### NHS CONTINUING HEALTH CARE COMMISSIONING POLICY

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Bengali

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Gujarati

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1. Introduction

The context for this Policy is provided in the form of The National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care (Department of Health, November 2012 revised).

*NHS West Cheshire Clinical Commissioning Group* (the “Commissioner”) will continue to apply the principles and guidance within The National Framework in its assessment and decision making processes with regard to the eligibility of individuals to have their care needs met through the use of NHS funding.

This Policy recognises that the Commissioner has an obligation to commission care for adults eligible to have such care fully funded by the NHS under the Continuing Healthcare (Responsibilities) Directions 2012.

This Policy sets out how the Commissioner will meet this obligation in a manner which appropriately balances the choices that may be offered to eligible individuals and the preferences expressed by such individuals with the duties of the Commissioner to make best use of NHS resources.

This Policy provides the basis on which the Commissioner will commission NHS Continuing Healthcare in a manner to ensure equity of access to care services which are appropriate, safe and compliant with relevant quality standards.

This Policy promotes consistency of decision making and transparency in how the Commissioner will comply with its obligations as a commissioner of NHS funded services.

2. Definitions

‘Continuing Care’ - refers to care provided over an extended period of time to a person 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) by or on behalf of the NHS.

‘The National Framework’ – refers to The National Framework for NHS Continuing Healthcare and NHS funded Nursing Care (published by the Department of Health 2012) 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.

The Framework is currently being reviewed with an updated version likely to be implemented by April 2016. As and when this is issued, this policy will be revised to reflect any changes to the Framework.

‘Individual’ - shall within this Policy refer to an individual who has been assessed by the commissioner under The National Framework to qualify to have their assessed health and social care needs met and fully funded by the NHS.

‘Representative’ - 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 (e.g. welfare Deputy or power of attorney, or an organisation representing the individual).

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3. Principles

When commissioning care services for eligible individuals, the Commissioner will apply the following principles:

i. That care needs assessed under the Continuing Health Care National Framework will be met;

ii. That there will be non-discriminatory equity of access to care services;

iii. That the safety and welfare of individuals will be assured through care services which are clinically safe and compliant with good practice and essential standards including Compassion in Practice reflected in the 6C’s: care, compassion, competence, communication, courage and commitment and supports individuals, their families and staff to provide the best possible service;

iv. That individuals’ and carers’ views as to choice of care setting, particularly when nearing the end of their life will be fully considered; this includes considerations of distance and transport requirements for families and carers;

v. That the process will be person-centred and good practice will be followed with regard to the commissioning of personalised support and care;

vi. That legal obligations will be fulfilled including specifically the NHS Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (Amendment) Regulations 2013

vii. That NHS resources will be utilised effectively and efficiently to commission in the most cost effective manner, care services which are reasonable and affordable;

viii. Quality assurances are sought though regulatory bodies and contract utilisation.

4. Roles and Responsibilities

4.1 The Commissioner’s Role and Responsibilities

The Commissioner has an obligation to meet the assessed care needs of individuals in a way that is considered to be reasonable and affordable whilst also in accordance with the Commissioner’s relevant legal obligations.

The Commissioner will maintain transparent and robust processes to ensure that the assessment of an individual’s care needs complies with the National Framework.

When considering how and what care services can be commissioned, the Commissioner has a responsibility toward taxpayers to comply with its statutory duty 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.

The Commissioner will consider the appropriateness of funding care services from a variety of care settings which may include an individual’s own home or a residential setting. In the case of a residential setting, such as for example a Care Home, the Commissioner will also fund reasonable accommodation (board and lodging) costs.

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2 NHS England » NHS Continuing Healthcare
3 NHS England » 2015/16 NHS standard contract
The Commissioner will make a reasonable offer of care which is able to fully meet an
individual’s care needs assessed under the National Framework and takes account of the
rights and preferences of the individual so far as possible. The care to be provided must be
cost-effective and an equitable and efficient use of the Commissioner’s resources in order to
support its duty to provide an effective system of care to its local population.

The Commissioner is required to ensure that there is a fair and efficient process and a good
quality assessment to reflect an individual’s needs including the following:-

- use of the national tools i.e. the Checklist if a screening tool is used. The individual/
  their representative will be told the outcome of the screening process
- ensure that a multi-disciplinary team assessment is carried out
- use the National Decision Support Tool to assist in deciding whether the
  individual has a primary health need - if this is the case, they are eligible for NHS
  Continuing Healthcare
- consult with the relevant social services authority before making a decision about a
  person’s eligibility for NHS Continuing Healthcare
- where a Fast Track application has been completed by an ‘appropriate clinician’ for
  individuals who have a rapidly deteriorating condition, care will be provided as quickly
  as possible. If needed, a further review using the Decision Support Tool will be
  conducted following provision of this support to ensure the individual remains eligible
  for NHS Continuing Healthcare
- notify the individual/their representative in writing of the eligibility decision and of their
  right to request a review of this decision
- provide/fund a package of care for anyone eligible for NHS Continuing Healthcare (to
  meet all assessed health, personal care and associated social care needs (as
  defined within their care plan)
- ensure availability of information and support to allow take-up of the full range of
  personal health budget options
- consider if those ineligible for NHS Continuing Healthcare may be eligible for NHS
  Funded Nursing Care or joint funding
- agree a dispute resolution procedure with the local authority which covers NHS
  Continuing Healthcare, joint funding and refunds
- promote and secure appropriate services for those not/no longer eligible for NHS
  Continuing Healthcare, including those eligible for joint funding
- The Commissioner will undertake audits of this Policy to determine the extent to
  which it is delivering choice, equity and value for money in the delivery of NHS
  Continuing Healthcare

tool-for-NHS-continuing-healthcare.doc
4.1 Delegated roles - Continuing Healthcare / Complex Care Team

The Commissioner delegates responsibility to a Senior Clinician with a responsibility for CHC to head a Continuing Healthcare / Complex Care Team.

The Senior Clinician ensures that with regard to the commissioning of Continuing Healthcare:

- The Commissioner complies with The NHS Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 and specifically The National Framework and relevant decision support tool;
- There is adherence to this Policy and other policies of the Commissioner;

• Where there is a need to assess an individual's eligibility to have their needs fully funded by the NHS, that arrangements are made for a multi-disciplinary team (the 'MDT') to undertake such assessment, ensuring that such assessments are:

  ➢ coordinated by the Continuing Healthcare/Complex Care Team;
  ➢ undertaken by an MDT having an appropriate mix of clinicians and practitioners from health and social care relevant to the individual's circumstances, wherever possible;
  ➢ undertaken in line with The National Framework and using associated statutory documentation; and
  ➢ are referred in good time to the Commissioner.

4.2.2 Multi-disciplinary Team (MDT)

The MDT undertaking an assessment of an individual's eligibility to have their care needs met fully through NHS funding will:

• ensure that the assessment is conducted thoroughly in line with the National Framework and relevant legislation (such as the Mental Capacity Act 20056);
• include an appropriate mix of clinicians and practitioners representing health and social care interests relevant to the individual's circumstances, notifying the Senior Clinician responsible for Continuing Health Care where further input is identified as necessary in order to comprehensively complete the assessment;
• use statutory documentation to formally record each assessment;
• take account of all relevant factors including appropriate risk assessment: and
• provide full documentary evidence of the assessment and a clear recommendation as to whether, in the assessment of the MDT, an individual should have their care needs met through NHS funding.

4.2.3 Commissioner Quality Assurance and Decision-Making Process

The Commissioner will consider the evidence for and appropriateness of an individual’s eligibility to have their assessed care needs met through NHS funding.

The Commissioner will scrutinise the evidence gathered and reported by the MDT following their assessment process and give careful consideration to the recommendation made by the MDT. Where considered necessary, the Commissioner may request the MDT to undertake further assessment or to provide further evidence in regard to an individual’s assessed needs.

The Commissioner carries the legal responsibility to make a decision regarding an individual’s eligibility and will provide a reasoned decision. Where in exceptional circumstances the recommendation of the MDT is not followed, the Commissioner will provide reasons as to why this is the case.

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6 Mental Capacity Act Code of Practice - Publications - GOV.UK
5. Provision

5.1 Decision Making Principles

The Commissioner is committed to commissioning care services that meet clinically acceptable quality of care standards in accordance with Compassion in Practice\(^7\) and that evidence value for money.

The Commissioner intends to make decisions with regard to individuals that:

- are robust, fair, consistent and transparent
- are based on objective assessments of individual’s clinical needs and safety
- have regard for the safety and appropriateness of care services to those involved in delivery of such care
- take into account all relevant factors which may be important to the wellbeing of the individual
- are person centered, involve the individual and family or appointed representatives
- take account of the need to utilise NHS resources in the most cost effective manner
- offer choices to individuals where it is reasonable and affordable to do so
- comply with relevant and applicable legislation (such as the Mental Capacity Act 2005 and the Disability Discrimination Act 2010\(^8\))

5.2 Assessment of Provision

In line with The National Framework, the Commissioner will establish and operate assessment and decision making processes that are person centered.

The Commissioner will take account of the wishes, expectations and preferences of individuals as to how and where their care is delivered. The Commissioner will also take account of any risks associated with the care options proposed, as well as how the provision of care may impact upon the equity of access to NHS resources by the whole of the population for which the Commissioner is responsible.

Commissioners will take account of the views of the relevant family, carers’ or other individuals involved with the individual.

5.3 Arranging Provision

5.3.1 Framework for Decisions

Within the law, the Commissioner 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 and consider all reasonable requests.

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\(^7\) [NHS England » Compassion in Practice – our culture of compassionate care](https://www.england.nhs.uk/compassion/)

\(^8\) [Definition of disability under the Equality Act 2010 - GOV.UK](https://www.gov.uk/guidance/definition-of-disability-under-the-equality-act-2010)
The individual or their representative(s) have the right to enter into discussions with any care provider to supplement the care package, over and above the package of care that has been agreed to be provided by the Commissioner. Any costs arising out of such an agreement must be funded by the individual or through third party funding and agreed separately with the provider under a private agreement. These costs may relate to:

- Additional non-healthcare services to the individual. For example, Hairdressing or enhanced TV packages.

- Additional healthcare services to the individual, outside of the services the individual has been assessed as requiring as part of the Continuing Healthcare package. These types of services may include things such as chiropractor appointments or additional physiotherapy sessions. The Commissioner will satisfy itself that these services do not constitute any part of the Continuing Healthcare identified need.

The decision to purchase additional private care services separate from a Continuing Healthcare package must be entirely voluntary for the individual. The provision of the Continuing Healthcare package must not be contingent on or dependent on the individual or their representative(s) agreeing to fund any additional services.

This means that the care home must be able to deliver the assessed Continuing Healthcare needs to the individual, without the package being supplemented by other services or requiring any additional cost from the individual.

It is not permissible in law for the NHS commissioner to allow for a third party or a service user to contribute towards any of their assessed Continuing Healthcare needs, including accommodation where this is required in order to meet their primary health need. The entire package of care for meeting the individual's Continuing Healthcare needs must be fully funded by the NHS commissioner.

In order to ensure that there is no confusion between the NHS and privately funded services, the Commissioner will enter into a legally binding contract 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 expressly 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 Commissioner’s contract.

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.

The NHS Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 provide that NHS Continuing Healthcare may be provided from any care setting. The Commissioner recognises its responsibility to ensure that care services commissioned for an individual are safe, appropriate, meet assessed need and are reasonable and affordable.
All providers from whom it commissions services (both public and independent sector) must have comprehensive single and multi-agency policies and procedures in place to safeguard and promote the health and well-being of children and adults at risk.

The Commissioner will discuss care provision options including care settings with individuals and their family, carer, appointed representative or other relevant individuals and will take their views and preferences into account. The Commissioner will determine the available options for the individual to choose from, or the options for a best interest’s assessment to consider, in the case of an individual lacking capacity. Consideration will be given to any care options proposed on behalf of the individual which address the individual's assessed care needs. The individual's human rights will be considered, in particular their right to respect for private and family life. Where there is a variation in the costs associated with different care options, the Commissioner will seek to accommodate the preferences of the individual as far as it is considered cost-effective to do so, to ensure that the obligation to meet the individual's assessed needs is met.

Where possible a number of providers will be presented to allow choice. This will be dependent upon the availability of providers able to meet the above criteria and the Commissioner will discuss the available options with the individual and their family/carers. The ‘available options’ presented will need to take account of affordability, cost effectiveness and value for money. Where the Commissioner determines that there is only one care provider able to meet the above criteria, a reasonable offer of care will be made to the individual.

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 Commissioner and to make and fund their own private arrangements. Where individuals lack capacity the Commissioner will make a decision based on the individual's best interests.

5.3.2 Care in the Individual’s Own Home

Where consideration is being given to the commissioning of care from an individual’s home care setting, the Commissioner will consider the following factors before making a reasonable offer of care:

- Whether it is possible to commission care services within the proposed care setting, which meet the assessed care needs of the individual to standards acceptable to the Commissioner;

- Whether such care services can be delivered safely and without presenting an unacceptable level of risk either to the individual or to those involved in the delivery of such care, or to any other person, including reference to the:
  - availability of necessary equipment;
  - environment and the impact upon and of the location where care is to be provided; and the
  - availability of appropriately trained carers’ to deliver the required care.

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9 Care Act 2014: statutory guidance for implementation - Publications - GOV.UK
• The extent to which such domiciliary care can reasonably be expected to benefit and enhance the quality of life of the individual;

• The willingness and ability of family and others to supplement support will be taken into account, although it will be made clear that there is no legal obligation on them to offer such support;

• Where the Commissioner identifies a carer10 in the assessment process, the Commissioner will advise them of their right to a carers’ assessment and advise them to contact their local authority or, with permission, refer them for this purpose. See link11:

• The extent to which, if any, the delivery of care services within the proposed domiciliary care setting may incur additional costs to the NHS, such costs being over and above those that would otherwise be incurred through the provision of alternative care services such as residential care services and, whether such additional costs are considered to be reasonable and affordable;

• Services will be commissioned from providers who are willing and able to meet the Commissioner’s contractual terms and conditions (as defined in the NHS Standard Contract, or equivalent). The provider will need to agree to these prior to the placement being made.

In exceptional cases the Commissioner may be prepared to support clinically sustainable provision of a package of care which keeps an individual in their own home where the anticipated cost of the care to the Commissioner may be more than the most cost effective care identified (based on Commissioner’s agreed standard rates for equivalent levels of need).

The Commissioner will consider such requests on a case by case basis guided by all relevant factors, including those set out in paragraph 5.1 and using the two stage process for determining exceptional circumstances set out below in paragraph 5.3.4.

Where the Commissioner decides to offer home care to an individual, the individual’s home becomes the member of staff’s place of work. Employee safety is an important consideration in home care packages. The individual's home must be a suitably safe environment to work and deliver care to the individual. This includes cleanliness of the environment, and interactions between the individual, family/carer and the employee.

Where the above factors within 5.3.2 have been carefully considered by the Commissioner and the case for care services being commissioned within a domiciliary care setting is not supported, the Commissioner will liaise with the individual and the family / advocate considering an appropriate placement within a residential care setting, such as a registered Care Home.

11 Carers’ assessments - Care and support guide - NHS Choices
5.3.3 Residential Care

The commissioner will operate a transparent process for assessing the capability of providers and awarding an NHS contract e.g. the process set out within the North West Framework for social, personal & nursing care for adults within a residential setting (‘care home’ services).

When considering appropriate residential care settings such as a registered Care Home, the Commissioner has a responsibility to commission care that:

- is delivered from a provider suitably qualified and registered with the appropriate authorities to offer such care;
- is able to meet essential quality standards which are clinically acceptable;
- is able to provide the level of care that will sufficiently meet the assessed needs of the individual;
- represents value for money within the given financial constraints of the Commissioner;
- is in a setting where the Commissioner has in place an NHS contract with the Provider (e.g., the Northwest Framework for Care Homes), except in exceptional circumstances, see below;
- in exceptional circumstances or where no suitable provider on the CHC Framework can be identified, providers who are willing and able to meet the Commissioner’s contractual terms and conditions (as defined in the NHS Standard Contract, or equivalent) will be identified and the provider will need to agree to these prior to the placement being made.

The Commissioner will use the above criteria to identify appropriate providers of care services and work with such providers in a timely manner to determine whether they are able to meet the assessed needs of the individual including having the current capacity to offer accommodation.

5.3.4 Exceptional Circumstances

The Commissioner recognises that exceptional circumstances may require exceptional consideration but will retain its obligation to make best use of NHS resources. In such circumstances, the Commissioner would be prepared to consider funding provision where the anticipated cost to the Commissioner is higher than the most cost effective care provision identified but will need to take account of what is fair and reasonable.

In order to determine whether exceptional circumstances exist for this purpose, a two-stage process will apply:

1. Are the individual’s needs significantly different to other individuals with the same or similar conditions? and

2. Will the individual benefit significantly more from the additional or alternative services than other individuals with the same or similar conditions would?

Exceptionality will be determined on a case by case basis and will require agreement from personnel at CCG Director level or higher; authorisations at a higher level would be determined by the CCG’s Standing Rules and Financial instructions.
5.3.5 Change of Circumstance

The NHS has a responsibility to regularly review the care needs of individuals eligible for NHS funding in order 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 as a minimum on an annual basis unless more frequently indicated by clinical need.

Reviews will be person-centered, taking place ‘at the bedside’ with families and carers’ invited to attend and contribute. If they are unable to attend, every effort will be made to obtain their feedback. The review will harness the views of the individual by utilising a questionnaire based on the ‘I’ statements as outlined in the CHC Assurance Framework. The outcome of such reviews will be formally communicated to the individual and, where appropriate, their family or carer.

Eligibility to have care funded by the NHS is not a permanent arrangement and remains subject to regular reviews and confirmation of continuing eligibility. 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.

Where evidence no longer supports an individual’s eligibility for NHS Continuing Healthcare, the Commissioner will review the case before making a decision and communicating this to the individual and their family or carer.

Details of individuals no longer eligible for NHS Continuing Healthcare 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 Commissioner will liaise effectively and with sufficient notice with 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.

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

5.3.6 Continuing Healthcare and Personal Health Budgets

The Commissioner will ensure that people eligible for NHS Continuing Healthcare benefit from the “right to have” a personal health budget from 1st October 2014 as announced by Government in October 2013 and provided for in the relevant regulations including the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 3) Regulations 2014.

The Commissioner 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 NHS CHC package. This enables greater choice and flexibility over the services received which is one of the key components of ensuring improved outcomes.

The commissioner will strive to include as much of this budget as possible into a person’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.

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.

5.3.7 Mental Capacity

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 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 Commissioner will consider the following as part of the best interests assessment:

- The individual’s wishes and feeling (whether expressed verbally, in writing or behaviour);
- The individual’s, beliefs and values that would influence him or her if they had capacity;
- The views of anyone named who should be consulted, any deputy or attorney for the person or anyone engaged in caring for or interested in the welfare of the Person.

The Commissioner will appoint an Independent Mental Capacity Advocate to support the individual in decision making, where required, in accordance with the Act.

In some circumstances the individual may have given another person authority to make a decision on their behalf. Where the Commissioner 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 them as Welfare Deputy (this could potentially include being able to decide on the care or accommodation of the individual);
- An order from the Court of Protection under Mental Capacity Act 2005, in respect of the care or accommodation of the individual.

Where one of the above documents is provided to the Commissioner, it will consider how best interest decisions should be made appropriately. The Commissioner will take its decision in accordance with the Mental Capacity Act guidance, and should seek specific legal advice where appropriate.

If there is a dispute about best interests in relation to where an individual should live and receive care, the Commissioner may need to make an application to the Court of Protection and will obtain legal advice where appropriate.

6. Appeal

In line with its legal obligations, Government guidance and this Policy, the Commissioner will make a reasonable offer of care to individuals deemed eligible for Continuing Healthcare funding.

In the case of such offer either being considered to be inappropriate, unreasonable and/or unacceptable to the individual, this should be notified to the Commissioner as soon as possible outlining the reasons or objections to the offer of care.

Upon receipt of a request to reconsider its offer of care, the Commissioner will arrange for a timely review to take place within a timescale appropriate to the urgency of the case as ensuring the individual’s safety and welfare is paramount. The review will examine the decision making process for that particular case and the relevant factors informing the decision.

Following its review, where the Commissioner determines to uphold its decision and 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.

7. Review

This policy will be reviewed once every three years or sooner where relevant changes occur with regard to the law, national policy or guidance.

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References

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- Decision Support Tool for NHS Continuing Healthcare

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- The Mental Capacity Act 2005 Code Of Practice
  Mental Capacity Act Code of Practice - Publications - GOV.UK

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- FACTSHEET 8 The Care Act – the law for carers’

- Carers’ assessments - Care and support guide - NHS Choices

- Making decisions ...about your health, welfare or finances. Who decides when you can’t?
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