

Report to the Cabinet

Meeting to be held on Thursday, 8 August 2019

Report of the Head of Service - Policy, Information and Commissioning (Live Well)

Part I

Electoral Division affected:
(All Divisions);

Continuing Healthcare – Implementation of the Care Act 2014 (Approval of Revised Adult Social Care Policies and Procedures) (Appendix 'A' refers)

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Executive Summary

Following the introduction of the Care Act 2014, the county council has undertaken to review all adult social care policies, practice and guidance to ensure compliance. The following new policy, procedures and guidance document is now presented to Cabinet for approval:

- NHS Continuing Healthcare

This is deemed to be a Key Decision and the provisions of Standing Order C19 have been complied with.

Recommendation

Cabinet is asked to approve the implementation of the NHS Continuing Healthcare policy as set out at Appendix 'A'.

Background and Advice

The Care Act 2014 significantly altered the landscape of adult social care for local authorities. In response, a comprehensive review of the county council's adult social care policies, procedures and guidance has been undertaken and key policy documents have been identified for development and/or revision, as part of a phased programme to ensure compliance.

This phased programme continues with the submission of a new policy, procedures and guidance document: NHS Continuing Healthcare.

Current arrangements

[A new framework was approved in March 2016 to ensure compliance with the Care Act](#) and to subject all new adult social care policies, procedures and practice guidance documents to robust governance arrangements.

Summary of Revised Policies and Procedures and Guidance documents

A new document – NHS Continuing Healthcare – is now ready for approval by Cabinet.

This is an interim Policy that aligns with the NHS National Framework, and is in response to the county council's legislative responsibilities under both the Framework and the Care Act. It *does not* reflect the current situation across Lancashire, where the current structures and systems do not always facilitate effective and efficient decision making, in relation to agreeing the funding of individual's packages of care. This can result in financial risk to the council's budget position in circumstances where the county council steps in to provide funding on a 'without prejudice'/short term basis, but cannot then quickly and easily get to a position where funds are recovered from the NHS.

Although through this legislation the county council has to follow a process, while we are committed to understanding the needs of all individuals, there are some limitations to what the county council can deliver at present, if it wishes to avoid incurring additional costs that should be met by the NHS.

As part of the National Framework, local policies need to be developed between the county council and the NHS to reflect each other's responsibilities. Work is currently underway to develop these local policies across the county council and the NHS (the system) to agree where responsibilities begin and cease. Once these policies have been agreed, this policy will be updated.

The county council puts the people it serves at the heart of everything it does and the council wants to make sure that our social care staff consider NHS Continuing Healthcare as part of the Assessment of Needs policy. The NHS may take up to 28 days to make a decision on NHS Continuing Healthcare (and any associated funding). Where an individual is being assessed for NHS Continuing Healthcare the county council will continue to meet any needs which fall within the county council's statutory powers and, as far as is practically possible, work with the NHS to ensure that patient needs remain paramount until any assessment and final funding decisions are made.

NHS Continuing Healthcare

This document sets out the county council's duties under Sections 9 of the Care Act 2014, the Care and Support (Assessment) Regulations 2014 and the Care and

Support (Eligibility Criteria) Regulations 2015, in relation to whether a person is eligible for NHS Continuing Healthcare.

The Care Act 2014 and Continuing Healthcare

As part of the [Assessment of Needs](#) process, the county council will consider whether the person's needs could be eligible for Continuing Healthcare. Continuing Healthcare is a package of care provided over a set period of time, and then reviewed, to a person aged 18 or over, to meet significant and complex physical or mental health needs that have arisen as a result of disability, accident or illness.

It is funded solely by the NHS and is free for those who are assessed as eligible. Care arranged as part of NHS Continuing Healthcare can be provided in a variety of different settings including; care homes, hospices or an individual's home.

An individual is eligible for NHS Continuing Healthcare if they have a 'primary health need'. This is a concept developed by the Secretary of State, to assist in determining when the NHS is responsible for providing for all of the individual's assessed health and associated social care needs.

In order to determine whether an individual has a primary health need, a detailed assessment and decision-making process must be followed, as set out in the [National Framework](#). Where an individual has a primary health need and is therefore eligible for NHS Continuing Healthcare, the NHS is responsible for commissioning a care package that meets the individual's health and associated social care needs.

If a person does not qualify for NHS Continuing Healthcare, the NHS may still have a responsibility to contribute to that individual's health needs – either by directly commissioning services or by part-funding the package of support. Where a package of support is commissioned or funded by both a local authority and a Clinical Commissioning Group, this is known as a 'joint package of care'.

NHS England, Clinical Commissioning Groups and local authorities **must comply** with their responsibilities, as set out in the Standing Rules¹ and Care Act legislation, as appropriate, in relation to NHS Continuing Healthcare.

Local authorities should consider the National Framework and review whether their current practice and processes fit with their responsibilities outlined within this National Framework. *Lancashire County Council and the NHS are currently working together collaboratively to review existing processes.*

Roles and responsibilities of the local authority

Where it appears that a person may be eligible for NHS Continuing Healthcare, the local authority **must refer** the individual to the relevant Clinical Commissioning

¹ *The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012*

Group. There are specific requirements for local authorities to cooperate and work in partnership with Clinical Commissioning Groups in a number of key areas.

Local authorities **must**, as far as is reasonably practicable, provide advice and assistance when consulted by the Clinical Commissioning Group in relation to an assessment of eligibility for NHS Continuing Healthcare. This duty applies regardless of whether an assessment of needs for care and support under Section 9 of the Care Act 2014 is required. Where the local authority has carried out such an assessment of needs, it **must** (as far as it is relevant) use information from this assessment to assist the Clinical Commissioning Group in carrying out its responsibilities. A local authority **must**, when requested to do so by the Clinical Commissioning Group, cooperate with the Clinical Commissioning Group in arranging for a person or persons to participate in a multidisciplinary team. Local authorities should:

- respond within a reasonable timeframe when consulted by a Clinical Commissioning Group prior to an eligibility decision being made;
- respond within a reasonable timeframe to requests for information when the Clinical Commissioning Group has received a referral for NHS Continuing Healthcare.

It is also good practice for local authorities to work jointly with Clinical Commissioning Groups in the planning and commissioning of care or support for individuals found eligible for NHS Continuing Healthcare wherever appropriate, sharing expertise and local knowledge (whilst recognising that Clinical Commissioning Groups retain formal commissioning and care planning responsibility for those eligible for NHS Continuing Healthcare).

Regulations state that local authorities **must** nominate individuals to be appointed as local authority members of independent review panels where requested to do so by NHS England. This duty includes both nominating such individuals as soon as is reasonably practicable and ensuring that they are, so far as is reasonably practicable, available to participate in independent review panels.

The Care Act also imposes certain restrictions on the provision of health services by the county council and these apply to meeting needs in provider failure cases. The county council may not meet needs in provider failure cases by, for example, providing NHS Continuing Healthcare. Where the failed provider's clientele consists of persons in receipt of NHS Continuing Healthcare, unless their needs appear to have changed, the county council can conclude that it was not necessary to do anything to meet those needs. This is because the duty to provide NHS Continuing Healthcare falls on the NHS and the county council cannot provide it.

New NHS Continuing Healthcare Policy, Procedures and Guidance Document

This is a revised document which updates existing guidance to ensure compliance with the Care Act and attendant regulations. The document provides a temporary reference point for social care staff in the delivery of the county council's responsibilities under the Care Act's NHS Continuing Healthcare regulations.

The county council is currently working with NHS colleagues to finalise Joint Protocols, Dispute Policy (including where a Clinical Commissioning Group has unjustifiably taken longer than 28 calendar days to reach a decision on eligibility for NHS Continuing Healthcare), and more integrated working practices as per the National Framework. Once these have been agreed, this Policy, Procedures and Guidance will be refreshed.

A copy of the policy is set out at Appendix 'A'.

Consultations

Wider public consultation has not been necessary as the documents in question reflect new duties and requirements placed on the county council under the Care Act 2014.

Implications:

This item has the following implications, as indicated:

Workforce

Our support for Lancashire residents is guided by the county council's adult social care policies, procedures and guidance. The accuracy and relevance of these documents is essential to support practice and the delivery of high quality services.

The Care Act and supporting guidance place a series of new duties and responsibilities on the county council in regard to care and support for adults. All revised or new documents have been reviewed and cleared by the county council's legal team before being presented to Cabinet for final approval. All documents will be publically accessible as part of this process, with the aim of reducing legal challenge and complaints due to a lack of understanding or transparency.

Equality and Diversity

The Care Act itself was implemented following a period of consultation and its provisions were assessed for their equality impact. Policies and procedures guidance documents are primarily intended as a guide for social care employees in applying the Care Act 2014 and ensuring delivery of quality care and support. It is an intrinsic requirement that these are applied objectively and fairly to all people with protected characteristics (age, disability, gender identity, sex/gender, race, religion or belief, sexual orientation, pregnancy and maternity and marriage or civil partnership status) and that, where necessary, reasonable adjustments are made to assist disabled people to participate in the process, or that other steps are taken to meet the requirements of the Equality Act 2010.

Furthermore, in line with the Public Sector Equality Duty, each policy, procedures and guidance document has been considered by the Equality and Cohesion Manager and a short appendix added to highlight the aims of the Public Sector Equality Duty and protected characteristics in a proportionate manner. It is intended that this will provide staff with a bespoke summary of how each policy, procedures

and guidance document may impact on groups with protected characteristics and that this is a proportionate means of showing due regard in relation to each individual policy, procedures and guidance document.

Financial

A person's eligibility for care and support provided by the county council will be determined, following a proportionate assessment. The person must have needs arising from a physical or mental impairment or illness and be unable to achieve two or more outcomes, as defined in the Care Act 2014. This is further explained in our Eligibility Criteria policy. Information is provided during the assessment period as to the potential financial implications to the person receiving care and support when the outcome of the assessment has been determined and agreed by both the assessor and the person being assessed and/or a suitable person, e.g. family member, advocate and/or attorney. This will detail how a person's contribution to care is worked out and, where an assessment determines that any care needs would be best met in a residential setting, describes the implications to the person if they own a property and the deferred payment options offered by the council.

Following the assessment stage, the individual's estimated personal budget must be shared with the individual when the care and support plan is being drafted.

Any financial implications that result from a needs assessment or care and support plan are addressed via the specific commissioning, delegation and funding arrangements governing each individual social care service, if so required.

Where it has been identified that an individual has a need for care which is above the level that the county council may lawfully provide – there may be a need for NHS Continuing Healthcare, - a checklist should normally be completed. A person only becomes eligible for NHS Continuing Healthcare once a decision on eligibility has been made by the Clinical Commissioning Group.

Clinical Commissioning Groups will normally make a decision about eligibility for NHS Continuing Healthcare within 28 days of getting a completed checklist or request for a full assessment, unless there are circumstances beyond its control. If the Clinical Commissioning Group decides a person is eligible, but takes longer than 28 days to decide this and the delay is unjustifiable, they should refund any care costs from the 29th day until the date of their decision. There is compelling evidence to show that many people are waiting way beyond the recommended assessment period to be advised. The Integrated Care System is committed to addressing this and the county council is represented on that group.

Risk management

The Care Act Statutory Guidance states that the county council should develop and maintain policies in relation to a number of subject areas covered by the Act. The county council may be at risk of future legal challenges if the recommendations are not taken forward.

Without a local agreement between the county council and the NHS, there is an ongoing risk of the county council being out of pocket if the relevant Clinical

Commissioning Group does not refund any care package costs incurred by the county council, whilst a checklist is being considered.

List of Background Papers

Paper	Date	Contact/Tel
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None

Reason for inclusion in Part II, if appropriate

N/A