

NHS FRIMLEY INTEGRATED CARE BOARD

East Berkshire NHS Continuing HealthCare Choice and Equity Policy

Version control sheet

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Equality statement

NHS Frimley aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others.

Throughout the development of the policies and processes cited in this document, we have:

- Given due regard to the need to eliminate discrimination, harassment, and victimisation, to advance equality of opportunity, and to foster good relations between people who have shared a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it.
- Given regard to the need to reduce inequalities between patients in access to, and outcomes from, healthcare services and in securing that services are provided in an integrated way where this might reduce health inequalities.

Members of staff, volunteers or members of the public may request assistance with this policy if they have particular needs. If the member of staff has language difficulties and difficulty in understanding this policy, the use of an interpreter will be considered.

We embrace the four staff pledges in the NHS Constitution. This policy is consistent with these pledges.

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1. Introduction

- 1.1 This policy describes the way in which NHS Frimley Integrated Care Board (the “**ICB**”) will make decisions when commissioning care for individuals who have been assessed as eligible for NHS Continuing Healthcare (“**CHC**”).
- 1.2 CHC means a package of ongoing care that is arranged and funded solely by the NHS where an individual has been assessed and found to have a ‘primary health need’ as set out in the National Framework for NHS CHC and NHS-funded Nursing Care. Such care is provided to an individual aged 18 or over, to meet health and associated social care needs that have arisen because of disability, accident or illness. The CHC eligibility decision making process is not within the scope of this policy.
- 1.3 The ICB will take a person-centred approach and commission care in a holistic manner which balances individual choice with the need to commission safe and effective care and to make equitable distribution of NHS resources. All decisions will be made on an individual basis and take account of all the specific relevant circumstances.
- 1.4 The ICB will arrange a package of care, in conjunction with the individual / their representative which meets the individual’s assessed needs. There is no obligation on the ICB to arrange a package of care greater than the individual’s assessed needs.
- 1.5 It is not always possible for the ICB to commission the individual’s choice of care package due to various considerations including safety, cost, and sustainability. The package of care commissioned under CHC is ultimately a matter for the ICB. The ICB will however ensure it takes individual’s wishes and preferences into account along with other considerations. The ICB will also provide a clear rationale to the individual on occasions where it is not possible to commission the individual’s choice of care package.
- 1.6 In this policy ‘representative’ means any friend, carer or family member who is supporting the individual in the process as well as anyone acting in a more formal capacity e.g., welfare deputy or power of attorney, or an organisation representing the individual).
- 1.7 This policy sets out the legal framework, key principles, and key considerations and how these will be applied by the ICB in CHC decision making.

2. Legal Framework

- 2.1 This policy should be read in conjunction with the legal framework as set out in Appendix 1.

3. Key Principles

- 3.1 The following **Key Principles** will be applied by the ICB when making decisions regarding CHC packages of care:

- 3.1.1 **Robust, fair and consistent:** this policy will be applied by the ICB in such a manner that allows for robust, fair and consistent decision making for individuals for whom it is responsible and who are eligible for CHC.
- 3.1.2 **Proportionality:** the ICB will be holistic in its decision making; balancing individual choice with the need to commission safe and effective care and to make equitable distribution of NHS resources.
- 3.1.3 **Exceptionality:** the ICB will make decisions on an individual, case by case basis taking into account exceptional circumstances where applicable. This includes but is not limited to circumstances:
 - a) where the individual's needs are significantly different from other individuals with the same or similar condition; and
 - b) where the individual would benefit significantly more from additional or alternative services than other individuals who have the same or similar condition.
- 3.1.4 **Transparency:** the rationale behind the ICB's decision-making will be clearly documented and communicated to individuals and their representatives.
- 3.1.5 **Involvement of the individual:** decision making will be person-centred, and the individual's choice and preferences will be ascertained by the ICB at all stages and the individual (and / or their representative) will be involved in and kept informed of the decision-making process. Where the individual has been assessed as lacking capacity the ICB will act in the best interests of the individual in line with the Mental Capacity Act 2005.

4. Key considerations when arranging NHS packages of care

- 4.1 The ICB will be proportionate in its decision making; balancing the following **Key Considerations** (this is not exhaustive):
 - 4.1.1 the **suitability** of care provision to the individual's objectively assessed health and social care needs;
 - 4.1.2 any **risks** to the **safety** of the individual and persons involved in the individual's care;
 - 4.1.3 the **choice** and **preferences** of the individual and/or their representative (and where the individual lacks capacity, their best interests);
 - 4.1.4 the ICB's obligations in terms of delivering **value for money** (considering the relative cost and benefits);
 - 4.1.5 the **equitable** distribution of finite NHS resources within the wider population within the ICB's area;

- 4.1.6 the need for **sustainability** of care provision in the longer term;
- 4.1.7 the **psychological** and **social** needs of the individual;
- 4.1.8 the geographical location of the placement;
- 4.1.9 any significant delay in availability of the care package;
- 4.1.10 any other exceptional specific circumstances of the individual;
- 4.1.11 any relevant risk assessment in relation to the setting of the care package (see paragraph 5.5 below); and
- 4.1.12 any wider considerations as set out in paragraph 5.7.

5. Additional considerations: care package setting

- 5.1 Decisions in relation to the setting of a care package will be made applying the decision-making process set out in this Policy.
- 5.2 The ICB will always consider the individual's preference of care setting.
- 5.3 Whilst there is no automatic right to a package of care in the individual's home, the ICB recognises that for most people, it would be preferable to stay in their own home. The ICB will therefore take steps to balance the individual's preference with the wider considerations as set out in paragraph 4 above. Where possible, the ICB will support a care at home package although it should be recognised that will not always be possible to accommodate this for various reasons, including safety, sustainability, and financial viability.
- 5.4 Individuals who are eligible for CHC funding often have a complexity, intensity, frequency and/or unpredictability in their overall care needs which could in some circumstances make it more difficult for care to be safely delivered at home on a sustainable basis. In particular, the following could potentially indicate that careful consideration of safety and sustainability may be required (these factors are not exhaustive nor are they conclusive):
 - 5.4.1 a care package which has previously broken down on a number of occasions;
 - 5.4.2 a care package more than eight hours a day;
 - 5.4.3 a care package with waking night care;
 - 5.4.4 a care package with direct oversight by registered clinical professionals and 24-hour monitoring;
 - 5.4.5 a care package where 2:1 care is required; and
 - 5.4.6 specific conditions or interventions including (but not limited to) the requirement for sub-cutaneous fluids, intravenous fluids, total

parenteral nutrition, continual invasive or non-invasive ventilation or the management of grade 4 pressure injury.

- 5.5 For the avoidance of doubt, the factors in paragraphs 5.4.1 - 5.4.6 are indicative examples only and their occurrence does not automatically preclude the ICB from commissioning CHC at home; the ICB will take all circumstances into account, in line with this policy.
- 5.6 In light of the above, where the individual's preference is for a package of care at home, the ICB will ensure a written risk assessment is undertaken by an appropriately qualified professional in consultation with the individual and/or their family/representative taking account of:
- 5.6.1 The availability of equipment;
 - 5.6.2 the physical environment;
 - 5.6.3 the availability of care staff to deliver care at the level of intensity, frequency and/or unpredictability required;
 - 5.6.4 the acceptance of the individual and persons involved in the individual's care of the identified risks and consequences;
 - 5.6.5 the agreement of the individual and persons involved in the individual's care to mitigate identified risks through agreed actions; and
 - 5.6.6 the agreement of the individual's GP to provide primary care medical support.
- 5.7 This risk assessment will be considered as part of the decision making process set out below.
- 5.8 The ICB will also consider;
- 5.8.1 The impact of the setting of the care package on the individual's Article 8 ECHR right to respect for private and family life; and
 - 5.8.2 The impact of the setting of the care package on any Protected Characteristics of the individual under the Equality Act 2010.

6. Decision making process

- 6.1 Once an individual has been assessed as eligible for CHC, decision-making for care provision to meet the individual's assessed needs will be as follows.

Identifying suitable options for care;

- 6.2 The ICB will work with the individual to identify the options for care packages to meet the individual's assessed needs. This will include consideration of packages of care at home as well as in care home settings.

- 6.3 The ICB will, as a general approach, look to identify the options for care packages to meet the individual's assessed needs.
- 6.4 If the individual identifies alternative option(s) for the provision of their care, this will be considered alongside the original options identified by the ICB as follows:
 - 6.4.1 If an alternative option of provider is requested, the ICB will consider the option of spot-purchasing from that provider on the condition they can obtain quality assurances from that provider they can meet the assessed needs;
 - 6.4.2 If an alternative option of care home is located outside of the ICB's geographical area, the ICB will consider the option of relying on the commissioning arrangements of the host ICB to commission a package of care.
- 6.5 It should be noted there is not always more than one viable option available.

Assessment of the options;

- 6.6 Once the options have been identified, the ICB will assess each option regarding the following:
 - 6.6.1 the relative suitability of the options to meet the individual's assessed health and social care needs;
 - 6.6.2 the relative risks (if any) to the individual and those involved in the individual's care of each option;
 - 6.6.3 the relative cost of each option;
 - 6.6.4 the relative sustainability of each option in the longer term, and any contingency plans;
 - 6.6.5 the ICB's duty to provide care equitably across its population; and
 - 6.6.6 any other information relevant to the options identified.
- 6.7 The ICB will explain the relative benefits and risks of each option to the individual and/or their representative.
- 6.8 The ICB will ascertain the individual's preference of care option and the individual's reasons for those preferences including any impact on the individual's right to family life or any protected characteristics in terms of the location or setting of the care package.

Decision-making

- 6.9 The ICB will make the final decision as to the individual's care package. In doing this the ICB will consider:
 - 6.9.1 The Legal Framework (set out in Appendix 1);

- 6.9.2 The Key Principles (set out above);
- 6.9.3 The Key Considerations (set out above); and
- 6.9.4 The Additional Considerations in relation to Care Package Setting (set out Paragraph 5 above).

Referral to the Complex Case Panel

6.10 Decisions will be referred to the Complex Case Panel where:

- 6.10.1 the cost of the individual's choice of care package is beyond the delegated financial limits of the Associate Director for All Age CHC & Complex Care
- 6.10.2 the ICB has substantive concerns in relation to the suitability, safety, value for money or otherwise of the individual's choice of care package, this could include (but is not mandated) where:
 - (a) the individual's preference is for a care at home package (rather than a care home package);
 - (b) the individual's preference is for a provider outside of one identified by the ICB;
 - (c) the individual's preference is for a care outside of the geographical area of the ICB.

6.11 The Panel will then refer its recommendation to appropriate person with the requisite level financial authorisation to take the final decision as to the individual's care package on behalf of the ICB. That decision will not defer from the recommendation of the Panel other than in exceptional circumstances.

6.12 See Appendix 2 for detail on decision making under the Complex Case Panel.

Informing the individual

6.13 The ICB will notify the individual of its final decision on the CHC package in writing, including:

- 6.13.1 acknowledging the individual's choice and preferences in relation to the identified option(s) and any reasoning to support the individual's preference;
- 6.13.2 the ICB's decision-making process, with reference to this Policy and in particular, the Key Principles; the Key Considerations (and how these balance and relate); and (where relevant) the Legal Framework;
- 6.13.3 the final choice of care package;
- 6.13.4 the individual's right to make private arrangements for their care (see Paragraph 7 below);

- 6.13.5 the individual's right to make a complaint in relation to the ICB's decision making or final decision (see paragraph 11 below); and
- 6.13.6 the CHC review process (see paragraph 12 below).

Record keeping

6.14 A clear record will be kept of the following:

- 6.14.1 the option(s) for care packages to meet the individual's assessed needs identified by the ICB and (where relevant) the individual;
- 6.14.2 the ICB's assessment of the risks, costs and sustainability of each option;
- 6.14.3 the individual's choice and preferences in relation to the identified option(s) and any reasons for these;
- 6.14.4 the ICB's decision-making process, with reference to this Policy and in particular, the Key Principles; the Key Considerations (and how these balance and relate); and (where relevant) the Legal Framework;
- 6.14.5 any referral to the Complex Case Panel;
- 6.14.6 the final choice of care package; and
- 6.14.7 the ICB's correspondence with the individual in relation to the decision-making process and the final decision.

Timescales

- 6.14.8 Once an individual has been assessed as eligible for fully funded CHC, the ICB will aim to either make a decision in relation to the individual's care package or to make a referral to the complex care panel within 28 days.
- 6.14.9 Where the above timescale is not realistic, the ICB will inform the individual in writing of the delay and the reasons for the delay in decision-making and when it anticipates that a decision will be made. The ICB will continue to keep the individual informed and will look to ensure that the individual's care needs are being met during the care planning process.

7. Individual's right to make private arrangements for care

- 7.1 The individual has a right to make private arrangements to meet their assessed CHC needs, using private funds instead of CHC funding.
- 7.2 Once the ICB has notified the individual of its final decision on the CHC package in writing under paragraph 6.13 above:

- 7.2.1 the individual or their representative may confirm its acceptance of that CHC package;
 - 7.2.2 the individual or their representative may decline that care package and exercise their right to make private arrangements for their care and the ICB will issue a Notice of Care being Declined; or
 - 7.2.3 if the ICB does not receive confirmation that the individual has accepted or declined that CHC package within 28 days of notifying the individual of its final decision, then the ICB will issue a Notice of Care being Declined (which will be rescinded if the individual contacts the ICB to accept the care package within 60 days after which time the ICB will take account of the all the circumstances and may still exercise discretion to rescind the Notice of Care being Declined).
- 7.3 A Notice of Care being Declined will:
- 7.3.1 confirm to the individual that CHC funding will cease 28 days after the date of the notice (if care arrangements are already in place);
 - 7.3.2 explain any risks of the individual declining the care
 - 7.3.3 advise that the individual can still choose to accept the offer of the CHC package within the 28 day notice period; and
 - 7.3.4 advise the individual of their right to re-enter the CHC process at a later date and the relevant person(s) to contact to initiate this.
- 7.4 The risks of the individual declining the CHC package will also be documented in the individual's care record.
- 7.5 The ICB will consider whether it would be appropriate to follow adult safeguarding procedures including consideration of a referral to the local authority (in line with its existing safeguarding process) if an individual refuses a CHC package of care.

8. Fast Track pathway tool

- 8.1 Individuals with a rapidly deteriorating condition that may be entering a terminal phase, may require 'fast tracking' for immediate provision of CHC. This is determined by an appropriate clinician (see further paragraphs 216-245 of the National Framework for CHC and NHS-funded nursing care).
- 8.2 The setting where an individual wishes to be supported as they approach the end of their life may be different to their current arrangements (e.g., even though they are currently in a care home setting they may wish to be supported in their family environment). The important issue is that (wherever possible) the individual concerned receives the support they need in their preferred place as soon as reasonably practicable.

- 8.3 The ICB will accept and immediately action a Fast Track Pathway Tool where the Tool has been properly completed. Action will be taken urgently to agree and commission the care package. Given the nature of the needs, this time period will not usually exceed 48 hours from receipt of the completed Fast Track Pathway Tool.
- 8.4 Once an appropriate package of care is commissioned the ICB will review the individual's care needs and the effectiveness of the care arrangements.
- 8.5 The overall Fast Track process will be carefully and sensitively explained to the individual and (where appropriate) their representative.

9. PHB

- 9.1 Decisions in relation to the ICB commissioning of Personal Health Budgets will be made by reference to the ICB Personal Health Budget Policy.

10. Financial contributions / Top up

- 10.1 NHS care is free at the point of delivery. The funding provided by the ICB for CHC packages of care should always be sufficient to meet the needs identified in the personalised care and care plan and the ICB's approach to care planning will be centred on this principle. Therefore, it is not permissible for an individual (or their representative) to be asked or to request to make any payments towards meeting their assessed care needs.
- 10.2 The individual has the right to decline NHS services and make private arrangements (see paragraph 7 above).
- 10.3 Where care providers offer additional services which go beyond the individual's assessed CHC needs, the individual may choose to purchase such additional services. Examples of this would include a room in a care home with a superior view or hair dressing services.
- 10.4 If an individual wishes to make arrangements directly with a provider for additional services that are not within the ICB's core package, they should first notify the ICB.

11. Complaints

- 11. The individual may make a complaint in respect of the ICB's decision making under this Policy. The ICB's Management of Complaints and Concerns Policy will apply to such complaints.

12. Review of the care package

- 12.1 The suitability of the care package will be reviewed by reference to this Policy initially at 3 months, then annually as a minimum requirement (**a CHC Review**). These reviews will primarily focus on whether the care plan or arrangements

remain appropriate to meet the individual's needs. This approach is in line with the NHS Framework for CHC.

- 12.2 If it is clear that an individual's CHC needs have changed following a CHC Review, it may be necessary to re-consider whether the care package still meets the individual's health and social care needs. For example, it may be necessary to re-consider whether a package of care at home is still appropriate. Any decisions by the ICB in respect of the care package will be made applying the decision making process set out in this Policy.
- 12.3 If the weekly cost of care for an individual increases by more than 20% (apart from a single period of up to four weeks to cover either an acute episode or for end of life care to prevent a hospital admission), the care package may be reviewed and other options to meet assessed needs may be explored. The ICB will ensure its decision in these circumstances making is aligned with the principles and considerations of this Policy.
- 12.4 The ICB will not use a CHC Review as an opportunity to re-assess eligibility for CHC. Such an assessment will only take place, if following a CHC Review, there is clear evidence of a change in needs to such an extent that it may impact on the individual's eligibility for CHC. A full assessment of eligibility will then take place.

Appendix 1:

1. Legal Framework

- 1.1 The ICB is subject to the laws of England and when making decisions under this Policy, with have due regard to inter alia:
 - 1.1.1 the duties in Section 14Z35 (as to reducing inequalities); Section 14Z36 (to promote involvement of each patient); Section 14Z37 (as to patient choice) of the NHS Act 2006;
 - 1.1.2 the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care 2018 (revised);
 - 1.1.3 the National Health Services Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012;
 - 1.1.4 the duty under Section 149 of the Equality Act 2010; and
 - 1.1.5 articles 8 and 14 of the European Convention on Human Rights.

Appendix 2:

1. Complex Case Panel

- 1.1 The purpose of the Panel is to be the forum where complex packages of care are discussed, and recommendations made in respect of certain complex circumstances where considerations of individual choice; suitability; safety and value for money must be carefully balanced.
- 1.2 It is not the purpose of the Panel to review the ICB's decision making process or decision where a referral to the Panel was not considered appropriate. Where an individual is not satisfied with the ICB's decision making process or decision, the individual should be directed to the ICB's Management of Complaints and Concerns Policy.
- 1.3 Decisions will be referred to the Complex Case Panel in the circumstances set out in paragraph 6.10 of the Policy.
- 1.4 The Panel will be made up of:
 - 1.4.1 the senior decision maker (panel chair);
 - 1.4.2 the individual's case presenter with an in-depth knowledge of the case;
 - 1.4.3 the two senior decision makers within the CHC service;
- 1.5 The following information will be collated and presented to the Panel:
 - 1.5.1 the options identified by the ICB and the individual to meet the individual's assessed health and social care needs;
 - 1.5.2 the ICB's assessment of the risks, costs and sustainability of each option;
 - 1.5.3 the individual's choice and preferences and any reasons for these including any impact on the individual's right to family life or any protected characteristics in terms of the location or setting of the care package;
 - 1.5.4 any relevant clinical assessments;
 - 1.5.5 where necessary expert and or legal advice to further inform decision making; and
 - 1.5.6 any other relevant information.
- 1.6 The Panel will convene within [14 days] of referral to the Panel. Where this timescale is not realistic, the ICB will inform the individual in writing of the delay and the reasons for the delay in decision-making and when it anticipates that a decision will be made. The ICB will continue to keep the individual informed.

- 1.7 The Panel will make a recommendation as to the individual's care package. In doing this the Panel will take account of:
 - 1.7.1 the Legal Framework (set out in Appendix 1);
 - 1.7.2 the Key principles (set out at paragraph 3);
 - 1.7.3 the Key considerations (set out at paragraph 3);
 - 1.7.4 the Additional considerations in relation to Care Package Setting (set out at paragraph 5); and
 - 1.7.5 any other relevant information.
- 1.8 Where the Panel cannot reach a unanimous recommendation, the final recommendation will be made by the Panel chair.
- 1.9 The Panel will then refer its recommendation to the person who has the requisite level of financial authorisation to take the final decision as to the individual's care package on behalf of the ICB. That decision will not defer from the recommendation of the Panel other than in exceptional circumstances.
- 1.10 The ICB will notify the individual of its final decision on the CHC package in accordance with paragraph 6.1 of the Policy.
- 1.11 In addition to the record keeping requirements under paragraph 6.14 of the Policy, the meeting of the Panel will be minuted and a record will be kept of those minutes.