

CONTINUING HEALTHCARE POLICY

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1. Introduction

This policy describes the way in which the five Primary Care Trusts (PCTs) in NHS North Central London (NCL) will make provision for the care of people who have been assessed as eligible for fully funded NHS continuing care. The term 'continuing care' is used in this policy as an abbreviation for 'fully funded NHS continuing care'.

Most patients who require continuing care will receive it in a specialised environment. The treatments, care and equipment required to meet complex, intense and unpredictable health needs often depend on highly trained professionals for safe delivery, management and clinical supervision. Specialised care, particularly for people with complex disabilities may only be provided in specialist nursing home or hospital settings, and may be distant from the patient's ordinary place of residence. Placements may be very costly.

These factors mean that there is likely to be limited choice of a safe and affordable package of care.

PCTs 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.

In the light of these constraints, NCL has developed and agreed this policy to guide decision making on the provision of continuing care, in a manner that reflects the choice and preferences of individuals but balances the need for the PCT to commission care that is safe and effective and makes best use of the resources available to the PCT.

The policy sets out to ensure that decisions will:

- be robust, fair, consistent and transparent,
- be based on the objective assessment of the patient's clinical need, safety and best interests,
- will have regard for the safety and appropriateness of care packages to those
- involved in care delivery
- will involve the individual and their family or advocate where possible and appropriate,
- take into account the need for the PCT to allocate its financial resources in the most cost effective way,
- support choice to the extent possible in the light of the above factors
- be consistent with the principles and values of the NHS Constitution
- take into account an individual's needs for both their health and their wellbeing

This policy and NCL's Continuing Care Guidelines (Appendix A) form NCL's continuing care framework. Both documents should be read in conjunction with:

- The National Eligibility Criteria for NHS Continuing Care (2007 and 2009)
- National framework on Continuing Healthcare and NHS funded nursing care
- PCT Health and Safety Policies
- PCT Policy and Procedure for Safeguarding Adults
- The NHS Constitution
- NCL's Continuing Care Appeals Policy

2. Context

Where a PCT has assessed an individual and found that the person's primary need is a health need then that individual will qualify for continuing care. Continuing care describes a package of on-going care arranged and funded solely by the NHS. Where an individual is eligible, the NHS is responsible for providing for the individual's assessed care needs.

The PCT is required to secure and fund a continuing care package to meet the reasonable needs of patients as assessed by the relevant professionals. Such needs will be identified through the multi disciplinary assessment.

There is no duty on the PCT to provide a specific package of care although the PCT will take individual choice into account when arranging a suitable package.

3. The Provision of Continuing Care

Continuing care is generally provided in a range of nursing home settings. These are established and managed specifically for the purpose of providing multi-disciplinary interventions in an environment designed to promote safety, dignity and choice within the constraints of the patient's condition. These may include a registered nursing home or hospice. These settings have high levels of expertise in the successful management of complex or unusual physical and mental health care, and employ staff trained, managed and supervised in specialist interventions. They provide care significantly beyond the degree of complexity which can generally be managed safely in community settings. The most appropriate placement may not always be in the patient's borough of residence.

NCL's Continuing Care Guidelines, September 2011 (Appendix A) describes the process of assessing continuing care eligibility in detail. When the decision on eligibility is agreed, the care manager, in conjunction with the residential brokerage team, will identify establishments which are capable of meeting the assessed needs and which are in a position to provide a place within a reasonable space of time.

The PCT aims to offer individuals a choice of care packages which meet an individual's assessed needs. This assessment takes into account their needs for both their health and their general wellbeing.

If more than one suitable establishment or care package is available, or where there is a request for a care package which is not usually commissioned by the PCT, the total costs of each package will be identified and assessed for overall cost effectiveness by the care management team and commissioners.

While there is no set upper limit on expenditure, the expectation is that placements will not be agreed where costs exceed 10% over the most cost effective package that has been assessed as able to meet an individual's needs.

This is the most effective, fair and sustainable use of finite resources, as set out in the principles and values of the NHS Constitution. PCTs 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.

Any assessment of need will include a review of the psychological and personal care needs and the impact on home and family life as well as the individual's healthcare needs.

Where a care package requested by an individual is not the most cost effective, the PCT, taking into account the considerations set out below, may agree to fund such a package of care in exceptional circumstances:

- Circumstances of overall placement/ package
- Clinical need
- Psychological need
- Risk
- Patient preference

- Available alternatives
- Overall cost to PCT

A discussion will take place between the care manager and the patient and family on the respective merits of the alternatives. Where the patient and family preference is consistent with the most cost effective package, the placement will be negotiated and the arrangements made and reviewed by the care management team.

If placement at home is more cost effective than in an establishment setting, it will only be agreed with the consent of the patient and family or advocate.

Where an individual is found eligible for continuing care whilst in acute NHS care or in a placement funded by the NHS, the individual or family must seek prior approval from the PCT for any change in the care package location unless they intend to pay for the full care privately. In the event that the placement is not one of the packages offered by the PCT, the PCT will consider the proposed placement in accordance with this policy. For the avoidance of doubt, a patient will not be treated on a different basis to another NHS patient because the individual previously received privately funded treatment.

An individual may appeal the decision in writing within 28 days through the Continuing Healthcare lead, as outlined in NCL's Continuing Care Guidelines Appeals Policy (within Appendix A).

4. Capacity to Make the Decision

The PCT will support an individual in making the decision as to where they wish to live. However, if concerns remain 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.

Where the individual lacks capacity to make the decision on where to live and there is no Lasting Power of Attorney which extends to healthcare decisions then the PCT is under a duty to act in accordance with the individual's best interests in accordance with the Mental Capacity Act. The PCT will take the decision on the basis of consideration of the best interests of the individual taking into consideration the views of the family/carers. The PCT will need to consider whether there is a requirement for a deprivation of liberty authorisation.

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

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

5. Top Up

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

Where an individual is found eligible for continuing care, the PCT must provide any services that it is required to provide, 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 assessed needs of the patient. For 'care at home' packages this will be the cost of providing the services to meet the assessed needs of the individual. The package of care which the PCT has assessed as being reasonably required to meet the individual's needs is known as 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. However, this is provided that it does not constitute a subsidy to the core package of care identified by the PCT. The PCT is responsible for the core package and must not allow the individual to contribute to it.

Joint funding arrangements are not lawful and any additional private care must be delivered separately from NHS care. The invoices for any extra services must be dealt with directly by the individual and show the service/item that the payment relates to so that it can be clearly seen that payment is not subsidising the PCT's core package.

As a general rule individuals can purchase services or equipment where these are optional, non-essential items which an individual has chosen (but was not obliged) to receive and are not items which are necessary to meet the individual's assessed needs. Examples include private hairdressers or a personal television.

6. Review of Continuing Care Support

The PCT is routinely reviewing packages of care and as a result all reviews will comply with the policy.

All individuals will have their care reviewed within the first three months of its start. Subsequent to any review, including this first, all patients must be reviewed at least once every twelve months thereafter, or sooner if their care needs indicate that this is necessary.

Individuals with palliative care needs will have their care reviewed more frequently in response to their medical condition.

The review may result in either an increase or a decrease in support offered and will be based on the assessed need of the individual at that time. Reviews will include input from the individual, their family and in the case of those who lack capacity, their advocate also.

Where the individual is in receipt of a home support package and the assessment determines the need for a higher level of support the criteria set out in Section 7, below, will apply. This may result in care being offered from a nursing home, hospital or hospice, whichever best meets the criteria overall.

Decisions on proposed changes of placement on financial grounds only would be made at Director level.

The individual's condition may have improved or stabilized to such an extent that they no longer meet the criteria for NHS fully funded continuing care. Consequently, the individual may be referred to the Local Authority who will assess their needs against the Fair Access to Care criteria. This may mean that the individual will be charged for all or part of their ongoing care. Where possible, transition to Local Authority care will be managed by agreement between the respective authorities.

An individual may appeal the decision in writing within 28 days through the Continuing Healthcare lead, as described in NCL's Continuing Care Guidelines Appeals Policy (Appendix A).

7. Continuing Care in a Care Home Placement

The PCT aims to offer individuals a reasonable choice of care homes and care providers. The PCT will provide information to individuals/representatives about the choice of care homes so that they are able to make an informed choice.

An individual has the right to decline NHS funding and make private arrangements. For the avoidance of doubt, in the event that an individual has been assessed and found to be eligible for continuing care they will no longer be able to receive funding from the Local Authority towards their care even if they decline NHS funding.

Where, immediately prior to being found eligible for continuing care, an individual is residing in a care home which is not one of the PCT's preferred providers and that individual does not wish to move, the PCT will undertake a clinical assessment of the individual to consider the clinical or psychological risk of a move to an alternative placement.

In exceptional circumstances, including where there is a high risk in moving the individual, the PCT will consider whether it is appropriate to commission a package outside of the PCT's preferred providers. In this instance, the PCT will consider:

- the cost of the package;
- the Care Quality Commission's assessed standard;
- the appropriateness of the package;
- the clinical assessment of the individual's needs;
- the risk any the change to the individual's health;
- the likely length of the proposed package;
- and the psychological needs of the individual in determining whether the PCT will continue to commission care at the care home.

In the event that the PCT commissions care in a home that is not normally commissioned by the PCT, the appropriateness of the placement will be reviewed at the initial and any subsequent reviews.

Where an individual is in hospital at the point that he/she is found eligible for continuing care then he/she will not be considered to be resident in a care home. This will be the case even if prior to the admission to hospital the individual was resident in a care home.

The PCT will not normally fund a placement where the requested care home is not the most suitable place for the provision of care and the care package can only be provided safely or resiliently at the current home with additional staffing at significant extra cost to the PCT.

If the individual or their family/representative indicates that they are unwilling to accept any of the placements offered by the PCT then the PCT shall issue a final offer letter setting out the options available. If the PCT does not receive confirmation that the individual has accepted one of the placements within 14 days then the PCT will write to the individual confirming that the NHS funding has been turned down and NHS funding will cease from 28 days after the date of this notice.

Where the individual or their family/representative choose to turn down continuing care funding, they will not be able to access local authority funding for the care and will need to make private arrangements.

If after receipt of a letter from the PCT, stating that funding has been turned down, the individual or their representatives want to access NHS services, they remain entitled to do so and can re-enter the continuing care process.

8. Continuing Care at Home

Given the complexity of continuing care cases, it would be unusual for the PCT to provide NHS continuing care to an individual in their own home. The PCT only supports the use of 'care at home' packages where appropriate and recognises the importance of patient choice. However, there may be situations where the PCT cannot provide the individual's choice of having a 'care at home' package either because of the cost or risks associated with the package. The PCT considers that packages which require a high level of input may be more appropriately and safely met in another care setting.

The PCT's duty to fund services does not extend to funding for the wide variety of different, non-health and non-personal care related services that may be necessary to maintain the patient in their home environment. Should the PCT identify that such basic needs are not going to be (or have not been) properly met, the PCT may find that a 'care at home' is not or no longer appropriate.

Whether a particular service should be provided by the PCT will depend on the review by the PCT of whether that particular service is required in order to meet that individual's personal or health care needs.

NCL will only consider the provision of continuing care at home in the following circumstances:

- Care can be delivered safely to the individual and without undue risk to the individual, the staff or other resident members of the household. The safety will be determined by professional assessment of risk which will include the availability of equipment, the environment and appropriately trained carers to deliver care whenever it is required;
- The acceptance by the individual, the PCT and each person involved in the individual's care of any risks relating to the care package.
- The patient's General Practitioner's opinion on the suitability of the package and confirmation that he/she agrees to provide primary medical support
- The opinion of a secondary care, specialist clinician, will be taken into account
- It is the individual's informed and preferred choice.
- The suitability, accessibility and availability of alternative arrangements
- The extent of a patient's needs
- Where the total cost of providing care is within 10% of the equivalent cost of a placement in an establishment.
- The cost of providing the package of choice
- The cost (or range of costs) of the care package(s) identified by the PCT as suitable to meet the individual's assessed care needs.
- The psychological, social and physical impact on the individual
- The individual's human rights and the rights of their family and/or carers including the right of respect for home and family life.
- The willingness and ability of family members or friends to provide elements of care where this is a necessary / desirable part of the care plan and the agreement of those persons to the care plan.

If the service user has capacity to make an informed decision and still wishes to be cared for at home, the following conditions apply:

- A full risk assessment must be made covering all the assessed needs and reflecting the proposed environment in which the care is to be provided.
- the individual agrees to receive care at home with a full understanding of the risks and possible consequences.
- the organisation with responsibility for providing the care agrees to accept the risks to their staff of managing the care package.
- the patient's primary care team agrees to provide clinical supervision of the care package, accepting the risks, which will need to be made explicit on a case by case basis.
- If action by family members or friends is needed to provide elements of care they must also agree to the care plan.
- actions to be taken to minimize risk will include those that must be taken by the individual or their family.
- any objections from other members of the household are taken into consideration.
- costs are expected to fall within 10% of an equivalent care although there is no set tariff placement and the assessed needs to be met within the cost are itemized within the care plan
- care is provided by an organisation or individual under a formal agreement and meeting standards acceptable to NHS commissioners; at this time it is not possible to make payments to individual patients or their families to purchase their care directly.

If a service user does not have the mental capacity to make an informed choice and is placing themselves at risk by indicating choice of a care package at home a mental capacity assessment will be undertaken. An independent advocate will be offered to support the user in this process, under the provisions of the Mental Capacity Act 2005.

If the service user does not have the capacity to make an informed choice the PCT will deliver the safest and most cost effective care available based on an assessment of best interests and in conjunction with any advocate, close family member or other person who should be consulted under the terms of the Capacity Act.

An individual may appeal the decision in writing within 28 days through the Continuing Healthcare lead as described in NCL's Continuing Care Guidelines Appeals Policy (Appendix A).

9. Assessments for Continuing Care at Home

In order to establish whether it is appropriate to fund a 'care at home' package, the PCT will undertake a number of assessments prior to agreeing to any package.

Safety of the package will be determined by a formal assessment of risk, undertaken by appropriately qualified professionals. The risk assessment will include the availability of equipment, the appropriateness of the physical environment and availability of appropriately trained carers and/or staff to deliver care whenever it is required.

The resilience of the package will be assessed and contingency arrangements will need to be put in place for each component of the package in case any component of the package fails.

Environmental Risk Assessment

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

The PCT is not responsible for any alterations required to a property to enable a home care package to be provided. For the avoidance of doubt, where an individual or representative has made alterations to the home but the PCT has declined to fund the package, the PCT will not provide any compensation for those alterations. Included in the risk assessment will be a robust Safeguarding Adult assessment in order to assess whether there are any actual or potential risks to the individual.

Clinical Assessment

When considering whether a package of care is suitable, the PCT will undertake a clinical assessment of the patient's needs and the extent to which that clinician considers that the proposed 'care at home' package meets those needs. The clinical assessment will consider the benefits of a 'care at home' package against the benefits of a care home placement.

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

Staffing Assessment

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

The PCT has a duty to its staff to assess any potential harm and take steps to prevent it. This covers both physical risks and any potential psychological risks that may arise. The PCT's Health and Safety policies and procedures will apply.

This includes manual handling policies and lone worker policies.

The individual (or representatives) are responsible for ensuring that the environment is safe for the provision of the care package. Where the safety assessment identifies a potential risk associated with the home, the individual is responsible for remedying that. The individual (or representatives) are also responsible for ensuring that the environment is appropriate for the provision of the care package by staff. This includes ensuring staff are able to have access to toilet, bathroom and kitchen areas and such areas are kept in a clean state and ensuring that staff are treated with dignity and respect.

10. Memorandum of Understanding for 'care at home'

Where the PCT agrees to fund a 'care at home' package the individual (if appropriate) and/or representatives will be required to enter into a Memorandum of Understanding ("Memorandum") confirming that they accept the terms on which any care is provided.

This Memorandum (Appendix B) will set out what the PCT will provide and what the individual and representatives have agreed to provide.

This Memorandum will also confirm that the individual and representatives understand that the care package is agreed on the basis of the assessed health and personal care needs and the required input at the date of the Memorandum. Where the cost of meeting the assessed care needs increases for any reason, the individual and representatives acknowledge that it may no longer be appropriate for the PCT to provide and they will work with the PCT to agree an alternative care package.

The Memorandum will set out the agreed alternative arrangements should the care package break down.

11. Termination of a 'Care at Home' Package

In any circumstance where the PCT considers that the safety of its staff or its agents/contractors are at risk it shall take such action as it considers appropriate in order to remove that risk. Where this relates to the conduct of the individual or the home environment it shall request that the individual/representatives take the necessary action to remove the risk.

Where a review identifies, or the PCT otherwise becomes aware that an action to reduce an identified risk to either the people involved providing care to the individual or to the individual has not been observed and such failure may put those individuals providing care at risk or may significantly increase the cost of the package then the PCT will take the necessary steps to protect the individual and staff involved with a view to ensuring the safety of all concerned. Harassment or bullying of care workers by the individual, carers or family members will not be accepted and the PCT will take any action considered necessary to protect their staff and contractors.

Where safety of the individual and/or those people involved in providing care is likely to be compromised without such action and the individual or representative does not take the required action then the PCT may write formally to the individual. Where there is a threat to the safety of PCT Staff or agents then the PCT retains the right to take any action it considers necessary to remove the threat including the immediate withdrawal of the care provision.

Where the individual is in receipt of a home care package and an assessment determines that this is no longer appropriate for any reason (including increase in care needs, inability for family to provide agreed care or identified risk) then an alternative package will be discussed and agreed. If the individual declines to accept alternative suitable provision, the PCT may write formally to the individual, giving no less than 28 days notice for alternative arrangements to be put in place by the individual.