NHS
West Essex
Clinical Commissioning Group

NHS WEST ESSEX CLINICAL COMMISSIONING GROUP

NHS Continuing Healthcare Equity and Choice Policy

WE CCG Policy Reference:

WECCG85

Brief Description (max 50 words)	This policy describes the way in which West Essex Clinical Commissioning Group (WECCG) will make provision for the care of people who have been assessed as eligible for fully funded NHS Continuing Healthcare (CHC). The aim of the policy is to ensure a balance between personal choice, alongside safety and effective use of a finite resource, whilst ensuring person centred outcomes.
Target Audience	The Continuing Healthcare Team, Hospital Discharge Teams, Local Authority, Residents within the west Essex CCG localities

Version Number	1.1
Accountable Officer	Jane Kinniburgh, Director of Nursing
Responsible Officer	Gail Walker, Head of Continuing Healthcare
Date Approved	20th July 2017
Approved By	Health & Care Committee
Date Summary presented to Board	Planned for 29th November 2018
Review Date	July 2019
Stakeholders engaged in development/review	yes
Equality Impact Assessment	yes

SUSTAINABILITY STATEMENT: We declare that NHS West Essex Clinical Commissioning Group will demonstrate commitment to promoting environmental and social sustainability through our actions as a corporate body and as a commissioner. We aim to reduce our carbon footprint by 28% from a 2013 baseline by 2020.

Amendment History

Version	Date	Reviewer Name(s)	Comments
1	31st May 2017	Laura Huntley Business Manager Continuing Healthcare	
1.1	12th July 2017	Laura Huntley Business Manager Continuing Healthcare	Minor amendments & inclusion of Equality Impact Assessment

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1. INTRODUCTION

This policy should be read in conjunction with the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care which sets out the principles and processes for the implementation of NHS Continuing Healthcare and NHS Funded Nursing Care and provides national tools to be used for assessment, applications and fast track cases. The same framework for eligibility determination and care planning applies for NHS Funded Nursing Care.

The Department of Health published a revised framework in November 2012, which does not change the basis of eligibility decisions for the NHS Continuing Healthcare, or the overall principles. However, the revised framework provides greater clarity in the descriptions within the need domains of the Checklist and the Decision Support Tool. It also defines the wider information that needs to be recorded and the Fast Track Pathway Tool.

WECCG is required to secure and fund a continuing healthcare package to meet the needs of individuals identified as eligible as assessed by the relevant professionals. Such needs will be identified through the multi-disciplinary assessment and packages will be based on the needs as identified in the care plan arising from the multi-disciplinary team assessment during the CHC eligibility process. There is no duty on the NHS to provide a specific package of care in accordance with patient / family choice although WECCG will take individual choice into account when arranging a suitable package.

This policy aims to promote consistency in the application of the National Framework for Continuing Healthcare and NHS Funded Nursing Care whilst, implementing and maintaining good practice, ensuring quality standards are met and sustained in line with available resources and value for money in the use of public funds.

2. SCOPE

This policy applies to any patient (18 or over), assessed as eligible for NHS Continuing Healthcare for whom the WECCG is the responsible commissioner. This policy is applicable to both new and existing patients eligible for NHS Continuing Healthcare Funding. Continuing Healthcare funded patients are entitled to the full range of NHS commissioned services.

This policy applies to all staff working for West Essex CCG that are involved in the assessment, review and management of patients for CHC funding. Failure to adhere to this policy could result in disciplinary action and where misconduct is identified this could be referred to the Local Counter Fraud Specialist (LCFS).

3. General Principles

This policy describes the way in which WECCG will commission and provide care for people assessed as eligible for fully funded Continuing Healthcare.

NHS Continuing Healthcare can be provided in a range of settings, including a specialist environment. The treatments, care and equipment required to meet complex, intense and unpredictable health needs can depend on highly trained professionals for safe delivery, management and clinical supervision.

For some individuals, with complex needs requiring specialist care, this might mean care provision in a specialist environment which may be a distance from their ordinary place of residence. For such cases there is likely to be limited choice of a safe and affordable package of care.

Specialist placements can be very costly, the NHS has a duty to ensure that the placements represent value for money, that the patient's needs are met safely and placements are reviewed regularly to ensure that quality of care is provided in the most appropriate environment. This may involve stepping patients down to a less intensive care package if their needs no longer require specialist placement / intervention.

WECCG holds the responsibility to promote a comprehensive health service on behalf of the Secretary of State for Health and to not exceed its financial allocations. It is expected to take account of patient choice, but must do so in the context of these two responsibilities.

Therefore it may not be possible to support choices in all circumstances on the grounds of unacceptable risk in a preferred placement, or on the grounds of the cost variance between alternative packages of care to meet need.

In light of these constraints WECCG will commission care in a manner that reflects the choice and preferences of individuals and balances the need for the CCG to commission provision that is safe and effective and makes best use of the resources available to the CCG.

The principles underlying this policy support consistency of approach and equitable access to NHS funded Continuing Healthcare. This policy will provide transparency and fairness in the allocation of resources. Decisions made under this policy will meet the following requirements, they will:

- Be needs led
- Be equitable
- Be culturally sensitive
- Be person centred
- Be robust and transparent
- Be easily understood
- Adhere to guidance and best practice

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

- Be robust, fair, consistent and transparent
- Be based on the objective assessment of the person's clinical need and safety, patient preferences, safety and best interest
- Support choice
- Have regard for the safety and appropriateness of the care packages provided by those involved in care delivery
- Involve the individual and their family / representative wherever possible and consider the location of the service for family access
- Take into account the need for WECCG to allocate its financial resources in the most cost effective way
- Be consistent with the principles and values of the NHS Constitution

This policy should be read in conjunction with:

- The DH Eligibility Criteria for NHS Continuing Healthcare (2007, 2009 & 2012)
- National Framework for Continuing Healthcare and NHS Funded Nursing Care (July 2009 revised 2012 & 2016)
- NHS Continuing Healthcare Practice Guidance (March 2010)
- Who Pays? Establishing the 'Responsible Commissioner'
- NHS and Local Authorities Responsibilities Directions for Continuing Healthcare
- Mental Capacity Act 2005
- The Delayed Discharges (Continuing Healthcare) Directions 2009
- WECCG Operational Policy for Continuing Healthcare and Funded Nursing Care
- WECCG Health and Safety Policies
- WECCG Policy and Procedure for Safeguarding Adults
- WECCG Risk Management Policy
- The Fraud At 2006, The Bribery Act 2010 and the CCG Anti-Fraud & Bribery Policy

All decisions made under this policy will take account of the:

- Human Rights Act 1998
- Equality Act 2010
- Case Law
- The CCG will consider the most cost effective option to meet the individual's needs.

4. CAPACITY TO MAKE A DECISION

The initial assumption will be that adults have capacity to make all or some decisions about their care and treatment and where they live unless it is shown they cannot. Where concerns arise that an individual does not have the mental capacity to make the decision as to where they live, a mental capacity assessment will be undertaken.

The Mental Capacity Act 2005 (MCA) provides a statutory framework to protect vulnerable people who are unable to make their own decisions. The MCA

clarifies the rights and duties of the workers and carers, including how to act and make decisions on behalf of adults who may lack mental capacity.

The MCA aims to ensure that people are given the opportunity to participate in decisions about their care and treatment to the best of their capacity. It covers all aspects of health and social care. Individuals should be given the appropriate help and support to enable them to make a decision.

Where an individual does not have the capacity to understand a particular decision then WECCG will consider whether it is appropriate to involve an independent advocate where it is considered there is no one else willing and able to be consulted, or that appointing an independent advocate will benefit the individual.

In exercising this responsibility, WECCG will need to consider whether there is a requirement for a deprivation of liberty authorisation. This needs to be undertaken if the patient, who lacks capacity, is under continuous supervision and control and is not free to leave the setting in which care is being, or is going to be provided. The person's compliance or lack of objection, the normality of the placement and service provided and the purpose of that package of care should not be considered, as these are irrelevant to the question of deprivation of liberty.

Under the Deprivation of Liberty Safeguards the services of an Independent Mental Capacity Advocate (IMCA) can be provided as either a representative of a vulnerable adult or to support their family; this person is known as an advocate.

WECCG will instruct an IMCA to support and represent a person who lacks mental capacity when:

1. they have arranged accommodation for that person
2. they aim to review the arrangements (as part of a care plan or otherwise), and

there are no family or friends who it would be appropriate to consult. Essex County Council has commissioned VoiceAbility to provide IMCA. WECCG will use Essex County Councils IMCA referral form to request IMCA if:

• the person is unbefriended and the decision is about a change of accommodation, or serious medical treatment.

•friend or family member exists, but they may not act in the person's best interests (for example because they are the alleged victim or abuser in a Safeguarding Adults investigation)

• the person is unbefriended and a health or social care review is being carried out.

The WECCG CHC team will document that it has established beyond reasonable doubt that the individual lacks mental capacity according to Part 1, sections 2 and 3 of the Mental Capacity Act 2005. This will include written testimony from a clinician.

The WECCG CHC team will document that it has established that there is no Power of Attorney which extends to healthcare decisions.

The WECCG CHC team will document that it has made all reasonable attempts to contact any friends or family and in cases where they can be involved, has sought their views.

The WECCG CHC team will decide if there is a need for the appointment of an IMCA in cases where no firm views from friends or family can be obtained.

Where an individual lacks capacity to make a decision on where to live and there is no Lasting Power of Attorney that extends to healthcare decisions then WECCG is under a duty to act in the individual's best interests in accordance with the MCA. In exercising this responsibility WECCG will need to consider whether there is a requirement for a deprivation of liberty authorisation.

Where a personal welfare deputy has been appointed by the Court of Protection under the MCA, or a Lasting Power of Attorney with powers extending to healthcare decisions has been appointed, then WECCG will consult that person and obtain a decision from the appointed person on the preferred care option.

5. Payment of additional Nursing Home Fees (third party agreement/top ups)

WECCG is only obliged to provide services that meet the assessed needs and reasonable requirements of an individual. A patient has a right to decline NHS services and make their own private arrangements.

Where an individual is found eligible for Continuing Healthcare, WECCG must provide any services that are required to meet assessed needs free of charge. In the context of care home placements this will be limited to the cost of providing accommodation, care and support necessary to meet the needs of the individual as assessed by the MDT and for care at home the cost of providing services to meet the assessed needs of the individual as assessed by the MDT; the core package.

Where an individual wishes to augment any NHS funded care package to meet their personal preferences, they are at liberty to do so, but only if it is possible to separately identify and deliver NHS funded elements. WECCG is responsible for the core package and must not allow the individual to contribute to it. Joint funding arrangements between an individual and WECCG are not lawful and any additional private care must be delivered separately from NHS care.

6. PLACEMENT TEAM

When sourcing packages of care / placements the Placement Team will identify those service providers that can offer such a service within a reasonable period of time. This should ordinarily be within 7 calendar days but with a Fast Track the aim would be to source a placement or home care package within 48 hours.

WECCG aims to offer individuals a choice of care packages where possible which meet an individual's assessed needs. If more than one suitable establishment or package is available, or where there is a request for a care package which is not usually commissioned by the CCG, the total costs of each package will be identified for overall cost effectiveness.

While there is no set upper limit on expenditure, the expectation is that placements will not be commissioned where costs will exceed 10% over the most cost effective package that has been assessed as able to meet an individual's needs. In determining whether the package will be funded the following factors will be taken into account:

- Circumstances of package / placement
- Clinical need
- Psychological need
- Clinical assessment of risk
- Patient preference
- Available alternatives
- Overall cost to the CCG

This is the most effective, fair and sustainable use of finite resources, as set out in the principles and values of the NHS Constitution, WECCG hold the responsibility to promote a comprehensive health service on behalf of the Secretary of State and to not exceed its financial allocations. It is expected to take account of patient choice, but must do so in the context of those two responsibilities.

6. CONTINUING HEALTHCARE FUNDED CARE HOME PLACEMENTS

Where an individual has been assessed as needing a nursing home placement the CHC Placements Team will work with the individual and family / carer to identify a suitable placement within the preferred provider network from a list of accredited providers.

The Placements Team will endeavour to provide a reasonable choice of placements and will give full consideration of the geographical proximity of identified care homes to family and friends.

All placements will be subject to the provider's ability to meet the individual's identified healthcare needs, nursing home capacity and will take into account

quality and safety of care. Complexity of an individual's needs may limit the choice of available placement as the priority is for the placement to be able to meet assessed needs.

It may not always be possible to offer to accommodate an individual in their preferred care setting. This may be because the care provider is unable to meet the individual's needs or they do not have a vacancy.

If an individual or their representative wish to select a different provider to those offered by the Placement Team, the CCG may agree to this as long as the cost is comparable, the provider can meet the individual's care needs and they are compliant with the Care Quality Commission standards of registration. It will be necessary for the provider to sign up to the CCG's proposed terms and conditions for placement. WECCG will not normally fund a placement where the requested care home is not the most suitable place for the provision of care and where the care package can only be provided safely, or resiliently, at the preferred home with additional staffing at a significant extra cost to the NHS.

Subject to the above the Placements Team will endeavour to source two nursing homes.

Where the placement of preference is not available a provisional (interim) placement will be offered, as remaining in an acute setting is undesirable and not in the best interests of the individual; it may expose the individual to the risks of increasing dependency and acquired infections. The provisional placement is defined in this context as one that is suitable to meet the individual's assessed needs and can be provided whilst waiting for the individual's preference.

The CCG will, in discussion with the individual and their representative, make reasonable effort to take into account the individual's preferences and circumstances when offering a provisional placement.

If an individual, (or their representative) refuses to accept a reasonable offer, (and the individual is in a hospital or rehabilitation facility) the CCG will consider that it has fulfilled its statutory duty to provide NHS Continuing Healthcare and inform the individual in writing that they will be moved to an interim placement.

The CCG is unable to enter into a joint funding arrangement where the individual's (or their representative's) preference is a nursing home that charges a 'top up' in addition to the agreed health rate charge, as such arrangements are not lawful. The CCG does not support or condone the practice of requiring a top up payment for larger rooms or enhanced facilities. Any top up payment above the agreed rate will be a private agreement between the patient (or their representative) and the nursing home.

In some circumstances, either as a result of patient choice or the absence of suitable care provision in west Essex the CCG will commission packages of care

in other areas. In order to obtain assurance about the quality of provision the Placements Team will:

- Take into account CQC reports on the provider
- Seek confirmation from the provider that they have capacity and capability to provide safe care
- Contact the local CHC Team to obtain information about the provider including whether there are any safeguarding concerns
- Contact the relevant Local Authority to obtain information about the provider including whether there are any safeguarding concerns.

8. CONTINUING HEALTHCARE FUNDED PACKAGES OF CARE AT HOME

Many individuals wish to be cared for in their own homes rather than in residential care, especially people who are in the terminal stages of illness. Packages of care in a person's own home are bespoke in nature and can often be considerably more expensive for the CCG than delivery of an equivalent package of services for a person in a care home. In some cases there may be non-health, non-personal care related services that are necessary to maintain an individual in their home environment that will not be met by CHC funding. Where this is the case the CCG may conclude that care at home is not or is no longer appropriate.

Patients choice of care setting should be taken into account but there is no automatic right to a package of care at home. The CCG needs to act fairly to balance the resources spent on an individual person with those available to fund services to other persons.

The CCG will consider if care can be delivered safely to the individual and without undue risk to them, their carers, staff or other members of the household (including children) and property. Safety will be determined by a written assessment of risk undertaken by an appropriately qualified professional. 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 CCG considers that in some circumstances an individual's needs would be most appropriately met within a nursing home setting. The general assumptions are set out below:

- A package in excess of eight hours a day would indicate a high level of need which may be more appropriately met within a care home placement. Individual cases would be considered and a risk assessment undertaken

- Individuals who need waking night care would generally be cared for in a care home, as the need indicates a high level of supervision at night. Individual cases would be considered and a risk assessment undertaken.

- Individuals with complex and high levels of need that require direct oversight by registered professionals and 24 hour monitoring would generally be cared for in a nursing home.

- There are specific conditions or interventions that it would not generally be appropriate to manage in a home care setting. These would include but are not restricted to: the requirement for sub-cutaneous fluids, continual invasive or non-invasive ventilation or the management of grade 4 pressure ulcers.

- Where a patient is discharged into the community from hospital the CCG as commissioner is responsible for coordinating the case management supported by clinical teams as appropriate to the patient's needs.

However, the CCG will take into consideration all relevant circumstances to establish whether these assumptions can be displaced. Where it is determined that supporting a package of continuing care for a person in their own home is clinically sustainable and, in line with the wishes of the person or their family, this will usually be supported as the preferred option.

A package of continuing care for a person in their own home will normally be considered to be cost effective if it is the same (or less) than the anticipated maximum cost of a care package delivered in an alternative appropriate location. Whilst there is no set tariff costs are expected to fall within 10% of the equivalent care placement.

The individual's GP and primary care team provide clinical supervision of the package accepting the risks which will need to be made explicit on a case by case basis.

The option of a package of care at home should be considered and, if unsuitable the reasons and the risk assessment undertaken to evidence the decision must be clearly documented.

Subject to individual needs and domiciliary capacity the Placement Team will endeavour to source two home care packages from Domiciliary Care providers who are able to assure the CCG that they meet the Care Quality Commission standards of registration and the quality requirements expected in the NHS Outcomes Framework and Adult Social Care Outcomes Framework.

The CCG will take into account that the individual's home will become a place of work for any staff engaged to provide care. Therefore, employee safety is a key consideration and the individual's home must be a reasonably safe environment in which to work and deliver care.

9. ACCEPTANCE, REFUSAL OR WITHDRAWAL OF SERVICES

An individual is not obliged to accept an NHS Continuing Healthcare package. Individuals should note that if they choose not accept an NHS package the local authority will not assume responsibility to provide care to the individual. The CCG discharges its duty by making an offer of an appropriate package of care to the individual, whether or not the individual subsequently chooses to accept the offer.

The CCG may withdraw funding in certain circumstances for example if a review indicates that the individual no longer meets the eligibility criteria for NHS Continuing Healthcare.

The CCG may also, in certain circumstances, withdraw services for example where the situation presents a risk of danger or violence to, or the harassment of, staff who are delivering the care package, or where the level of clinical risk to the individual has become unacceptable and cannot safely be managed.

The CCG will not make any decision to withdraw NHS Continuing Healthcare from an individual without consulting with the individual and the local authority. In such circumstances the CCG will consider whether it is appropriate to offer an alternative care package to the individual.

10. REVIEWS AND CHANGE OF CIRCUMSTANCES

Care packages will be reviewed after three months and then annually as a minimum requirement, alongside the continuing healthcare review to ensure that they still meet individual's needs at that time. Professionals, the individual or their family can request an earlier review if the individual's needs have changed. The CCG can stipulate that a review is carried out after a shorter period, for example on placing an individual in a nursing home with the additional support of 1:1 supervision in order to reassess needs after a period of stabilisation.

A review may indicate that an alternative care provision is required where the current care package is no longer able to meet the individual's needs.

In the event that the review establishes that the individual's condition has improved or stabilised to such an extent that they no longer meet the eligibility criteria for NHS fully funded Continuing Healthcare, (following an assessment for CHC) the CCG will no longer be required to fund the service. The CCG will give 28 calendar days written notice of cessation of funding to the individual or their representative and the local authority.

An ongoing package of care may qualify for funding by Social Services, subject to assessment according to the 'Fair Access to Care' criteria or the cost of the ongoing package may need to be met by the individual themselves. The transition of care should be seamless and will be coordinated by a CHC case manager. The individual and / or their representative will be notified of the proposed changes to their funding and involved where appropriate.

11. EXCEPTIONAL CIRCUMSTANCES

In exceptional circumstances and in an attempt to balance the wishes and interests of the individual to receive care in a particular setting (either a preferred nursing home or a package of care at home) and the need to act fairly, to balance the resources spent on an individual person with those available to fund services to other persons, the CCG will be prepared to support a clinically sustainable package of care provided the anticipated cost to the organisation is no more than 10% higher than the anticipated cost of a care package delivered in an alternative appropriate location.

Exceptionality would be determined on a case by case basis and would require agreement via an Exceptional Circumstances Panel. The basis for determining exceptionality would include (but not necessarily be limited to) the following:

- are the individual's needs significantly different to other patients with the same or similar conditions at the same stage of the condition
- will the patient benefit significantly more from the additional or alternative services or placement than other patients with the same or similar conditions

The Exceptional Circumstances Panel will be convened as required and will consist of the following: Head of Continuing Healthcare (or Business Manager), Clinical Lead (or Complex Case Manager) and Finance Lead.

12. APPEALS AND COMPLAINTS

The appeals process is set out at paragraph 8 of the NHS Continuing Healthcare and Funded Nursing Care Operational Policy.

The complaints process is set out at paragraph 15 of the NHS Continuing Healthcare and Funded Nursing Care Operational Policy.

APPENDICES

1. DEFINITIONS

NHS Funded Continuing Healthcare means a package of ongoing care that is arranged and funded solely by the NHS where the individual has been found to have a 'primary health need'. Such care is provided to an individual aged 18 or over, to meet needs that have arisen as a result of disability, accident or illness. Guidance recognises that individuals and their carers may require input from social services to address social care issues.

Responsible Commissioner is the body statutorily responsible for commissioning care within the NHS for an individual and paying for that care.

Preferred Provider Network; Nursing Homes in the Integrated Residential & Nursing Home Framework and care providers that meet the agreed quality specification for care delivery and have agreed the CCG pricing structure.

Proposed terms and conditions means the NHS Standard Contract and standard service specification.

Health Rate means the agreed CCG rate for a nursing home bed

Core Package means the package of care which WECCG has assessed as being reasonably required to meet the individual's healthcare needs

MDT means multi-disciplinary team

Individual means the person who has been assessed for and found to be eligible for NHS Continuing Healthcare

Accredited Provider means a provider assessed and accepted by the CCG as being able to fulfil the NHS Continuing Healthcare requirements of individuals at an agreed cost; these are providers registered with the Care Quality Commission as providing an appropriate form of care to meet the individual's needs and are not subject to an embargo by the CCG or the relevant local authority

2. COMMISSIONING APPROVAL PROCESS

Once a recommendation of eligibility has been clinically validated the Complex Case Manager from the Placements Team will consider and agree the proposed care plan.

All packages of care (nursing home and domiciliary care) require authorisation by the finance lead and the Head of Continuing Healthcare to ensure that the most financially cost effective and clinically safe and appropriate placements are being sourced.

Commissioning approval of the proposed package of care will be made on the basis of the following:

- In accordance with the CCG's NHS Continuing Healthcare and Funded Nursing Care Operational Policy
- The clinical assessment of need submitted in the application
- Any views on the type of package of care submitted by the MDT, the patient or family

The form DECISION MAKING WITH REGARD TO FUNDING OPTIONS will be completed to ensure that the agreed process is followed and a record of the decision making is kept.

3. **DECISION MAKING WITH REGARD TO FUNDING OPTIONS**

Decision making with regard to funding Options

QA ID:

Patient name: ……

Dob:

Patient Choice:

Patient Outcome:

Quality:

Risk assessment:

Cost Comparison / Value for Money:

Decision:

FINANCE
LEAD:……
……

HEAD OF CONTINUING HEALTHCARE:
…….

Date: …….

4. Equality Impact Assessment

West Essex CCG is committed to carrying out a systematic review of all its existing and proposed policies to determine whether there are any equality implications. This policy has been assessed using the CCG's Equality Impact Assessment Framework which identified the following impact/s upon equality and diversity issues.

Age	Marital Status	Disability	Gender & Pregnancy	Race	Sexuality	Religion	Human Rights	Total Points	Impact
0	0	3	0	0	0	0	0	3	HIGH

Points
3 – This area has a high relevance to equalities
2 – This area has a medium relevance to equalities
1 – This area has a low relevance to equalities
0 – This area has no relevance to equalities
Scoring
13-18 points – high impact
7-12 points – medium impact
0-6 points – low or no impact