



Sunderland
Clinical Commissioning Group

CO36: Policy for Continuing Healthcare and Funded Nursing Care Appeal Procedure



Contents

1.	Introduction	3
2.	The Purpose of Continuing Healthcare Appeals	3
3.	Requests for an Appeal	4
4.	Upon Receipt of a Request for Appeal	5
5.	Gathering of Information.....	6
6.	Local Resolution Meeting	7
7.	Challenges to the outcome of the Local Appeal Process.....	7
8.	Exceptionality Criteria.....	7
9.	Review and Dissemination	9
10.	References and Links.....	9
11.	Equality Impact Assessment	10

Version Control

Version	Date Approved	Committee	Date of next review	CCG Lead
1	03/08/2021	SCCG Executive Committee	03/08/2023	Vicky McGurk

Accessible Information Standards

If you require this document in an alternative format, such as easy read, large text, braille or an alternative language please contact SUNCCG.sccg@nhs.net

1. Introduction

- 1.1 This procedure is created in accordance with paragraph 151 of the National Framework for NHS Continuing Healthcare (CHC) as revised in March 2018 (implemented in October 2018). The National Framework for NHS CHC reflects the new NHS framework and structures created by the Health and Social Care Act 2012, effective from 1 April 2013 and the Care Act 2014.

The Regulations under the Health and Social Care Act set out the Standing Rules to be followed when determining eligibility for NHS Continuing Healthcare and NHS Funded Nursing Care (FNC), and this process is designed to set out a clear pathway as to how individuals, or their representative, may challenge eligibility for CHC.

This procedure refers to a challenge made by an individual or their representative following an assessment of eligibility for NHS CHC as an appeal, whereas the Standing Rules use the term 'review' for the same situation. Therefore, when this document refers to an 'appeal' this equates to a 'review of a decision' regarding CHC eligibility made by a Clinical Commissioning Group (CCG).

- 1.2 This procedure is not for use where disputes arise between public bodies as to funding responsibilities or disagreement regarding a recommendation for funding made by the CHC multi-disciplinary team (MDT). The procedure applies exclusively to cases for which the CCG is the Responsible Commissioner.
- 1.3 This procedure only applies to periods of care where eligibility for funding has been assessed. It does not apply to periods of unassessed care.
- 1.4 The Department of Health states the responsible CCG should deal with a request within three-months of receipt of the initial request, where possible.

2. The Purpose of Continuing Healthcare Appeals

- 2.1 It is the duty of the responsible CCG to take reasonable steps to ensure that an assessment of eligibility for CHC is carried out in all cases where it appears to the NHS that there may be a need for such an assessment.

The purpose of such an assessment is to establish whether a patient has a Primary Health Need which is utilised to establish a patient's eligibility for Continuing Healthcare Funding. The actual decision on whether or not a person demonstrates a Primary Health Need remains the responsibility of the CCG.

- 2.2 This Procedure sets out the process to be followed by the Funded Care Team to determine whether an individual's case is appropriate for consideration under the appeal procedure, in order to assess whether that individual has been wrongly denied CHC funding.

2.3 This procedure aims to:

- Adhere to the Standing Rules for Continuing Healthcare
- Provide transparency throughout the appeal process
- Adhere to guidance from the 'National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care in addition to the timescales set by the Department of Health (2018)'
- Adhere to the Guidance for CCGs on the time limits for individuals to request a review of an eligibility decision for NHS Continuing Healthcare Funding
- Adhere to the 'Refreshed Redress Guidance (April 2015)'
- Adhere to the NHS Continuing Healthcare Operational Procedure for Independent Review Panels (2009)

3. Requests for an Appeal

3.1 Where a CHC assessment has been carried out and the individual or their representative who holds the appropriate legal authority to do so wishes to challenge the outcome of the decision they must do so through the Local Appeal process.

3.2 In cases where an individual does not have the mental capacity to manage their own affairs a representative may request an appeal of an eligibility decision on their behalf if they hold 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 has been registered with the Office of the Public Guardian.
- An order of the Court of Protection appointing them as Deputy and the order enables them to decide to request a review of an eligibility decision.
- An order from the Court of Protection, deciding that a review of eligibility should take place.

3.4 Where no person holds any of the documents from the aforementioned list, each case will be considered on an individual basis taking into account what would be in the best interest of the individual.

3.5 All challenges must be received by the Funded Care Team no later than six-months following receipt of the decision regarding CHC eligibility. Any requests received outside of the six-month timeframe will be considered for exceptional circumstances (see section 8 for criteria).

3.6 A request for an appeal may be made in the following circumstances:
Where an individual or their representative is dissatisfied with the decision regarding eligibility for NHS Continuing Healthcare following completion of the Decision Support Tool.

Or

Where there has been a failure to follow National Guidance in reaching its decision as to determine the individual's eligibility for NHS Continuing Healthcare.

3.7 A request for an appeal can only be made once the recommendation has been accepted by the responsible CCG. The decision will remain unchanged until such time as it is overturned. If, as a result of the Local Appeal Process the decision is overturned, CHC funding will normally be back dated to the date when the assessment to which the appeal period relates to, was completed.

Any refund will be in line with the NHS Continuing Healthcare Refreshed Redress Guidance, 2015.

3.8 This procedure does not cover the following challenges:

- The content of the Department of Health National Framework for Continuing Healthcare and NHS-Funded Nursing Care. These need to be pursued with the Department of Health
- The type and/or location of any offer of NHS funded Continuing Healthcare services or NHS treatment. These challenges need to be pursued through the standard NHS Complaints Procedure.

4. Upon Receipt of a Request for Appeal

4.1 In line with the Department of Health Guidance, appeals must be received in writing no later than six-months after the date of the letter advising of the outcome of the decision regarding eligibility for NHS Continuing Healthcare. Exceptional criteria may apply to the above time limit (see section 8).

4.2 Once an appeal letter has been received from the individual and/or their representative outlining the reasons for the request for an appeal of the NHS

Continuing Healthcare eligibility decision. An acknowledgement letter will be sent in writing to the individual and/or their representative enclosing the following documents within 5 working days where possible:

- A copy of the CHC Appeal Procedure appeal form with outcome letter.
- Consent form for completion or proof of legal right

The individual and/or their representative will be required to send the following documentation to the Funded Care Team. The Funded Care Team cannot progress the appeal until the following is received:

- Any relevant legal documentation a completed copy of the appeal form and any additional evidence that they wish to be considered

- 4.3 The Funded Care Team must ensure the appropriate consent to share information is obtained. In a case where there is a lack of mental capacity the principles of the Mental Capacity Act 2005 will be applied.
- 4.4 Where the individual to whom this decision relates is deceased, the person requesting the appeal will need to provide evidence that they are entitled to benefit from the deceased's estate.
- 4.5 On receipt of the requested information from the appellant inclusive of proof of eligibility to act, copies of all care records associated medical and social care records will be requested from the providers pertinent to the individual's case. In many cases under 'The Access to Health Records Act 1990' care providers have up to 40 days to supply the records.
- 4.6 Once the relevant documents have been received a date will be arranged for the individual and/or their representative to attend a Local Resolution Meeting. This will be in line with the Department of Health Guidance and will aim to be within the three- months of the initial request where at all possible.

If the Funded Care Team fails to meet the three-month time frame, this will be communicated in writing to the individual and/or their representative explaining the reasons why this has not been achieved.

5. Gathering of Information

- 5.1 Attempts should be made to access information from all reasonable sources to ensure a complete and robust appeal is undertaken.
- 5.2 The Clinical Lead should address all the relevant points made by the individual and/or their representative.
- 5.3 The appeal process will consider evidence of the time period used by the CHC Multi-Disciplinary Team for their original recommendation and any other relevant information for a period of three-months prior to the date of the Decision Support Tool.
- 5.4 There may be exceptional circumstances where it is necessary for evidence prior to the three-month time frame preceding the Decision Support Tool to be considered.
- 5.5 Where the Funded care Team finds that not all the evidence has been considered, or that a robust decision-making process did not lead to a sound decision on eligibility, the case with the appeal investigation report will be brought internally for reconsideration.

6. Local Resolution Meeting

- 6.1 If the individual and/or their representative has chosen to employ a third party to act on their behalf, the individual and/or representative will ensure it is made clear to the CCG who should be contacted directly through all the stages of the process.
- 6.2 During the Local Resolution Meeting (LRM) the individual and/or their representative should be prepared to discuss the reasons for the appeal and any additional evidence that may have been supplied. A meaningful two-way discussion will take place between the CHC Team and the individual or their representative. This may involve clarification of anything not understood and how the CHC Team came to its decision regarding eligibility.
- 6.3 The Funded Care Team will explain the appeal process and make every effort to ensure that the individual and/or their representative has a clear understanding of the NHS Continuing Healthcare eligibility criteria and how it applies to their own situation.
- 6.4 Detailed notes will be taken at the meeting and provided in the decision outcome.
- 6.5 If no further information is presented to the Funded Care Team, it will then be considered whether there is sufficient evidence to proceed with the appeal or close the case. Only when there is a clear omission on the part of the responsible CCG that not all the evidence has been considered, or that a robust decision making process did not lead to a sound decision on eligibility, will the CCG continue with the appeal.
- 6.6 The outcome of the Local Resolution Meeting will be communicated in writing to the individual and/or their representative.

7. Challenges to the outcome of the Local Appeal Process

- 7.1 In such cases where the individual fails to meet the eligibility criteria and does not demonstrate a Primary Health Need and the individual and/or their representative remains dissatisfied with the outcome they have the right to request that NHS England examine the evidence at an Independent Review. NHS England should receive this request no later than six-months from the date the appeal decision letter.

8. Exceptionality Criteria

(Regarding non-submission of an appeal by the Department of Health- stipulated six-month time limit following notification of an eligibility decision)

- 8.1 The Department of Health stipulate a six-month time limit following notification of an eligibility decision. The Funded Care Team will consider whether there are exceptional circumstances as to why a request has been made after this deadline and if a request should be considered outside of the deadlines. Each case will be considered on its individual merits.
- 8.2 The Funded Care Team will make a recommendation to Senior CHC Leads within Sunderland CCG as to whether a request for an appeal after the deadline should be

accepted.

8.3 In order to determine whether exceptional circumstances exist, the Funded Care Team will consider all relevant factors, including the following scenarios:

8.3.1 If the individual had the capacity to understand the meaning of the deadline referred to in paragraph 3.2 and the steps they needed to take to request an assessment:

- Were there circumstances that meant the individual could not reasonably have been expected to know about the deadline (e.g. they were out of the country for the entire period or they were otherwise incapacitated)?

8.3.2 If the individual lacked the capacity to understand the meaning of the deadline referred to in paragraph 3.3 (see above) and the steps they needed to take to request an appeal:

- Did they have anyone appointed to manage their affairs (e.g. an Attorney registered with the Office of the Public Guardian or a Court of Protection appointed Deputy)?
- If so, were there circumstances that meant such an Attorney or Deputy could not reasonably have been expected to know about the deadline (e.g. they were out of the country for the entire period or they were themselves incapacitated)?
- Was there any other individual who could reasonably have been expected to know about the deadline and its consequences for the individual would it be in the best interests of the individual to apply for an appeal?

8.3.3 Was there an error on the part of any NHS body in processing a request for an appeal, which was received prior to the relevant deadline?

8.3.4 At the time of the assessment is there evidence that was known, or should reasonably have been known, to the Funded care Team within the CCG that the individual did demonstrate a 'Primary Health Need'?

8.3.5 Examples of issues that are not exceptional include where a patient or their representative:

- believes they were unaware of the deadline for appealing despite a letter having been sent to the patient stating that the deadline existed
- was unaware that care provided by the Local Authority is means-tested
- was unaware of a decision taken by the patient or a separate representative not to pursue an appeal and disagrees with that decision

The above list is illustrative and is not intended to be exhaustive.

9. Review and Dissemination

9.1 This procedure will be reviewed as indicated by the review date unless there are legislative changes to organisational infrastructure etc., which may require review sooner.

Staff will receive instruction and direction regarding this framework via:

- Line manager
- Specific training course Other communication method e.g. team meetings, CCG intranet

10. References and Links

Department of Health (2018) National Framework for NHS Continuing Healthcare and NHS – Funded Nursing Care November 2018 (Revised) Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746063/20181001_National_Framework_for_CHC_and_FNC_-_October_2018_Revised.pdf

The Office of the Public Guardian Mental Capacity Act (2005) Code of Practice (Updated October 2020) Available from: <https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>

Guidance for Strategic Health Authorities and Primary Care Trusts on the time limits for individuals to request a review of an eligibility decision for NHS Continuing Healthcare Funding

<https://www.gov.uk/government/publications/guidance-on-the-time-limits-applicable-from-april-2012-for-requests-on-review-of-eligibility-decisions-for-nhs-continuing-healthcare-funding>

Refreshed Redress Guidance (April 2015)

<https://www.england.nhs.uk/wp-content/uploads/2015/04/nhs-cont-hlthcr-rdress-guid-fin.pdf>

Access to Health Records 1990

https://www.legislation.gov.uk/ukpga/1990/23/pdfs/ukpga_19900023_en.pdf

NHS Continuing Healthcare: Independent review Process – Public Information Guide

<https://www.england.nhs.uk/publication/nhs-continuing-healthcare-independent-review-process-public-information-guide/>

The Data Protection Act 2018

<https://www.gov.uk/government/collections/data-protection-act-2018>

General Data Protection Regulation (2018)

<https://www.gov.uk/government/publications/guide-to-the-general-data-protection-regulation>

11. Equality Impact Assessment

Equality Impact Assessment Initial Screening Assessment (STEP 1)

As a public body organisation, we need to ensure that all our current and proposed strategies, policies, services and functions, have given proper consideration to equality, diversity and inclusion, do not aid barriers to access or generate discrimination against any protected groups under the Equality Act 2010 (Age, Disability, Gender Reassignment, Pregnancy and Maternity, Race, Religion/Belief, Sex, Sexual Orientation, Marriage and Civil Partnership).

This screening determines relevance for all new and revised strategies, policies, projects, service reviews and functions.

Completed at the earliest opportunity it will help to determine:

- The relevance of proposals and decisions to equality, diversity, cohesion and integration.
- Whether or not equality and diversity is being/has already been considered for due regard to the Equality Act 2010 and the Public Sector Equality Duty (PSED).
- Whether or not it is necessary to carry out a full Equality Impact Assessment.

Name(s) and role(s) of person completing this assessment:

Name: Vicky McGurk

Job Title: Head of Continuing Healthcare & Complex Care

Organisation: NHS Sunderland Clinical Commissioning

Title of the service/project or policy: Policy for Continuing Healthcare and Funded Nursing Care Appeal Procedure

Is this a;

Strategy / Policy

Service Review

Project

Other [Click here to enter text.](#)

What are the aim(s) and objectives of the service, project or policy:

To inform the public of the process to appeal should they disagree with the CCG funding decision in relation to continuing healthcare eligibility

Who will the project/service /policy / decision impact?

(Consider the actual and potential impact)

- **Staff**
- **Service User / Patients**
- **Other Public Sector Organisations**
- **Voluntary / Community groups / Trade Unions**
- **Others, please specify** [Click here to enter text.](#)

Questions	Yes	No
Could there be an existing or potential negative impact on any of the protected characteristic groups?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Has there been or likely to be any staff/patient/public concerns?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Could this piece of work affect how our services, commissioning or procurement activities are organised, provided, located and by whom?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Could this piece of work affect the workforce or employment practices?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the piece of work involve or have a negative impact on: <ul style="list-style-type: none"> • Eliminating unlawful discrimination, victimisation and harassment • Advancing quality of opportunity • Fostering good relations between protected and non-protected groups in either the workforce or community 	<input type="checkbox"/>	<input checked="" type="checkbox"/>

If you have answered no to the above and conclude that there will not be a detrimental impact on any equality group caused by the proposed policy/project/service change, please state how you have reached that conclusion below:

The Continuing Healthcare Framework dictates the process for how the public can appeal and how CCG's should address appeals against eligibility decisions. It is deemed good practice to have a separate local policy for public reference accessible on the individual CCG website. By publishing this on the CCG website it will enhance information sharing and support public awareness of their right to appeal and how to progress this.

If you have answered yes to any of the above, please now complete the 'STEP 2 Equality Impact Assessment' document

Accessible Information Standard	Yes	No
Please acknowledge you have considered the requirements of the Accessible Information Standard when communicating with staff and patients. https://www.england.nhs.uk/wp-content/uploads/2017/10/accessible-info-standard-overview-2017-18.pdf	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Please provide the following caveat at the start of any written documentation: "If you require this document in an alternative format such as easy read, large text, braille or an alternative language please contact (Funded Care Team, 0191 2831296)"		
If any of the above have not been implemented, please state the reason: Click here to enter text.		

Governance, ownership and approval

Please state here who has approved the actions and outcomes of the screening		
Name	Job title	Date
Victoria McGurk	Head of Continuing Healthcare & Complex Care	03/08/2021
Presented to (Appropriate Committee)		Publication Date
Executive Committee		03/08/2021

Publishing

This screening document will act as evidence that due regard to the Equality Act 2010 and the Public Sector Equality Duty (PSED) has been given.

If you are not completing 'STEP 2 - Equality Impact Assessment' this screening document will need to be approved and published alongside your documentation.

Please send a copy of this screening documentation to: NECSU.Equality@nhs.net for audit purposes.