



Kernow Clinical Commissioning Group

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Policy links

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[Mental Capacity Act](#)
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1. Introduction

- 1.1 NHS Clinical Commissioning Groups (CCGs) have a delegated target duty to promote a comprehensive health service: they also have a direct statutory duty to ensure that each year their expenditure does not exceed the financial allocations and other sums they receive. Although CCGs are expected to take account of patient choice they must do so in the context of those responsibilities
- 1.2 This policy describes the way in which NHS Kernow Clinical Commissioning Groups (NHS Kernow) will make provision for the care of people who have been assessed as eligible for fully funded NHS continuing care. The policy describes the ways in which NHS Kernow will commission and provide care in a manner that reflects the choice and preferences of individuals but balances the need for NHS Kernow to commission care that is safe, effective and makes best use of the resources available to NHS Kernow.
- 1.3 This policy has been developed to:
- Support choice for individuals to the extent possible taking into account the need to allocate NHS funds in the most cost effective way.
 - Ensure Involvement of the individual and their family wherever this is possible
 - Ensure robust, consistent and transparent decision making is applied by the CCG
 - Enable an objective assessment of the patient's clinical need, safety and best interests
 - Ensure commissioned services meet specified levels of quality and sustainability

- Ensure effective partnership working between clinicians, providers and agencies
Ensure a regard for the safety and appropriateness of care packages to those involved in care delivery

1.4 This policy should be read in conjunction with:

- National framework for Continuing Healthcare and NHS funded nursing care
- CCG health and safety policies
- CCG policy and procedure for adult safeguarding
- The NHS Constitution

2. Context and scope

2.1 This policy is applicable to individuals for whom NHS Kernow is the responsible commissioner and who are eligible for care provision fully funded by the NHS

2.2 Where NHS Kernow has assessed an individual and found that the person's primary need is a health need then that individual will qualify for fully funded NHS continuing care.

2.3 Fully funded NHS continuing care describes a package of on-going care arranged and funded solely by the NHS. Where an individual is eligible, the NHS is responsible for providing the individual's assessed care needs.

2.4 NHS Kernow is required to secure and fund as part of a fully funded NHS continuing care package services necessary to meet the assessed health and social care needs. Such needs will be identified through the multi-disciplinary assessment.

2.5 There is no duty on NHS Kernow to provide a specific package of care although NHS Kernow will take individual choice into account when arranging a suitable package.

2.6 The term 'continuing care' is used in this policy as an abbreviation for 'fully funded NHS continuing care'.

2.6 It is not expected that this policy would apply to individuals in receipt of Funded Nursing Care as the registered nursing care contribution is a set amount and non-negotiable within a care home with nursing facility

2.7 This policy will be applied when:

- An individual is determined newly eligible to receive NHS funded care

- A significant increase from existing provision is proposed, ie greater than 10 per cent over and above inflation
- A review of care package is undertaken as a planned process, as part of a change in needs, due to changes in care provider or other reasons.

3. The provision of a Continuing Healthcare package of care

- 3.1 Once an individual has been determined eligible to receive care funded by the NHS, their care coordinator will discuss options on how this could be provided with the individual, or with their representative if they lack the mental capacity to do so themselves through a best interest meeting.
- 3.2 There may be several options appropriate to meet the individuals needs and these are likely to take two forms:
- Care provided at home (a commissioned personal care agency or the offer of a personal health budget (PHB) or
 - A registered care setting, such as a nursing home or residential home.
- 3.3 NHS Kernow's duty is to provide a care package to meet the needs of patients as assessed by the relevant professionals. When considering the options, the clinical feasibility (i.e. the ability of the package or placement to meet the care needs), safety, affordability and sustainability of the package or placement will be discussed with the individual/their representative.

Discussions will include:

- Individual preference and choice
- The willingness and ability of family/informal carers to provide elements of care and the agreement of those persons that the provision of such care will form an integral part of the care plan. (there is no obligation for family members to provide care, the decision is not dependent on this, but where an offer is made the CCG may take this into account as part of the care planning)
- The accessibility of alternative arrangements particularly where public transport is required for family members to visit.
- The acceptance by the individual/their representative of any identified risks, where plans to minimise such risks can be put in place, which are agreed by the individual, the care provider/s and the CCG
- The likelihood of care package sustainability and the availability of contingency
- The necessity of appropriate registration of a provider with the Care Quality Commission, and assurance that the provider is not subject to any current enforcement action or under suspension with the CCG
- The requirement for a provider to hold an appropriate contract with the CCG where a service is directly commissioned (i.e. not via a direct payment/PHB)

- The requirement for individuals to have signed the PHB user agreement which forms the basis of a contract between the individual and the CCG (if receiving a direct payment/PHB)
 - Cost of alternative care packages
 - The potential risks and benefits of the different packages of care or placement
- 3.4 The CCG will offer a reasonable choice of providers to the individual dependant on available market capacity at the time.
- 3.5 Where family are supporting a care package with informal support which is maintaining the care package, the CCG will ensure arrangements are in place for on-going assessments to ensure that the individual is receiving the appropriate level of care to meet the assessed needs. Should the family support be no longer available the CCG may review the appropriateness of the package.
- 3.6 If an individual is receiving a care package at home and the package of care is no longer appropriate to meet the assessed need in view of safety or deterioration of the individuals condition such as an individual requires clinical oversight and 24 hour monitoring, or there is a change in the ability of the family to provide informal support. The CCG will ensure the monitoring and review of the package to establish if the package remains clinically appropriate, safe and cost effective.
- 3.7 In line with the scope and context of this policy where there is more than one clinically suitable provider identified, an assessment of the sustainability and total costs of each option will be made. Although there is no set tariff on expenditure, options where the weekly fee exceeds the most cost effective clinically suitable package by more than 10 per cent it will not be normally funded.
- 3.8 Any assessment of need will include a review of the psychological and personal care needs and the impact on home and family life as well as the individual's healthcare needs i.e. if an individual requires care over eight hours and waking nights this might be better addressed in a care home.
- 3.9 The CCG will take into account the wishes expressed by an individual or their representative when making a decision about commissioning care.
- 3.10 Individuals or their representatives will be given a reasonable choice of providers from the referrer and will be required to make a decision on their first choice within a 48 hour period. Where no decision is communicated to NHS Kernow CHC team within this timescale, the CCG will instruct and advise the referrer to provide an interim service in order to prevent clinical risks and ensure continuity of care. This approach may be necessary, for example, when an individual is medically fit for hospital discharge, and the chosen provider is not immediately available.

- 3.11 In some circumstances interim arrangements may be required if there is no capacity for care at home to be delivered, or the first choice of care home for the individual is not available. In all cases, the individual will be accommodated with care provision that is able to meet their assessed health and associated social care needs in full.
- 3.12 Where an individual or their representative declines all of the options proposed by the CCG, they can suggest a different arrangement, as long as it satisfies the following criteria:
- The preferred care arrangement is safe and meets the required care needs and quality standards
 - The cost of the arrangement does not exceed by more than 10 per cent the most cost effective of the options tabled by the CCG.
 - The preferred care arrangement is available within 48 hours.
 - The proposed provider will enter into the NHS Standard Contract unless it is being commissioned by the individual via Direct Payments
- 3.13 The CCG will only fund care in excess of 10 per cent of the most cost-effective option in exceptional circumstances. Exceptional in this context is taken to mean in comparison to other people in similar circumstances; the definition used by NHS Kernow is that proposed by the NHS Confederation, namely:

“The person is significantly different to the general population of people with the condition in question”;

and

“The person is likely to gain significantly more health benefit (from the intervention) than might normally be expected for people with that condition.”

The following factors will be taken into account in determining exceptionality:

- The factors set out at paragraph 3.3 and the outcome of the discussions
 - The nature, extent and complexity of the individual’s needs
 - The extent to which one particular environment might contribute to the individual’s wellbeing
 - The human rights of the individual.
- In addition the safety of the proposed package for the individual, their relatives and carers, whether informal or employed, will be taken into account.

This exceptionality will also apply where there is a request for short term temporary increase (less than four weeks) in care such as a cover for carer illness where the additional costs are greater than 10 per cent of existing funding.

These exceptional cases will be presented to a CCG high cost panel for consideration and robust transparent decision making.

It must be noted that to allow for robust decision making processes to be undertaken, there may be a delay in transfer of care and section 3.10 therefore applies.

4. Capacity to make the decision

- 4.1 NHS Kernow will support an individual in making the decision as to where they wish to live. 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.
- 4.2 Where the individual lacks capacity to make the decision on where to live and there is no lasting Power of Attorney which extends to healthcare decisions then NHS Kernow is under a duty to act in accordance with the individual's best interests in accordance with the Mental Capacity Act (Office of the Public Guardian 2015). NHS Kernow will take the decision on the basis of consideration of the best interests of the individual taking into consideration the views of the family/carers. NHS Kernow will need to consider whether there is a requirement for a deprivation of liberty authorisation or whether there is a need for a Court of Protection Application to be made.
- 4.3 Where the individual does not have the capacity to understand the particular decision then NHS Kernow will consider whether it is appropriate to involve an independent advocate if NHS Kernow considers that there is no one else willing and able to be consulted or that appointing an independent advocate will benefit the individual.
- 4.4 Where a personal welfare deputy has been appointed by the Court of Protection under the Mental Capacity Act or a lasting Power of Attorney with powers extending to healthcare decisions has been appointed then NHS Kernow will consult with that person and obtain a decision from the appointed person on the preferred care option.

5. Top-up payments

- 5.1 NHS Kernow is only obliged to provide services that meet the assessed needs and reasonable requirements of an individual. A patient has the right to decline NHS services and make their own private arrangements.
- 5.2 Where an individual is found eligible for continuing health care, NHS Kernow 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 health services to meet the assessed needs of the individual. The package of care which NHS Kernow has assessed as being reasonably required to meet the individual's needs is known as the core package.

- 5.3 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 replace or conflict with elements of care funded by the NHS within the care plan. Examples that may be permitted arrangements include hairdressing, massage reflexology, beauty therapies or perhaps sitting services if care is being delivered at home. If additional services are purchased outside of the care plan the individual has a duty to inform NHS Kernow to ensure it can assess against any conflict of the care plan. It is essential the CCG is aware of all top up arrangement made between the individual and the provider and that both the provider and individual are fully aware that this arrangement is separate from the NHS funded care package.

6. Review of NHS Continuing Care support

- 6.1 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 their medical condition if required.
- 6.2 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.
- 6.3 The individual's condition may have improved or stabilised to such an extent that they no longer meet the criteria for NHS fully funded continuing healthcare. Consequently, the individual will be referred to the local authority who will assess their needs against the Care Act. This may mean that the individual will be charged for aspects of their ongoing care or may need to fully fund their ongoing care. Where possible, transition to local authority care will be managed by agreement between the respective authorities. Where an individual is no longer eligible for CHC funding NHS Kernow will issue a Withdrawal of Care notice.

7. Fully Funded NHS Continuing Care in a care home placement

- 7.1 Individuals will, where possible, be offered a choice of care home provider. NHS Kernow commissions care home services, from many providers and has an assurance of the quality of care and equity in provision from these through contracting arrangements. NHS Kernow will provide information to individuals/representatives of these providers. Decisions on placements of the patients' choice will take in to account the individuals needs and personal

circumstance, and the cost based on alternative equally suitable provision which is subject to capacity and availability.

- 7.3 Where an individual is found eligible for NHS Continuing Healthcare they will be able to choose where he/she wishes to be placed from NHS Kernow's approved provider list, which is available via the NHS Kernow Health Buyer team.
- 7.4 Where, immediately prior to being found eligible for CHC, an individual is residing in a care home which is not on NHS Kernow's care home list and that individual does not wish to move, NHS Kernow will undertake a clinical assessment of the individual to consider the clinical or psychological risk of a move to an alternative placement and consider all areas detailed in section three of this policy.
- 7.5 In exceptional circumstances, including where there is a high risk in moving the individual, NHS Kernow will consider whether it is appropriate to commission a package outside of the care home list. NHS Kernow will consider the cost of the package; the Care Quality Commission's assessed standard; the appropriateness of the package; the clinical assessment of the individual's needs; the risk of any change to the individual's health; the likely length of the proposed package; and the psychological needs of the individual in determining whether NHS Kernow will continue to commission care at the care home. In the event that NHS Kernow commissions care in a home that is not on the care home list, the appropriateness of the placement will be reviewed at the initial and any subsequent reviews.
- 7.6 NHS Kernow will not 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 to NHS Kernow.
- 7.7 If the individual or their family/representative indicates that they are unwilling to accept any of the placements offered by NHS Kernow then NHS Kernow shall issue a final offer letter setting out the options available. If NHS Kernow does not receive confirmation that the individual has accepted one of the placements within 14 days then NHS Kernow will issue a Withdrawal of Care notice confirming that the NHS funding has been declined by the individual and NHS funding will cease from 28 days after the date of the Withdrawal of Care notice. This notice will be bespoke to each individual case and outline explicitly the reasons why care is being withdrawn.
- 7.8 Where the individual or their family/representative choose to turn down CHC funding they will not be able to access local authority funding for the care and will need to make private arrangements.

- 7.9 If after a Withdrawal of Care notice the individual or their representatives want to access NHS services they remain entitled to do so and can re-enter the CHC process from the point of new referral.
- 7.10 NHS Kernow is not responsible for providing care to support with parenting (ie someone with MS needs support to look after their children). This is the responsibility of the Local Authority.

8. Fully Funded NHS Continuing Care at Home

- 8.1 NHS Kernow supports the use of 'care at home' packages where appropriate and recognises the importance of patient choice. However, there may be situations where NHS Kernow cannot provide the individual's choice of having a 'care at home' package either because of the cost or risks associated with the package or NHS Kernow considers that packages which require a high level of input may be more appropriately and safely met in another care setting.
- 8.2 NHS Kernow's duty to fund services does not extend to funding for the wide variety of different, non-health and non-personal care related services that may be necessary to maintain the patient in their home environment. Should NHS Kernow identify that such basic needs are not going to be (or have not been) properly met, NHS Kernow may find that 'care at home' is not or no longer appropriate.

Whether a particular service should be provided by NHS Kernow will depend on the review by NHS Kernow of whether that particular service is required in order to meet that individual's health or social care needs.

- 8.3 NHS Kernow will take account of the following considerations when considering a request to deliver a complex 'care at home' package:
- Care can 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, NHS Kernow 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 he/she agrees to provide primary medical support.
 - It is the individual's preferred choice.
 - The suitability accessibility and availability of alternative arrangements
 - The extent of a patient's needs
 - The cost of providing the package of choice
 - The cost (or range of costs) of the care package(s) identified by NHS Kernow as suitable to meet the individual's assessed care needs
 - 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 of respect for 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.

9. Assessments for fully funded NHS Continuing Care at Home

NHS Kernow will ensure that the relevant number of assessments are undertaken prior to agreeing to any 'care at home' package in order to establish whether it is appropriate to fund the package. Safety will be determined by a formal assessment of risk, undertaken by appropriately qualified professionals. The risk assessment will include the availability of equipment, the appropriateness of the physical environment and availability of appropriately trained carers and/or staff to deliver care whenever it is required. The resilience of the package will be assessed and contingency arrangements will need to be put in place for each component of the package in case any component of the package fails.

9.1 Environmental risk assessment

The risk assessment must consider all risks that could potentially cause harm to the individual, any family and the staff. Where an identified risk to the care providers or the individual can be minimised through actions by the individual or his/her family and/or carers, those individuals must agree to comply with the steps required to minimise such identified risk.

Where the individual requires any particular equipment then this must be able to be suitably accommodated within the home

NHS Kernow is not responsible for any alterations required to a property to enable a home care package to be provided. For the avoidance of doubt, where an individual or representative has made alterations to the home but NHS Kernow has declined to fund the package, NHS Kernow will not provide any compensation for those alterations.

Included in the risk assessment will be a robust safeguarding adult assessment in order to assess whether there are any actual or potential risks to the individual.

9.2 Clinical assessment

When considering whether a package of care is suitable, NHS Kernow will undertake a clinical assessment of the patient's needs and the extent to which that clinician considers that the proposed 'care at home' package meets those needs. The clinical assessment will consider the benefits of a 'care at home' package against the benefits of a care home placement.

A key worker and the individual's GP will be asked to consider the proposed arrangements in order to determine whether it is the most appropriate care package. This will include current and likely future clinical needs and psychological needs. Where part of the package is based on care being provided by a family carer(s) it will also include consideration of how needs will be met in the event that the carer is temporarily unable to provide the care.

9.3 **Staffing assessment**

NHS Kernow will assess the care need and the input required by the individual to meet those needs. NHS Kernow shall consider the qualification of any required staff and the sustainable availability of appropriately qualified staff including appropriate contingency arrangements.

NHS Kernow has a duty to its staff to assess any potential harm and take steps to prevent it. This covers both physical risks and any potential psychological risks that may arise. NHS Kernow's Health and Safety policies and procedures will apply. This includes manual handling policies and lone worker policies.

In the event that NHS Kernow considers that the safety of any member of its staff or any staff contracted to provide the care is at risk it shall take such action as it considers appropriate. Harassment or bullying, verbal or physical abuse of care workers will not be condoned or accepted and NHS Kernow will take any action necessary including immediate withdrawal of services. Where, in exceptional circumstances it is necessary to withdraw services, NHS Kernow will urgently consider how else (if at all) services can be offered. The individual (or representatives) are responsible for ensuring that the environment is safe for the provision of the care package. Where the safety assessment identifies a potential risk associated with the home, the individual is responsible for remedying that. If evidence suggest that an individual resident or resident (s) are potentially at risk due to the identified risks a risk management plan requires implementing, discussions with adult safeguarding lead or multi agency adult safeguarding team and appropriate action taken which may involve adult safeguarding referral.

The individual (or representatives) are also responsible for ensuring that the environment is appropriate for the provision of the care package by staff. This includes ensuring staff are able to have access to toilet, bathroom and kitchen areas and such areas are kept in a clean state and ensuring that staff are treated with dignity and respect.

10. Memorandum of understanding for 'care at home'

- 10.1 Where NHS Kernow agrees to fund a 'care at home' package the individual (if appropriate) and/or representatives will be required to enter into a

memorandum of understanding ("memorandum") confirming that they accept the terms on which any care is provided.

- 10.2 This memorandum will set out what NHS Kernow will provide and what the individual and representatives have agreed to provide.
- 10.3 This memorandum will also confirm that the individual and representatives understand that the care package is agreed on the basis of the assessed health and personal care needs and the required input at the date of the memorandum. Where the cost of meeting the assessed care needs increases for any reason, the individual and representatives acknowledge that it may no longer be appropriate for NHS Kernow to provide and they will work with NHS Kernow to agree an alternative care package.
- 10.4 The memorandum will set out the agreed alternative arrangements should the care package break down.

11. Termination of a 'Care at Home' Package

- 11.1 In any circumstance where NHS Kernow considers that the safety of its staff or its agents/contractors are at risk it shall take such action as it considers appropriate in order to remove that risk. Where this relates to the conduct of the individual or the home environment it shall request that the individual/representatives take the necessary action to remove the risk.
- 11.2 Where a review identifies, or NHS Kernow otherwise becomes aware that an action to reduce an identified risk to either the people involved providing care to the individual or to the individual has not been observed and such failure may put those individuals providing care at risk or may significantly increase the cost of the package, NHS Kernow will take the necessary steps to protect the individual and staff involved with a view to ensuring the safety of all concerned. Harassment or bullying of care workers by the individual, carers or family members will not be accepted and NHS Kernow will take any action considered necessary to protect their staff and contractors.
- 11.3 Where safety of the individual and/or those people involved in providing care is likely to be compromised without such action and the individual or representative does not take the required action then this may result in NHS Kernow issuing a Withdrawal of Care notice. Where there is a threat to the safety of CCG staff or agents then NHS Kernow retains the right to take any action it considers necessary to remove the threat including the immediate withdrawal of the care provision.
- 11.4 Where the individual is in receipt of a home care package and an assessment determines that this is no longer appropriate for any reason (including increase in care needs, inability for family to provide agreed care or identified

risk) then an alternative package will be discussed and agreed. If the individual declines to accept an alternative suitable provision this may result in NHS Kernow issuing a Withdrawal of Care notice giving no less than 28 days' notice for alternative arrangements to be put in place by the individual.

12. Legal clauses

The threshold for referring cases for legal advice from the organisation's solicitors will vary on a case by case basis depending on the circumstances of each case. Escalation for legal advice will therefore be considered on an individual basis and further advice and support should be sought from the Organisation Board Secretary in the first instance.

13. Complaints and appeals

All complaints must be made and addressed in conjunction with the NHS Kernow CHC Operational policy and the NHS Kernow Complaints policy.

All appeals will be conducted in line with the NHS Kernow CHC appeals process.