable PoC to individuals whether they choose to accept the offer or not. The following are examples of how this can work in practice:

- The CCG offers to discharge its duty by providing a PoC for an individual in one or more appropriate care settings, irrespective of whether this is the individual's preferred setting, and that offer is rejected by the individual.

- The CCG offers to discharge its duty to an individual who, to date, has had a PoC in their own home by moving the individual to one or more appropriate care homes (since the costs of providing such care may be significantly less than providing care for an isolated individual in their own home) but that offer of a care home is rejected by the individual.

Either of the above circumstances may lead to a decision to withdraw services from the individual. The CCG will have recourse to the Vulnerable Adults Policy, local safeguarding procedures and the Mental Capacity Act, as appropriate.

Where an individual exercises their right to refuse, the CCG will ask the individual or their representative(s) to sign a written statement confirming that they are choosing not to accept the offer of a PoC.

It may be appropriate for the CCG to withdraw a PoC where the situation presents a risk of danger or violence to, or harassment of, the care staff who are delivering the PoC.

The CCG may also withdraw a PoC where the clinical risks become too high. This can be identified through, or independently of, the review process. Where the clinical risk has become too high in a home setting, the CCG may choose to offer a PoC in a care home setting.

## **10 Disputes**

An individual may dispute a decision by the CCG in relation the PoC offered. Such disputes will be dealt with through the CCG's complaints procedure. If the complaint cannot be resolved locally the individual or their representative can apply to the Health Service Ombudsman.

Leicester City CCG:

East Leicestershire and Rutland CCG:

West Leicestershire CCG:

## **11 Continuing Healthcare review**

A case review should be undertaken no later than three months after the initial eligibility decision, in order to reassess the individual's care needs and eligibility for an episode of fully funded NHS CHC, and to ensure that the individual's clinically assessed care needs are being met. Reviews should take place annually thereafter, as a minimum. The CHC review may identify an adjusted, decreased or increased care need.

If the review demonstrates that the individual's condition has improved to an extent that they no longer meet the eligibility criteria for CHC, the CCG is obliged to cease funding, whether the PoC is delivered in a home or care home setting. In these circumstances, the individual will be informed and where appropriate the Local Authority (LA) will also be informed.

Where an individual remains eligible and is receiving a PoC in their home setting, the CCG will consider the ability of the PoC to be delivered in the home setting, and also the cost effectiveness of this PoC in accordance with sections 3 and 12 of this policy.

Where the individual remains eligible and is accommodated in a care home setting, the CCG will ensure that the care home is able and suitable to deliver this adjusted or decreased care need.

Where the care home is unable to meet this adjusted care need, the CCG will accommodate the individual in accordance with sections 3 and 12 of this policy.

Where there is a decreased care need, the CCG will consider the cost effectiveness of the PoC to be delivered in the current care home setting, and may move the individual to a suitable alternative care provider in accordance with sections 3 and 12 of this policy. In such circumstances, the CCG will give a minimum of TBC notice to the individual.

## **12 Exceptional Circumstances**

The CCGs are required to achieve financial balance each year and therefore have a statutory duty to support a clinically sustainable PoC funded by the NHS which keeps an individual in their preferred setting of care, where the anticipated cost to the CCG is not more than TBC% above the anticipated cost of the provision of a broadly similar PoC to be delivered in an appropriate alternative setting.

The CCGs' policy is that the High Risk and Complex Care Panel should consider requests for CHC funding where the anticipated cost to the CCG is more than TBC% above the cost of a broadly similar PoC to be delivered in an alternative setting.

### **12.1 Exceptional circumstances criteria**

In exceptional circumstances, the CCGs will be prepared to consider funding provision where the anticipated cost to the CCG is more than TBC% above the cost of a broadly similar PoC to be delivered in an alternative setting. Exceptional circumstances will be considered on a case by case basis. Please see below an indication of the exceptional circumstances:

- An End of Life Care patient – a person with a rapidly deteriorating condition and entering a terminal phase who may need CHC funding to enable their assessed care needs to be urgently met (e.g. to enable them to go home to die or to provide appropriate end of life support to be put in place either in their own home or in a care setting).
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Please note that, due to the clinical risk of providing the following level of care in a home setting, it should be presumed that this should not be delivered in an individual's own home:

- 24 hour care from a registered nurse. This clinical need would normally be provided in a nursing home
- hospital level care. This clinical need would normally be provided within a specialist unit

### **12.2 Demonstrating exceptional circumstances**

- a. The requesting clinician is required to present a full report to the High Risk and Complex Care panel using the NHS Funding Request Form which sets out a

comprehensive and balanced clinical picture of the history and present state of the individual's medical condition, the nature of the PoC requested and the anticipated benefits of the care requested.

- b. The panel shall determine, based upon the evidence provided to the panel, whether individual exceptional clinical and/or operational circumstances have been demonstrated for the patient. The evidence to show that, for the individual patient, the proposed PoC is likely to be clinically effective may be part of the case that the patient's individual clinical and/or operational circumstances are considered to be exceptional.
- c. In determining whether a clinician is able to demonstrate that a patient has individual exceptional circumstances the panel shall compare the individual to other patients with the same presenting medical condition at the same stage of progression.

### **13 Fast track applications**

Care provision for individuals assessed using the Fast Track Pathway Tool for NHS CHC will be subject to the same principles as set out in sections 3 and 12 of this policy.

### **14 High Risk and Complex Care Panel**

Following agreement that an individual meets the eligibility criteria for CHC or a PHB and a PoC has been identified that makes up an ongoing care plan, cases are referred (where applicable) to the LLR CCGs' High Risk and Complex Care Panel to consider requests for NHS funding. The panel considers:

- a specific PoC
- correct application of the Settings of Care Policy
- the risks inherent in the design of the proposed support/care plan for service users taking up a PHB

The panel has two distinct functions to consider:

- i. risk associated with care plans
- ii. complex care placements and their cost effectiveness

## Appendix A – Definitions

**Accommodation:** In the context of CHC, accommodation relates to an appropriately registered care setting or the individual's own home.

**Care Co-ordinator:** Care Co-ordinator refers to the person who coordinates the assessment and care planning process. Care Co-ordinators are usually the central point of contact with the individual.

**Care provision:** Care provision takes two main forms:

- Care provided in an individual's own home and referred to in this document as 'home care' or 'domiciliary care'.
- Care provided in an appropriately registered care setting (such as a nursing home or a residential home) and referred to in this document as 'registered care setting' or 'care home'.

**CHC:** CHC is used in this policy as an abbreviation for NHS Continuing Healthcare which is a package of care arranged and funded solely by the NHS for a person aged 18 and over to meet physical or mental health care needs which have arisen as a result of disability, accident or illness.

**Individual:** In the context of this policy the individual is the service user that has been assessed and found eligible for CHC.

**Personal Health Budget;** an amount of money to support identified healthcare and wellbeing needs, planned and agreed between an individual or their representative, and the local NHS team.

**Representative(s):** Representative(s) refers to the person(s) whom it is appropriate for the CCGs to consult about and involve in decisions about the provision of CHC/PHB to the individual. The individual receiving healthcare may elect to have representative(s) act with them or on their behalf, or there may be representative(s), formally or informally appointed or chosen, where the individual does not have the mental capacity to make independent decisions relating to the CHC eligibility process or the proposed package of care.

Representatives may be legal representatives, individual advocates, family/those important to the individual, or other people who are interested in the individual's wellbeing.

Where the individual has capacity, they must give consent for any representative to act on their behalf.

A person who has formally been appointed as an Attorney or Deputy has defined responsibilities for the individual. The extent of these responsibilities will vary according to the nature of their appointment.

**Local Authority:** Local Authority refers to Leicester City Council, Leicestershire County Council or Rutland County Council.



**CCG:** CCG refers to NHS Leicester City, East Leicestershire and Rutland, or West Leicestershire Clinical Commissioning Group.

**Provider:** Provider refers to the organisation that provides a package of care to the individual.

**Preferred providers:** These providers have been assessed and accepted onto the Any Qualified Provider framework by the CCG as being able to fulfil the CHC requirements of defined categories of individuals at an agreed cost.

## Appendix B – Legal Sources

- Human Rights Act 1998
- Mental Capacity Act 2005 Code of Practice
- National Health Service Income Generation - Best practice: Revised guidance on income generation in the NHS (1 February 2006)
- National Health Service Act 2006 (as amended)
- Guidance on NHS patients who wish to pay for additional private care (May 2009)
- Equality Act 2010
- The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (as amended)
- The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care - November 2012 (revised)
- Who Pays? Determining responsibility for payments to providers (August 2013)
- Care Act 2014
- NHS Constitution for England 2015