

Personal health budgets policy

Date approved: 28 July 2020

Document control sheet

Title of document: Personal health budget policy
Originating directorate: Integrated care, community
Originating team: Continuing healthcare team
Document type: Policy
Subject category: Information
Author(s) name: Daniel Monie
Date ratified: 28 July 2020
Ratified by: Quality and performance committee
Review frequency: 1 year
To be reviewed by date: 28 July 2021
Target audience: All staff and members of the public
Can this policy be released under FOI? Yes
Give reasons for exemption if no:

Version control

| Version number | Revision date | Revision by | Nature of revisions |
|----------------|---------------|---------------------------------|--|
| 1 | 27/09/2018 | Daniel Monie | Draft |
| 1.1 | 23/05/2019 | PHB review team | Draft to be reviewed by Jackie Horne and Carol Green |
| 2 | 28 July 2020 | Quality & Performance Committee | Document ratified |

Contents

| | |
|---|----|
| 1. Introduction | 5 |
| 2. Glossary | 5 |
| Personal health budget (PHB) | 5 |
| Budget holder | 5 |
| PHB coordinator | 5 |
| Support care plan | 6 |
| Fast track | 6 |
| Indicative budget | 6 |
| Nominated person or nominee | 6 |
| Representative | 6 |
| Provider | 6 |
| Personal budget | 7 |
| 3. Legislation and guidance | 7 |
| 4. Purpose of a PHB | 8 |
| Increasing shared decision making and achieving personalisation | 9 |
| Principles | 9 |
| 5. General framework | 10 |
| Who can have a PHB? | 11 |
| What a PHB can and cannot be used for | 11 |
| 6. PHBs implementation | 11 |
| 7. How a PHB can be received | 12 |
| Notional budget | 12 |
| Direct payment | 12 |
| Third party budget | 13 |
| 8. Supporting individuals in managing their PHB | 13 |
| Top-ups (non-carer related) | 13 |
| Access to services not covered by a PHB | 14 |
| 9. Direct payment PHB | 14 |
| Support services | 14 |
| Employer's liability insurance | 14 |
| Disclosure barring scheme (DBS) | 14 |
| Payroll | 15 |

| | |
|--|----|
| Rates of pay | 15 |
| Contracts | 15 |
| Close family member and/or living at the same address | 15 |
| PA employment status..... | 16 |
| Training for PAs | 17 |
| Funding..... | 17 |
| Other funding | 18 |
| Respite | 18 |
| Contingency..... | 18 |
| Review and duty of care | 19 |
| 10. Governance..... | 19 |
| Clinical risk | 19 |
| Financial risk..... | 20 |
| Organisational risk | 22 |
| 11. Repayment of direct payment..... | 22 |
| 12. Approval process and timeframes | 23 |
| Risk enablement..... | 24 |
| 13. Monitoring and benchmarking data | 24 |
| 14. Integration with the local authority | 25 |
| 15. Complaints procedure | 26 |
| 16. Safeguarding and risk management..... | 26 |
| Appendix 1: Risk enablement process in PHBs for NHS CHC funded cases..... | 27 |
| Appendix 2: My personal support care plan | 27 |
| Appendix 3: Direct payment agreement terms and conditions | 27 |
| Appendix 4: Requirements for setting up a PHB bank or building society account | 27 |
| Appendix 6: PHB service requisition and indicative budget..... | 27 |
| Appendix 7: PHB cost form template..... | 27 |
| Appendix 8: Equality impact assessment | 28 |
| Aims, objectives and purpose of the policy | 28 |
| Differential impacts | 29 |
| Human rights values | 32 |
| Public Sector Value Act 2012 | 33 |
| Equality and diversity | 33 |

1. Introduction

A personal health budget (PHB) is an amount of money to support a person's identified health and wellbeing needs, planned and agreed between the person and their local NHS team. The vision for PHBs is to enable people with long term conditions and disabilities to have greater choice, flexibility and control over the health care and support they receive.

This policy outlines the principles for achieving the implementation of PHBs by balancing choice, risk, rights, and responsibilities. It recognises that, in the right circumstances, risk can be managed to promote a culture of choice and independence that encourages responsible, supported decision making.

It applies to adults in receipt of NHS continuing healthcare (CHC) funding and children and young people under the age of 18 years in receipt of children's CHC funding, who request a PHB. It also applies to those PHBs not eligible for CHC which could be joint health and social care cases and other care groups such as long-term conditions, mental health or learning disability and autism falling outside of CHC eligibility for example those who are eligible for Section 117 aftercare funding.

For ease and where the text refers to CHC and children's CHC, which are likely to be integrated PHBs with the social services and/or education, is implicit unless noted otherwise. A glossary of common terms used in relation to PHBs is shown below.

2. Glossary

Personal health budget (PHB)

Means the total annual amount calculated to meet the patient's health and wellbeing needs.

Budget holder

Means the individual who receives the direct payment in their role as the patient, the nominee or the representative and handles all contractual arrangements entered into for the benefit of the patient and secured by means of the direct payment

PHB coordinator

Means the representative from NHS Kernow Clinical Commissioning Group (NHS Kernow) or another commissioned service or external agency. They will manage the first assessment of the budget holder's health outcomes for the support care plan, ensure those health outcomes continue to be met and oversee the arrangements.

Support care plan

The overview care plan for a PHB developed by the budget holder and PHB coordinator with brokerage and support service aid where appropriate. It sets out the budget holder's health needs and health and wellbeing outcomes, the amount of money in the personal health budget and how the money will be used. It includes a risk assessment and contingency and respite plans for managing any significant potential risks.

Fast track

Where a suitable clinician completes an assessment that indicates an urgent package of care is required because of a rapidly deteriorating condition, which may be entering a terminal phase.

Indicative budget

An estimated budget using a cost calculator based on comparable care rates. It is calculated so that the individual can begin to develop a support care plan to meet their holistic needs including their health outcomes and form our local offer to the individual. Following detailed support care plan the funding requested may be higher or lower than the indicative budget (see appendix 5 and appendix 6).

Nominated person or nominee

The person chosen by the patient to manage the direct payment on their behalf; in this situation the patient has mental capacity to make that decision. The nominated person handles all the responsibilities of someone receiving direct payments. These include:

- acting as the principal person for all contracts and agreement with care providers and employees
- using the direct payment in line with the agreed support care plan
- following any other requirement that would normally be undertaken by the person receiving care

Representative

The person who receives and manages direct payments on behalf of the budget holder. For example, a power of attorney for health and welfare or a person with parental responsibility. Where there is no such person, any person appointed by NHS Kernow to receive and manage the direct payments on behalf of the budget holder.

Provider

Commissioned by NHS Kernow from existing commissioned services or an external partner or if appointed by the budget holder will be an organisation or person providing

a support or care service to the individual that helps them meet their identified health outcomes.

Personal budget

The amount of social care money (means tested) that is available from the local authority to pay for support and is also referred to as a direct payment.

3. Legislation and guidance

The drive towards an increase in numbers of PHBs in the NHS originated from the increased choice and control for people receiving PHBs in social care. Since the first PHB pilots in the NHS in 2009 and the right to have a PHB in CHC from October 2014, NHS England and NHS Improvement (NHSEI) has continued on a path towards a wider choice of non-traditional care delivery. NHSEI's integrated personal care agenda has been widened out to be known as personalised care and the key statutory guidance that has shaped this development is set out at the end of this section.

The duties placed on the NHS Kernow make it clear that an individual meeting CHC eligibility has had a right to have a PHB since October 2014. NHS Kernow must offer a PHB to all people with a homecare package from April 2019. This could be via any of the three types of PHBs as defined in [section 7](#).

- NHS next stage review: High quality care for all (Department of Health 008) outlined plans for personal health budgets.
- Health Act (2009): Allowed selected primary care trust sites to pilot direct payments.
- High quality care for all: The operating framework for the NHS in England 2009/10 outlined NHS priorities such as better access, reduced inequalities, partnership working in delivering personalised care and supporting service user contributions to improving and shaping high quality provision.
- On 1 August 2013 (as amended 14 October 2013), the National Health Service (Direct Payments) Regulations came into force across England, meaning that the NHS can lawfully offer direct payments for healthcare.
- In support of the regulations, guidance on direct payments for healthcare: understanding the regulations was issued in March 2014.
- Guidance on the right to have a PHB in adult NHS CHC and children and young people's continuing care published in September 2014.

NHS Kernow duties are also set out in the:

- National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 3) Regulations 2014
- National Framework for NHS Continuing Healthcare and NHS Funded Care (revised 2016) and further revised March 2018 which helps to set out the relationship

between CHC and PHBs and this relationship is further strengthened in the latest National Framework, published March 2018 for implementation in October 2018

- National Framework for Children and Young People's Continuing Care 2016 helps to set out the relationship between CHC and PHBs for health-related care
- NHSEI guidance letter from May 2018, which required NHS Kernow to show their plans to ensure all people eligible for CHC care and support at home (except fast track) are offered a notional PHB as the default option

Other relevant legislation includes:

- National Health Service Act 2006 (as amended), which sets out several core statutory duties that NHS Kernow must comply with when carrying out its functions
- Human Rights Act (1998): including Article 8, the Right to respect for private and family life and Article 14 Prohibition of discrimination
- Data Protection Act (2018) and the EU General Data Protection Regulation (2016/679) and the General Data Protection Regulations (2018)
- Carers (Equal Opportunities) Act (2005): ensures that carers can take up opportunities that people without caring responsibilities often take for granted
- Mental Capacity Act (2005): the need to apply the five key principles of the Mental Capacity Act features strongly in self-directed support where there may be concerns about a service user who lacks the mental capacity to manage their own money and/or lack the ability to make decisions about their care
- Equality Act 2010: imposes several equality-related duties that public bodies like NHS Kernow are subject to, as well as the Public Sector Equality Duty. NHS Kernow is also subject to health inequality duties under the NHS Act 2006 (as amended)
- Children and Families Act 2014: this introduced education, health and care plans for children and young people with special educational needs and disabilities
- Fraud Act 2006: This sets out the general offence of fraud and is relevant to investigation of suspected fraudulent activities relating to the provision of PHBs. NHS Kernow will also report any concerns about fraud to the NHS counter fraud service and this is necessary to ensure the NHS Constitution principle that: "The NHS is committed to providing best value for taxpayers' money and the most effective, fair and sustainable use of finite resources' is upheld"
- Care Act 2014 (came into force April 2015): This is aimed at reshaping the system around prevention and promoting individual wellbeing, with personalisation at the heart of the Act.

4. Purpose of a PHB

PHBs are designed to offer shared decision making, control and flexibility. The purpose of a personal health budget is to ensure that the PHB budget holder has the maximum opportunity to put together and direct their own support to the extent they feel able to. By working in partnership with their PHB coordinator they are encouraged to meet tailored health outcomes using their own individual strengths and abilities.

Increasing shared decision making and achieving personalisation

NHS Kernow is committed to offering opportunities for health care professionals and service users to work in partnership, making shared decisions and actively co-designing services and support. The introduction of PHBs is one way of doing this. PHBs give individuals more shared decision making and control over how money is spent on meeting their health and wellbeing needs. A support care plan is at the heart of a PHB that is developed through a combination of the healthcare professional's vital clinical expertise and knowledge, along with the person's expertise in their condition and their own ideas for how their needs can best be met.

NHS Kernow is committed to promoting service user shared decision making - where available, whilst supporting them to manage risk positively, proportionately, and realistically. Good practice must support shared decision making. The health care professional will support and encourage service user's shared decision making as much as possible and to keep service user informed, in a positive way, of issues associated with those decisions and how to take reasonable steps to manage them.

Principles

The Department of Health (2009) set out six key principles for PHBs and personalisation in health. Whilst these principles are now quite old, they are still relevant and form the foundation of what constitutes a PHB and apply to any PHB implemented by NHS Kernow.

Upholding NHS principles and values

The personalised approach must support the principles and values of the NHS as a comprehensive service free at the point of use, as set out in the NHS Constitution, and should remain consistent with existing NHS policy:

- fully involve service users and their carers in discussions and decisions about their care using easily accessible, reliable, and relevant information in a format that can be clearly understood
- there should be clear accountability for the decisions made
- no one will ever be denied essential treatment because of having a PHB
- having a PHB does not entitle someone to more or more expensive services or to preferential access to NHS services
- there should be good and correct use of current NHS resources

Quality – safety, effectiveness and experience should be central

The wellbeing of the individual is paramount. Access to a PHB will be dependent on professionals and the individual agreeing a support care plan that is safe and will meet agreed health and wellbeing outcomes. There should be transparent arrangements for

continued clinical oversight, proportionate to the needs of the individual and the risks associated with the care package.

Tackling inequalities and protecting equality

PHBs and the overall movement to personalise services could be a powerful tool to address inequalities in the health service and should help NHS Kernow to achieve its public sector equality duty, see Equality Act (2010) above. The PHB should not worsen existing inequalities or reduce equality and the public sector equality duty requires:

“Public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities.”

This can be achieved by use of an indicative budget setting tool and consistent use of a support care plan that finds measurable health outcomes.

The decision to set up a PHB for an individual must be based on their needs, irrespective of race, age, gender, disability, sexual orientation, marital or civil partnership status, transgender, religion, or beliefs. Lack of mental capacity should not be a factor and any concerns or decisions should be compliant with the Mental Capacity Act (2005), see above.

Personal health budgets are purely voluntary

No one will ever be forced to take more control than they want.

Making decisions as close to the individual as possible

Appropriate support should be available to help all those who might receive help from a more personalised approach, for example, taking the time to find out what is important to the individual particularly those who may feel least well served by existing services and access. It is essential that the support care plan is produced jointly with the individual following a personalised conversation about all the options available.

Partnership

Personalisation of healthcare embodies co production. This means individuals working in partnership with their family, carers, and professionals to plan develop and procure the services and support that are appropriate for them. It also means NHS Kernow, local authorities and healthcare providers working together to utilise PHBs so that health and social care work together as effectively as possible.

5. General framework

Who can have a PHB?

Apart from exclusions by statute, in principle, all service users needing support at home and who are in receipt of CHC funding are eligible to receive a PHB. NHSEI confirmed that all people eligible for CHC funding at home (except fast track) should be offered a notional PHB as the default choice by April 2019. This does not mean that fast tracks are excluded and NHSEI is keen to roll out PHBs to this group of people and to other care groups over time. There is no exclusion by diagnosis or by virtue of mental incapacity.

It is the intention that all fast-track eligible clients, mental health including those who are eligible for section 117 aftercare, those who are in receipt of wheelchairs, clients who have a learning disability and autism should all be considered for PHBs in the future. Some of these groups are currently part of a PHB consultation and NHS Kernow recognises that the mainstreaming of PHBs is something that will happen over time. The local management of NHS CHC is set out in the [NHS Kernow local operational policies](#).

What a PHB can and cannot be used for

A PHB may only be spent on the services agreed between the service user and their care co-ordinator in the support care plan that will enable the service user to meet their agreed health and wellbeing outcomes. NHSE guidance is clear that PHBs could be used to fund innovative solutions to meet a person's defined health outcomes and NHS Kernow is keen to work with people to encourage this where needed. This will be achieved by accessing existing commissioned services, community support and universal services in the first instance, with the PHB being used to enable the individual to meet their health outcomes.

There are a small number of things that a PHB cannot be used for:

- alcohol or tobacco products
- gambling services or facilities
- a debt other than for a service agreed in the support care plan
- primary medical services (such as diagnostic tests, vaccinations or medical or dental treatment or prescription medication)
- urgent or emergency treatment services (such as unplanned hospital admissions)

6. PHBs implementation

NHS Kernow acknowledges that all in receipt of CHC funding at home are entitled to the right to have a PHB and from April 2019 will offer all newly eligible adults meeting CHC eligibility a notional PHB.

In the meantime, NHS Kernow will endeavour to meet all requests for direct payment PHBs for both newly eligible and existing individuals in receipt of CHC. The ability, resources and skills needed to meet all requests may result in the need to prioritise and if necessary, to run a waiting list for these types of PHB. This list will be managed based on the order in which they were received although there may be complicating factors with individual cases that lead to delays in setting up the PHB.

For service users already in receipt of CHC funding receiving care in their own home, suitability for a PHB will be considered at CHC 3 month or annual review. It is intended that all individuals within this group will be made aware of their notional budget by April 2019

Transition cases from child to adult CHC will be considered for a PHB when eligibility for adult CHC (by the age of 17) is decided further to the NHS CHC Operational Guidelines (2017).

For those actively requesting a PHB in advance of a CHC review, every effort will be made to help this request promptly. NHS Kernow's capacity will determine the length of time that this takes as an up-to-date support care plan will be required.

7. How a PHB can be received

There are three ways in which a person can receive a PHB.

Notional budget

Individuals are aware of the treatment options within a budget constraint and of the financial implications of their choices. The NHS underwrites overall costs, keeps all contracting and service coordination functions and manages the budget/account. There is no requirement for the service user to keep financial records.

Direct payment

Individuals are given a budget to buy and manage services themselves, including third party organisations. This will be paid directly into the individual's bank account, or that of their nominee or representative, set up solely for the purposes of the PHB. If the individual is unable to manage the budget themselves a representative or a Nominated person may do it for them, or the money can be paid directly into the bank account of an approved support service. An independent payroll service must be used for making wages payments if the individual wishes to use this type of service. There is a requirement to keep sufficient records to be able to show that any monies provided have been used in accordance with achieving the outcomes agreed in their individual support care plan. The budget holder will handle meeting the legal obligations arising from their support package, for example, setting up employment status, ensuring indemnity cover. NHS Kernow will need evidence that these legal obligations have been

met. NHS Kernow must consider whether a direct payment is appropriate, and this method can be refused although there is a defined process that will take place before this happens – see risk enablement policy.

In addition, NHS Kernow will not offer direct payments for people undergoing treatment for addiction and detoxification therapy. In this instance, people will be offered a notional or third-party budget.

Third party budget

Service users are given a budget, held by a third party (independent of both the individual and the NHS) on their behalf. The third party helps the service user choose services within the budget based on their agreed health and wellbeing outcomes. Where a third party manages a service user's budget on their behalf, they will have to keep sufficient records to be able to show that any monies provided have been used in accordance with achieving the outcomes agreed. The third-party handles ensuring that all legal and employment requirements are fulfilled, for example employers' liability Insurance. Where regulated care activity is provided and care staff employed, the third-party provider will need to be registered with Care Quality Commission (CQC).

A combination of notional and direct payments may also be appropriate. The key principle is that the individual knows what their budget is, the treatment or care options and the financial implications of their choices, irrespective of the way the budget is managed.

8. Supporting individuals in managing their PHB

Once a decision has been made that the individual is eligible for a PHB and the method of delivery has been agreed; an indicative budget figure will be agreed in principle to guide care planning. The final budget may be higher or lower than the indicative budget and the key is that the support care plan meets the assessed needs. A direct payment budget should not exceed the cost of the care provided via a notional PHB.

Top-ups (non-carer related)

Budget holders are not allowed to contribute to or top-up the cost of care as set out in the support care plan from their own resources. If the budget holder considers that the direct payments are insufficient to meet his or her assessed needs, then he or she should request a review of the care package by NHS Kernow.

The budget holder can buy more services from their own funds which are not found in the care support plan. Where other services are bought from own funds, this is outside of all PHB processes and this should take place separately with clear accountability. Money for anything that is not agreed in the support care plan should not be taken from the PHB account.

Access to services not covered by a PHB

NHS Kernow will provide PHBs so that service users may use them to meet their identified health and wellbeing needs and outcomes. The use of such funding does not extend to the delivery goods or services that would normally be the responsibility of other bodies (for example, local authority social services, housing authorities) or are covered by other existing contracts held by NHS Kernow, such as community equipment via the joint integrated community equipment service contract. The direct payment should cover all the health outcomes agreed in the support care plan and it should be noted that cash withdrawals from the PHB are not allowed.

This list is not exhaustive and if unsure, the service user should seek advice before any expense is incurred.

If the direct payment option is chosen, then people will be able to make their own choice in the support they receive provided this meets their agreed health outcomes.

They will also be able to access comprehensive employment advice about employing personal assistants (PAs) via [Skills for Care](#).

9. Direct payment PHB

Support services

The PHB coordinator can make a referral for support services. In this instance, they will supply a copy of the agreed health outcomes and the indicative budget figure with the referral form. This is to help the support service with arranging the required support. The cost of this will be accounted for within the support care plan.

The support services advisor can supply information about how PHBs work in practice, using care agencies, employing staff, managing and co-ordinating care and information about managing risk and contingency planning. Advice and guidance will be free from bias to ensure that the individual secures quality support and value from their PHB. However, this information must be read in the context of NHS Kernow's policy on PHBs as NHS Kernow must decide to agree a support care plan and PHB budget.

Employer's liability insurance

Where PAs are employed by budget holders, NHS Kernow requires the budget holder to have comprehensive employers' and public liability insurance (to include carer liability). The cost of this will be accounted for within the support care plan.

Disclosure barring scheme (DBS)

NHS Kernow expects all PAs to have an enhanced DBS check in place prior to commencement of employment except for close family members.

Payroll

An independent payroll provider must be used to ensure income tax and national insurance contributions are calculated on behalf of the budget holder for the PAs. This can be accessed independently, and the cost of this service must be accounted for within the support care plan. The support service may have access to an independent payroll service which helps the payments to PAs on behalf of budget holders if required.

Rates of pay

Rates of pay for PA's must meet the requirement of the national living foundation wage and must be discussed when developing the support care plan. Once the support care plan has been agreed and signed off, any changes to these rates of pay must be agreed by NHS Kernow prior to the rates being changed.

Contracts

Budget holders must ensure a written contract of employment with staff is in place at the point of engagement. Contracts must adhere to and not exceed the statutory legal requirements. Any contract deviation from the statutory legal requirements will require approval from NHS Kernow. Please let NHS Kernow know if your care plan needs to change. For example, because of a long stay hospital admission so that NHS Kernow support and advice can be offered.

Where it is agreed for part or all a direct payment to be used to pay for a care agency or regulated service; the budget holder will contract directly with the agency for this support and should use a provider who is registered with CQC in respect of that activity.

Close family member and/or living at the same address

A PHB cannot be used for support or care provided by an individual living in the same household as the budget holder unless NHS Kernow considers that securing the service in question from that individual is necessary to:

- satisfactorily meet the service user's need for that service
- promote the welfare of a service user who is a child

NHS Kernow will consider the benefits that the service user and the proposed individual of the same household may already be in receipt of; and the care that should naturally be expected from that of a family member or individual living in the same household.

There may be occasions where it is appropriate to employ a family member as a PA, however NHS Kernow will ensure any decision made is fair and equitable. Where it is agreed for a family member to be employed as a paid carer, NHS Kernow will consider a third-party choice. It is not routinely allowed for the budget holder to also be an employee or paid. A payroll service must be used as above. Close family or friends pay rates and hours will not exceed those agreed within the support care plan without NHS Kernow's approval. Working time directives and all employment laws will be considered when deciding to allow a family member to be a PA.

PA employment status

A care worker who works in a client's home is likely to be an employee and all aspects of current employment law apply.

It is not a personal choice of either the budget holder or the carer as employment status is determined by the actual terms, conditions and associated working arrangements of an individual engagement and should comply with Her Majesty's Revenue and Customs (HMRC) rules.

There are extremely limited engagement circumstances that would result in a carer being considered self-employed. To protect the budget holder from dispute and to ensure complicity with IR35 legislation, NHS Kernow will require the following as evidence before proceeding to approve a PHB direct payment where the status of the carer is anything but employee.

Requirements

The gov.uk [check employment status for tax](#) online tool is completed. That a full copy of this is supplied to NHS Kernow which has been signed by the carer and the budget holder to confirm agreement with the answers and avoid potential future disputes.

That NHS Kernow reserves the right to further request that the budget holder contact HMRC to request a customer service status opinion and the written outcome of this is provided to NHS Kernow.

This may involve HMRC reviewing written documentation such as contracts and talking to the budget holder and/or the worker.

Where it is agreed that a carer is self-employed to maintain a consistent financial governance approach in keeping with NHS Kernow's own policies it is expected that any self-employed carer should submit an invoice to the budget holder. Please refer to the direct payment agreement terms and conditions for a detailed description of what should be included in the invoice.

For clinical governance if a carer is self-employed it is essential that the budget holder ensures that appropriate guidance is followed including confirmation that the self-

employed carer carries their own liability insurance and has the required expertise to carry out the tasks for which they are being contracted.

Contacts

HMRC status helpline: 0300 123 2326

HMRC Email: ir35@hmrc.gov.uk

ACAS: <https://www.acas.org.uk>

Training for PAs

Budget holders will be responsible for ensuring that PAs have the appropriate level of training to meet the individual health needs as outlined in the SCP and training costs will be met through the PHB except for training costs for self-employed contractors/carers. NHS Kernow will check at least annually that appropriate and relevant training is in place, and any third party delegated health related tasks are monitored. PHB recipients should not purchase training outside that in their care plan without approval from NHS Kernow.

If a third-party budget is required, then NHS Kernow will provide details of appropriate third-party providers as appropriate to manage the PHB. NHS Kernow currently has no contracted providers for third party budgets, but this is actively being pursued.

Funding

Mileage

NHS Kernow would not routinely agree to pay mileage to individuals or to give mileage funding for their PAs. NHS Kernow would not usually give funding for mileage for PAs to get to their place of work. Where NHS Kernow does agree to pay mileage in exceptional circumstances the [HMRC mileage rate](#) will be applied. As of January 2020, this is £0.45p per mile for cars and vans.

Transport

NHS Kernow would expect that transport to and from appointments or activities would be met through existing resources (DLA, patient transport services, Motability vehicles, their own resources). Transport to and from respite and day care will be considered on an exceptional circumstances basis where there is clear evidence available to support delivery of an assessed health outcome as a result.

Equipment

It is not expected that PHBs should be used to buy equipment. NHS Kernow would expect that equipment would continue to be sourced through usual routes (for example community equipment store contracts) to promote equity.

NHS Kernow would only consider funding a specific piece of equipment using a PHB in exceptional circumstances.

Accommodation

A PHB should not be used to fund accommodation for individuals as it is expected that accommodation costs should be met through existing benefits or other income.

NHS Kernow may consider funding accommodation for the individual where this represents respite provision and will review this on an individual basis. NHS Kernow will not fund accommodation for PAs but may fund their hours worked to support an individual during a period of respite. This would be considered by the exceptional circumstances process.

Other funding

When calculating the budget allowance other costs may need to be taken into consideration in addition to those mentioned above including:

- holiday entitlement for the PA's, employer's pension contributions or tax (essential where PA's are employed)
- consumables used when providing care for example gloves and aprons
- cost of sending reviewed SCP or agreement forms and quarterly documents to NHS Kernow via secure post (maximum allowance £30 per annum)
- running cost of the PHB as agreed in the SCP

Please note that one person cannot claim to be delivering management costs whilst delivering hands on care.

If any other cost is identified, then this must be described in the SCP and agreed by NHS Kernow before being paid. Any changes to these costs must be made known to NHS Kernow and agreed prior to the cost being paid.

Respite

Respite will be worked out in the development of the SCP.

Contingency

When a direct payment PHB is in place; it is usual for 2 weeks of the total direct payment to be paid as a one-off upfront payment for contingency. This money is to remain in the PHB account for emergency situations and NHS Kernow should be contacted if this money is needed in order that approval of expenditure is looked for and a PHB review can be arranged if necessary.

Review and duty of care

Monitoring and reviewing of SCPs will remain a role for the designated care coordinator and should be proportionate to needs and risk in the context of NHS Kernow's duty of care and statutory responsibilities. Reviewing will be at a frequency and intensity which is proportionate to vulnerability, risk, need and value. The first review must take place within 3 months of the start of a personal health budget. A face-to-face review must be held at least once a year. Frequent reviews will be a condition of higher risk PHB requests receiving approval.

The SCP will be reviewed against the following criteria and where indicated following a review, changes can be made to the PHB arrangement or care against the following criteria:

- whether the SCP is meeting the health and wellbeing outcomes
- whether the SCP has addressed the health and wellbeing needs
- whether health and wellbeing needs or circumstances have changed
- whether risks have increased, decreased, or stayed the same
- whether contingencies have been used
- cost neutrality or improved value for money
- the quality of support and service

Where there are any significant variations, trends, irregularities, and issues that require further investigation, NHS Kernow's nominated local counter fraud specialist may be involved in financial audit.

10. Governance

The governance mechanisms in place for personal health budgets involve:

- clinical review conducted in the first 3 months and at least annually thereafter or sooner where indicated
- financial review within the first 3 months and at least annually thereafter or sooner where indicated
- use of the PHBs risk enablement process prior to the PHB being agreed and setting up of risk enablement panel where significant clinical and/or financial risks have been proven (see appendix 1)
- PHB lead to supply reports internally to NHS Kernow and externally, for both routine and specific purpose

Clinical risk

NHS Kernow is committed to promoting individual choice, while supporting them to manage risk positively, proportionately, and realistically. Good practice must support

service user choice. Supporting people to take informed decisions with an awareness of risks in their daily lives enables them to achieve their full potential and to do the things that most people take for granted.

Individuals should be enabled to exercise choice and control over their lives and therefore their own management of risk is central to achieving better outcomes for individuals. A degree of risk can be accommodated within the aim of enhancing the quality of people's lives. Potential risks need to be found and it is essential that service users are fully involved in the risk assessment process.

An individual who has the mental capacity to decide and chooses voluntarily to live with a level of risk, is entitled to do so. NHS Kernow requires that the PHB coordinator clearly documents any evidence of decision-making and rationale in relation to the management and reduction of risk where appropriate or necessary.

The PHB coordinator will support and encourage individual choice as much as possible and keep the service user informed, in a positive way, of any issues associated with those choices and how to take reasonable steps to manage them. The aim is to ensure that such risk is fully understood and managed so that the individual's needs, and their best interests are safeguarded.

Consideration should be given to use of the support service in providing more assistance with managing risk.

Risk is a consideration when the service user is deciding how they want to spend their money to meet their outcomes. Most choices made by service users will be straightforward for the PHB coordinator to support. Other choices may not be supported by NICE guidance, or could be unorthodox, causing concern to professionals trained to adhere to evidence-based practice. Ways of mitigating the risk should be explored with the service user. Depending on the situation and the risk, it may be possible to agree a trial period with the service user that includes frequent monitoring. More frequent reviews will be a condition of higher risk PHB requests receiving approval.

Financial risk

NHS Kernow must balance value for money and PHBs must be affordable within NHS Kernow's overall budgetary allocation for CHC. Each budget must be sufficient to meet the outcomes found in the SCP and allow for contingencies. NHS Kernow encourages a staged approach to risk when considering a request for a PHB relating to the three different ways that a PHB can be managed. If a direct payment is not suitable for an individual; a notional personal health budget will be offered. A personalised, outcome focused SCP will be completed with the individual.

Where a direct payment is to be made, the financial arrangements and requirements are contained within the direct payment agreement (appendix 4). This is between NHS Kernow and budget holder (which could be the individual patient, their nominee or

representative) and will be signed by both parties. It should be noted that only the bank account specified in the direct payment agreement should be used to make payments for the personal health budget. A payment cannot be made with another account or type of account (such as PayPal) and then refunded back to that account from the personal health budget.

The following costs will normally be paid as part of the PHB:

- the direct cost of supplying the service, including support service costs
- start-up costs such as initial staff training
- employers' liability insurance
- refresher training
- equipment costs – only where equipment specifically forms part of the budget and is not covered by other existing contracts
- funding to cover the contingency plan including an estimate for each PHB to allow for other elements of spend which may arise such as:
 - redundancy costs when a service provided by a PA ends
 - maternity pay for a PA
 - long term sickness for a PA
 - training to support newly employed staff and on-going training for existing staff

All new PHBs will be reviewed after 3 months to ensure that budget estimates are correct. Revisions to budgets will be agreed with service users based on this monitoring and will help inform the budget setting for future PHBs.

NHS Kernow has financial management processes and documentation to ensure robust management of individual budget payments.

The budget holder and NHS Kernow's representative must sign the Direct Payment agreement to confirm their understanding of the PHB purpose, funding arrangements and restrictions.

The budget holder must provide evidence of expenditure through for example bank statements or receipts. Financial expenditure records are kept by the individual and made available for inspection by NHS Kernow or their agents, for example, local counter fraud service.

Mechanisms for changing the amount of the budget, recovering surplus funds, suspending, or terminating payment of the budget as set out in the Direct Payment Agreement.

It is the responsibility of the budget holder, provider or PHB co-ordinator to inform the CHC team as soon as they become aware of factors which may affect the cost of a PHB to NHS Kernow. NHS Kernow will not automatically fund increased costs which have not been pre-approved through the SCP or financial review process. NHS Kernow

should ensure that the PHB does not duplicate other sources of funding, for example, mobility allowance; universal credit; winter fuel allowance.

Any requested variation over the initial approved budget will need to be considered in line with NHS Kernow's existing high-cost care package procedure.

A procedure is in place within NHS Kernow for the recovery of any unspent funds; as a minimum this will be recovered on or near the annual anniversary of the PHB being set or sooner if the surplus is more than two weeks contingency. Any unused amounts will not be rolled forward. This procedure also includes mechanisms for recovery of the PHB on the death of the budget holder, including any assets purchased by the PHB. If theft or fraud relating to a direct payment has been proven; NHS Kernow may recover such amounts through civil debt proceedings.

Organisational risk

NHS Kernow is responsible for authorising PHBs and it has an obligation to ensure that:

- health and wellbeing needs are being met
 - safeguarding duties are fully met
 - it is fulfilling its duty of care and broad statutory obligations
 - it is fulfilling its responsibility to ensure that public funds are used to enable people to live independent and full lives – ensuring value for money
 - PHB expenditure is managed within the overall NHS Kernow budgetary allocation
- public funds are used appropriately

NHS Kernow is committed to shifting the balance of risk towards a positive approach of supported decision-making for service users, the organisation, and its partners.

NHS Kernow will work with partner organisations to promote a wider understanding of this approach to risk. It will also seek to secure from partners, a complementary approach to risk which is as light touch as is reasonable. NHS Kernow will work with the local authority according to local policy should any safeguarding concerns arise in respect of an individual receiving a PHB.

11. Repayment of direct payment

The PHB case manager or appropriate NHS Kernow manager retains the right to suspend direct payments with immediate effect should there be evidence of misuse or fraudulent use of the monies. In such cases the budget holder may be liable to repay all or part, of the direct payment. The decision to seek repayment, and the amount of money to be reclaimed, is at the discretion of the CHC case manager or appropriate NHS Kernow manager who may decide to waive reclaiming all or part of the direct payment.

Direct payments will be reclaimed if:

- the direct payments have been used otherwise than to purchase a service not agreed in the care plan
- the person has died, leaving part of the direct payment unspent
- the care plan has changed substantially and there are excess funds as a result
- the individual's circumstances have changed substantially, for example because of being hospitalised and so they are not using their direct payment to purchase care
- a considerable proportion of the direct payment has not been used to secure the services specified in the care plan and so money has accumulated

Direct payments may be immediately suspended or terminated if:

- the direct payments have been used otherwise than to purchase a service not agreed in the care plan
- theft, fraud, or other offences may have occurred

If a substantial amount of money has accumulated in the individual's account due to an under spend, for whatever reason, the appropriate healthcare manager or appropriate NHS Kernow manager in consultation with finance colleagues will consider whether it is appropriate to reclaim that money. In some circumstances, it may be more appropriate to simply reduce subsequent direct payments, factoring in the existing surplus. The appropriate manager will consider why a surplus has built up, particularly whether the budget holder is not receiving the care they need or whether too much money has been allocated.

When reclaiming money from a budget managed by a representative or nominee; the appropriate finance officer will approach the representative or nominee holding the money, rather than the individual receiving care.

In the event of a PHB holder's death the PHB will not form part of their estate and cannot be considered as the personal resource of the budget holder. In the event of the PHB holder's death, any agreement will immediately end, and any unspent money will be recoverable from the executor(s) or the responsible administrator of the estate by NHS Kernow.

12. Approval process and timeframes

If the individual meets the eligibility criteria for CHC and is having a support package at home (except for fast-track palliative care) then they will receive a PHB notional budget by default.

They will receive advice regarding third party budgets and direct payments, and this would normally be approved straightaway except for high cost or high-risk cases that might need to come to an individual care request panel or to go through the [risk](#)

[enablement process](#). A decision as to whether to agree a direct payment PHB will be made within 7 days of receipt of an agreed SCP and fully completed direct payment agreement. If individual care request panel approval is required, then this may take a further 7 days. Where PAs are employed, recruitment, DBS checks, employment checks and training will have to be undertaken; the direct payment start date may be some time after this. In the interim a person may receive a traditional agency package of care paid directly by NHS Kernow.

Risk enablement

Where any risks have been found that might mean a PHB cannot be agreed, then NHS Kernow's [risk enablement process](#) will be followed. This process ensures that all identified risks are resolved where possible through a 4-stage process culminating in a risk enablement panel at stage 4 if required.

Should the panel be unable to resolve the outstanding risk, NHS Kernow will not be able to agree the PHB. If the risk enablement process is followed to stage 4, the risk enablement panel, without agreement, the route for appeal is through NHS Kernow's complaints procedure as set out below.

If the appropriate manager has decided to seek repayment, by suspending or terminating payments they must give the relevant person reasonable notice in writing (at least 28 days), stating:

- the reasons for their decision
- the amount to be repaid
- the time in which the money must be repaid
- identifying who will be responsible for repayment

If the PHB finance officer is seeking to reclaim money because of theft, fraud, or another criminal offence, the PHB finance officer may seek for that sum to be summarily reclaimed as a civil debt. In these circumstances, legal advice will be sought. This power does not affect any other method of recovery, for example under the Proceeds of Crime Act (2002).

13. Monitoring and benchmarking data

The decision support tool that is completed during assessment for CHC funding makes provision for an equality monitoring form. The provider is required to complete this form so that equality of opportunity for those found eligible for CHC is monitored. The same form of monitoring can also be used for PHBs. NHS Kernow will report on the uptake of PHBs by protected characteristics annually to identify any issues of accessibility.

NHS Kernow will ensure that mechanisms are in place to collect and collate sufficient information to provide assurance that service user's outcomes can be measured against

overall budget allocation, statutory and locally agreed performance measures. This will include measurement of outcomes such as patient activation that can be used on an individual basis to ensure that health outcomes are being met. They will also be used as a tailoring tool to make sure that NHS Kernow commissions what is relevant to the needs the population of NHS Kernow.

Ongoing monitoring and evaluation will be undertaken by the PHB lead, and includes:

- uptake of PHBs
- service user experience of PHBs; NHS Kernow will, in consultation with NHSEI, identify suitable performance and outcome measures that include improvements in quality of life, experience, outcomes and benefit
- addressing any requirements from the quality and governance committee and Governing Body
- receiving reports relating to the audit of PHB or proactive reviews by the local counter fraud service

14. Integration with the local authority

The local authority is an integral partner in the effective delivery of PHBs as they already possess experience of delivering direct payments in a social care context. NHS Kernow will work with the local authority to integrate processes for individuals managing PHBs where possible if there is an interface with the local authority.

Examples could include individuals previously in receipt of a social care direct payment, individuals ceasing eligibility for CHC and returning to social care direct payment, children's CHC and non-CHC integrated packages of health and social care. The budget holder will have already agreed to the sharing of data with other agencies such as adult social care as part of the CHC process and this will be further strengthened as health and social care processes are aligned over time to minimise the impact on the service user.

NHS Kernow will work with the local authority regarding use of external support services. This will encourage people to consider community and voluntary sector support options and to find other funding streams, for example equipment or adaptations. CHC and the support services will ensure that service users are offered information that is easily accessible, reliable, and relevant in a format that can be clearly understood. Advice and guidance will be free from bias to ensure that the service user secures quality support and value from their PHB.

NHS Kernow will also work with the local authority where possible to:

- develop a shared understanding of risk
- develop other shared approaches as appropriate and although not current policy, includes the potential for a pre-paid card payment system for PHBs

- work with service users, user groups and voluntary sector groups, to minimise duplication and maximise opportunities for involvement

15. Complaints procedure

NHS Kernow wishes to hear all complaints and comments and is committed to investigating all these thoroughly. It is always the intention of NHS Kernow to address any problem as soon as is practicably possible. There are different ways of doing this. Anyone who is receiving, or has received, NHS treatment or services can complain. If the person is unable to personally complain then their representative or nominated person can complain on their behalf.

NHS Kernow complaints procedures are published on NHS Kernow's website and may be used for any complaint about the operation of this policy within the NHS Kernow including this PHB Policy and the risk enablement process in appendix 1. NHS Kernow complaints process should be accessed by the individual or their representative should they wish to appeal the decision of the risk enablement panel.

16. Safeguarding and risk management

Budget holders may be vulnerable adults and or children. Support and contingency plans will be reviewed by care managers to ensure that safeguarding issues have been considered when developing the agreed health and wellbeing plan and final support and budget plan. Where a representative or nominated person is managing a budget on behalf of an individual but not living at the same address as a budget holder, an enhanced DBS check is recommended by the healthcare manager for the representative and is also recommended for any PAs employed by the budget holder.

Robust arrangements are in place to ensure that the appropriate healthcare manager is informed of any concerns flagged up by the lead for safeguarding vulnerable adults/ children about domiciliary care providers. When a safeguarding alert is raised in relation to the care provided to a personal health budget holder, the safeguarding adults or child protection procedure will be instigated as set out in the Cornwall multi-agency procedures.

Appendix 1: Risk enablement process in PHBs for NHS CHC funded cases

Being updated – hyperlink will be added

Appendix 2: My personal support care plan

Being updated – hyperlink will be added

Appendix 3: Direct payment agreement terms and conditions

Being updated – hyperlink will be added

Appendix 4: Requirements for setting up a PHB bank or building society account

Being updated – hyperlink will be added

Appendix 6: PHB service requisition and indicative budget

Being updated – hyperlink will be added

Appendix 7: PHB cost form template

Being updated – hyperlink will be added

Appendix 8: Equality impact assessment

Name of policy or service to be assessed: Personal health budgets policy

Department or section: Integrated care, community

Date of assessment: 27/09/2018

Person(s) responsible for the assessment: Daniel Monie

Is this a new or existing policy? Existing

Aims, objectives and purpose of the policy

Describe the aims, objectives and purpose of the policy

To set out the policy for personal health budgets (PHBs) within NHS continuing healthcare

Who is intended to benefit from this policy, and in what way?

Clinical staffing, patients and their representatives, NHS Kernow management

What outcomes are wanted from this policy?

To provide a clear policy for staff, clinicians and the public on PHBs

What factors or forces could contribute or detract from the outcomes?

Not adopting the policy.

Who are the main stakeholders in relation to the policy?

Clinical staffing, patients and their representatives, NHS Kernow management

Who implements the policy, and who is responsible for the policy?

NHS Kernow

Differential impacts

Perspective of race, nationality and/or ethnic origin

Does this have a positive or negative impact on black, Asian and minority ethnic (BAME)?

This policy will aid fairness of treatment for all groups including those listed above.

How will any negative impact be mitigated?

There should be no negative impact

Perspective of sex

Does this have a positive or negative impact on people who identify as male, female or intersex?

There should be no differential impact.

How will any negative impact be mitigated?

There should be no negative impact.

Perspective of disability

What is the positive or negative differential impact on people from the perspective of disability?

This policy will aid fairness of treatment for all groups including those listed above.

How will any negative impact be mitigated?

There should be no negative impact.

Perspective of sexual orientation

Does this have a positive or negative impact on people who identify as heterosexual, lesbian, gay, bisexual, pansexual or asexual?

This policy will aid fairness of treatment for all groups including those listed above.

How will any negative impact be mitigated?

There should be no negative impact.

Perspective of age

What is the positive or negative differential impact on people from the perspective of age?

This policy will aid fairness of treatment for all groups including those listed above.

How will any negative impact be mitigated?

There should be no negative impact.

Perspective of religion or belief

What is the positive or negative differential impact on people from the perspective of religion or belief?

This policy will aid fairness of treatment for all groups including those listed above.

How will any negative impact be mitigated?

There should be no negative impact.

Perspective of marriage and civil partnership

What is the positive or negative differential impact on people from the perspective of marriage and civil partnership? This is particularly relevant for employment policies.

This policy will aid fairness of treatment for all groups including those listed above.

How will any negative impact be mitigated?

There should be no negative impact.

Perspective of gender re-assignment

Does this have a positive or negative impact on people who identify as trans or transgender, non-binary or gender fluid?

This policy will aid fairness of treatment for all groups including those listed above.

How will any negative impact be mitigated?

There should be no negative impact.

Perspective of pregnancy and maternity

Does this have a positive or negative impact on people who are pregnant, breast feeding mothers, or those on maternity leave?

This policy will aid fairness of treatment for all groups including those listed above.

How will any negative impact be mitigated?

There should be no negative impact.

Other identified groups

This policy will aid fairness of treatment for all groups including those listed above.

How will any negative impact be mitigated?

There should be no negative impact.

Human rights values

How have the core human rights values of fairness, respect, equality, dignity and autonomy been considered in the formulation of this policy, service or strategy?

If they have not, please reconsider the document and amend to incorporate these values.

Which of the human rights articles does this document impact?

- ☐ To life
- ☐ Not to be tortured or treated in an inhuman or degrading way
- ☐ To liberty and security
- ☐ To a fair trial
- ☒ To respect for home and family life, and correspondence
- ☐ To freedom of thought, conscience and religion
- ☐ To freedom of expression
- ☐ To freedom of assembly and association
- ☐ To marry and found a family
- ☒ Not to be discriminated against in relation to the enjoyment of any of the rights contained in the European Convention
- ☐ To peaceful enjoyment of possessions

What existing evidence (either presumed or otherwise) do you have for this?

The policy supports the rights to receive a care package at home.

How will you ensure that those responsible for implementing the policy are aware of the human rights implications and equipped to deal with them?

Staff training.

Public Sector Value Act 2012

NHS Kernow is committed and obliged to fulfil the requirements of the Public Sector Social Value Act 2012. This Act requires the organisations to consider how services commissioned or procured might improve the economic, social and environmental wellbeing of an area.

Please describe how this will support and contribute to the local system, wider system and community.

It will encourage a proportionate balance of risk weighed against the wishes of a person to receive a particular package of support at home.

Equality and diversity

Describe how the policy contributes towards eliminating discrimination, harassment and victimisation.

It sets out clear guidelines for everyone using it.

Describe how the policy contributes towards advancing equality of opportunity.

It applies to all individuals equally.

Describe how the policy contributes towards promoting good relations between people with protected characteristics.

It does not discriminate between different groups.

If the differential impacts identified are positive, explain how this policy is legitimate positive action and will improve outcomes, services and/or the working environment for that group of people.

It will encourage a proportionate balance of risk weighed against the wishes of a person to receive a particular package of support at home.

Explain what amendments have been made to the policy or mitigating actions have been taken, and when they were made.

N/A

If the negative impacts identified have been unable to be mitigated through amendment to the policy or other mitigating actions, explain what your next steps are using the following equality impact assessment action plan.

N/A

Signed (completing officer): Daniel Monie

Date: 27/09/2018

Signed (head of department or section): [Click here to enter text.](#)

Date: [Click here to enter text.](#)

Please ensure that a signed copy of this form is sent to both the corporate governance team with the policy and the equality and diversity lead.