

NHS Continuing Healthcare for Adults – Eligibility and Assessments

What is NHS Continuing Healthcare?

NHS Continuing Healthcare is a non-means tested complete package of ongoing care that is arranged and funded solely by the NHS where an adult, (aged 18+), has been assessed and found to have a 'primary health need' as a result of an injury, illness or disability. It applies not only to those in later life, but also equally to adults living with a disability who have health needs.

What is the impact of NHS Continuing Healthcare funding?

In practical terms, eligibility for NHS Continuing Healthcare means the NHS is responsible for care provision and meeting all of the associated costs. NHS Continuing Healthcare can be provided in any setting (i.e. at home or in a care facility) and may cover the cost of accommodation (such as residency in a care home) if this is necessary to meet assessed care needs.

What rules govern NHS Continuing Healthcare?

The National Framework for NHS Continuing Healthcare & NHS-funded Nursing Care October 2018 ("National Framework") introduced revised principles and processes for establishing NHS Continuing Healthcare eligibility.

There is a legal requirement for Clinical Commissioning Groups ("CCGs") to have regard to the principles and processes contained within the National Framework.

What are the 'Core Values'?

The National Framework makes it very clear that the entire process should be person-centred, placing the individual at the heart of the assessment and care-planning processes.

What is a 'primary health need'?

In order to qualify for NHS Continuing Healthcare, it must be demonstrated through an evidence-based assessment process that an adult has a 'primary health need'.

In simple terms, this is a concept developed to help assessors decide whether an individual's primary need is for healthcare (for which responsibility lies with the NHS) or for social care (for which a Local Authority has a duty to assess).

What is the difference between a 'healthcare' and 'social care' need?

There is no legal definition per se, however, the revised National Framework attempts to clarify the difference.

It suggests in general terms that:

- A 'healthcare need' is one related to treatment, control, management or prevention of a disease, illness, injury or disability, and the care or aftercare of a person with these needs (whether or not the tasks involved have to be completed by a health professional).
- A 'social care need' is one which relates to the Care Act 2014 eligibility criteria for Local Authority provision.

An adult will have eligible needs if they arise from, or relate to, a physical or mental impairment or illness, which results in the adult being unable to achieve two or more outcomes. This is, or is likely to, have a significant impact on the adult's well-being.

Examples of the outcomes include managing and maintaining nutrition, maintaining personal hygiene, and managing toileting needs.

To determine whether an adult has a 'primary health need' requires assessors to look at the totality of needs based on the evidence.

Discharge to Assess

One of the fundamental changes introduced by the revised National Framework is the notion of 'Discharge to Assess'. The idea is that an adult's eligibility for NHS Continuing Healthcare should not be assessed whilst in an acute Hospital environment. This is because it may be difficult to accurately identify and assess needs in an acute setting.

Once an adult is deemed safe for Hospital discharge, a CCG should consider the provision of therapy, rehabilitation, intermediate or an interim package of care (a non-means tested package provided by the NHS and/or Local Authority for a limited period) with a view to assessing eligibility in the Community.

The Assessment & Decision Making Process

In order to determine eligibility for NHS Continuing Healthcare, the NHS-funded Nursing Contribution, or a jointly funded Package of Care, an adult must be screened and assessed. The assessment process is summarised below.

Checklist Assessment

- The first stage is to complete a 'Checklist Assessment', a screening tool to determine whether a full eligibility assessment is required. The threshold to pass has been set intentionally low.
- A variety of health & social care professionals (such as a registered nurse, GP, or social worker) can complete the Tool.
- The Assessment is split into 11 care domains broken down into 3 levels: A, B or C. A full eligibility assessment is required if the individual scores: 2 or more A's, 5 or more B's, 1 A and 4 B's; or 1 A marked with an *.
- Completion of the Checklist can be bypassed at the CCG's discretion.

Multi-Disciplinary Team Meeting (“MDT”) Assessment & Decision Support Tool (“DST”)

- If the Checklist is Positive, the second stage is to complete a DST at an MDT.
 - The MDT should be made up of both health and social care professionals who are knowledgeable about the individual. The adult (subject to mental capacity), their family and/or representatives should be invited to actively participate so that the MDT can collectively complete the DST.
 - The DST is divided into 12 broad areas of need, known as domains:
 1. Breathing
 2. Nutrition
 3. Continence
 4. Skin integrity
 5. Mobility
 6. Communication
 7. Psychological & emotional needs
 8. Cognition
 9. Behaviour
 10. Drug therapies and medication
 11. Altered states of consciousness
 12. Other significant care needs.
 - The MDT must consider and apply the evidence (provided by the family, professionals & within the relevant medical/care records) to the descriptors to determine whether each domain is of a Priority, Severe, High, Moderate, Low or No level of need.
 - Once needs are established, certain characteristics (known as the key indicators) and their impact on the care required to meet need are used to determine whether the care required goes beyond the lawful remit of a Local Authority.
 - A ‘primary health need’ should be established when the totality of an adult’s needs are considered to be within their nature intense, complex, or unpredictable.
 - Eligibility would be expected in each of the following cases:
 - A level of priority needs in any one of the four domains that carry this level.
 - ▶ A total of two or more incidences of identified severe needs across all care domains.
 - Where there is either
 - ▶ A severe level need combined with needs in a number of other domains or
 - ▶ A number of domains with high and/or moderate needs
- Then careful consideration must be given to the four characteristics of nature, intensity, complexity and unpredictability.
- The MDT’s recommendation should be submitted to the CCG for ratification. The CCG must confirm the decision in writing, along with information about how to appeal a decision of non-eligibility.

Not Eligible for NHS Continuing Healthcare?

The CCG may award either:

1. The **NHS-funded Nursing Contribution** (“FNC”) whereby a set, weekly rate of £183.92 will be paid directly to a provider to facilitate provision of nursing care. This rate is subject to change.
2. A **jointly funded Care Package** which means the CCG & Local Authority will split the cost of care but the social care element is means-tested.
Often this is awarded where the process has identified the individual has some healthcare needs, but when considered in totality, these do not amount to a ‘primary health need’.

Retrospective Claims

If an adult may have been eligible for NHS Continuing Healthcare in the past, but their needs were unassessed, a CCG can retrospectively determine eligibility for care.

The assessment process is similar, however usually the MDT process is paper-based.

How can Lester Aldridge assist?

At Lester Aldridge, we support individuals and families throughout all stages of the NHS Continuing Healthcare assessment, appeals and care planning processes. We use our expertise and compassionate approach to assist those most in need to access fundamental NHS provision.

We can provide:

- An initial, free assessment to determine the merits of a claim.
- Advocacy at Checklist Assessments & MDTs to ensure that family views are clearly articulated, assessors consider all the relevant evidence, and the assessment process is compliant with the National Framework.
- Detailed written submissions, which forensically analyse all of the evidence against the eligibility criteria to facilitate the presentation of evidence-based arguments in support of eligibility.
- On-going support to negotiate with a CCG throughout the process.
- Advice at each key stage.

For more information please visit: www.lesteraldridge.com
Tel: 02380 827484 | Email: communitycare@LA-Law.com

