

CABINET

24 MARCH 2022

CONTINUING HEALTH CARE PARTNERSHIP POLICY

Relevant Cabinet Member

Councillor Adrian Hardman

Relevant Chief Officer

Strategic Director of People

Local Member(s)

N/A

Recommendations

- 1. The Cabinet Member for Adult Social Care recommends that Cabinet approves the NHSE Herefordshire and Worcestershire NHS Continuing Healthcare and Funded Nursing Care – Working in Partnership Policy (the Policy)**

Background:

2. The Policy sets out a partnership agreement with NHS Herefordshire and Worcestershire Clinical Commissioning Group (CCG), Herefordshire County Council and Worcestershire County Council in its approach for the delivery of NHS Continuing Health Services for the population for whom NHS Herefordshire and Worcestershire Clinical Commissioning Group ('the CCG') is the responsible commissioner. In October 2018 the National Framework for NHS Continuing Care and NHS-funded Nursing Care *Revised* (the 'Framework') set out the principles and processes relevant to NHS Continuing Healthcare and NHS-funded Nursing Care and therefore the policy required updating. Adult Social Care also commissioned an independent review of Continuing Health Care and S117 funding and as a result, key areas for improvement were identified.

3. Where an adult had a primary health need, the NHS is responsible for commissioning a care package that meets the individual's health *and* social care needs. If a person's health is deteriorating rapidly, the individual should be considered for the CHC Fast-Track pathway so that appropriate care and support can be put in place by the NHS (fully funded and usually within 48 hours).

4. CHC assessments, including Fast Track, are completed by multidisciplinary teams to make a recommendation regarding eligibility for NHS Continuing Healthcare. A person with a primary health care need who has been deemed eligible for CHC/Fast Track will receive care and support services (for both health and social care needs) fully funded by the NHS.

5. The Policy sets out the roles and responsibilities of each organisation, including management of disputes, and will guide front line staff and senior officers in decision making in line with the Framework, setting out robust timescales.

Key considerations

6. The arrangements proposed in this report relate to the care and support people may be entitled to receive under Continuing Health Care funding provisions, if they are assessed to have a primary health need.

7. In order to determine whether an adult has a primary health need, a detailed assessment and decision-making process must be followed, as set out in the National Framework called the Decision Support Tool.

8. The Policy aim is to have a legally compliant policy, agreed between the Clinical commissioning Group (CCG), Worcestershire County Council and Herefordshire County Council.

9. The Policy has been approved by Herefordshire and Worcestershire CCG Executive Committee on 22 December 2021, to clearly set out the legal framework for Continuing Health Care and the duties imposed on health and social care, with details of how each agency is required to work in partnership to fulfil its obligations to people.

10. It is important to note that not every person who has a health need will be eligible for Continuing Health Care. Some people may be entitled to joint funding, where there is a combination of health and social care needs, met separately by each organisation. Those who have a learning disability, physical disability, older people, and people with mental health needs who have been assessed as *not* CHC eligible, have a right to be considered for joint funding if they have health and social care needs, and should only contribute to, or pay for their social care needs to be met. Any identified health needs should be funded by health and be free of charge to the individual.

11. The Council has recently undertaken a programme of work called Fair and Transparent Care, procuring specialist external support, to understand fully the position through a series of engagement sessions with managers, reviewing sample cases of 170 service users who are either funded fully by the Council, jointly funded by both the Council and the CCG or in receipt of funding under Section 117 of the Mental Health Act 1983 (aftercare funding designed to cover the cost of meeting all a person's mental health related support needs). The Policy ensures all identified areas for improvements have been addressed within the new Policy and future CHC workstreams.

12. The effectiveness of the Fair and Transparent Care programme is evident through:

- Increased numbers of people CHC eligible
- Increased numbers of people Fast Track eligible
- Significant reduction in inter-agency disputes, all being the lowest level (1)

13. As a result of the new arrangements, people will receive the benefit of:

- Legal and robust application of the National Continuing Health Care Framework

- Clarity and assurance of how each organisation will work together to minimise any disputes
- Clear and concise information and advice for practitioners

14. The CCG is responsible for the provision and commissioning of services for people in receipt of Continuing Health Care Funding. There will be further consideration in the future of joint commissioning arrangements.

15. The Policy also reflects the key elements of legislation that apply to people who are eligible under Section 117 and should also be considered if they have needs that meet the Continuing Health Care criteria.

16. The Council, Herefordshire Council and the CCG have implemented a CHC Partnership board to address several operational and process improvements that include new, robust policies and operational procedures, workforce development and potential for joint commissioning arrangements. This group meets on a monthly basis. Agreed terms of reference set out the purpose of the board, who should attend and frequency of meetings. Specifically, the panel will be responsible for considering all aspects of Continuing Health Care, including Fast Track and Joint Funding. Children are currently out of scope.

Legal, Financial and HR Implications

17. There are no procurement, human resources or specific ICT implications from the proposed new Policy and Standard Operating Procedure.

Resource implications

18. The budgeted position for income related to CHC was c£1.7m per annum. Since April 2021, the Council has achieved £2.8m income against this budget i.e., an additional £1.1m recurrent funding. There is also an additional £1.6m one-off income for backdated claims/recharges, from reducing and resolving disputes. It is expected that further income will be due to several new cases, with forecasted additional income in excess of £0.5m.

19. The proposed Policy has no specific or immediate resource implications for the Council but will enable it in the future to monitor performance closely through the Partnership Board. The Council will be monitoring expenses for those who were funded through Continuing Health Care, Fast Track and Joint Funding and are subject to review. We will ensure any reviews of eligibility decisions are appropriate and in line with the National Framework. This will ensure that all Adult Social Care spending and client charging is appropriate, and balance costs met under section 117 and the Care Act 2014 or other NHS funding streams such as Funded Nursing Care (FNC) or Continuing health Care.

Legal implications

20. The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care states that *“NHS continuing healthcare is an ongoing package of health and social care that is arranged and funded solely by the NHS where an individual is*

found to have a primary health need. Such care is provided to an individual aged 18 or over to meet needs that have arisen as a result of disability, accident or illness.” The Revised Guidance reminds “all those involved in the delivery of NHS Continuing Healthcare should become familiar with the whole National Framework, Practice Guidance, annexes and National Tools and should align their practice accordingly.” The National Framework also requires inter-agency co-operation and agree local dispute resolution processes. The proposed Policy fulfils these objectives and the requirements of the National Framework.

Risk management

21. Consideration is given to the risks and opportunities to the Council if the recommendations are declined.

Risk / Opportunity	Mitigation
<p><u>Risk if Policy is not approved</u></p> <p>Risk to customers</p> <p>Without the joint policy, staff may neglect to identify that a person may be eligible for CHC funding to meet health needs.</p> <p>Risk that disputes are more likely to occur and take significant time to resolve, resulting in uncertainty over funding responsibilities.</p>	<p>The Policy and National Framework sets out clearly the legal requirements and provides guidance for both health and social care staff, including Quality Assurance arrangements and monitoring</p>
<p>Legal and reputational.</p> <p>If the Policy is not approved, there is a risk that some of the Council’s legal obligations could be neglected, misapplied or misunderstood, resulting in longstanding disputes, potentially reaching secretary of state for resolution.</p>	<p>The policy sets out the legal responsibilities for the CCG and the Council in line with the National Framework.</p> <p>The documents have been reviewed by legal departments of both Council and CCG to ensure the documents are fully appropriate and compliant with legislation.</p>
<p><u>Risk if Policy and Standard Operating Procedure are approved</u></p> <p>None identified</p>	

Alternative options

22. No other alternative. The existing policy has been superseded by the revised National Framework in 2018.

Joint Equality, Public Health, Data Protection and Sustainability Impact Assessments

Equality duty

23. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, 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.*

24. An Equality Impact Assessment has been carried out by the CCG to assess the impact of the Policy on those affected by the introduction of these documents.

25. Taking into consideration the Equality Act 2010 and the 9 protected characteristics of Age; Disability; Gender Reassignment; Marriage & Civil Partnership; Pregnancy & Maternity; Race; Religion & Belief; Sex; Sexual Orientation, The EIA found that there would be either a neutral or positive impact as a consequence of approving these policy documents

26. A copy of the Equality Impact Assessment can be found at Appendix 2

Community impact

27. In addition to meeting legal obligations the approval and implementation of the proposed Policy will help to ensure that all people who could be, or are, entitled Continuing Health Care Funding (including Fast Track) will receive the correct assessments in a timely manner.

28. The county plan outlines three key themes of Sustainability, Connectivity and Wellbeing. The provision of the Policy will better enable adults with care and support needs, and their families and representatives, to be involved in decisions that impact on their health and wellbeing. It will also contribute to the ambition to protect and improve the lives of vulnerable people by ensuring they receive the

right care and support, at the right time, and are not paying for social care support (often involving sale of homes) when they should be entitled to free health care.

29. The introduction of the partnership board ensures the effectiveness and compliance with the agreed policy. This includes the monitoring and review of operational performance in respect of Continuing Health Care, Joint Funding arrangements and disputes.
30. There are no specific implications of this decision for health and safety. The Councils, and CCG partners each take steps to promote appropriate health and safety practice in commissioning and contract arrangements for services for people with care and support needs.
31. There are no specific implications of the proposed policy for the corporate parenting responsibilities of the council and its partners. However, there will be a small number of young people looked after by the council or leaving care who are eligible for Continuing Care as a child and when they reach adulthood, this policy will apply.

Environmental Impact

32. The Council provides and purchases a wide range of services for the people of Worcestershire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Worcestershire's outstanding natural environment.
33. Approving the Policy would be expected to have a neutral environmental impact, focused as they are on information and guidance around Council activity that is already taking place.

Consultees

34. The process of developing the joint Policy has taken place over a number of months with cross agency involvement. This has enabled consultation of senior officers of the CCG and Herefordshire County Council and those agencies have also engaged with experts who advise them.

Appendices – available electronically

- Appendix 1 Continuing Health Care Partnership Policy
- Appendix 2 Equality Impact Assessment
- Appendix 3 National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care October 2018 (Revised)

Background papers

In the opinion of the proper officer (in this case the Strategic Director for People) there are no background papers relating to the subject matter of the report.

Contact Points

Specific Contact Points for this report

Kerry McCrossan Assistant Director – Adult Social Care

Tel: 01905 845273 Email: kmccrossan@worcestershire.gov.uk