

All-Age Continuing Care Commissioning Policy



Version 1a

Document History

Version	Author(s)	Purpose / Change	Approval Date	Date Ratified	Responsible Committee	Review Date
1	All Age Continuing Care Network members. All Age Continuing Care System Oversight Group.	New ICB Policy			System Oversight Board. Quality, Performance and Assurance Group.	
1a	Amended following Quality and Performance Committee		Dec 24	11 Dec 24	Quality and Performance Committee	Dec 27

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1 Introduction

- 1.1 The policy describes the way NHS Cheshire and Merseyside Integrated Care Board (the Commissioner) will make provision for individuals who have been assessed as eligible for an episode of NHS Continuing Healthcare (CHC) funding, including Funded Nursing Care (FNC) or a contribution to a Joint Package of Care (JPC), including section 117 after-care.
- 1.2 The purpose of this policy is to assist NHS Cheshire and Merseyside ICB to commission care that reflects the preferences of eligible individuals whilst balancing the need to commission care that is safe and effective and makes the best use of available resources.
- 1.3 In developing this policy, NHS Cheshire and Merseyside ICB has had regard to the guidance set out in the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care (DH 2022) and is mindful of its obligations under the relevant legislation set out below.
- 1.4 The National Framework (2022) reflects legislative guidance resulting from the Health and Care Act 2022 which established Integrated Care Boards as the statutory bodies with responsibility for NHS Continuing Healthcare and outlines the legal duties and responsibilities of Integrated Care Boards, NHS England and Local Authorities in relation to NHS Continuing Healthcare. The Integrated Care Board (ICB), amongst other functions, fulfils the role previously held by Clinical Commissioning Groups (CCGs) and is responsible for commissioning the provision of relevant NHS services including NHS Continuing Healthcare.
- 1.5 In relation to NHS Continuing Healthcare, an Integrated Care Board (ICB) includes any person or body authorised by the ICB to exercise any of its functions on its behalf. Where an ICB delegates these functions, it retains statutory responsibility and must provide system leadership by ensuring suitable governance arrangements to ensure these functions are met in accordance with relevant standing rules, guidance, and the National Framework. The ICB should not delegate its final decision-making function in relation to eligibility decisions and remains legally responsible for all eligibility decisions made.
- 1.6 This policy applies to newly referred individuals and existing individuals who are already in receipt of a care package and who have received a comprehensive, multidisciplinary assessment of their health and social care needs and the outcome shows that they are eligible for an episode of:
 - NHS Continuing Healthcare (CHC) funding.
 - The NHS element to a Joint Package of Care (JPC).
 - NHS Funded Nursing Care (FNC).
 - Children's and Young People's Continuing Care.

These elements are referenced in the standing rules (1.7)

- Section 117 Aftercare.
- Mental Health Funding as an inpatient in an Independent Hospital

These elements are subject to the principles outlined within this policy but are not subject to responsibilities under the standing rules (1.7)

- 1.7 The policy details the legal requirements, responsibilities and agreed course of action in

commissioning care which meets the individual's assessed needs. It has been developed to assist the ICB to meet its responsibilities under:

- The National Health Service Commissioning Board and Clinical Groups (Responsibilities and Standing Rules) Regulations 2012 (as amended).
- The Health and Care Act 2022.
- The National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care, July 2022 (revised) (National Framework).
- The National Framework for Children's and Young People's Continuing Care (2016).
- The Care Act 2014.
- The Mental Health Act 1983 (as amended)
- NHS Who Pays? Determining which NHS commissioner is responsible for commissioning healthcare services and for making payment to a provider (Revised 2024).
- The NHS Act 2006 (as amended).
- The National Health Service (Integrated Care Boards: Responsibilities) Regulations 2022.

1.8 This policy has been developed to help provide a common and shared understanding of the ICB's commitments in relation to individual choice and resource allocation. The benefits of this policy are to:

- inform robust and consistent commissioning decisions.
- promote individual choice as far as reasonably possible.
- ensure the provision of safe, high quality and clinically effective care.
- ensure that there is consistency in the local area over the services that individuals are offered.
- ensure the ICB achieves value for money in its purchasing of services for individuals eligible for a package of care.
- facilitate effective partnership working between health care providers, NHS bodies and the local authority in the area.

1.9 The NHS Continuing Healthcare eligibility process is outlined in the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care (Revised 2022) and the National Framework for Children and Young People's Continuing Care (January 2016); the operational detail of that process is not within the scope of this policy.

1.10 Promoting equality and addressing health inequalities are at the heart of NHS England's values. Throughout the development of this policy, we have given regard to the need to:

- eliminate discrimination, harassment, and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation) and those who do not share it.
- reduce inequalities between individuals in access to, and outcomes from, healthcare services and to ensure services are provided in an integrated way where this might reduce health inequalities.
- make reasonable adjustments when necessary.

2 Provision of Services for People who are Eligible for NHS Continuing Healthcare

- 2.1 Many individuals who require NHS CHC will receive this in a specialised environment. The treatments, care and equipment required to meet complex, intense and unpredictable health needs will depend 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 individual's ordinary place of residence. These factors may mean that there is a limited choice of clinically appropriate, safe, sustainable, and affordable packages of care.
- 2.2 ICB's commission in accordance with the NHS Constitution and the duties at s.14Z36 (duty to promote patient involvement) and s.14Z37 (duty to promote patient choice) of the National Health Service Act 2006 (the NHS Act). The ICB fully recognises these obligations but must balance them against its other duties.
- 2.3 In commissioning NHS Continuing Healthcare, the ICB must have constant regard to its financial duties. In brief, section 223G of the NHS Act provides for payment to CCGs from the NHS Commissioning Board ("NHS England") in respect of each financial year, to allow the CCG to perform its functions. Section 223GC provides that within each financial year the CCG must not exceed the amount specified by the Board. With the dissolution of CCGs, these responsibilities transferred to ICBs on 1st July 2022.
- 2.5 NHS Cheshire and Merseyside ICB acknowledges it must also have due regard to the rights of eligible 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 as proportionate, in accordance with *Gunter v Southwestern Staffordshire Primary Care Trust* [2005 ¹].
- 2.6 The ICB must also have due regard to the responsibilities transferred from the former CCGs regarding equality duties, both under s.14Z35 of the NHS Act 2006 (duty to reduce inequalities) and the Public Sector Equality Duty under s.149 of the Equality Act 2010 (duty to eliminate discrimination and advance equality of opportunity between persons with and without protected characteristics). Quality and Equality Impact Analyses have been undertaken for this policy at the time of its review.
- 2.7 The ICB is guided in balancing these obligations as outlined in the case of *Condliff v North Staffordshire Primary Care Trust* [2011]² 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).
- 2.8 In the light of these constraints, NHS Cheshire and Merseyside ICB has developed this policy to balance personal choice and safety with the need to effectively use finite resources. It is also necessary to have a policy that 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.

3 Principles

¹ [2005] EWHC 1894 (Admin)

² [2011] EWHC 872 (Admin)

- 3.1 The application of this policy will ensure decisions about care will be equitable.
- 3.2 The process will be person-centred. Consideration of individuals' and carers' views will be given, particularly when nearing the end of their life; this includes considerations of distance and transport requirements for families and carers.
- 3.3 The ICB will take choice into account when arranging a suitable package of care. However, there is no legal obligation for the ICB to provide a care package greater than the assessed need.
- 3.4 Where an individual qualifies for an NHS contribution to a package, the ICB will resource a reasonable and appropriate package based on the needs that have been formally assessed in accordance with national guidance. The ICB will secure and fund (in part or in full) a package necessary to meet the assessed health needs (health and associated social care needs in the context of CHC)
- 3.5 The ICB will seek to promote the individual's independence subject to the factors set out in section 3.7 below. In addition, the ICB aims to support individuals to take reasonable risks whilst ensuring that care provided is clinically safe; this will include the appropriate use of a Personal Health Budget (PHB).
- 3.6 The ICB is committed to using NHS resources effectively and efficiently in the most cost-effective manner in the provision of care services which are reasonable and affordable.
- 3.7 The ICB's responsibility to commission, procure or provide a package of care does not continue indefinitely, as needs could change. Regular reviews are built into the process to ensure that the care provision continues to meet the individual's needs. When commissioning services with individuals, the ICB will balance a range of factors including:
 - individual safety and the safety of others.
 - individual choice and preference.
 - individual's rights to family, private and home life, and Equality Act protected characteristics.
 - value for money.
 - the best use of resources for the population.
 - ensuring services are of sufficient quality.
 - ensuring services are culturally sensitive.
 - ensuring services are personalised to meet individual need.

4 Referral Criteria

- 4.1 Referrals for assessment will be accepted for individuals who are the responsibility of NHS Cheshire and Merseyside in accordance with Who Pays? Determining which NHS ICB is responsible commissioning healthcare services and for making payment to a provider (Revised 2024), and who fit within one of the categories detailed below:

Mental Health

- Individuals eligible for after care under Section 117 of the Mental Health Act 1983 (MHA). This refers to those individuals for whom it is required that NHS Cheshire and Merseyside ICB and the relevant local authority, in cooperation with voluntary

agencies, provide or arrange for the provision of aftercare. This applies to individuals detained in hospital for treatment under section 3, 37, 45A, 47 or 48 of the MHA who then cease to be detained and further includes individuals granted leave of absence under section 17, and individuals subject to community treatment orders.

- Individuals who are detained in an Independent Hospital.

NHS Continuing Healthcare

- Individuals aged 18 or over and where a positive NHS Continuing Healthcare checklist has been completed as detailed in The National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care.

Joint Packages of Care

- Individuals aged 18 or over where a full assessment has found that they are not eligible for NHS Continuing Healthcare but the ICB has agreed that the package of care includes elements that should be funded by the NHS as core services are unable to meet the assessed needs or the individual has needs which are above the level of responsibility a Local Authority can solely meet.

Children and Young People's Continuing Care

- Individuals under the age of 18 whose needs cannot be met by existing universal and specialist services alone and where a pre-assessment has taken place which indicates a full assessment is necessary as detailed in the National Framework for Children and Young People's Continuing Care.

5 Roles and Responsibilities

5.1 The ICB delegates responsibility and authority to the All-Age Continuing Care Team to ensure that:

- the ICB complies with relevant Responsibilities and Standing Rules Regulations.
- the ICB complies with The National Frameworks.
- There is adherence to this Policy and other policies of the ICB.
- NHS resources are utilised effectively and efficiently to commission in the most cost-effective manner, care services which are reasonable and affordable.

5.2 Where the package of care is defined as exceeding the normal level of expenditure or includes features described in section 13, then the case must be referred to an Exceptional Circumstance Consideration Panel to consider the suggested package, and any exceptional circumstances that are pertinent to the individual that may indicate that the ICB agrees for it exceeding the normal level of expenditure or to commission the recommended features.

5.3 Exceptional Circumstances are described in section 13.

6 Responsibilities of the ICB

6.1 The ICB's duty is to provide a care package to meet the reasonable needs of individuals as formally assessed in accordance with national guidance.

- 6.2 The ICB aims to offer individuals a choice of care packages which meet their assessed health needs. Where there is a request for a care package by the eligible individual or their representative which is not usually commissioned, the expectation is that the most cost-effective package that meets the assessed needs will be commissioned.
- 6.3 Where a care package requested by an individual is more expensive than the options offered by the ICB, then the ICB, taking into account the considerations set out in paragraph 3.7, may agree to fund such a package of care in exceptional circumstances. Funding decisions relating to such circumstances will be considered on an individual basis, clearly documented, and discussed with the individual or their representative. Where decisions of this nature are required, the ICB should use an Exceptional Circumstance Consideration Panel to consider the request to ensure equitable and consistent use of resources as set out in section 13.
- 6.4 In exceptional circumstances, the ICB may agree to fund care provision where the costs exceed the most cost-effective care package that has been assessed as able to meet an individual's needs.
- 6.5 The ICB will support an individual in making the decision as to where they wish to receive their package of care, from the available options. However, if concerns remain that an individual does not have the mental capacity to make the decision as to where they live, a mental capacity assessment will be undertaken.
- 6.6 All individuals will have their care reviewed at three months and thereafter on at least an annual basis or sooner if their care needs indicate that this is necessary. Individuals with palliative care needs will have their care reviewed more frequently in response to any change in their medical condition, based on clinical judgement.
- 6.7 The review may result in either an increase or a decrease in support offered and will be based on the assessed need of the individual at that time.
- 6.8 The individual's condition may have improved or stabilised to such an extent that they no longer meet the criteria for the package of care. Following reassessment, they may be found to be no longer eligible. Consequently, the individual will be referred to the relevant local authority who will assess their needs. This may mean that the individual will be charged for aspects of their ongoing care or may need to fully fund their ongoing care themselves. Where possible, transition to local authority care will be managed by agreement between the respective authorities within a maximum of 28 days of the individual being found no longer eligible for the package of care.
- 6.9 Where an individual is no longer eligible for an NHS funded package of care, the ICB will issue a notice withdrawing the care package. The individual can request a review of this decision through the ICB Local Resolution Procedure. In line with timescales described in 6.8.

7 Provision

- 7.1 Within the law, the ICB is the appointed body to determine the appropriate setting in which it is prepared to commission care for individuals, but in so doing will take account of individual's rights to family, private and home life and protected characteristics and consider all reasonable requests.
- 7.2 Children and Young people up to the age of 18 who are eligible for NHS continuing care may have their care and support needs met by a package of care that includes

funding from the NHS, Local Authority and Education in a Bi Partite or Tri Partite package, based upon the assessed needs of the individual. The package, or funding resource, allocated to a personal health budget may be determined by using a Resource Allocation Tool.

8 Care at Home Packages

- 8.1 The ICB supports the use of 'care at home' packages where appropriate and recognises the importance of individual choice. However, there may be situations where the ICB cannot provide the individual's choice of having a 'care at home' package because of the factors associated with the package. Where the ICB considers that packages which require a high level of input may be more appropriately and safely met in another care setting, this will be assessed on an individual basis in line with section 3.7 and 7.1.
- 8.2 Cheshire and Merseyside ICB does not have the resources or facilities to provide either a 24-hour registered nursing hospital at home service or the equivalent of nursing/residential care provision. 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 bound to undertake. However, the ICB will consider all requests for home care, on an individual basis, having regard to assessed needs in accordance with the principles set out in the National Framework in every case.
- 8.3 The ICB will consider the following factors when considering a request to deliver a complex 'care at home' package:
- Can care be delivered safely to the individual and without undue risk to the individual the staff, or other resident members of the household?
 - The acceptance by the individual, the ICB and each person involved in the individual's care of any risks relating to the care package.
 - The General Practitioner's opinion on the suitability of the package and confirmation that they agree to provide primary medical support.
 - It is the individual's preferred choice.
 - The suitability, accessibility, and availability of alternative arrangements.
 - The extent of an individual's needs (i.e. frequency of qualified nurse intervention required).
 - The cost of providing the package of choice to ensure best value and efficient use of resources.
 - The cost (or range of costs) of the care package(s) identified by the ICB as suitable to meet the individual's assessed care needs.
 - 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 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.
 - The psychological, social, and physical impact on the individual.
 - The individual's human rights and the rights of their family and/or carers, including the right to respect home and family life.
 - The willingness and ability of family members or friends to provide elements of care where this is a necessary/desirable part of the care plan and the agreement of those persons to the care plan.

- 8.4 At all times, individuals with capacity to make decisions about their residence, care and treatment retain their right to decline any offer made by the ICB, and to make and fund their own private arrangements. Where individuals lack capacity, in the absence of any court appointed deputy or LPA, the ICB will make best interest determination following the practice outlined in Section 16 of this policy.
- 8.5 The ICB aims to offer individuals a choice of care providers. To ensure consistent high-quality care and equity in provision, the ICB has a list of pre-approved care providers, who have demonstrated that they can provide care for individuals who meet eligibility described within this policy. The ICB will set standards for the quality of care to be delivered; only providers which meet these standards will make the pre-approved care provider list. The case manager will use all the clinical information from the assessment to match assessed needs to those approved care providers which can meet those assessed needs and have capacity to undertake the provision.
- 8.6 Care providers can conduct a pre acceptance assessment plan detailing how they will meet needs and requirements and outlining how they will deliver care. The case manager will review all the options and select the care provider which can best meet individual needs, based on quality and value for money. If more than one care provider is identified (maximum of three), then the case manager will discuss the options with the individual or their representative. The case manager may also request consideration at an Exceptional Circumstance Consideration Panel at this time to ensure equitable and consistent use of resources.

9 Assessments for Care at Home Packages

- 9.1 The ICB will ensure that prior to agreeing to any 'care at home' package, an appraisal of the following will be completed:
- the outcome of considerations as described in 8.3.
 - staff risks in relation to the use of equipment within the environment.
 - staffing contingency in the event of package breakdown.
 - whether care can be delivered safely and without undue risk to the eligible individual. Safety will be determined by a written risk assessment undertaken by an appropriately qualified professional in consultation with the eligible individual and/or their family. The risk assessment will include the availability of equipment, 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.
 - Any risks posed to carers or other members of the household (including children) will also be considered.
 - Where equipment and/or assistive technology can be used to support the safe delivery of care at home, it is expected that the eligible individual will accept and use this appropriately.

10 Care Home Placements

- 10.1 If the clinical need assessed by the ICB is for Registered Nurse direct supervision or intervention throughout 24 hours, the care would normally be expected to be provided within a nursing home placement. This includes the requirement for 1-2 hourly intervention/monitoring for repositioning, continence management, medication, feeding, manual handling, and other clinical interventions and/or for the management of significant cognitive impairment.

- 10.2 The ICB aims to offer individuals a choice of care homes. To ensure consistent high-quality care and equity in provision, the ICB has a list (Care Home List) of pre-approved care homes with nursing who have demonstrated that they can provide care for individuals who meet eligibility described within this policy. The ICB will set standards for the quality of care to be delivered; only providers which meet these standards will make the pre-approved care provider list. The ICB will use all the clinical information from the assessment to match assessed needs to those approved care providers which can meet those assessed needs and have availability. The ICB may choose to consider a request for a placement outside NHS Cheshire and Merseyside footprint; this will be considered as an exceptional circumstance described in section 13.
- 10.3 Care providers can conduct a pre-admission assessment plan detailing how they will meet needs and requirements and outlining how they will deliver care. The ICB will review all the options and select the care provider which can best meet individual needs, based on quality and value for money. If more than one care provider is identified (maximum of three), then the case manager, on behalf of the ICB, will discuss the options with the individual or their representative.
- 10.4 Where, immediately prior to being found eligible for NHS Continuing Healthcare, an individual is residing in a care home which is not on the Care Home List and that individual does not wish to move, the ICB will request and consider a clinical assessment of the individual and, if necessary, a best interests decision to consider the clinical or psychological risk of a move to an alternative placement.
- 10.5 The ICB will in exceptional circumstances consider whether it is appropriate to commission a package outside of the Care Home List. The ICB will consider:
- the cost of the package.
 - the individual's preferences.
 - the Care Quality Commission's assessed standard.
 - whether an NHS contract is in place.
 - the appropriateness of the package.
 - the clinical assessment of the individual's needs and the risk of any change to the individual's health.
 - the likely length of the proposed package.
- 10.6 If care is commissioned in a home that is not on the Care Home List, the cost of the placement should not usually exceed more than an equivalent package of care from a care home on the approved list. It would be expected that unless there is a clear and identifiable risk to an individual's health that the individual would move to a care home derived from the approved list. The appropriateness of the placement will be reviewed at all subsequent review points.
- 10.7 In exceptional circumstances, the ICB may agree to fund a care home placement which exceeds the cost of an equivalent package of care. The ICB will not normally fund a placement where the requested care home is not the most suitable place for the provision of care, and the care package can only be provided safely or resiliently at the current home with additional staffing at significant extra cost.

11 Contracting

- 11.1 To ensure that there is no confusion between the NHS and privately funded services, the ICB will enter a legally binding contract and / or individual placement agreement with the selected care provider which details the provision by the care home of a

defined level of health and social care to the individual. This will be independent of any arrangement between the care provider and the individual or their representative(s) and will be expressed to continue notwithstanding the termination of any arrangements made between the individual and the care provider. Any payments made by the individual under a contract with the care provider for additional services cannot be made under the ICB's contract.

- 11.2 Should the private arrangement cease, this should not have an adverse impact on the arrangement with the provider to deliver a package of care which is funded through the NHS. This reiterates the importance of separating private and NHS funded care so that it is distinct and entirely separate and not financially and contractually interdependent.
- 11.3 'The ICB will review its fee uplifts approach on an annual basis, taking into account any relevant national planning guidance and other local factors'

12 Third Party Contributions (top up)

- 12.1 The ICB is only obliged to provide services that meet the assessed needs and reasonable requirements of an individual. An individual has the right to decline NHS services and make their own private arrangements.
- 12.2 Where an individual is found eligible for NHS Continuing Healthcare, the ICB must provide any services that it is required to provide, free of charge. In the context of care home placements, this will be limited to the cost of providing accommodation, care and support necessary to meet the assessed needs of the individual. For 'care at home' packages, this will be the cost of providing the services to meet the assessed needs of the individual. The package of care which the ICB has assessed as being reasonably required to meet the individual's needs is known as the core package.
- 12.3 Where an individual wishes to augment any NHS funded care package to meet their personal preferences, they are at liberty to do so. However, this is provided that it does not constitute a subsidy to the core package of care identified by the ICB. Third party contributions (top up) to NHS care are not lawful.
- 12.4 As a general rule, individuals can make a contribution to their care package where the additional services are optional and non-essential services which an individual has chosen (but was not obliged) to include in their care package; examples include private hairdressers or a personal television.
- 12.5 In addition to 12.4, where health services beyond those assessed as required as part of the care package are needed by the individual, they would be accessed in the same way as do the wider community, such as physiotherapy. 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 their representative/s) under a contract with a care provider for services cannot relate to any services that are to be provided under the NHS ICB contract with the care provider.
- 12.6 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.
- 12.7 If the individual (and/or his/her representative/s) decides for any reason that the funding of the additional services is to be terminated, NHS Cheshire and Merseyside ICB will not assume responsibility for funding any additional services.

13 Exceptional Circumstances

- 13.1 The ICB recognises that exceptional circumstances may require exceptional 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 normal level of expenditure or includes features described below in 13.2, then the case will be referred to consider the suggested package and any exceptional circumstances that are pertinent to the individual that may indicate that the NHS ICB is in agreement with the proposed package of care.
- 13.2 Exceptionality will be determined on a case-by-case basis and will require agreement by personnel as determined by the ICB's Standing Rules and Financial Instruction

Examples of exceptional circumstances that must be considered in this manner are:

- **Employing a family member as a paid carer via a Direct Payment Personal Health Budget.**
- **Bespoke piece of equipment required above normal levels of expenditure.**
- **Use of private services as opposed to Core NHS Services, for example, private physiotherapy or hydrotherapy.**
- **Complex / specialist care that would be removed from family / informal carers.**
- **If an individual requires specific care provision which reflects their religion, belief, and culture, which requires care to be commissioned above normal levels of expenditure. This could improve their spiritual health and sense of belonging.**
- **Commissioning a package of care above normal levels of expenditure when a reasonable alternative is available.**
- **Where a case is in dispute with a council or other ICB and Cheshire and Merseyside ICB are paying or need to consider paying without prejudice.**

- A case may also to be referred for consideration as an Exceptional Circumstance where the ICB wishes to discuss any features that may be considered unusual or contentious.
- Funding decisions relating to such circumstances will be considered on an individual basis, clearly documented, and discussed with the individual or their representative. Where decisions of this nature are required, the ICB will use an Exceptional Circumstance Consideration Panel to consider the request to ensure equitable and consistent use of resources.
- An Exceptional Circumstance Panel should consist of a minimum of 2 ICB senior clinicians or managers, 1 of whom has the relevant level of authority as determined by the ICB's Standing Rules and Financial Instruction. Specific staff may be invited to the panel depending upon the request made, for example an Occupational Therapist may be invited to consider the purchase of bespoke equipment. It will be the responsibility of the panel chair to decide on the membership of each panel. Cases which exceed panel members approval limits, as defined within the ICB Standing Rules and Financial Instructions, must be referred through relevant approval routes following the Exceptional Circumstances Panel.

- 13.6 An Exceptional Circumstance Consideration Panel may meet face to face or virtually and the case may be discussed jointly or considered separately if the panel members agree the decision and any actions arising from the panel.
- 13.7 When determining exceptionality relating to care at home packages and care home placements the ICB must also consider factors described in 8.3 and 9.1
- 13.8 Oversight of cases which are heard at Exceptional Circumstances Panel will be via the emerging AACC governance route.

14 Change of Circumstance

- 14.1 The NHS has a responsibility to regularly review the care needs of individuals eligible for NHS funding, to ensure that the care services being commissioned for them remain appropriate or to consider how those services may need to change. An initial review will take place 3 months after the first assessment. Thereafter, case reviews will take place on an annual basis as minimum, unless more frequent reviews have been clinically indicated.
- 14.2 NHS Cheshire and Merseyside ICB recognises an individual's needs may change over time and there may be other changes the ICB has to take account of, including other budget demands, changes in technology 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 by NHS Cheshire and Merseyside ICB and/or any services they commission does not constitute a promise the services will continue to be offered or commissioned in that manner in the future.
- 14.3 Reviews will be person-centred. Initial and annual reviews will take place to include the individual, families, and carers. Some reviews will be conducted over the telephone to ensure care needs are being met when initially put in place and will involve discussion with the individual and representatives. If they are unable to attend, every effort will be made to obtain their feedback. The outcome of such reviews will be formally communicated to the individual and, where appropriate, their family or carer.
- 14.4 Eligibility to have care funded by the NHS is not a permanent arrangement and remains subject to regular reviews and confirmation of continuing eligibility through reassessment where there is clear evidence of a change in need. The health and/or health needs of individuals may improve or stabilise to the extent that they no longer meet the eligibility criteria for NHS Continuing Healthcare and other care packages covered by this policy.
- 14.5 Where the evidence no longer supports an individual's eligibility for NHS Continuing Healthcare or other care packages covered by this policy, the ICB will adhere to reassessment processes outlined in The National Framework ensuring to (in so far as is practicable) consult the local authority before making a decision, including any reassessment of CHC eligibility.
- 14.6 Following reassessment, details of individuals no longer eligible for NHS Continuing Healthcare or other packages of care covered by this policy will, with the consent of the individual, be forwarded to Adult Social Services within the local authority so that an assessment can be arranged to determine the extent to which the individual may qualify for local authority funded care. The case manager, on behalf of the ICB, will liaise effectively with the individual, or their representative, as well as the local authority to ensure that any transition of responsibilities for commissioning care services are coordinated effectively by an appointed Case Manager and that there are no gaps in

care provision. Responsibility for funding will cease at the point of a not eligible decision and will be communicated to the individual, or their representative as well as the Local Authorities as soon as a reassessment is initiated therefore ensuring that all possible outcomes are fully understood.

- 14.7 Individuals no longer eligible for NHS Continuing Healthcare may be eligible for NHS Funded Nursing Care which will be considered by the ICB in accordance with The National Framework.

15 Personal Health Budgets

- 15.1 The ICB will ensure that people eligible for NHS Continuing Healthcare or other care packages covered by this policy benefit from the “right to have” a personal health budget.
- 15.2 The ICB will ensure that the guidelines laid out in NHS Cheshire and Merseyside Personal Health Budget Policy are fully utilised.
- 15.3 The ICB will be open and transparent with people about what elements of their care can be included in a personal health budget and how this budget has been calculated. This will be based, in principle, on the amount of money that would have normally been spent on NHS services as part of an individual’s package of care. This enables greater choice and flexibility over the services received which is one of the key components of ensuring improved outcomes.
- 15.4 The ICB will strive to include as much of this budget as possible into an individual’s personal health budget and where this is not possible, work with them, their representatives, family, and carers to tailor the support provided for their assessed needs.
- 15.5 Any agreed budget will be of a sufficient amount to ensure the health and wellbeing outcomes required for an individual can be realistically met. As with any NHS funded package of care, any privately funded arrangements must be distinct from that funded under a personal health budget and any contractual arrangements must be separate.

16 Mental Capacity

- 16.1 Where there is reason to believe that an individual may lack capacity to make a decision regarding the provision of (or change to) their care or accommodation, a mental capacity assessment shall be undertaken. If the assessment confirms that the individual lacks the relevant capacity, best interest decision making shall be undertaken in accordance with the Mental Capacity Act 2005 and the Code of Practice which accompanies it. Any decisions made should also consider any actual or potential Deprivation of Liberty and associated authorisation in place or that is required.
- 16.2 Any best interest decision made will be in accordance with the best interests process and considerations described in the Mental Capacity Act 2005. In particular, the ICB will consider the following as part of the best interest assessment:
- the individual’s wishes and feeling (whether expressed verbally, in writing or behaviour).
 - the individual’s beliefs and values that would influence them if they had capacity.
 - The views of anyone named who should be consulted, any deputy or attorney for the individual, or anyone engaged in caring for, or interested in, the welfare of the individual

as to what they consider is in the individual's best interests.

- 16.3 The ICB will appoint an Independent Mental Capacity Advocate to support the individual in decision making, where required, in accordance with the Mental Capacity Act.
- 16.4 In some circumstances the individual may have given another person authority to make a decision on their behalf. Where the ICB is made aware of this and a best interest decision is required in respect of an offer of care, it will ask to see one of the following documents:
- A Lasting Power of Attorney, which has been registered with the Office of the Public Guardian. This can be either a Health and Welfare Lasting Power of Attorney or a Property and Financial Affairs Lasting Power of Attorney.
 - An Enduring Power of Attorney (which can only be for property and finances), which has been registered with the Office of the Public Guardian.

Alternatively, there may be:

- An order of the Court of Protection appointing a Welfare Deputy (this could potentially include being able to decide on the care or accommodation of the individual).
 - An order of the Court of Protection appointing a Financial Deputy.
 - An order from the Court of Protection under the Mental Capacity Act 2005, in respect of the care or accommodation of the individual.
- 16.5 Where one of the above documents is provided to the ICB, it will consider how best interest decisions should be made appropriately. The ICB will take its decision in accordance with the Mental Capacity Act guidance and will seek specific legal advice where appropriate.
- 16.6 If there is a dispute about best interests in relation to where an individual should live and receive care, the ICB may need to make an application to the Court of Protection and will obtain legal advice where appropriate.

17 Appeal

- 17.1 In line with its legal obligations, Government guidance and this Policy, the ICB will make a reasonable offer of care to individuals deemed eligible for NHS funding identified in section 1.6.
- 17.2 In the case of any offer of care either being considered to be inappropriate, unreasonable and/or unacceptable to the individual, this should be notified to the ICB within five working days, outlining the reasons or objections to the offer of care.
- 17.3 Upon receipt of a request to reconsider its offer of care, the ICB will arrange for a timely review to take place within a timescale appropriate to the urgency of the case, and a maximum of five working days, while ensuring the individual's safety and welfare is paramount. If the offer of care has not already been discussed at an Exceptional Circumstance Panel, then this should be arranged to consider the relevant factors informing the decision. If the offer of care has already been discussed at an Exceptional Circumstance Panel the review should be escalated to the next senior manager to consider. An outcome should be clearly documented and communicated to the individual or their representative within a maximum of 5 working days.

- 17.4 Following its review, where the ICB determines to uphold the offer of care, this will be confirmed to the individual, advising of the right to make a formal complaint and how such a complaint may be made in accordance with the NHS complaints process.
- 17.5 Any dispute in care provision should not lead to a delay in discharge from acute (Hospital care) facilities, and while the dispute is being resolved, the service user will receive their care in an appropriate environment outside of an acute hospital.

18 Right to Refuse

- 18.1 An eligible individual is not obliged to accept NHS Cheshire and Merseyside ICB's offer of care. Where an eligible individual chooses not to accept a package, the ICB will take reasonable steps to inform the individual that:
- NHS Cheshire and Merseyside ICB is not required to make further offers to the individual or offer to fund care in a location of the individual's choice.
 - The Local Authority may not assume responsibility to provide care to the individual.
- 18.2 NHS Cheshire and Merseyside ICB will have discharged its duty to eligible individuals by making an offer of a suitable care package whether individuals choose to accept the offer. For example, NHS Cheshire and Merseyside ICB may discharge its duty by offering to commission a package of services for an eligible individual in one or more appropriate care settings, irrespective of whether this is the individual's preferred location.
- 18.3 If NHS Cheshire and Merseyside ICB's offers of appropriate care packages are refused by the eligible individual or someone with legal authority to act on their behalf, NHS Cheshire and Merseyside ICB may have recourse to local Safeguarding Policies and Procedures and the Mental Capacity Act 2005, as appropriate.
- 18.4 Where an eligible individual exercises their right to refuse, NHS Cheshire and Merseyside ICB will ask the individual or their representative(s) to provide a written statement confirming they are choosing not to accept the offer of care provision.
- 18.5 If the individual or their family/representative, where appropriate, indicates that they are unwilling to accept any of the placements offered by the ICB, then NHS Cheshire and Merseyside ICB shall issue a final offer letter setting out the options available. If the ICB does not receive confirmation that the individual has accepted one of the placements within 10 working days, then the ICB will issue a Notice of Care being declined by a service user confirming that the NHS funding has been turned down and NHS funding will cease 28 days after the date of the Notice of Care being declined by the individual or their representative.
- 18.6 If the family/representative of an individual decline all reasonable offers of care on behalf of an individual lacking capacity to make that decision the ICB will consider whether it is necessary to take legal advice and/or seek involvement from the Court of Protection.
- 18.7 If during the period of the notice the individual or individual's representative chooses to accept the offered care, this offer will be reinstated. Where the individual or their family/representative choose to turn down NHS Continuing Healthcare funding, they will not be able to access local authority funding for the care and will need to make private arrangements.
- 18.8 Where an eligible individual refuses such care, they are entitled to re-engage with NHS

Cheshire and Merseyside ICB at any time, and, if they do so, the offer of what should be made available to that individual will be reconsidered in line with their current needs.

19 Policy review

- 19.1 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 NHS Cheshire and Merseyside ICB circumstances / arrangements or changes in legislation / national guidance.

20 Definitions

Integrated Care Board	An integrated care board (or ICB) is a statutory NHS organisation which is responsible for developing a plan for meeting the health needs of the population, managing the NHS budget and arranging for the provision of health services in a geographical area.
Case Manager	A person employed by the ICB responsible for planning, prioritising and purchasing health services for individuals who have been assessed as eligible for an episode of NHS Funding.
'The Individual'/Eligible individual	Within this Policy, this refers to any individual, service user or client, who has been assessed by the ICB to be eligible, to have their assessed health and social care needs met and funded by the NHS.
'Continuing Care'	Refers to care provided over an extended period of time to an individual aged 18 or over, to meet physical and/or mental health needs which have arisen as a result of disability, accident or illness.
'NHS Continuing Healthcare (or "CHC")'	Refers to a package of continuing care that is commissioned (arranged and funded) solely by or on behalf of the NHS where an individual has been found to have a 'primary health need.'
'The National Framework'	Refers to The National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care (revised 2022) which provides the context for the commissioning of NHS Continuing Healthcare, providing clarity and consistency of decision making with regard to eligibility and setting out the systems and processes to be used by the NHS.
'Funded Nursing Care'	This is the funding provided by the NHS to care homes providing nursing to support the provision of nursing care by a registered nurse. In all cases individuals should be considered for eligibility for NHS Continuing Healthcare before a decision is reached about the decision for NHS Funded Nursing Care.

<p>'Joint Package of Care'</p>	<p>This refers to the following care packages:</p> <p>a) An individual who is not entitled to NHS Continuing Healthcare (because 'taken as a whole' their needs are not beyond the powers of a local authority to meet), but nonetheless have some specific needs identified through the decision support tool that are not of a nature that a local authority can solely meet or are beyond the powers of a local authority to solely meet.</p> <p>This will include access to core health services and only where these cannot meet the individuals assessed health needs will these be individually funded by the ICB.</p> <p>b) Individuals under Section 117 of the Mental Health Act (MHA) (1983) The NHS and local authorities have a duty to provide or commission the provision of after care services to individuals who have been detained under certain provisions of the Mental Health Act for needs arising from their mental disorder. This will include access to core health services and only where these cannot meet the assessed health needs will these be individually funded by the ICB.</p>
<p>"Children and Young People's Continuing Care"</p>	<p>A continuing care package will be 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.</p>
<p>'Representative'</p>	<p>Includes any friend, unpaid carer or family member who is supporting the individual in the process as well as anyone acting in a more formal capacity (i.e. welfare deputy or power of attorney, or an organisation representing the individual).</p>
<p>Equality Act protected characteristics</p>	<p>Protected characteristics are the nine groups protected under the Equality Act 2010. They are:</p> <ul style="list-style-type: none"> • age • disability • gender reassignment • marriage and civil partnership • pregnancy and maternity • race • religion or belief • sexual orientation