

Merton and Wandsworth CCGs
Continuing Healthcare Commissioning Policy

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Stakeholders engaged in development or review	Wandsworth Borough Council
Target audience:	<p>Merton CCG and Wandsworth CCG employees and members</p> <p>Merton and Wandsworth Borough Councils (Social Services)</p> <p>All Commissioned Services</p> <p>Patients and, where indicated, their representative(s) who are subject to NHS Continuing Healthcare Funding.</p>

Implementation of the Public Sector Equality Duty 2011 (PSED) forms the foundation of equality and diversity activities in Merton and Wandsworth CCGs. The PSED applies to the CCGS as a public authority and therefore requires that the CCGS, in the exercise of its functions, **have due regard to the need to:**

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it

These are known as the three sections of the “general duty”

The CCGs intend to utilise the NHS equality delivery system (EDS) as the principle means of fulfilling our commitments under the PSED.

Public Sector Equality Duty - Equality Statement: “This document demonstrates the organisation’s commitment to create a positive culture of respect for all individuals, including staff, patients, their families and carers as well as community partners. The intention is, as required by the Equality Act 2010, to identify, remove or minimise discriminatory practice in the nine named protected characteristics of age,

disability, sex, gender reassignment, pregnancy and maternity, race, sexual orientation, religion or belief, and marriage and civil partnership. It is also intended to use the Human Rights Act 1998 and to promote positive practice and value the diversity of all individuals and communities”.

1.0 Introduction

1.1 ‘NHS Continuing Healthcare’ (NHS CHC) means a package of continuing care that is arranged and funded solely by the NHS. ‘Continuing care’ means care provided over an extended period of time, to a person aged 18 or over, to meet physical or mental health needs that have arisen as a result of disability, accident or illness.

1.2 This is the Merton Clinical Commissioning Group and Wandsworth Clinical Commissioning Group policy on the commissioning of care packages for patients who are eligible (see section 4.1) for an episode of Continuing Healthcare (CHC). Merton and Wandsworth CCGs are responsible for commissioning and procuring services for all individuals who qualify for NHS Continuing Healthcare.

2.0 Purpose

2.1 The purpose of this policy is to assist Merton CCG and Wandsworth CCG to ensure that the reasonable requirements of eligible individuals are met, while meeting the CCG’s statutory and other legal obligations.

2.2 This policy applies once an individual has received a comprehensive, multidisciplinary assessment of their health and social care needs and the outcome shows that they have a Primary Health Need and are therefore eligible for an episode of NHS Continuing Healthcare funding

2.3 This policy has been developed to help provide a common and shared understanding of CCGs commitments in relation to individual choice and resource allocation (please refer to SW London Choice and Equity Policy)

2.4 The benefits of this policy are to:

- Improve the quality and consistency of care
- Ensure that there is consistency in the local area over the services that individuals are offered
- Inform robust, consistent and transparent commissioning decisions for the CCGs
- Ensure objective assessment of the patient’s clinical need, safety and best interests
- Promote individual choice as far as reasonably possible
- Facilitate effective partnership working between health care providers, NHS bodies and the Local Authority in the area
- Ensure the CCGs achieve best value in their purchasing of services for individuals eligible for NHS Continuing Healthcare and joint packages of care
- Ensure compliance with and adherence to the CCG’s Standing Financial Instructions

3.0 Aligned Policy

3.1 CHC Operational Policy

3.2 SW London Choice and Equity Policy

3.3 Mental Capacity Act policy and procedures for Wandsworth and Merton CCGs

3.5 Safeguarding Adults policy and procedure for Wandsworth and Merton CCGs

4.0 Scope of the Policy

4.1 This policy relates to patients eligible for NHS Continuing Healthcare, NHS funded nursing care, or a joint package of health and social care who are registered with a GP in Merton and Wandsworth or where the CCG is responsible under the responsible commissioner guidance, Who Pays - NHS England 2013.

4.2 The NHS Continuing Healthcare and Funded Nursing Care Framework (revised 2012) and from October 1st 2018 NHS Continuing Healthcare and Funded Nursing Care Framework (revised 2018) is a legal framework that is used to identify whether patients are eligible for NHS Continuing Healthcare or funded nursing care. See link below:

<https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care>

5.0 Duties / Accountabilities and Responsibilities

5.1 This policy is issued to support Merton and Wandsworth CCGs to meet its commitments under The National Health Service and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (“the Standing Rules”) for Continuing Healthcare, in accordance with the National Framework. See link above.

5.2 This policy will ensure that the CCGs adhere to national and local requirements to safeguard adults and adhere to the principles identified within the Mental Capacity Act and its associated Code of Practice, including the Deprivation of Liberty Safeguards (2009).

6.0 Policy Document Requirements Details

6.1(a) where an individual qualifies for NHS Continuing Healthcare, the package to be provided is that which the CCG assesses is appropriate to meet all of the individual’s assessed health and associated social care needs

6.1(b) The CCG will seek to promote the individual’s independence subject to the factors set out in paragraph 6.1(d).

6.1(c) The CCGS’s responsibility to commission, procure or provide NHS Continuing Healthcare is not indefinite, as needs could change. As defined in the national framework, regular reviews are built into the process to ensure that the care provision continues to meet the individual’s needs and is funded appropriately.

6.1(d) When commissioning services for individuals based on their assessed needs, the CCGS will consider a range of factors including:

- Safety, Governance & Assurance
- Clinical need;
- Individual safety;
- Public safety;
- Individual choice and preference;
- Individual’s rights to family life;
- Value for money; and
- The best use of resources for the population of Merton and Wandsworth

Personalisation, Choice & Diversity

- Ensuring services meet the required quality standards;
- Ensuring services are culturally sensitive; and
- Ensuring services are personalised to meet individual need.

These lists are not exhaustive.

6.2 Identification of care provision

6.2(a) Where an individual is eligible for an episode of NHS Continuing Healthcare funding, Merton and Wandsworth CCGs will commission care which meets the individual's assessed needs. The CCGs will only fund services to meet the needs that are identified in the care plan, for which it has a statutory responsibility and that are needed to meet the individual's reasonable requirements based on all relevant factors, including those in 6.1(d).

6.2(b) The CHC Nurse Assessor/ individual's care coordinator will discuss the proposed care provision with the individual and their representative(s) where the individual gives consent for such a discussion or where the individual lacks capacity. The care coordinator should identify different options for providing the care, indicating which of these the individual prefers. The Care Plan will identify the outcomes the individual wishes to achieve

6.2(c) The care coordinator will use the CCG's 'Funding Request Brokerage Form' to set out the requested care package and associated information. The brokerage form must be completed in full for every proposed care package.

6.2(d) The CCGs will seek to take into account any reasonable request from the individual and their representative(s) in making the decision about the care provision, subject to the all relevant factors, including those set out in paragraph 6.1(d).

6.2(e) The CCGs will endeavour to offer a reasonable choice of available, preferred providers to the individual. Where the individual wishes to receive their care from an alternative provider the CCGs will consider this subject to the following criteria:

- Provider's acceptance to sign up to the NHS Standard Contract;
- The individual's preferred care setting is considered by the CCGs to be suitable in relation to the individual's needs as assessed by the CCGs;
- The cost of making arrangements for the individual at their preferred care setting would not require the CCGs to pay more than they would usually expect to pay having regard to the individual's assessed needs;
- The individual's preferred care setting is available;
- The people in charge of the preferred care setting are able to provide the required care to the individual subject to the CCGs usual terms and conditions.

6.3 Registered care settings

6.3(a) Where care is to be provided in a registered care home setting the CCGs will only place individuals with providers which are:

- I. Registered with the Care Quality Commission (CQC), or any successor as providing the appropriate form of care to meet the individual's needs; and
- II. Not subject to an embargo by the CCGs or Local Authority, including the lead CCGs or Local Authority if the provider is not located in Merton and Wandsworth CCGs boundaries; and (subject to paragraph 6.3(b) below), and
- III. Contracted as an approved provider under the Pan London AQP (Continuing Healthcare) agreement **OR**
- IV. Can demonstrate compliance with the non AQP Care Home (CHC) Service specification.

6.4 Care At Home

6.4(a) Where home care is to be provided, the CCGs will use domiciliary care agencies it has commissioned through AQP to provide such care, including agencies commissioned by the Local

Authority on its behalf. Home care will be provided by agencies suitably qualified to deliver the care that meets an individual's assessed needs, see paragraph 6.3(a), (i) and (ii).

6.4(b) The cost of home care provision should not exceed the equivalent cost of care in a registered care setting capable of meeting the needs of the individual.

6.4(c) If an individual with a domiciliary care package is admitted into an acute setting, the CCGs will only pay for the carer to accompany the service user for the journey and to ensure the service user is settled on arrival. The CCGs will pay to the end of that particular shift or a maximum of 3 hours after the shift has ended.

6.4(d) In exceptional circumstances, the CCGs will fund a care retainer for services where the continuity of service delivery (most specifically with particular carers skills) is of paramount importance. In such instances, we would expect the carer to maintain service delivery throughout an acute in-patient experience, and that the provider liaises directly with the Acute Trust to ensure compliance with local policy.

6.5 CCG Preferred Providers

6.5(a) To assist the CCGs in achieving consistent, equitable care, the CCGs will endeavour to offer and place individuals with preferred providers that are on the CCG's Approved List of Preferred Providers and / or part of the Pan London AQP Protocol.

6.5(b) Where a Preferred Provider is not available to meet the individual's reasonable requirements, the CCGs may make a specific purchase and place the individual with another care provider who meets the individual's needs. Where such an arrangement has been agreed the CCGs reserves the right to move the individual to a suitable Preferred Provider when available, where this will provide a clinical benefit to the patient or better value for money to the CCGs.

6.5(c) Though all reasonable requests from individuals and their families will be considered, the CCGs are not obliged to accept requests from individuals for specific care providers which have not been classified as Preferred Providers.

6.6 Location – Care at Home

6.6(a) The CCGs will take account of the wishes expressed by individuals and their families when making decisions as to the location or locations of care to be offered to individuals to satisfy the obligations of the CCGs to provide NHS Continuing Healthcare.

6.6(b) The CCGs acknowledges that many individuals with complex healthcare needs wish to remain in their own homes, with support provided to the individual in their own homes. Where an individual or their representative(s) express such a desire, the CCGs will investigate to determine whether it is clinically feasible and within the duties of the CCGs to provide a sustainable package of NHS Continuing Healthcare for an individual in their own home.

6.6(c) By April 2019, any care at home requests will be accompanied by an offer of a Personal Health Budget

6.6(d) where an individual expresses the preference to receive care at home, the CCGs will benchmark the cost of such a package against the cost of a suitable package of care in a registered care setting (per Choice and Equity Policy)

6.7 Location – Registered Care Settings

6.7(a) Through discussions with the individual, and/or their representative(s), location requests will be accommodated as much as reasonably possible, and in accordance with this policy, taking into account

all the relevant factors, including, for example, proximity to relatives. Location requests will be subject to the criteria described in paragraph 6.3 of this policy.

6.7(b) If the individual requests a care home that was not originally offered, the CCG will accept the individual's selection providing it complies with the criteria set out in paragraph 6.3 of this policy.

6.7(c) The CCG understands that individuals may want to be located near specific places to stay in the local community and enable family and friends to visit easily. To accommodate this, where the CCG's preferred available care homes are not within a reasonable travelling distance, the CCGS may choose to make a specific purchase for that individual to enable them to be accommodated in their preferred area where the anticipated cost to the CCG may be more than the available CCG preferred accommodation (based on CCG agreed standard rates for equivalent levels of need).

6.7(d) The CCGs will consider such requests on a case by case basis, guided by all the relevant factors including those set out in paragraph 6.1(d) and using the two stage process for determining exceptional circumstances set out below in paragraph 6.16(b).

6.7(e) Reasonable travelling distance will be based on a case by case assessment of an individual's circumstances, and will take into account factors such as ability of family and friends to visit, which may include public transport links and mobility of the family and friends.

6.8 Additional services

6.8(a) The individual or their representative(s) has the right to enter into discussions with any provider to supplement the care provision, over and above that required to meet assessed needs. Any such costs arising out of any such agreement must be funded by the individual or through third party funding

6.8(b) The decision to purchase additional services to supplement a CHC package must be entirely voluntary for the individual. The provision of the CHC package must not be contingent on or dependent on the individual or their representative(s) agreeing to fund any additional services. This means that the care home must be willing and able to deliver the assessed CHC needs to the individual, without the package being supplemented by other services as described in this policy.

6.9(a) Any funding provided by the individual for additional services should not contribute towards costs of the assessed need that the CCG has agreed to fund. Similarly, CHC funding should not in any way subsidise any additional service that an individual chooses outside of the identified care plan.

6.9(b) Where an individual is funding additional services, the associated costs to the individual must be explicitly stated and set out in a separate agreement with the provider. If the individual chooses to hold a contract for the provision of these services, it should be clear that the additional payments are not to cover any assessed needs funded by the CCG.

6.9(c) If the individual or their representative(s), for any reason, decides that they no longer wish to fund any such additional services, the CCG will not assume responsibility for funding those additional services.

6.9(f) Where the CCG is aware of additional services being provided to the individual privately, the CCG will satisfy itself that they do not constitute any part of the provision to meet assessed needs.

6.10 Availability

6.10(a) To enable individuals to receive the correct care promptly, individuals will be offered available care as soon as possible. If an individual's first choice from the CCG's Preferred Providers is not available, they will be offered another CCG Preferred Provider to ensure provision as soon as possible. The CCG will offer care from Preferred Providers before any other unless exceptional circumstances apply.

6.10(b) If the individual requests care which is currently unavailable, and is unwilling to accept the CCG's offer of care, there are several options available to the CCG:

- I. Temporary placement of the individual with alternative care provision until the care from the CCG's preferred care is available.
- II. The individual may choose to go to their own or a relative's home without the assessed care provision until the preferred care is available. The terms set out in paragraph 6.11 of this policy will apply. The individual will, however, retain the right subsequently to change their mind and elect to accept the care provision offered by the CCG. If the individual does not have mental capacity to make this decision, a best interests decision will be made in accordance with the Mental Capacity Act 2005;
- III. If it has been agreed with the individual that the assessed needs can best be met through a care home placement, the CCGS may choose to provide home care until the preferred care home is available, but cost implications to the CCGs must be considered. This will be in accordance with paragraph 6.2 of this policy.
- IV. If the individual's representative(s) are delaying placement in a care home due to non-availability of a preferred home, and the individual does not have the mental capacity to make this decision themselves, the CCG will have recourse to the Merton and Wandsworth (and Pan London) Multi Agency Safeguarding Adults Policy, local safeguarding procedures and the Mental Capacity Act 2005, as appropriate.
- V. If the individual is in an acute healthcare setting, they must move to the most appropriate care setting as soon as they are medically fit for discharge, even if their first choice of care provision is not available.

6.11 Acceptance

An individual is not obliged to accept a Continuing Healthcare package. Once an individual is eligible and offered NHS Continuing Healthcare, and they choose not to accept the Continuing Healthcare package, the CCGS may, in appropriate cases, take reasonable steps to make the individual aware that the Local Authority does not assume responsibility to provide care to the individual. The CCG will work with the individual to help them understand their available options and facilitate access to appropriate advocacy support. As appropriate, the CCG will have recourse to Merton and Wandsworth (and Pan London) Multi Agency Safeguarding Adults Policy, local safeguarding procedures and the Mental Capacity Act 2005.

6.12 Withdrawal

The NHS discharges its duty to individuals by making an offer of a suitable care package to individuals, whether or not they choose to accept the offer.

6.12(a) Where an individual exercises their right to refuse, the CCG will ask the individual or their representative(s) to sign a written statement confirming that they are choosing not to accept the offer of care provision.

6.12(b) It may be appropriate for the CCG to remove Continuing Healthcare services where the situation presents a risk of danger, violence to or harassment of care staff that are delivering the package.

6.12(c) The CCG may also withdraw Continuing Healthcare funded support where the clinical risks become too high. This can be identified through, or independently of, the review process. Where the clinical risk has become too high in a home care setting, the CCG may choose to offer Continuing Healthcare in a care home setting.

6.12 (d) In all such instances, the decision of the CCG will be made by a senior panel of members. No decision will be made or undertaken unilaterally or without consultation with our Local Authority

This list is not exhaustive.

6.13 Appeals

An individual may appeal against a decision by the CCG as to the nature, extent or location of a care package being offered. Appeals will be dealt with through the CCG's Appeals procedure. If the appeal cannot be resolved locally the individual or their representative can be referred directly to the Health Service Ombudsman.

6.14 Continuing Healthcare review

6.14(a) A case review should be undertaken by a Continuing Healthcare nurse no later than three months after the initial eligibility decision, in order to reassess the individual's care needs and eligibility for NHS Continuing Healthcare and to ensure that the individuals assessed needs are being met. Clinical reviews undertaken by a Continuing Healthcare nurse should thereafter take place annually as a minimum.

6.14(b) If the review demonstrates that the individual's condition has improved to an extent that they no longer meet the eligibility criteria for Continuing Healthcare provision, the individuals, family carers where appropriate and the CCG will work collaboratively with the Local Authority to ensure the individuals needs will be met.

6.14(c) At this point the Local Authority has 28 days to review the individual's requirements and the individual will be notified they may no longer be eligible for Continuing Healthcare. CCG funding for an individual's care may be continued for 28 days where a Local Authority is undertaking such a review or such longer period as seems reasonable in the circumstances.

6.14(d) The Continuing Healthcare review may identify an adjusted, decreased or increased care need.

6.14(e) where an individual is receiving home care, the CCG will consider the ability of the package to be delivered in the home environment and also the cost effectiveness of this package.

6.15 Fast Track

The eligibility criteria for a Fast Track application are defined within the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care (DH, revised 2012),

Care provision for individuals assessed on the Fast Track will be subject to the same principles as set out in this policy.

7. Public Sector Equality Duty

7.1 Public Sector Equality Duty –Merton and Wandsworth CCGs 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.

7.2 The general equality duty requires public sector bodies, in the exercise of their functions, to have due regard to the need:

- Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited under the Equality Act 2010
- Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it
- Foster good relations between people who share a relevant protected characteristic and those who do not share it

7.3 Staff should be alerted to the increased likelihood of harm being suffered by disabled children, young people and Adults at Risk, along with those living in special circumstances, whose needs may not be recognised by staff employed in providing services.

Any individual's communication needs will be considered at all times.

Equality Act 2010 - The Equality Act provides protection from direct or indirect discrimination; harassment and victimisation for people with a 'protected characteristic' that relate to: disability, gender reassignment, pregnancy and maternity, race, religion belief or non-belief, sex, sexual orientation and age.

8.0 Documents Relied Upon

- Department of Health Policy guidance relating to this document includes the following:
- The National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care, Department of Health 2012 (revised)
- Continuing Healthcare - Single Operating Model (2015)
- DH published guidance - additional Private Care guidance March 2009
- Standards for Better Health, Department of Health,
- High Quality Care for All, Department of Health, 2008
- The Human Rights Act 1998
- The Equality Act 2010
- Mental Capacity Act 2005
- Deprivation of Liberty Safeguards 2009
- Who Pays, NHS England 2013
- Care Act 2014

Appendices

Appendix A

EQUALITY IMPACT ASSESSMENT (EQIA)

This EQIA aims to embed within the Commissioning intentions and the potential impact and implications of Continuing Health Care for groups of people who are protected under the Equality Act (2010) in relation to: Age Disability – vision, hearing, LD, autism, carers by association & Physical impairment and Mental Health Gender reassignment Marriage & Civil partnership Pregnancy & Maternity Race, Nationality, Ethnicity Religious Belief Gender/Sex - Men & Women Sexual Orientation

UNDERSTANDING IMPACT: This policy is likely to have a positive impact on patients and carers. Any future procurement of provision may result in a service from a non-NHS provider and the potential impact of this will need to be factored in terms of impact on all equality groups, and fully considered; as articulated within the recommendations in this EQIA.

Name of Policy / Strategy / Service redesign etc.			
1	Continuing Healthcare Commissioning Policy		
2	<p>Briefly describe the aim of the policy, strategy or project. What needs or duty is it designed to meet? Clinical Commissioning Groups (CCGs) are under a duty to make arrangements to ensure that, in discharging their functions, they have regard to the need to procure sound and safe packages of care for those adults in receipt of NHS Continuing Healthcare</p> <p>The purpose of the policy is to ensure all CCG staff and patients are aware of their roles and statutory responsibilities.</p> <p>This Policy provides support to Merton and Wandsworth CCGs and their Commissioning Support Services and strengthens local assurance arrangements for services commissioned for our patients.</p>		
3	Is there any evidence or reason to believe that the policy, strategy or project could have an adverse or negative impact on any group/s?	Yes	No X
4	Is there any evidence or other reason to believe that different groups have different needs and experiences that this policy is likely to assist i.e. there might be a relative adverse effect on other groups?	Yes	No X
5	Has prior consultation taken place with organisations or groups which has indicated a pre-existing problem which this policy, strategy, service redesign or project is likely to address?	Yes	No X
Signed by the manager undertaking the assessment:			
Alison Kirby			
Date Completed: 03.07.2018			