Lancashire and South Cumbria Integrated Care Board

Choice and Equity Policy

Ref:	*LSCICB_Fin04*
Version:	*2*
Purpose	The policy describes the way in which the ICB will commission care in a manner which reflects the choice and preferences of eligible individuals as well as those individuals commissioned via IPA team whilst balancing the need for the ICB to commission care that is safe and effective and makes the best use of available resources.
Supersedes:	1 and any previous CCG policies.
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Ratified by: (Name of responsible Committee)	Quality Committee
Cross reference to other Policies/Guidance	Personal Health Budget Policy Anti-Fraud, Corruption and Bribery Policy ICB Procurement Policy
Date Ratified:	18 September 2024
Date Published and where (Intranet or Website):	Website
Review date:	September 2027
Target audience:	All Staff

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Document control:		
Date:	**Version Number:**	**Section and Description of Change**
	1	Approved by Funded Care Operational Group
22.06.22	1	Discussed at FCIB and approved subject to minor changes
28.06.22	1	Amended in light of FCIB members comments around residents refusing CHC eligible care and role of LAs and requirement for a further DST in light of significant changes in need of the resident.
23.11.23	2	Reviewed following transfer of MLCSU.
22.12.23	2	Added Section 14 around Fraud, Bribery and corruption
28.12.23	2	Included section around Provider Selection Regime & alignment to ICB policies
08.05.24	2	Reviewed following comments from legal
10.06.24	2	Reviewed by LA's, reviewed by legal
19.07.24	2	Final

Equality Statement

Equality, diversity and human rights are central to the work of the Lancashire & South Cumbria (LSC) Integrated Care Board (ICB). This means ensuring local people have access to timely and high-quality care that is provided in an environment which is free from unlawful discrimination. It also means that the ICB will tackle health inequalities and ensure there are no barriers to health and wellbeing.

To deliver this work ICB staff are encouraged to understand equality, diversity and human rights issues so they feel able to challenge prejudice and ensure equality is incorporated into their own work areas.

ICB staff also have a right to work in an environment which is free from unlawful discrimination and a range of policies are in place to protect them from discrimination.

The ICB's equality, diversity and human rights work is underpinned by the following:

- NHS Constitution 2015
- Equality Act 2010 and the requirements of the Public Sector Equality Duty of the Equality Act 2010
- Human Rights Act 1998
- Health and Care Act 2022

Freedom of Information

If requested, this document may be made available to the public and persons outside the healthcare community as part of ICB's commitment to transparency and compliance with the Freedom of Information Act.

Equality Analysis

ICB aims to design and implement services, policies and measures that are fair and equitable. As part of the development of this policy its impact on staff, patients and the public have been reviewed in line with ICB's legal equity duties.

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1. Introduction and Background

1.1 This policy describes the way in which the Integrated Care Board (ICB) in Lancashire and South Cumbria ("the ICB") will commission care for people who have been assessed as eligible for fully funded NHS Continuing Healthcare (CHC) including individuals deemed eligible for Fast Track funding, as well as Discharge to Assess (DTA), Childrens & Young People Continuing Care (CYPCC) and specialist placements related to Individual Patient Activity (IPA) and Learning Disability & Autism. The policy describes the way in which the ICB will commission care in a manner which reflects the choice and preferences of eligible individuals as well as those individuals commissioned via IPA team whilst balancing the need for the ICB to commission care that is safe and effective and makes the best use of available resources.

1.2 The policy has regard to previous policies adopted by Lancashire and South Cumbria Clinical Commissioning Groups (CCGs). It also provides parity across the Northwest being based on the policy adopted by Greater Manchester.

1.3 In developing this policy, the ICB has had regard to the guidance set out in the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care (DHSC 2022) and is mindful of its obligations under the relevant legislation set out below.

1.4 The National Framework states that health commissioning organisations should take a strategic as well as an individual approach to fulfilling their NHS Continuing Healthcare commissioning responsibilities. The National Framework advises ICBs to consider commissioning NHS funded care from a wide range of providers, in order to secure high quality services that offer value for money.

2. The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care (DHSC revised July 2022)

2.1 The National Framework states:

2.2 "Where an individual is eligible for NHS Continuing Healthcare, the ICB is responsible for care planning, commissioning services, and for case management. It is the responsibility of the ICB to plan strategically, specify outcomes and procure services, to manage demand and provider performance for all services that are required to meet the needs of all individuals who qualify for NHS Continuing Healthcare The services commissioned must include ongoing case management for all those eligible for NHS Continuing Healthcare, including review and/or reassessment of the individual's needs." (paragraph 185).

2.3 Where a person qualifies for NHS Continuing Healthcare, the package to be provided is that which the ICB assesses is appropriate to meet the individual's assessed health and associated care and support needs.

2.4 The ICB has responsibility for ensuring this is the case and determining what the appropriate package should be ensuring that care is delivered by a provider which is part of a procured framework or dynamic purchasing system and quality assured by the ICB. In doing so, the ICB should have due regard to the individual's wishes which will be considered and the ICB will discuss with individuals and family and work to preferred outcomes wherever possible.

3. Context

3.1 NHS Continuing Healthcare (CHC) is a package of continuing care arranged and funded solely by the NHS where the eligible individual has been found to have a 'primary health need' as set out in the National Framework. Such care is provided to an eligible individual aged 18 or over, to meet their assessed health and associated social care needs that have arisen as a result of disability, accident or illness. The actual services provided as part of that package should be seen in the wider context of best practice and service development for each client group. Eligibility places no limits on the settings in which the package of support can be offered or on the type of service delivery. (Definitions page 21)

3.2 Individual Patient Activity (IPA) is related to individuals who have a package funded by the NHS but are considered not eligible for CHC. This can be joint (joint funded with the local authority) or fully health funded packages.

3.3 Discharge to Assess (DTA) is a pathway funded by the NHS. This policy applies to the packages of care which are sourced via the All Age Continuing Care (AACC) DTA team for individuals discharged under DTA who require long term nursing care due to their health needs. This is commonly referred to as pathway 3 and these individuals will require a CHC assessment.

3.4 Children & Young People Continuing Care according to the NHS Framework is "a package which is required when a child or young person has needs arising from disability, accident or illness that cannot be met by existing universal or specialist services alone".

4. The Provision of Services for People who are in receipt of funding for packages of care through the NHS

4.1 Many patients who require NHS funding will receive it in a specialised environment. The treatments, care and equipment required to meet complex, intense and unpredictable health needs often depends on such environments for safe delivery, management, and clinical supervision. Specialised care, particularly for people with complex disabilities may only be provided in Specialist Care Homes (with or without nursing), which may sometimes be distant from the patient's ordinary place of residence.

4.2 These factors mean that there is often a limited choice of clinically appropriate, safe, sustainable, and affordable packages of care.

4.3 NHS commissioning organisations commission with due regard for the NHS Constitution, and the duties at s.14Z36 (duty to promote patient involvement) and 14Z37 (duty to promote patient choice) of the National Health Service Act 2006 ("the NHS Act"). These obligations are fully recognised but the ICB must balance them alongside its other duties.

4.4 In commissioning care, each ICB must have constant regard to its financial duties. In brief, section 223G of the NHS Act provides for payment to the ICB from NHS England in respect of each financial year, to allow the ICB to perform its functions. In the case of *Condliff v North Staffordshire Primary Care Trust* [2011] EWHC 872 (Admin), the Court stressed the fundamental challenge for ICBs in allocating scarce resources to best serve the local population, whilst also having due regard to individual rights and choices.

4.5 The ICB acknowledges that it must have due regard to the rights of individuals under Article 8 of the European Convention on Human Rights to respect for private and family life, and any interference with this right must be clearly justified in accordance with the limitations set out by Article 8 in Schedule 1 of the Human Rights Act 1998[1].

4.6 The NHS must also have due regard to its equality duties. Commissioning organisations need to balance obligations and responsibilities, as noted in the case of *Condliff* mentioned above, in which the Court held that a policy of allocating scarce resources on the strict basis of a comparative assessment of clinical need was intentionally non-discriminatory and did no more than apply the resources for the purpose for which they are provided without giving preferential treatment to one patient over another on non-medical grounds (para. 36).

4.7 In the light of these constraints, the ICB has developed this policy due to the need to balance personal choice and safety with the need to effectively use finite resources. It is also necessary to have a policy which supports consistent and equitable decision making about the commissioning of care regardless of the person's age, condition or disability.

These decisions need to provide transparency and fairness in the allocation of resources.

4.8 Application of this policy will ensure that decisions about care will:

- be person centred by involving the individual and their family/representative to the fullest extent possible.
- Be culturally sensitive
- be robust, fair, consistent and transparent.
- be based on the objective assessment of the eligible individual's clinical need, safety and best interests.
- have regard to the safety and appropriateness of care to the eligible individual and staff involved in the delivery.
- consider the commissioning principles, e.g., appropriateness, effectiveness, cost-effectiveness, affordability, and ethics.
- be consistent with the ICB commissioning processes at the time.
- implement the principles and processes of Personal Health Budgets (PHBs) and ensure availability of information and support to allow take up of all options related to PHBs.
- take into account the need for the NHS to allocate its financial resources in the most cost-effective way.
- support and offer choice to the greatest extent possible in view of the above factors.

4.9 The ICB has a duty to commission care for an individual with continuing healthcare needs in order to meet those assessed needs. An eligible individual or their family/representative cannot make a financial contribution to the cost of NHS Continuing Healthcare as assessed as required to meet the individual's needs. However, an individual has the right to decline NHS services and make their own private arrangements.

[1] 1 See also National Framework Practice Guidance and reference to Gunter v South Western Staffordshire Primary Care Trust [2005]

4.10 Access to NHS services depends upon clinical need, not ability to pay. The ICB is only obliged to commission care if it is identified as the responsible ICB, in line with the guidance, 'Who Pays? Determining which NHS commissioner is responsible for commissioning health care services and making payments to providers' (revised 1 April 2024).). The ICB will not charge a fee or require a co-payment from any NHS patient in relation to their **assessed needs**. The principle that NHS services remain free at the point of delivery has not changed and remains the statutory position under the NHS Act 2006 as amended. The NHS is not currently able to allow individuals to top up payments into the package of care assessed as meeting the needs of the individual under NHS Continuing Healthcare and covered by the fee negotiated with the service provider (e.g., the care home) as part of the contract.

4.11 However, where service providers offer additional or other services which go beyond the individual's needs as assessed, the individual may choose to use their own personal funds to take advantage of these additional or other services.

4.12 Examples of such services falling outside NHS provision include hairdressing, newspapers etc., within a care home. Any additional services which are unrelated to the person's assessed health needs will not be funded by the ICB as these are services over and above those which the service user has been assessed as reasonably requiring, and the NHS could not therefore reasonably be expected to fund those elements. In these circumstances the provider must be able to clearly separate the associated cost of these additional services. Any payments made by the individual (and/or his/her representative/s) under a contract with a care provider for services cannot relate to any services to be provided under the NHS ICB contract with the care provider.

4.13 If the individual (and/or his/her representative/s) decides for any reason that their funding of the additional services is to be terminated, the ICB will not assume responsibility for funding any additional services.

4.14 Where an individual advises that they wish to purchase additional private care or services the ICB will discuss the matter with the individual to seek to identify the reasons for this. If the individual advises that they have concerns that the existing care package is not sufficient or not appropriate to meet their needs the ICB will offer to review the care package in order to identify whether a different package would more appropriately meet the individual's assessed needs.

4.15 The decision to purchase additional private care services will always be a voluntary one for the individual concerned. There will not be a requirement of the individual to purchase additional private care services as a condition of the provision or continued provision of NHS funded services to them.

4.16 Unless it is possible to separately identify and deliver the NHS funded elements of a service it will not usually be permissible for eligible individuals to pay for higher cost services and/or accommodation.

4.17 NHS organisations will not be held responsible for the payment of additional private care services in the event that the individual is no longer able to afford them.

4.18 In instances where more than one clinically effective care option is available (e.g., a nursing home placement and a domiciliary care package at home) the total cost of each

care package will be identified and assessed for their overall cost effectiveness as part of the decision-making process. The ICB currently has funding caps on rates with providers and may have to apply NHS fixed rate cards and/or commission within other funding responsibilities such as those set out in the Health and Care Act 2022 under the new National Payment Scheme (NPS).

Therefore, the ICB will ensure the funding process at the time of decision is utilised to ensure the most cost-effective option will be commissioned that meets the individuals assessed needs and taking into account all of the individual's circumstances.

4.19 The cost comparison must be based on the genuine costs of alternative models. A comparison with the cost of supporting a person in a care home should be based on the actual costs that would be incurred in supporting a person with specific needs in the case and not on an assumed standard care home cost.

4.20 Any assessment of a care option should include the psychological and social care needs of the eligible individual and the impact on their home and family life, as well as the eligible individual's care needs. The outcome of this assessment will be considered in arriving at a decision.

4.21 The setting in which care is provided will be reviewed by the ICB. The ICB **must** take into consideration its wider resources and an equitable allocation of the same. However, this consideration will always be balanced against the factors set out above.

4.22 It is recognised that an individual's needs may change over time and there may be other changes that need to be taken account of, including other demands on its budgets, technology changes or other factors that may change commissioning decisions related to the services that are reasonably required to meet the needs of an individual. Consequently, any offer made and/or any services that are commissioned does not constitute any promise that the services will continue to be offered or commissioned in that manner in the future. Regular case reviews will be undertaken in order to reassess an individual's care needs and eligibility for NHS funded services and/or to determine what services should be offered or commissioned for an individual.

4.23 The ICB reserves the right to reassess any package it is involved in commissioning of health and/or social care services and/or an individual's CHC eligibility at any time and to amend care plans or any commissioned services in response to that reassessment and any relevant circumstances in partnership with the local authority, where appropriate.

5. Continuing Healthcare Funded Care Home Placements

5.1 Where an individual has been assessed as requiring placement within a care home, The ICB holds a contracted provider list, and the expectation is that individuals requiring placement will have their needs met in one of these homes. This may be superseded by the ICBs alternative commissioning arrangements at the time of decision.

The ICB will endeavour to provide a reasonable choice of placements (maximum of three placements will usually be the case due to the nature of the needs of CHC funded patients, but in some cases, more options may be able to be provided if requested and/or appropriate) and discuss the placements with the individual and their family.

5.2 The individual may wish to move into a home outside of the contracted provider list, or their family/representative may wish to place the individual in an alternative home. As long as the fee for the bed is comparable to the fee agreed with the contracted providers and the ICB is satisfied with the Care Quality Commission (CQC) inspection reports, their own internal quality contract monitoring of the care home and that the home can meet the individual's assessed care needs, this option will be considered.

If the home is outside Lancashire and South Cumbria, the ICB will contact the commissioner in the proposed locality to seek these assurances.

5.3 When considering how and what care services can be commissioned, the ICB has a responsibility to use public funds effectively, efficiently and economically to comply with its own Standing Financial instructions to ensure that commissioning decisions take full account of the most cost-effective options available, whilst also ensuring the assessed care needs of individuals are met.

5.4 If the fee is higher for an out of area placement than the fee charged by the care homes commissioned within the locality, the ICB would require clarification as to whether the higher fees included additional or other services which went beyond those identified within the NHS package and, if so, would consider funding the core costs of care which related to the NHS funded element if the care costs were considered equitable and consistent with the commissioning processes in place at the time, allowing the individual to contract separately with the care home for the additional or other services. The provider will only be able to invoice the NHS for the core care costs and reasonable accommodation costs and will have to invoice the client separately for the non-core care costs. The invoices will detail what the ICB and individual is being charged for.

5.5 If the provider refuses to provide appropriate clarification as to the basis upon which their fees are charged, or to contract on the basis outlined above, it is unlikely that this home would be commissioned, and the individual will be advised that they will need to consider choosing a home from those commissioned within the ICB locality or identify another out of area placement where the same clarification and assurance would be sought as noted above.

5.6 Where there is a conflict between a high-cost placement outside of the fee agreed with the local commissioned providers and personal choice, the case will be referred and discussed through the ICB's preferred governance process which is Commissioning Decision Panel & related Policy & Terms of Reference.

5.7 If the individual is unwilling to accept any of the offers made by the ICB, it will have fulfilled its duties to the individual and is not required to take further steps to provide services to him or her.

5.8 If the individual's representatives are not in agreement regarding a care setting due to non- availability of their first choice and the individual does not have the mental capacity to make decisions themselves, the ICB will work with the multi-disciplinary team involved in the individual's care and as the responsible commissioner for care, will make a best interests decision on behalf of the individual to secure a prompt placement in one of the available options that the ICB is willing to commission, having taken into account all relevant factors and ensuring compliance with the Mental Capacity Act 2005 and other statutory obligations. Where the individual has a valid and applicable Lasting Power of

Attorney or Court Appointed Deputy who has power(s) relevant to the decision to be made, they will be the decision maker for the individual. Attempts will be made to resolve any dispute regarding best interests. There may be circumstances where a dispute regarding best interests cannot be resolved and a court application will be required.

6. Funded Packages of Care at Home

6.1 Many individuals wish to be cared for in their own homes rather than in a care home, especially in the terminal stages of an illness. Where an individual or their family expresses such a desire, the ICB will support this choice wherever possible taking into account the factors set out in paragraphs 4 and 6 of this policy.

6.2 The ICB will take account of the following issues before agreeing to commission a care package at home:

- the matters set out in section 4 above and, in addition:

- whether care can be delivered safely and without undue risk to the individual. Safety will be determined by written assessments of risk undertaken by appropriately qualified professionals in consultation with the individual and/or their family. The risk assessments will include the availability of equipment, the appropriateness of the physical environment, potential adaptations and the availability of appropriately trained care staff and/or other staff to deliver the care at the intensity and frequency required. Risks posed to carers or other members of the household (including children) will also be taken into account.

- where equipment and/or assistive technology can be used to support the safe delivery of care at home, it is expected that the individual will accept this and use it appropriately, their ability to do so (with and/or without available carer support) having been assessed as part of any offer of such care.

- acceptance by the ICB and each person involved in the individual's care in relation to any identified risks in providing care and potential consequences of receiving care at home. Where an identified risk can be minimised through actions by the individual or their family and carers, those individuals agree (and confirm their agreement in writing) to comply with the steps required to minimise such identified risk.

- the acceptance of the individual and their representatives of the responsibility for ensuring that the environment is safe for the provision of the care package. Where the safety assessment identifies a potential risk associated with the home, the individual or their representative is responsible for remedying that.

- the individual and their representatives are also responsible for ensuring that the environment is appropriate for the provision of the care package by staff. This includes ensuring staff are able to have access to a toilet, bathroom and kitchen areas and such areas are kept in a clean state. The package of care and support may include aspects of provision to deal with supporting the individual or their representative in maintaining this where that forms part of the assessed needs. It is also essential for any care at home to be delivered that staff are treated with dignity and respect.

- the individual's GP agrees to provide primary care medical support and the local provider of community services agrees to deliver the necessary community support.

- the suitability and availability of alternative care options.

- the cost of providing the care at home in the context of cost effectiveness.

- the relative costs of providing the package of care in line with the individual's preference considered in line with the relative benefit to that individual of doing so.

- the willingness and ability of family, friends or informal carers to support elements of care where this is part of the care plan. There must be agreement of those persons to the care plan and a contingency plan in place in the event that the family, friends or informal carers are no longer able to care for the individual and meet those needs.

- the outcome of the Carers Assessment referral.

Any changes to the above once the package is in place will lead to a reconsideration of whether it is appropriate to continue to offer a package of care at home and the ICB has the right to end or change the package of care where it can no longer meet the assessed needs of the individual and offer an alternative care provision either in the person's home, or an alternative care setting where that is no longer possible or appropriate to commission. Notice will be provided to the individual and/or their representative of any such change required.

6.3 The NHS does not have the resources or facilities to provide either a 24-hour registered nursing service or the equivalent of nursing/residential care provision in a person's own home. This level of care is unlikely to meet the necessity for cost effectiveness in comparison with other care settings which is a consideration that the ICB is legally required to take into account. However, all requests for home care including Personal Health Budgets will be considered, on an individual basis, having regard to assessed needs in accordance with the principles set out in the National Framework in every case.

6.4 Home care packages that exceed the cost of a care home placement would indicate a high level of need and would be carefully considered, with a full risk assessment undertaken.

6.5 Persons who need waking night care might generally be more appropriately cared for in a residential setting. The need for waking night care indicates a high level of supervision day and night. The ICB will take into consideration family and/or informal carers support to an individual as well as whether this is sustainable for family/carers health and wellbeing. Where possible core and/or universal services will be used as this will be funded by the ICB through commissioned contracts.

6.6 Residential placements may be deemed more appropriate for persons who have complex and high levels of need. Residential placements benefit from being regulated, having direct oversight by registered professionals and the ability to undertake 24-hour monitoring of individuals if required.

6.7 If the clinical need is for a registered nurse for direct supervision or intervention throughout the 24 hours, the care would normally be expected to be provided within a

nursing home placement. This would include the requirement for frequent intervention/monitoring for positional changes, continence management, medication, feeding, manual handling, and other clinical interventions or for the management of significant cognitive impairment (this is not an exhaustive list).

6.8 There are specific conditions or interventions that it may not be appropriate to manage in a home care setting. These would include but are not restricted to the requirement for sub- cutaneous fluids, continual invasive or non-invasive ventilation or the management of grade 4 pressure areas. In each case a comprehensive risk assessment should be completed to determine the most appropriate place for care to be provided.

6.9 Each assessment will consider the appropriateness of a home-based package of care, considering the range of factors in paragraph 6.2 and any others deemed appropriate by the ICB in an individual case and underpinned by the principles in 4.8

Circumstances to be taken into consideration.

6.10 The ICB All Age Continuing Care (AACC) and IPA staff teams will seek to take account of the wishes expressed by individuals and their families when making decisions as to the location(s) of care packages and residential placements to be offered to satisfy the obligations of the ICB to commission NHS funded care. The ICB accepts that many persons with complex medical conditions wish to remain in their own homes and to continue to live with their families, with a package of support provided to the person in their own homes.

Where a person or their family expresses such a desire this will be reviewed to determine whether it is clinically feasible and cost effective to commission a sustainable package of care for a person in their own home.

6.11 Packages of care in a person's own home are bespoke in nature and thus can often be considerably more expensive for the ICB than delivery of an equivalent package of services for a person in a care home or supported living environment. Such packages have the benefit of keeping a person in familiar surroundings and/or enabling a family to stay together. Contingency planning is required to be in place regarding packages of care which are deemed high risk and these packages may need to change to a nursing placement due to safety issues and/or risks which cannot be safely mitigated. However, the ICB needs to act fairly to balance the resources spent on an individual with those available to fund services to other persons.

6.12 The ICB has resolved that, in an attempt to balance these different interests it will be prepared to support a clinically sustainable package of care which keeps a person in their own home where the anticipated cost to the ICB is ordinarily no more than the anticipated cost of a care package delivered in an alternative appropriate location such as a care home. The ICB will consider the cost comparison on the basis of the genuine costs of alternative models. A comparison with the cost of supporting a person in a care home should be based on actual costs that would be incurred in supporting a person with the specific needs in the case and not on an assumed standard care cost. There may be exceptional cases where the ICB may fund a package of care at home which exceeds the equivalent cost of care in an alternative appropriate setting. The process around this will follow the process outlined at paragraphs 6.20 and 6.21.

6.13 In situations where there is a home care package (with family support) and the family are unable to provide the agreed support, in those circumstances the ICB would need to reassess the appropriateness of a home package.

6.14 Each assessment will consider the appropriateness of a home-based package of care, taking into account the range of factors in paragraphs 3.2 and 6.2 above.

6.15 The authorisation for the commissioning and funding of packages of care at home lies with the ICB, where an individual is eligible for NHS full funding. Where packages are joint funded with the Local Authority the authorisation of commissioning lies with both organisations. There is a process for the confirmation of eligibility and the authorisation of care packages and placements.

6.16 Once a package of care at home has been agreed, individuals may be offered a personal health budget (PHB), which covers the cost of the care package to meet assessed need. Individuals and their families will be able to have some flexibility in the delivery of the care (for example, times) providing the individual's assessed care needs are being met if a PHB is in place.

6.17 If at any time it is identified that the care commissioned does not meet the individual's assessed need, e.g., due to deterioration, or the package becomes fragile, unsustainable and/or high risk the care package will be reviewed, and other options (for example a residential placement) will be explored following consideration of the issues outlined in paragraph 6.2.

6.18 The exception to this is where an increase of care is needed for a single period of up to two weeks to cover either an acute episode or for end of life care to prevent a hospital admission. These requests would be reviewed by the ICB on an individual, needs based basis.

6.19 NHS rules require ICBs to offer individuals the opportunity to have their own PHB through a direct payment or managed account. All individuals and those supporting them, will know exactly how much funding is available for their care and will be able to agree the best way to spend it to meet their assessed needs and to achieve outcomes through an agreed support plan as stated within the Personal Health Budget Policy.

Exceptional Circumstances

6.20 The ICB recognises that exceptional circumstances may require particular consideration but will retain its obligation to make best use of NHS resources to meet the needs of the whole population served. Where the package of care is defined as exceeding the typical level of expenditure or includes exceptional features then the case may be referred to a Commissioning Decisions Panel to consider the suggested package and any exceptional circumstances that arise. This process is outlined within the Commissioning Decisions Panel Terms of Reference.

6.21 Exceptionality will be determined on a case-by-case basis.

Review

6.22 The ICB will periodically review an individual's needs within the context of CHC in line with the National Framework. This should be an initial three-month review, followed by annual reviews (or following a significant change in circumstances) to ensure that the package of care still meets assessed needs at that time. The three-month and annual review will be undertaken by the ICB whether an individual is receiving care at home or in a care home. ICBs have the right to undertake reviews more frequently.

6.23 Individuals and their families need to be aware that there may be times where it will no longer be appropriate to commission or provide care at home. For example, deterioration in the person's condition may result in the need for clinical oversight and 24-hour monitoring.

6.24 In line with the ICB's duties to commission appropriate health services to meet an individual's assessed needs, packages of care at home will be commissioned when the factors outlined in section 6 and underpinned by those principles outlined in section 4 render it appropriate.

6.25 By reason of such reviews, it will sometimes be apparent that an eligible individual's needs have significantly changed and consequently it will be necessary to undergo a review of the appropriateness of any package of care provided at home in line with the decision making process as outlined at sections 4 and 6.

6.26 Any package of care provided at home must therefore remain appropriate in line with that decision-making process for it to be continued following the health review. Should it be considered inappropriate, the ICB will have the right to serve notice on the package and will revise its offer accordingly, with reference to section 6 above. Should an individual or their representative wish to appeal against this decision, please refer to section 13 below.

6.27 If a home care package is not considered appropriate, on review, the offer of residential care as an alternative, in accordance with this policy will be a discharge of the ICB's duty to make a reasonable offer, and, if not accepted, the package can be withdrawn with suitable notice period and right to review.

6.28 If an individual is found to no longer be eligible for NHS Continuing Healthcare following a full reassessment of eligibility (i.e., a multi-disciplinary completion of the Decision Support Tool, the ICB will cease to fund the package of care or placement on a date to be confirmed to the individual, their representative and any other relevant person/bodies such as the local authority where appropriate)[2]

6.29 The individual and families will be supported to consider care options going forward (e.g., by referral to the relevant social services department).

7. Right to Refuse

7.1 An individual is not obliged to accept the offer of care. Where an individual chooses not to accept a package, the ICB will take reasonable steps to inform the individual that:

[2] See the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care July 2022 (Revised) paragraphs 210-227 for details relating to principles of continuity of care and dispute resolution

7.1.1 the NHS is not required to make further offers to the individual or offer to fund care in a location of the individual's choice. The ICB will ensure they have been working with the individual and that the decision is undertaken in accordance with public law principles; and

7.1.2 the Local Authority is unlikely to assume responsibility to provide care to the individual where the offer of care relates to NHS Continuing Healthcare.

7.2 The ICB will have discharged its duty to eligible individuals by making an offer of a suitable care package whether or not individuals choose to accept the offer.

7.3 For example, the ICB may discharge its duty by offering to commission a package of services for an eligible individual in one or more appropriate care settings, having followed a fair process of decision making, irrespective of whether this is the individual's preferred location.

7.4 If all offers of appropriate care packages are refused by the eligible individual or someone with legal authority to act on behalf of the individual, the ICB may have a need to following local Safeguarding Policies and Procedures and consider options under the Mental Capacity Act 2005 where the eligible individual lacks capacity to make the relevant decision for themself, as appropriate.

7.5 Where an individual exercises their right to refuse, the individual or their representative(s) will be required to sign a written statement confirming that they are choosing not to accept the offer of care provision if the individual has capacity to do so, and/or their representative has the authority to do so. In all cases this must be clearly documented in the individual's records. Should the individual lack capacity to refuse or accept an offer of care, the appropriate processes under the Mental Capacity Act 2005 shall be followed.

7.6 Where an eligible individual refuses such care, they are entitled to re-engage with the ICB at any time, and, if they do so, consideration of what offer should be made to that individual will be given.

Dependent on the time between the original offer and the time the individual re-engages with the ICB, a reassessment of needs and eligibility may need to be undertaken.

8. Provider Selection Regime

8.1 The Health and Care Act 2022 has introduced a new procurement regime for selecting providers of health care services in England, which will replace the existing procurement rules for NHS and local authority funded health care services.

8.2 The Provider Selection Regime (PSR)[3] has been designed to introduce:

- **a flexible and proportionate process** for selecting providers of health care services so that all decisions are made in the best interest of people who use the services.

[3] The Health Care Services (Provider Selection Regime) Regulations 2023 came into force on 1 January 2024 - any procurement process for health care services started on or after 1 January 2024 will have to be done in compliance with the new Provider Selection Regime (PSR) regulations.

- **the capability for greater integration and enhanced collaboration** across the system, whilst ensuring that all decisions about how health care is arranged are made transparently.
- Opportunities to reduce bureaucracy and cost associated with the current rules.

8.3 Under the regime, competitive tendering will be one tool for organisations to use when it is of benefit, alongside other routes that may be more proportionate, and which better enable the development of stable partnerships and the delivery of integrated care.

8.4 The regime still requires relevant authorities to consider value for money as an important criterion, and to be transparent, fair, and proportionate in their decision-making.

8.5 The PSR will apply to the arrangement of health care and public health services arranged by relevant authorities and irrespective of who the provider is (i.e., whether the service is provided by NHS providers, other public sector bodies, local authorities, or providers within the voluntary, community, faith and social enterprise (VCFSE) and independent sectors). The PSR will not apply to goods and non-health care services (such as medicines, medical equipment, cleaning, catering, business consultancy services and social care).

9. How Personal Health Budgets Work

9.1 A personal health budget (PHB) is an amount of money to support a person's identified health and wellbeing needs planned and agreed between the person and the ICB team. The vision for PHBs is to enable people with long term conditions and disabilities to have greater choice, flexibility and control over the health care and support they receive. The PHB Policy should be referred to for more information and for a more detailed explanation of the various types of PHB available.

9.2 The budget set for an individual will depend on their clinical need and may be available for both care within an individual’s home and where care is provided within a residential setting.

9.3 A PHB may only be spent on the services agreed between the eligible individual and their Care Co-ordinator in the care and support plan that will enable the eligible individual to meet their agreed health and wellbeing outcomes. For further information please see the ICB’s PHB Policy.

9.4 Where a PHB is being agreed with an eligible individual, a support plan will be put into place which will include:

- what is important to the eligible individual.
- outcomes to be achieved.
- support to be provided to the eligible individual and how this will be managed.
- how the budget will be used.
- how the eligible individual will remain in control.
- how the eligible individual will make it all happen.
- requirement for submission of invoices for audit.

Refer to PHB Policy and Procedures for further guidance.

10. Fast Track

10.1 The eligibility criteria for NHS CHC for Fast Track applications are defined within the National Framework for NHS Continuing Healthcare and NHS-Funded Nursing Care, NHS Continuing Healthcare Fast Track Pathway Tool (July 2022) and NHS Standing Rules. Care provision for individuals assessed on the Fast Track will be subject to the same principles as set out in the relevant sections in this policy dependent on needs. This includes utilisation of core and universal services.

10.2 In urgent situations however, where services may need to be commissioned very quickly there may not be time to apply choice as described above, however the team will take reasonable steps to work in partnership with the eligible individual and their family / representative in all cases.

10.3 Since Fast Tracked individuals are deemed to be near End of Life, the ICB will support the principle of individuals having the right to choose the setting for their end of life care, so long as the care meets the needs of the individual and is equitable.

10.4 If following a review, the CHC Fast Track is no longer applicable, the ICB will undertake a multidisciplinary team meeting and complete a Decision Support Tool to determine whether the eligible individual remains eligible for NHS CHC.

10.5 Following a review, if the individual is deemed no longer eligible for NHS CHC the offer of care may be amended and / or referred to the Local Authority in line with this Policy.

Refer to Fast Track Procedure for further guidance.

11. Capacity

11.1 The ICB will always consult directly with an eligible individual with regard to choice of care. In accordance with the Mental Capacity Act 2005, it will assume that the eligible individual retains the necessary capacity to make these decisions unless there is reason to doubt this and then a formal capacity assessment will be required.

11.2 If a formal capacity assessment is identified as being required, it is the responsibility of the ICB to ensure that this is undertaken.

11.3 If an eligible individual lacks the capacity to make a decision about choice of care setting, the ICB will follow the processes set out in the Mental Capacity Act 2005 to commission the most clinically and cost effective, safe care available based on an assessment of the person's best interests, having regard to the factors set out in sections 4 and 6 above, having regard to the Act and associated Code of Practice.

11.4 In considering the appropriate care setting and in order to make a reasonable offer of care for an eligible individual, the ICB will consider issues that may arise in relation to:

- Any expressed wishes which form part of a valid and applicable Lasting Power of Attorney (LPA) regarding welfare that may have been made by the eligible individual and/or views of any Attorney for health and welfare, or court appointed Deputy for health and welfare within the limits of the decision-making powers granted to the Attorney or Deputy.

- Any views expressed by a person appointed under a registered EPA, or a property and affairs LPA or Deputyship where there may be a financial implication for the patient.
- Any valid and applicable Advance Decision to Refuse Treatment that may have been made by the eligible individual.
- Any Advance Statement of wishes previously prepared by the eligible individual.

11.5 In the absence of any court appointed deputy or LPA, the ICB will follow a consultation process required under section 4 Mental Capacity Act 2005 with others, to ensure any commissioning decisions are informed by the individual's expressed wishes and feelings to inform what options will be explored, and that any best interests decisions required are taken in accordance with the Mental Capacity Act 2005 and the associated Code of Practice. Circumstances where an IMCA is required and/or an advocate is considered appropriate to assist the individual should be considered in each case and steps taken to ensure that referral is made when necessary and/or appropriate.

12. Review of NHS funding eligibility and care provision

12.1 For those eligible for NHS Continuing Healthcare, The National Framework states that all eligible individuals should be reviewed no later than three months following the initial assessment and then annually as a minimum requirement to ensure that the package of care is still meeting the eligible individual's needs. There may be a need to review a package of care outside of these timeframes where a change in circumstances relating to the person's needs and/or care provision makes that appropriate. For individuals who are not eligible for

CHC funding but NHS contribute to the funding of their package the same review timeframes will be implemented.

12.2 On review, the eligible individual's condition may have improved or stabilised to such an extent that they no longer meet the criteria for NHS funding. Consequently, the patient may become the responsibility of the Local Authority (LA) who will assess their needs against the Care Act eligibility criteria. This means the individual may be charged for their care depending on their financial circumstances.

12.3 Where the individual remains eligible for NHS funding, the review may result in either an increase or decrease in care based on the assessed need of the eligible individual at that time. Where care is provided at home, the factors in paragraph 6.2 will again be considered and an alternative care option may be agreed if this is appropriate.

12.4 In order to meet its duty to commission health services to appropriately and safely meet an individual's needs, the ICB must be afforded access to complete its review of an individual when that package is provided in an individual's home.

12.5 In circumstances where access is not facilitated and the ICB cannot satisfy itself as to the safety, appropriateness or cost efficiency of the current package of care, this will require the ICB to consider the appropriate action to enable a review to take place, which may involve a court application in extreme circumstances where a resolution cannot be reached to ensure the review takes place, and may lead to an alternative offer of care.

13. Right of Appeal

13.1 If the individual wishes to challenge the package of care provided / offered by the ICB, an appeal request against the ICB's decision needs to be made within 14 days from the date of the decision letter, where the eligible individual / representative will have the opportunity to submit additional information, that will be considered by an ICB panel. Further information on the appeal process will be provided to the individual upon receipt of any appeal request.

14. Fraud, Bribery and Corruption

14.1 The ICB is committed to reducing the level of fraud, bribery and corruption within the NHS and has adopted a Local Anti-Fraud, Bribery and Corruption Policy. Individuals should refer and adhere to this policy.

14.2 If evidence of an offence(s) emerges, sanctions may be applied or pursued. These may include disciplinary, criminal or civil proceedings and/or reporting to a professional regulator. Consideration will also be given whether action is possible to recover any losses, e.g. via the Proceeds of Crime Act 2002, or via a recovery of NHS Pension contributions.

14.3 Concerns about fraud, bribery or corruption should be reported to the ICB's nominated Anti- Fraud Specialist.

14.4 Contact details are contained within the Local Anti-Fraud, Bribery and Corruption Policy. These details can also be found on the ICB's Anti-Fraud intranet page.

14.5 Alternatively, concerns can be reported via the NHS Fraud and Corruption Reporting line on 0800 028 4060 or using the online report tool, www.reportnhsfraud.nhs.uk

14.6 All contacts are dealt with by experienced trained staff and anyone who wishes to remain anonymous may do so.

15. Policy Review

15.1 This policy will be reviewed no later than 3 years after it has been approved or at any point within this time to reflect changes of the ICB circumstances/arrangements or changes in legislation/guidance.

16. Mutual Respect

16.1 All those who have contact with the ICB should expect to be treated with courtesy and respect by NHS professionals.

16.2 The harassment and/or discrimination (indirect or direct) of NHS or care staff will not be accepted in line with the NHS Zero Tolerance campaign:
https://www.gov.uk/government/news/stronger-protection-from-violence-for-nhs-staff#%3A~%3Atext%3DThe%20new%2C%20zero%2Dtolerance%20approach%2CThe%20strategy%20includes%3A%26text%3Dprompt%20mental%20health%20support%20for%20staff%20who%20have%20been%20victims%20of%20violence

17. Definitions

All Age Continuing Care (or "AACC") – refers to fully funded services provided by the NHS. These services assess and provide funding for the care of individuals of all ages to meet their ongoing health and care needs.

Childrens and Young Peoples' Continuing Care (or "CYPCC") – refers to a continuing care package which is required when a child or young person has needs arising from disability, accident or illness that cannot be met by existing universal or specialist services alone. Assessments are completed in accordance with The National Framework for Children and Young Peoples' Continuing Care (2016).

'NHS Continuing Healthcare (or "CHC")' - refers to a package of continuing care that is commissioned (arranged and funded) by or on behalf of the NHS in accordance with Regulation 20 of The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (as amended).

'The National Framework' – refers to The National Framework for NHS Continuing Healthcare and NHS funded Nursing Care (published by the Department of Health and Social Care, revised July 2022) which provides the context for the commissioning of NHS Continuing Healthcare, providing clarity and consistency of decision making in regard to eligibility and setting out the systems and processes to be used by the NHS.

'**Individual'** - shall within this Policy refer to an individual who has been assessed by the ICB to qualify to have their assessed health funded by the NHS, in part or in full.

'Funded Nursing Care' (or "FNC") - NHS-funded nursing care (FNC) is when the NHS pays for the nursing care component of nursing home fees. The NHS pays a flat rate directly to the care home towards the cost of this nursing care.

'Integrated Care Boards' (ICBs) - NHS organisations responsible for planning health services for their local population. There is one ICB in each ICS area. They manage the NHS budget and work with local providers of NHS services, such as hospitals and GP practices, to agree a joint five-year plan which says how the NHS will contribute to the ICP's integrated care strategy.

18. Guidance and legislation

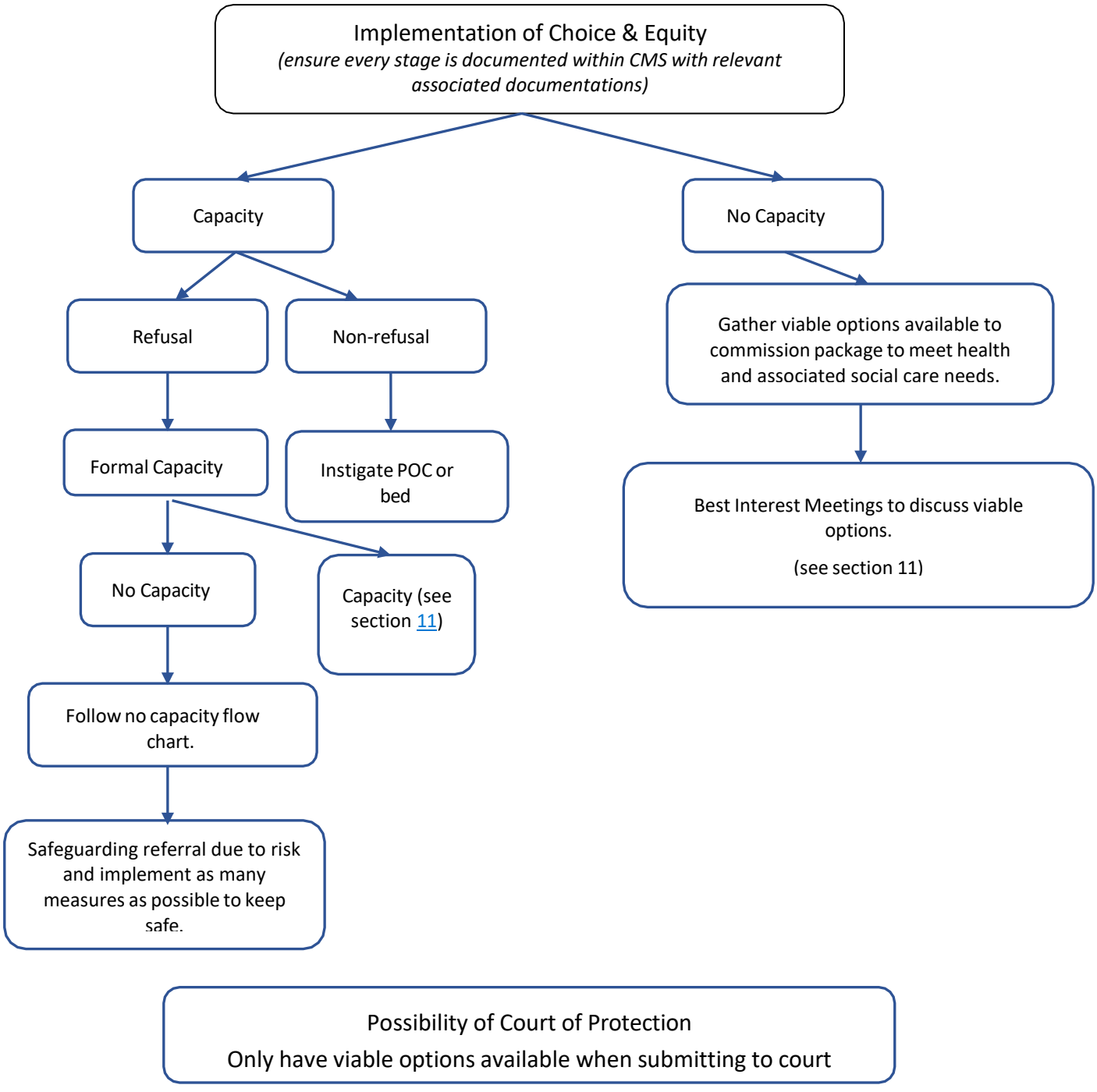
This is not an exhaustive list, however key legislation and guidance considered in the formulation of this policy and that decision makers should have regard to include:

- The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care – July 2022 (revised)
- Children Act 1989
- The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (as amended).
- Human Rights Act 1998

- Who Pays? Determining which NHS commissioner is responsible for commissioning health care services and making payments to providers.(revised 1 April 2024)
- National Framework for Children and Young People's Continuing Care 2016
- The National Health Service (Integrated Care Boards: Responsibilities) Regulations 2022
- Mental Health Act 1983
- Mental Capacity Act 2005
- Care Act 2014
- Statutory guidance to support Local Authorities to implement the Care Act 2014
- The Care and Support and After Care (Choice of Accommodation) Regulations 2014
- NHS Act 2006
- Health and Care Act 2022

19. Implementation

Implementation of Choice & Equity



Possibility of Court of Protection

Only have viable options available when submitting to court

If in hospital and patient/representatives refuses to move out of hospital, the eviction policy may need to be implemented by the hospital