



**Merton**

***Clinical Commissioning Group***



Wandsworth Clinical Commissioning Group

## **Personal Health Budget Policy**

### **Merton and Wandsworth Clinical Commissioning Groups**

**July 2019**

## Document Control

Version	Date	Author	Comments
1	22.01.19	Neil Francis	Initial re-draft based on January 18 MW Draft PHB Policy (drafted by Lola Triumph)
2	15.02.19	Neil Francis	Updated Feb/March to reflect national policy announcements/PHB Project Group feed-back
3	20.03.19	Neil Francis	Drafting for internal CCG comment
4	07.05.19	Neil Francis	Revision drafting following internal CCG comments. To seek legal advice.
5	30.06.19	Neil Francis	Final amendment following legal advice (Capsticks). Version for EMT 31.07.19 and for IGQC (August 2019)

<b>Name of Policy</b>	<b>Personal Health Budget Policy</b>
<b>What is this about</b>	<p>A Personal Health Budget (PHB) is an amount of NHS money to support a person's identified health and wellbeing needs, planned and agreed between the person and their local NHS team.</p> <p>The PHB can be paid to a service user or someone they nominate or their representative. It is used to buy the support that meets the agreed outcomes in the service user's support plan.</p> <p>This document describes the Merton CCG and Wandsworth CCG offer those individuals who can receive a PHB in line with national legislation and guidance, how the money is paid out, and how Merton CCG and Wandsworth CCG monitors PHB expenditure.</p>
<b>Date agreed:</b>	TBC
<b>Start date:</b>	July 2019
<b>Owner and contact details:</b>	<p>Alison Kirby Continuing Healthcare and Personal Health Budgets (adults) Commissioning lead Merton and Wandsworth CCGs</p> <p>T: <a href="tel:02035748653">02035748653</a> E: <a href="mailto:Alison.Kirby@swlondon.nhs.uk">Alison.Kirby@swlondon.nhs.uk</a></p>
<b>Policy being replaced</b>	Wandsworth CCG Personal Health Budget Policy (February 2016)
<b>Forms &amp; Templates associated with this (These must be reviewed when this document is reviewed)</b>	1. Merton and Wandsworth CCGs Personal Health Budget Direct Payment Agreement
<b>Next Review date:</b>	30/07/2020

# CONTENTS

<u>Sections</u>	<u>Page No.</u>
1. Introduction.....	7
2. Aim of the Policy	7
3. Legislative Context	7
4. Definition of Personal Health Budgets	9
5. Aim of Personal Health Budgets.....	9
6. Principles and Key Characteristics for the Delivery of Personal Health Budgets	9
7. Merton CCG and Wandsworth CCG Personal Health Budget Offer for 2019-2011	
8. Exclusions for Personal Health Budgets	12
9. Management of Personal Health Budgets	12
10. Personal Health Budget Agreements	13
11. What can a Personal Health Budget Be Spent On?	14
12. Calculating a Personal Health Budget	15
13. Support Planning	16
14. Support for Managing a Personal Health Budget	16
15. Governance	17
16. Risk Management	18
17. Integration with Local Authorities	19
18. Monitoring and Review	20
19. Termination of Personal Health Budgets.....	20
20. Appeals	21
21. Complaints Process	21
22. Service User Evaluation	23
23. Further Information	23
24. Review Date	23

## Appendices:

Appendix 1	Management of Personal Health Budgets as a Direct Payment
Appendix 2	Merton and Wandsworth CCGs Personal Health Budgets Direct Payment Agreement
Appendix 3	Merton and Wandsworth CCGs Personal Health Budgets Notional Agreement
Appendix 4	Merton and Wandsworth CCGs Personal Health Budgets Project Group Terms of Reference

## Glossary of Key Terms

### **Case Manager**

A case manager is a person who coordinates services on behalf of an individual in health care, rehabilitation and social work settings. A case manager is responsible for assessment and regular review of care packages that have been commissioned on behalf of the service user.

### **Children's Continuing Care**

An equitable, transparent and timely process for assessing, deciding and agreeing bespoke continuing care packages for children and young people funded by the NHS whose health needs in this area cannot be met by existing universal and specialist services. Assessment of these needs and the delivery of bespoke packages of care to meet them will take place alongside services to meet other needs, including education and social care funded by the relevant local authority. (Department of Health 2010)

### **Continuing Healthcare**

Continuing Healthcare (CHC) services apply to adults over the age of 18 years. It is a complete package of ongoing care arranged and funded solely by the NHS, where it has been assessed that the individual's primary need is a health need. It can be provided in any setting including in a person's own home. Eligibility for CHC means that the NHS funds all the care that is required to meet their assessed health needs and includes elements of social care. In care homes, for CHC funded residents the NHS also makes a contract with the care home and pays the full fees including for the person's accommodation and all their care. (Department of Health 2009)

### **Direct Payments**

Payments made to an individual who is eligible for a personal health budget and who agrees to receive and use the money to enable them to make their own arrangements to meet their identified needs.

### **Disclosure and Barring Service (DBS)**

Disclosure and Barring Service helps employers make safer recruitment decisions and prevents unsuitable people from working with vulnerable groups. It replaces the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).

### **Notional Personal Health Budget**

Wandsworth CCG manages the personal health budget money on the individuals' behalf and commissions/procures or provides the goods and services set out in the care and support plan.

### **Personal Health Budget (PHB)**

The NHS England definition of a personal health budget is

*A personal health budget is an amount of money to support the identified healthcare and wellbeing needs of an individual, which is planned and agreed between the individual, or their representative, and their local clinical commissioning group (CCG). It isn't new money but a different way of spending health funding to meet the needs of an individual*

**PHB Offer**

The PHB offer describes who has a 'right to have' a PHB and who has a 'right to ask' for a PHB within NHS Merton CCG and NHS Wandsworth CCG. PHBs are not means tested. If an individual is included within the 'right to have' group outlined within the CCGs' offer (section 7) and they meet the requirements of this policy they will be entitled to a PHB.

**Safeguarding**

Safeguarding is defined as 'protecting an adult's right to live in safety, free from abuse and neglect.' (Care Act, 2014).

**Support Plan**

A Support Plan describes how an individual will use their personal health budget to meet their needs and achieve agreed health outcomes. It is likely to have a wider scope than a traditional health "care plan".

**Support Service Organisations**

Support Service Organisations can provide a range of services to support the employment of Personal Assistants, including payroll and ensuring that the requirements of employment legislation are met. They can also provide brokerage support with creating the support plan.

**Third Party or Managed Account**

With a Third Party, or Managed Account, an organisation commissioned by the CCG manages the personal health budget money by holding it on the individual's behalf, and buys or provides the goods and services set out in the care and support plan.

## **1. Introduction**

- 1.1. Personal Health Budgets (PHB) are a key component of the Government drive for wider personalisation of NHS care to give people greater individual choice and control over how their care is planned and delivered.
- 1.2. The PHB policy sets out the Merton and Wandsworth CCGs offer for who can receive a PHB in line with national legislation and guidance. It describes the criteria under which the Merton and Wandsworth CCGs will authorise a PHB through existing NHS funded services, Third Party arrangements or Direct Payments, on an individual basis, by balancing choice, risk, rights and responsibilities.
- 1.3. Within this context, Merton and Wandsworth Clinical Commissioning Groups (CCGs) are legally obligated and are accountable for meeting their own statutory duties, for instance in relation to quality, financial resources, equality, health inequalities and public participation.
- 1.4. In making these arrangements, the Merton and Wandsworth CCGs have had regard to relevant law and guidance, including their duties under the National Health Service Act 2006, the Health and Social Care Act 2012, the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012; and the National Health Service (Direct Payments) Regulations 2013 (as amended) and relevant guidance issued by NHS England.
- 1.5. The Merton and Wandsworth CCGs PHB programme will be delivered within the remit of the respective CCGs' commissioning budgets. The CCGs' expenditure has to be affordable within the limits of available resources with an emphasis on the quality of care and positive outcomes for patients and their families.

## **2. Aim of the policy**

- 2.1. The Merton and Wandsworth CCGs PHB policy aims to:
  - Set out the Merton and Wandsworth CCGs offering for those who can receive a PHB in line with national legislation and guidance.
  - Outline the practice and local procedures for implementing the CCG PHB programme in 2019-20 and beyond
  - Communicate with users of the policy – such as CCG staff and the staff of CCG commissioned services supporting the delivery of PHBs, and to set out their roles and responsibilities with regard to the implementation of PHBs.

## **3. Legislative Context**

- 3.1. The Government's vision for PHBs is to enable people with long term conditions and/or disabilities to have greater choice, flexibility and control over the health care and support they receive.

- 3.2. The NHS Commissioning Board and CCGs (Responsibilities and Standing Rules) (Amendment) (No. 3) Regulations 2014 provides the legal framework for the development of PHBs. The legislative framework makes it clear that from October 2014 patients who are eligible for NHS Continuing Healthcare (CHC) have a statutory 'right to have' a personal health budget, including direct payment, subject to exceptions.
- 3.3. The NHS Mandate 2014 includes a commitment that by April 2015 *everyone with long- term conditions including people with mental health problems will be offered a personalised care plan that reflects their preferences and agreed decisions.*
- 3.4. The Forward View into Action: planning for 2015/16 includes the requirement for CCGs to develop plans for a major expansion of personal health budgets, and to ensure that people with learning disability and/or autism are included by April 2016.
- 3.5. The NHSE letter to CCG Accountable Officers entitled Continuing Healthcare Opportunities (01-05-18) sets out NHSE requirements to make PHBs the default delivery model for CHC funded home care; ...'*NHS England believes that all CHC packages delivered in a home care setting, excluding fast track NHS CHC, should be managed as a personal health budget, and that that they should become the default operating model by April 2019.*'
- 3.6. The NHS Long Term Plan (January 2019) sets a requirement that up to 200,000 people will benefit from a PHB by 2023/24. This will include the provision of bespoke wheelchairs and community-based packages of personal and domestic support and an expansion of the PHB offer in mental health services, for people with a learning disability, people receiving social care support and those receiving specialist end of life care.
- 3.7. The policy has been drawn up in response to the following legislation and associated guidance:
  - The NHS Act 2006 (as amended)
  - The Health Act 2009
  - The National Health Service (Direct Payments) Regulations 2013 as amended by the National Health Service (Direct Payments) (Amendment) Regulations 2013
  - Guidance on Direct Payments for Healthcare: Understanding the Regulations and other key documents and guidance which can be accessed from the following link: <https://www.england.nhs.uk/healthbudgets/resources/>
  - Special Educational Needs and Disability Regulations 2014
  - Special Educational Needs (Personal Budgets) Regulations 2014
  - Direct Payment for Healthcare: Guiding on Ensuring the Financial Sustainability of Personal Health Budgets
  - National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care (2018)
  - National Framework for Children and Young People's Continuing Care
  - The Special Educational Needs and Disability (SEND) Code of Practice 0-25 years (statutory guidance for commissioners)
  - Data Protection Act 2003
  - Mental Capacity Act 2005

- Equality Act 2010
- The NHS Long Term Plan 2019

3.8. At all times, all users of this policy, including Merton and Wandsworth CCGs' respective employees, staff on temporary contracts and NHS funded services supporting the delivery of PHBs must comply with all laws, statute, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the user is bound to comply, in relation to this policy.

## 4. Definition of Personal Health Budgets

4.1. The NHS England definition of a PHB is

*A personal health budget is an amount of money to support the identified healthcare and wellbeing needs of an individual, which is planned and agreed between the individual, or their representative, and their local clinical commissioning group (CCG). It isn't new money but a different way of spending health funding to meet the needs of an individual*

('What Are Personal Health Budgets?' – NHSE Personal Health Budgets national website)

4.2. The amount in an individuals' PHB is based on their personalised care and support plan. This plan helps people to identify their health and wellbeing outcomes together with their NHS team, and sets out how the PHB will be spent.

## 5. Aim of Personal Health Budgets

5.1. The aim of PHBs is to:

- enable individuals to exercise choice and control over their lives through the allocation of a PHB.
- promote independence, wellbeing and choice which will enable individuals to manage identified risks, achieve their potential and live their lives in ways which best suits them.

## 6. Principles and Key Characteristics for the Delivery of Personal Health Budgets

6.1. There are a series of national key **principles** that underpin the delivery of PHBs and personalisation in health which Merton and Wandsworth CCG will adhere;

6.1.1. **Upholding NHS principles and values** - The personalised approach must support the principles and values of the NHS as a comprehensive service which is free at the point of use, as set out in the NHS Constitution. It should remain consistent with existing NHS policy, including the following principles:

- Individuals and their carers should be fully involved in discussions and decisions about their care using easily accessible, reliable and relevant information in a format that can be clearly understood;
- There should be clear accountability for the choices made;
- No one will ever be denied treatment as a result of having a PHB;
- Having a PHB does not entitle someone to additional or more expensive services, or to preferential access to NHS services;
- There should be efficient and appropriate use of current NHS resources.

6.1.2. **Quality** – safety, effectiveness and experience should be central. The wellbeing of the individual is paramount. Access to a PHB will be dependent on professionals and the individual agreeing a care plan that is safe and will meet agreed health and wellbeing outcomes. There should be transparent arrangements for continued clinical oversight, proportionate to the needs of the individual and the risks associated with the care package.

6.1.3. **Tackling inequalities and protecting equality** – PHBs and the overall movement to personalise services could be a powerful tool to address inequalities in the health service. A PHB must not exacerbate inequalities or endanger equality. The decision to set up a PHB for an individual must be based on their needs, irrespective of race, age, gender, disability, sexual orientation, marital or civil partnership status, transgender, religion, beliefs or their lack of the requisite mental capacity to make decisions regarding their care.

6.1.4. **PHBs are purely voluntary** - No one will ever be forced to take more control than they want.

6.1.5. **Making decisions as close to the individual as possible** - Appropriate support should be available to help all those who might benefit from a more personalised approach, particularly those who may feel least well served by existing services / access, and who might benefit from managing their budget.

6.1.6. **Partnership** - Personalisation of healthcare embodies co-production. This means individuals working in partnership with their family, carers and professionals to plan, develop and procure the services and support that are appropriate for them. It also means CCGs, local authorities and healthcare providers working together to utilise PHBs so that health, education and social care work together as effectively as possible.

6.2 In developing PHBs the Merton and Wandsworth CCGs will ensure that the following national **characteristics** of a PHB are met. The individual with a personal health budget (or their nominee or representative) should:

- Be fully involved in developing their personalised care and support plan and agree who else is involved
- Be able to agree the health and wellbeing outcomes they want to achieve, together with relevant health, education and social care professionals

- Know how much money is available to meet the assessed health and wellbeing outcomes agreed in the personalised care and support plan
- Have enough money in the budget to meet the assessed health and wellbeing needs and outcomes agreed in the personalised care and support plan
- Have the option to manage the money as a direct payment, a notional budget, a third party budget or a mix of these approaches
- Be able to use the money to meet their outcomes in ways and at times that make sense to them, as agreed in their personalised care and support plan.

## 7. Merton CCG and Wandsworth CCG PHB Offer 2019-20

7.1 CCGs are required to set out and publish their offer for PHBs. The Merton and Wandsworth CCGs' offer reflects NHSE guidance.

7.2 The Merton and Wandsworth CCGs' offer with regard to PHBs for 2019-20 is;

7.2.1. The following groups have a legal **right to have** a personal health budget from the CCGs;

- Adults who are eligible for NHS Continuing Healthcare (CHC) as defined by the National Framework for Continuing healthcare and NHS-funded Nursing Care, and the families of children eligible for Continuing Care as defined by the National Framework for Children and Young People's Continuing Care. In the case of children this refers to the element of their care package that would normally be provided by the NHS once they become "continuing care" eligible and not the elements of their package provided by social care or education.
- All NHS CHC packages delivered in a home care setting, excluding fast track NHS CHC, will be managed as a PHB for CHC home care from April 2019.

7.2.2. The Department of Health and Social Care announced in March 2019 that the right to have a PHB will be extended to the following groups during 2019-20;

- People eligible for an NHS wheelchair
- People who access after-care services under section 117 of the Mental Health Act.

The CCGs will put in place processes and procedures to extend the right to have a PHB to these groups throughout 2019-20

7.2.3. The following groups have a **right to ask** for a personal health budget from the CCGs;

- Adults aged 18 and over with learning disability, autism and/or mental health and behaviour that challenges living in a community setting who will benefit from having a PHB.

- Children and young people (birth to 25) who may not be eligible for Continuing Care but have an Education, Health and Care (EHC) plan and could receive a PHB for the health element of their plan.

The CCGs are developing processes and procedures to extend PHBs to these groups throughout 2019-20

## 8. Exclusions for Personal Health Budgets

- 8.1 If an individual comes within the scope of the “right to have” a PHB, then the expectation is that one will be provided. However, in certain exceptional circumstances the CCGs may choose not to agree to a PHB in line with the NHS England guidance which states:

*“There may be some exceptional circumstances when a CCG considers a personal health budget to be an impracticable or inappropriate way of securing NHS care for an individual. This could be due to the specialised clinical care required or because a personal health budget would not represent value for money as any additional benefits to the individual would not outweigh the extra cost to the NHS.”*

- 8.2 There are also a series of additional exclusions that the CCGs will apply specifically to a PHB held as a direct payment. These are set out in Appendix 1 (section 7) of this policy. An individual who is excluded from a PHB Direct Payment may also still be able to receive a notional or Third Party PHB.
- 8.3 If an individual and/or his or her representative, who comes within the scope of a ‘right to have’ a PHB requests a PHB and is turned down, the CCGs will set out in writing the reasons why the request has been refused. Once this information has been received, the person and/or his or her representative may appeal the CCG’s decision. The CCG will reconsider this decision. The CCGs’ process for appeals is set out in Section 20 of this policy document.

## 9. Management of Personal Health Budgets

- 9.1. A PHB is based upon a personalised care and support plan. This plan sets out an individual’s health and wellbeing needs, the outcomes they wish to achieve, the amount of money available and how it will be spent. Once the plan and budget has been agreed, the money in a PHB can be managed in three ways, or a combination of these:
- 9.2. **Notional budget:** The CCG holds the PHB on behalf of an individual and uses it to secure services based on discussions with the individual as set out in their personalised care and support plan.
- 9.3. **Third party budget:** An organisation independent of both the individual and the CCGs (for example an independent user trust or a voluntary organisation) is responsible for and holds the budget on an individual’s behalf. They then work in partnership with the individual and their family to ensure the care they arrange and pay for with the budget meets the agreed outcomes in the care and support plan.

- 9.3.1. The third party will monitor the account and check receipts, invoices and bank statements for the PHB. The third party will work with the CCG to ensure that the money is being spent appropriately.
- 9.3.2. The CCGs have made arrangements with a number of organisations to hold Third Party PHBs. Contact details for these organisations will be made available to individuals as they pursue the options for managing a PHB.
- 9.4. **Direct payment:** The PHB money is transferred from the CCG to an individual or his or her representative or nominee, who contracts for the necessary services to deliver the agreed outcomes in the personalised care and support plan.
- 9.4.1. In most cases individuals will need a separate account to receive a PHB via a direct payment. The separate account must only be used for purchasing care.
- 9.4.2. Budget holders must show what the money has been spent on in accordance with achieving the outcomes agreed in their individual support plan.
- 9.4.3. In some instances the CCGs can transfer the direct payments to;
- a third party who manages the money and payments for the individual who still makes all the decisions about buying the goods and services set out in their care and support plan (this is often referred to as a 'Direct Payment Managed Account')
  - an individual with a pre-loaded payment card administered by a local authority on behalf of the CCGs. The individual can use the card to buy the goods and services set out in their care and/or support plan
- 9.5. There are a number of detailed issues relating to the specific management of PHBs managed as a Direct Payment that are set out in Appendices 1 and 2 of this policy

## 10. Personal Health Budget Agreements

- 10.1. All Merton and Wandsworth CCGs' funded PHB must be approved by the respective CCGs or by their nominated representatives. (This may include NHS Trusts or non-NHS providers).
- 10.2. A Personal Health Budget Agreement forms the contract between the CCG and the individual and stipulates the conditions upon which the payment is made. Different types of agreements will apply to the different management arrangements for PHBs.
- 10.3. Notional – The CCG will commission the care directly from a service provider on behalf of the individual PHB holder and will utilise existing NHS Standard Contract arrangements. The CCGs will also require a signed Support plan for each individual that sets out the care to be delivered and the costs. In some cases the CCGs may also require a notional agreement to be signed by the individual, or their representative or nominee. An example notional contract is attached at Appendix 3.
- 10.4. Third Party – The CCGs will contract with the third party organisation to organise, purchase and be responsible for, an individual's care and support as set out in their Support Plan. In these instances the NHS Standard Contract will govern the

relationship between the CCG and the third party organisation managing the health budget. Any exception to using the NHS Standard Contract will be considered on a case by case basis.

When the third party purchases the services and products on behalf of the individual as agreed in their care plan, the NHS Standard Contract will not be used by the third party with the suppliers of care and support.

- 10.5. Direct payments – Where an individual chooses to manage their PHB as a Direct Payment the individual (or representative/nominee) will need to enter into a legal agreement with the CCG for the use of the budget and provision of care. A copy of the Merton and Wandsworth CCGs' Direct Payment Agreement is attached at Appendix 2.

10.5.1 The CCGs' Direct Payment Agreement aims to ensure that robust processes and documentation support the management of a PHB taken as a Direct Payment. In particular they require;

- The individual PHB holder to provide evidence to the CCG of budget expenditure on a regular basis i.e. through the submission of bank statements, receipts, invoices etc
- That all PHB records are retained by the service user and made available for inspection by the CCG or CCG agents such Local Counter Fraud Service.
- That any unused funds can be reclaimed by the CCG as set out in the CCGs Direct Payment Agreement

## 11. What can a Personal Health Budget be spent on?

- 11.1 Although a PHB is not new or additional money it can potentially be spent on a broader range of care and support than would be routinely commissioned by the NHS if it is agreed by the CCGs as being appropriate to meet an individual's assessed needs. This could include funding for a personal assistant to help with personal care at home, and equipment such as a wheelchair.
- 11.2 What a personal budget will spent on must be outlined in their personalised care and support plan and agreed between the person (or their representative/nominee) and the local NHS team and where necessary the CCG.
- 11.3 There are a number of **exclusions** that are outlined in regulations and include the following;
- alcohol, tobacco, gambling or debt repayment or anything that is illegal
  - emergency or urgent care
  - primary medical services such as GP care
  - NHS charges- such as prescriptions or dental charges
  - surgical procedure
- 11.4. A full of exclusions is available in 'Guidance on Direct Payments in Healthcare – Understanding the Regulations March 2014'.

- 11.5 The CCGs may also choose not to agree the funding of certain goods or services, where it has already reached a decision that these will not normally be commissioned for the general population based on available evidence. Any such instances will be considered on an individual basis taking into account the specific circumstances and needs of the individual concerned.
- 11.6 Merton and Wandsworth CCGs have overall responsibility for ensuring that all intended expenditure is lawful as part of the governance arrangement for PHBs.

## **12. Calculating a Personal Health Budget**

- 12.1 The amount that an individual receives in their PHB will depend on the assessment of their health and wellbeing needs and the cost of meeting these needs.
- 12.2 The PHB will be equivalent to the Merton and Wandsworth CCGs' estimate of the reasonable cost of securing the agreed provision of the service. This means that the PHB should be sufficient to enable the recipient to lawfully secure a service of a standard that the CCG considers is reasonable to meet the assessed needs to which the PHB relates.
- 12.3 Merton and Wandsworth CCGs may choose to apply a Resource Allocation System (RAS) as a means of giving an approximate indication of what it may reasonably cost to meet an individual's eligible needs according to their individual circumstances.
- 12.4 When estimating the reasonable cost of securing the support required through a PHB Direct Payment (rather than directly paid for by Merton and Wandsworth CCGs), some associated costs will be included that are necessarily incurred in securing provision, without which the service could not be provided or could not lawfully be provided.
- 12.5 The particular costs involved will vary depending on the way in which the service is secured, but when an individual intends to employ someone to deliver their care, such costs might include recruitment costs, staff training, National Insurance, pension, statutory holiday pay, sick pay, maternity pay, employers' liability insurance, public liability insurance and VAT. The individual will need to follow all employment regulations.
- 12.6 Merton and Wandsworth CCGs are not obliged to fund associated costs if, taking into account the individual's assessed need, the total costs exceed the CCG's estimate of the reasonable cost of securing the service and if a service of the requisite standard could in fact be secured more cost-effectively in another way.
- 12.7 In nearly all cases, people cannot add their own money into a PHB and the budget should meet all the assessed health and wellbeing needs of the individual.
- 12.8 The exceptions to this rule include people accessing wheelchairs and some dental and ophthalmic services, where under existing legislation people can add their own money to NHS funds to purchase a different service or product, within these exceptions. NHS funding covers the service or product that meets someone's assessed needs, as agreed in the care and support plan, so that any personal

contribution is paying for extras or changes that an individual wants outside of the agreed need.

- 12.9 In all other situations, if an individual wants to access more services than those being provided by the NHS to meet their assessed needs, then they can do so. They would need to organise, and pay for this, and it would be separate to the PHB and any associate agreements for the supply of care and support services.

### **13. Support Planning**

- 13.1. A support plan is the document that defines what really matters to the individual and explains how he/she will spend the PHB.
- 13.2. Good care planning involves looking holistically at the individual's life to improve their health, safety, independence and wellbeing. The individual should be supported throughout the care planning process
- 13.3. The plan must be effective, affordable and meet a range of agreed outcomes. This will help to calculate an agreed finalised PHB. The PHB should be enough to cover all the services agreed in the plan. There is recognition that the budget will adjust as the individual's condition changes.
- 13.4. As a minimum, the support plan should include;
- The agreed health needs of the individual
  - The desired outcomes of the individual in his/her own words
  - The amount of money available under the PHB
  - What the PHB will be used to purchase
  - How the PHB will be managed and who will managing the PHB
  - Who will be providing each element of support
  - How the plan will meet the agreed outcomes and health needs of the individual
  - Who the individual should contact to discuss any changes in their needs
  - The date of the support plan review
  - Identification of any training needs and how these will be met
  - Identification of any risks and mitigating actions
  - Contingency planning
  - How the individual has been involved in the production of the plan
  - The signed agreement of the individual (or representative/nominee) and the clinical team on behalf of the CCG.

(Note: A Support Plan template is attached at Appendix 2 Schedule 2)

- 13.5. The support plan will also take account of Best Interests of individuals and to work within the remit of Merton and Wandsworth CCGs' Safeguarding Policy.

### **14. Support for Managing a Personal Health Budget**

14.1. Merton and Wandsworth CCGs have made arrangements for support service organisations to provide the following services to PHB recipients and their families, representatives or nominees:

- Support planning
- Employer advice and information
- Third party managed account and/or payroll services

Contact details of these organisations will be made available to individuals as they pursue the options for managing a PHB.

14.2. The support organisations will be nominated by an individual (or their representative/nominee) to act on their behalf. For this arrangement to succeed the individual must remain in control of directing his or her service and making key decisions, for example deciding who their personal assistant will be.

14.3. The support organisation should be able to comprehend and advise on employment legislation or the complexities of payroll arrangements and remain responsible for these elements of the Direct Payments on behalf of the service user.

14.4. Support Service organisations who have been selected by an individual to hold a Third Party and/or Managed Account on their behalf will:

- Work directly for the person making sure they stay in control and live the life they choose. If the person lacks capacity to make a particular decision, the PHB support organisation will work with the family or another representative if the family is not willing to take that role
- Work with the CCG/NHS team (i.e. nurse assessors and /or case managers) to review financial aspects of care packages in line with the agreed schedule.
- Carry out financial reviews including monitoring of direct payments, reviewing receipts and bank accounts and liaising with patient and council to ensure payments are set up and to handle queries relating to payments not received by patients. This will include alerting CCGs/NHS Teams when a PHB is significantly underspent/overspent to trigger assessment that the patient's health needs are still being met.

## **15. Governance**

15.1. The implementation and overall commissioning administration of PHBs in Merton and Wandsworth CCGs will be coordinated by the CCGs' Personal Health Budgets Project Group. The Terms of Reference including membership and reporting arrangements are attached at Appendix 4.

## **16. Risk Management**

### **16.1. Clinical Risk**

- 16.1.1. Merton and Wandsworth CCGs are committed to promoting individual choice, while supporting individuals to manage risk positively, proportionately and realistically.
- 16.1.2 Enabling people to exercise choice and control over their lives, and therefore manage their needs and levels of risk themselves, is central to achieving better outcomes for individuals. A degree of risk can be accommodated within the aim of enhancing the quality of people's lives.
- 16.1.3 An individual who has the mental capacity to make a decision, and chooses voluntarily to live with a level of risk, is entitled to do so. Merton and Wandsworth CCGs require that providers document clearly any evidence of decision making and the reasons for decisions in relation to the management and reduction of risk where appropriate or necessary. This will be considered as part of the PHB approval process by Merton and Wandsworth CCGs.
- 16.1.4 The aim will be to support and encourage individual choice as much as possible, and to keep the individual informed, in a positive way, of any issues and risks associated with those choices and how to take reasonable steps to manage them.
- 16.1.5 The CCGs will strive to ensure that risk is understood as fully as possible and managed in the context of ensuring that the individual's needs and their best interests are safeguarded. In practice, this means that, because there are different ways to manage a PHB, those individuals deemed not suitable for a direct payment should be offered a budget held by a Third Party, or a notional budget.

### **16.2. Organisational Risk**

- 16.2.1 Merton and Wandsworth CCGs have overall responsibility for authorising PHB and the obligation to ensure that:
  - health and well-being needs are being met
  - safeguarding duties are fully met
  - it is fulfilling its duty of care and broad statutory obligations
  - it is fulfilling its responsibility to ensure that public funds are used to enable customers to live independent and full lives – ensuring value for money
  - PHB expenditure is managed within the overall CCG budgetary allocation, ensuring the CCGs meets their statutory duty to break even on their resource limit
  - that public funds are used appropriately
  - the CCGs' reputation is protected

- 16.2.2 The CCGs will work with partner organisations to promote a wider understanding of this approach to risk. It will also seek to secure from partners a complementary approach to risk which is as light touch as is reasonable.
- 16.2.3 The CCGs will work with the Local Authority as lead agency should any safeguarding concerns arise in relation to physical, sexual, financial or other abuse of an individual receiving a PHB. These will be investigated accordingly.

### **16.3 Financial risk**

- 16.3.1 Merton CCG and Wandsworth CCG requires PHB implementation to demonstrate value for money and be affordable within the CCG's overall budgetary allocation for this purpose.
- 16.3.2 The PHB should always be sufficient to meet the outcomes identified in the care plan and allow for planned contingencies.
- 16.3.3 The financial arrangements and requirements are contained in the agreement between the CCG and the individual PHB holder (or their representative) in the case of PHB Direct Payments; or service providers in the case of Notional PHBs or Third Party PHBs. The agreements will be signed by both parties.
- 16.3.4 Any requested variation over and above the agreed PHB must be authorised by the CCGs and/or their nominated representative.
- 16.3.5 The CCGs will monitor PHB expenditure, and reserve the right to recover funds that are not regularly used to provide for the individual's health and wellbeing needs as described in the PHB Support Plan.
- 16.3.6 If the individual accumulates a surplus of their PHB that exceeds two months value of their agreed annual PHB sum, then the CCGs reserve the right to contact the individual to review their Support Plan.
- 16.3.7 CCG may decide to recover any surplus funds from the individual, and if so, will write to the individual to inform them of their decision and how the recovery of the surplus will be managed.
- 16.3.8 PHB funds remain the property of the CCG until they are spent in accordance with the individual's Support Plan. If the PHB is ceased for any reason, all unused funds must be repaid to the CCG with immediate effect.

## **17. Integration with Local Authorities**

- 17.1. Local Authorities are an integral partner in the effective delivery of PHBs. Merton and Wandsworth CCGs will work with the London Boroughs of Merton and Wandsworth to ensure that the processes for managing PHBs are

aligned to minimise the impact on the individual where there is interface with the local authorities. For example;

- For individuals previously in receipt of a social care direct payment who become eligible for an NHS PHB
- Where NHS CHC eligibility ceases for an individual with a PHB and the individual returns to a local authority social care direct payment
- Developing a shared 'approved provider list' for services relating to PHBs
- Developing a shared understanding of risk

## **18. Monitoring and Review**

- 18.1. PHB care plans should be reviewed within three months of an individual first receiving a direct payment. Following this reviews should be undertaken at clinically appropriate intervals, but at least annually.
- 18.2. When carrying out the review the CCGs may:
  - Re-assess the health needs of the information
  - Consult a range of health and social care professionals and others involved in the provision of care for the individual
  - Review receipts, bank statements and other information relating to the use of direct payments
  - Consider whether a PHB direct payment has been effectively managed
- 18.3. If the CCGs become aware, or are notified, that the health of the individual has changed significantly, the CCGs must consider whether it is appropriate to carry out a review of the care plan to ensure the individual's needs are still being met.
- 18.4. If the CCGs become aware, or are notified that the Direct Payment has been insufficient to purchase the services agreed in the care plan, they will carry out a review as soon as possible.
- 18.5. The individual, their representative or nominee may request that the CCGs undertake a review at any time. If this happens, the CCGs must decide whether or not to undertake this review, taking into account local practices and circumstances.

## **19. Termination of Personal Health Budgets**

- 19.1. Before making a decision to terminate a PHB, wherever possible and appropriate, the CCGs will consult with the individual receiving it to enable misunderstandings to be addressed, and enable alternative arrangements to be considered and put in place.
- 19.2. The CCGs will terminate a PHB where:
  - A person with capacity to consent, withdraws their consent to receiving a PHB;

- A person who has recovered the capacity to consent, does not consent to their PHB continuing;
  - The money is being spent inappropriately (e.g. to buy something which is not specified in the support plan);
  - Where there has been theft, fraud or abuse of the Direct Payment;
  - If the patient's assessed needs are not being met or the person no longer requires care.
  - The person has died.
- 19.3. Where a PHB is stopped, the CCGs will give notice to the individual, their representative or nominee in writing, explaining the reasons behind the decision. The CCGs will normally give one month's notice that a PHB will be stopped. However where there has been theft or fraud (or other exceptional circumstances) the CCGs may terminate a PHB and suspend any payments immediately.

## **20. Appeals**

- 20.1. In circumstances where the CCGs decide not to provide someone with a PHB, or an element of the planned use of the budget is not approved, or a PHB is reduced or withdrawn; the CCG will ensure an explanation is given to the individual in writing within 7 working days of a decision being reached.
- 20.2. When an individual wishes to appeal a CCG decision this should be made in writing to the CCG within not more than four months of the original CCG decision being made (the CCGs will not consider appeals that exceed four months). In these instances the CCGs will;
- Acknowledge receipt of the request in writing within 10 working days. This acknowledgement will include details of how the review will be conducted and timeframes for when it should be completed
  - Any final decision will be sent in writing within 28 working days of acknowledgement of the original request.
- 20.3. There may be instances where a complex situation requires a longer timeframe for reconsideration and response. In these instances individuals will be kept informed of progress.
- 20.4. If an individual and/or his or her representative is not satisfied they can pursue the matter via the local NHS complaints processes.

## **21. Complaint Process**

- 21.1. Merton and Wandsworth CCGs wish to hear all complaints and comments regarding local NHS services and are committed to investigating all of these thoroughly and as soon as is practicably possible.
- 21.2. Anyone who is receiving, or has received, NHS treatment or services can complain. This includes services provided by independent contractors or

providers where Merton CCG or Wandsworth CCG have a contract with the organisation to provide NHS services.

- 21.3. If a patient is unable to complain themselves then someone else, usually a relative or friend, can complain on their behalf.
- 21.4. If a complaint is raised concerning a patient who is deceased, this must be made by a suitable representative, for example their Executors personal representative of their Estate.
- 21.5. It is important that the complaint is made as soon as possible after the event has occurred, as the NHS will usually only investigate complaints that are made within 12 months after the event itself.
- 21.5. NHS Merton CCG and NHS Wandsworth CCG complaints procedures are published on their respective websites and may be used for any complaint about the operation of this policy.
- 21.6. Complaints about Merton CCG or Wandsworth CCGs and the services they provide should be dealt with as follows:
  - Any and all correspondence pertaining to a complaint, or a possible complaint, must be sent to the CCG Customer Care Lead via the generic inbox for Wandsworth CCG: [waccg.customercare@nhs.net](mailto:waccg.customercare@nhs.net) and Merton CCG [NELCSU.SEcomplaints@nhs.net](mailto:NELCSU.SEcomplaints@nhs.net)
  - The CCGs will seek to distinguish between requests for assistance in resolving a perceived problem and an actual complaint. All received 'complaints' will be risk assessed and dealt with according to the level of the issue.
  - Queries/Enquiries/Concerns shall be resolved as quickly as possible by an immediate, informal response made by a front line member of staff, their manager, or the person receiving it if they are able to do so, in an open and non-defensive way. All issues will be dealt with in a flexible manner, which is appropriate to their nature. A matter deemed to be a complaint (i.e. any issues where the immediate, informal response has not satisfied the complainant) will be dealt with strictly in accordance with the complaints procedure.
  - Whenever there is a specific statement of intent on the part of the caller/ correspondent that they wish their concerns/enquiries/queries to be dealt with as a complaint, they will be treated as such.
  - With the agreement of the person raising the concern/enquiry/queries, if unresolved will be passed to the Customer Care Lead to be logged and acknowledged through the normal complaints process.
  - Any formal complaint will be forwarded directly to the Customer Care Lead. The Customer Care Lead will take reasonable steps to contact the complainant prior to investigation in order to go through the complaints

plan and where possible agree on how the complaint will be handled and clarify what the complaint is about if required. Customer care will also manage coordination of what the outcome is and when the complainant should receive a response.

- 21.7. Further information regarding the CCGs' complaints procedures can be found at either;

**Wandsworth CCG complaint process can be accessed:**

[http://www.wandsworthccg.nhs.uk/aboutus/Governance/Policies%20and%20Procedures/Complaints%20Policy%20\(final\).pdf](http://www.wandsworthccg.nhs.uk/aboutus/Governance/Policies%20and%20Procedures/Complaints%20Policy%20(final).pdf)

**Merton CCG complaint process can be accessed:**

<http://www.mertonccg.nhs.uk/Contact-us/Pages/Comments,-compliments%20and%20complaints.aspx>

## **22. Service User Evaluation**

- 22.1. It is important that the CCGs have systems and processes in place to review the effectiveness of PHBs to provide assurance that individual support plans are safe and effective in meeting individual needs and outcomes.
- 22.2. The CCGs will promote the use of the NHS England annual Personal Health Budgets, Integrated Personal Budgets (joint health and social care budgets) and Personal Wheelchair Budgets survey questionnaire for local PHB users to participate in.
- 22.3. In addition the CCGs will introduce local mechanisms for seeking feedback and experience on local PHB processes from PHB holders, their families, carers or representatives on a systematic basis.

## **23. Further Information**

- 24.1. Further information is available on the NHS England website which has a section dedicated to PHBs at;

<https://www.england.nhs.uk/personal-health-budgets/>

## **24. Review Date**

- 25.1. This policy will be reviewed in July 2020, or earlier in light of any substantive changes as a result of legislation or national guidance.

-----