NHS
Southend
Clinical Commissioning Group

# CONTINUINING HEALTHCARE DISPUTES AGREEMENT POLICY

**SCCG QP11**

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| **Version:** | **2C updated April 2019** |
| **Ratified by:** | **Governing Body** |
| **Date Ratified:** | **25th September 2019** |
| **Name of originator/author** | **David Williams** |
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| **Target Audience:** | **Continuing Healthcare Professionals** |

| 1 | INTRODUCTION |
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| | The main content of this policy has been agreed across the named CCG's in Essex which are co-terminus with Essex County Council (ECC).<br><br>There are three different kinds of dispute that may arise in relation to NHS continuing healthcare;<br>a) challenges (including requests for reviews) by the individual or their representative in relation to the process or decisions made – this is not covered by this process and can be found in the Clinical Commissioning Groups (CCG) operating framework;<br>b) disputes between two CCGs over which is the responsible |

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| | commissioner for the patient;<br>c) disputes between a CCG and a Local Authority (LA) regarding eligibility.<br><br>Points a) and b) are addressed in national guidance, and local arrangements are in place in each CCG, and fall outside the scope of this protocol. However, Paragraph 6.83 of the Care and Support Statutory Guidance (DH 2014) makes it statutory requirement for LAs and CCGs to have a disputes resolution process in place that deals with disputes between CCGs and LA (point c), which must cover;<br>• eligibility for Continuing Healthcare, and/or,<br>• the apportionment of funding, and/or,<br>• operation of the refunds guidance. |
| **2** | **PURPOSE** |
| | The purpose of this policy is to ensure a consistent and equitable approach to managing CHC disputes across the five Essex CCG's which are co-terminus with ECC.<br><br>This policy should be read in conjunction with the National Framework for NHS Continuing Healthcare (Department of Health and Social Care, 2018, as amended ), the Care and Support Statutory Guidance (Department of Health and Social Care 2018, as amended) and the Care Act 2014. |
| **3** | **DEFINITIONS – EXAMPLE OF CURRENT CCG CONTENT FOR SOUTHEND CCG.** |
| | **3.1 NHS Southend Clinical Commissioning Group** is responsible for commissioning health services for the population of Southend.<br><br>**3.2 Fully funded "NHS Continuing Healthcare"** is a term used to describe a package of ongoing care, including accommodation, arranged and funded solely by the NHS, where it has been assessed that the individual's primary need is a health need<br><br>**3.3 NHS-funded nursing care'** is the funding provided by the NHS to homes providing nursing to support the provision of nursing care by a registered nurse. Since 2007 NHS-funded nursing care has been based on a single band rate. In all cases individuals should be considered for eligibility for NHS continuing healthcare before a decision is reached about the need for NHS-funded nursing care<br><br>**3.4 Eligibility for funding**<br>Eligibility for NHS continuing healthcare is based on an individual's assessed needs. The diagnosis of a particular disease or condition is not in itself a determinant of eligibility for NHS continuing healthcare.<br><br>**3.5 NHS Continuing Health Care (CHC)**<br>CHC applies to care provided to persons aged 18 or over to meet the physical or mental health needs which have arisen as a result of disability, accident or illness. It may require the provision by the NHS of health services |

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| | and social care services and can be provided in a range of settings.<br>CHC is not awarded indefinitely, but is subject to regular eligibility reviews.<br><br>**3.6 NHS England Independent Review Panel (IRP)**<br>IRP is hosted by NHS England. The Independent Review Panel (IRP) process has been set up to enable individuals and/or their representatives to look at:<br>• the primary heath need decision by a Clinical Commissioning Group (CCG);<br>• or the procedure followed by a CCG in reaching a decision about their eligibility for NHS Continuing Healthcare; and to make a recommendation to NHS England in the light of its findings on the above matters.<br><br>**3.7 Multi-Disciplinary Team (MDT)**<br>A multidisciplinary team is a group of health care workers who are members of different disciplines (professions e.g. Psychiatrists, Social Workers, etc.), each providing specific services to the patient. |
| **4** | **ROLES AND RESPONSIBILITIES** |
| | **4.1 CCG Board**<br>The CCG has the lead responsibility for NHS Continuing Healthcare in the CCG locality (but there are also specific requirements for Local Authorities to cooperate and work in partnership with the CCG a number of key areas)<br><br>**4.2 Chief Nurse**<br>The Chief Nurse leads the Continuing Health Care Team and assumes a consultative and advisory role in the clinical and operational aspects of the CHC team**.**<br><br>The Chief Nurse must ensure Southend CCG meets its responsibilities as set out in the National Health Service (Commissioning Board and Clinical Commissioning Groups Standing Rules) Regulations 2012<br><br>**4.3 Accountable Officer (AO)**<br>The AO must ensure Southend CCG meets its responsibilities as set out in the National Health Service (Commissioning Board and Clinical Commissioning Groups Standing Rules) Regulations 2012<br><br>**INSERT AS APPROPRIATE LOCAL DISPUTES RESOLUTION PROCESSES.**<br><br>**4.5 CHC Staff**<br>All members of CHC staff have a responsibility to familiarise themselves with the content of the CHC Disputes Policy. |
| **5** | **POLICY PROCEDURAL REQUIREMENTS** |
| | ***Annex A and B*** of this paper sets out a draft memorandum of understanding and a protocol that sets out these requirements |
| **6** | **MONITORING COMPLIANCE** |

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| | The policy will be monitored by the CHC Team and Chief Nurse |
| **7** | **ARRANGEMENTS FOR REVIEW**<br>This policy will be reviewed no less frequently than every three years. An earlier review will be carried out in the event of any relevant changes in legislation, national or local policy/guidance. |
| **7** | **ASSOCIATED DOCUMENTATION** |
| | National Framework for NHS Continuing Healthcare (Department of Health 2018, as amended)<br>Care and Support Guidance (Department of Health 2018, as amended) and the Care Act 2014. |
| **8** | **REFERENCES** |
| | n/a |

**10 LIST OF STAKEHOLDERS CONSULTED**

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**Annex A**

# Memorandum of Understanding on the provision of Continuing Health Care and Funded Nursing Care

# between

# Essex County Council

# and

# Basildon and Brentwood Clinical Commissioning Group (CCG)
# Castle Point and Rochford CCG
# Mid Essex CCG
# North East Essex CCG
# West Essex CCG
# Southend CCG

This memorandum of understanding (MoU) establishes a framework for co-operation between Local Authorities (LAs) listed above and the Clinical Commissioning Groups (CCG) listed above. It sets out the role of each body, and explains how they work together to discharge their responsibilities under the Care Act 2014, the Care and Support Guidance 2018, as amended, the NHS Framework for Continuing Healthcare 2018, as amended and the Continuing Healthcare Operating Framework (DHSC 2015). The MoU is based on the following principles;

- clear **accountability**. Each authority must be accountable for its actions and the discharge of its statutory responsibilities as set out in the relevant guidance;
- **transparency**. Elected members, citizens of Essex, and, regulators must know who is responsible for what;
- **avoidance of duplication**. Each authority must have a clearly defined role, to avoid second guessing, inefficiency, and, the unnecessary duplication of effort. This will help ensure proper accountability;

- **regular information exchange**. This helps each authority to discharge its responsibilities as efficiently and effectively as possible.

**Provision of care**

It is agreed by all parties that in the event of a dispute between them over the funding of care no arbitrary decision will be taken by any party that could lead to a delay in provision of, or the withdrawal of care that has been provided to meet an assessed need.

**The responsibility of Essex County Council** The relevant LA will ensure that it fully discharges its responsibilities as defined in the Care and Support Guidance (Department of Health 2018, as amended). In particular, it will ensure;

a) that it acts openly and in good faith in all dealings with its health partners;
b) it deals with any disputes that arise between it and any of its health partners relating to the provision of Continuing Healthcare and/or Funded Nursing Care in line with the local agreement governing disputes between the Council and the relevant health partner;
c) in all cases where the LA is funding the adults care and support at the time the dispute arises it will continue such funding on a "without prejudice" basis until such a time as the dispute is resolved.

**The responsibility of the Clinical Commissioning Groups**
The CCGs will ensure that they provide Continuing Healthcare and Funded Nursing Care in full compliance with the Care Act 2014, the Care and Support Statutory Guidance 2014, National Framework for NHS Continuing Healthcare and NHS funded nursing care (Department of Health 2018, as amended), CHC Operating Framework (Department of Health 2015). In particular, each CCG will ensure;

- that it acts openly and in good faith in all dealings with the local authority partner(s);
- it deals with any disputes that arise between it and its local authority partner(s) relating to the provision of Continuing Healthcare and/or Funded Nursing Care in line with the local agreement governing disputes between it and its local authority partners;
- in all cases where the CCG is funding the adult's care and support at the time the dispute arises it will continue such funding on a "without prejudice" basis until such a time as the dispute is resolved.

**Review of this Memorandum of Understanding (MoU)**
This MoU will be kept under regular review to ensure it is fit for purpose. Formal reviews will take place at three-year intervals. All parties will be invited to participate in the review process.

**Annex B**

# Continuing Healthcare and Funded Nursing Care Disputes Protocol Agreed between Basildon and Brentwood Clinical Commissioning Group (CCG) Castle Point and Rochford CCG North East Essex CCG Mid Essex CCG West Essex CCG Southend CCG Essex County Council (ECC)

**Context**

1. This protocol deals with disputes between Essex County Council (Southend on Sea Unitary Authority and Thurrock Unitary Authority may wish to sign up to agreement at later date) and the Clinical Commissioning Groups listed above regarding the provision of Continuing Healthcare and Funded Nursing Care in the following areas:
   - eligibility for Continuing Healthcare and Funded Nursing Care;
   - apportionment of funding in cases where support is being provided though a jointly funded care and support plan.

2. This document fulfils the requirement for a disputes process set out at paragraph 6.83 of the Care and Support Guidance (Department of Health, 2018, as amended), and should be read in conjunction with both the Guidance, the NHS Framework for the provision of NHS funded Continuing Health Care (Department of Health and Social Care. 2018, as amended) and the Continuing Healthcare Operating Model (Department of Health 2015).

3. This protocol should also be interpreted in the light of the wider duty to cooperate imposed on all parties by the Care Act 2014.

4. This protocol does not deal with the general assessment and decision making process as this is set out statutory guidance listed above.

**Approach to ensuring continuity of care provision**

5. The basic principle of this protocol is that a dispute between the parties shall not delay, or, result in, a failure of the provision of care and support to an adult who has been assessed as requiring it.

6. While the dispute is being resolved the party who is presently meeting the adult's needs shall be responsible for funding the adult's care and support on a "without prejudice" basis in the interim period.

7. In the case of a jointly funded package funding will continue in the same ratio on a "without prejudice basis" in the interim period.

**Resolution of disputes**

8. All disputes over eligibility and/or funding that cannot be resolved by negotiation shall be heard and adjudicated by the Continuing Healthcare Disputes Panel (the Panel).

9. The membership and responsibilities of the panel are set out at **Annex C**. The membership and responsibilities of the panel may be changed with the agreement of all parties without the need to revise this protocol.

10. Nothing may be done to the structure of the panel without a revision of this protocol. This is to protect the role of the independent Chair.

**Referrals to the Panel**

11. Either party can refer a case to the Panel, if, following negotiation between them, a resolution to the dispute cannot be reached. Notification will be given

by the referring party to the other parties by means of a formal exchange of deadlock letters which state the evidence base for the dispute.

**Timescale for holding the Panel**

12. The Panel shall be held within 28 calendar days of the receipt of the deadlock letters.

**Arranging the Panel**

13. It will be the responsibility of the party triggering the disputes process to arrange the panel and provide accommodation and support for it.

**Evidence**

14. All evidence to be considered by the Panel shall be contained in the deadlock letters.

**Decisions binding**

15. The parties accept that, subject to their legal rights, the decisions of the Panel will be binding upon them and undertake to implement them within 10 working days of a decision being formally notified to the parties.

**Reimbursement of funding**

16. Where without prejudice funding has been provided, and, the liability to fund is determined as falling on the other party, or in the case of jointly funded support a change in the ratio of the funding results, any financial adjustments shall be made between the parties within 28 working days of the decision being formally notified. The reimbursement of funding will be backdated to the date of the original decision that has been the subject of the dispute, or the date the disputed funding started whichever is the shorter.

**Term and review of the Protocol**

17. The Protocol shall remain in force, subject to the parties giving 28 working days' notice in writing of their intention to withdraw. The protocol will be formally reviewed at 6 months and at the end of its first year of operation and will then be reviewed every three years thereafter.

**Annex C**

# The Continuing Healthcare Disputes Panel

**Membership**
The Continuing Healthcare Disputes Panel (CHDP) will consist of two members from each party to the agreement (members to be determined by the CCG and LA, and who must be independent of the case being heard). The meeting will be chaired by an independent Chair, who is also independent of the case being heard. The Chair and the members must evidence experience of senior level decision making relating to Continuing Healthcare.

**Remit**
The CHDP will hear, and, adjudicate upon disputes over eligibility for, or funding, (including joint funding), of Continuing Healthcare, and/or Funded Nursing Care, where the dispute is between the parties to this agreement. It will not deal with matters relating to individuals who may be in dispute with any of the parties, or disputes between Clinical Commissioning Groups.

**Powers**
The CHDP has the power;

- to decide disputes between the parties relating to eligibility and or funding of, Continuing Healthcare in line with the relevant statutory guidance, and,
- to direct reimbursement where it has been determined that the party who has been funding the adult is not liable to do so, or, in the case of jointly funded packages, not liable to do so at the rate they have been.

**Decision making process**
Decisions will be taken by a simple majority vote of the members. In all cases the Chair will have the casting vote.

Decisions will be formally notified, in writing, to the parties within 5 working days of the date of decision. All decisions will be binding, subject to the legal rights of the parties.