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**All-Age Continuing Care**

Procedure for Dealing with Previously Unassessed Periods of Care

January 2023

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# **Shape, arrow Description automatically generated****Introduction**

NHS Continuing Healthcare (NHS CHC) is the name given to a package of care which is arranged and funded solely by the NHS for individuals outside of hospital who have ongoing healthcare needs. To qualify for NHS CHC, an individual must have a ‘primary health need’ which is assessed using the National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care published 1 October 2007 (revised 2022)[[1]](#footnote-1) (National Framework).

The purpose of this guidance is to ensure practitioners work in a consistent way and to advise of the process needing to be followed when a request for a Previously Unassessed Period of care is received. Consideration of a retrospective application will only be made from 1 April 2012 onwards. This is because of a previous Department of Health Closedown which took place in 2012.

Whilst the general principles of the National Framework are applied when completing a review of a previously unassessed period of care (PUPoC) the National Framework does not include explicit guidance on how a PUPoC should be completed. There will be some variations in how a PUPoC assessment is completed, the outlines of this process are described within the guidance below.

A notable difference is that when an NHS CHC assessment is completed the patient, or their representative will be invited to attend a multi-disciplinary meeting to complete the assessment. During the PUPoC process this meeting does not take place. Instead, a care needs portrayal document (NPD) is produced. This will detail the patients’ needs during the period under review and the claimant will be invited to engage in a discussion with the team completing the PUPoC review and provide written comments on the NPD prior to the Decision Support Tool[[2]](#footnote-2) (DST) and CHC assessment being completed.

The ICB will have an information leaflet for that will be issued to each individual requesting consideration of a PUPoC. The Information leaflet will include anticipated timeframes detailing how long it will take for the case to be completed and how the request will be managed locally.

NHS Cheshire and Merseyside will ensure that staff have the appropriate skills and knowledge to deliver high quality retrospective CHC assessments; practitioners will complete the NHS England and NHS Improvement e-learning training and attend regular update training.

This document sets out how to complete an NHS CHC assessment for a previously unassessed period of care (PUPoC).

1. **Retrospective Review Process: Establishing if a case is suitable for a Retrospective** **Review.**

1.1 On receipt of a request for an assessment of eligibility for NHS CHC for a PUPoC, the receiving body must complete several preliminary checks to establish if it should be done, as set out below:

1.2. NHS Cheshire and Merseyside will first have to establish whether it is the correct responsible commissioner[[3]](#footnote-3) for the individual who is the subject of the PUPoC request. If NHS Cheshire and Merseyside is not the responsible commissioner, they will inform the applicant who they need to make their application to and return to them any documents and paperwork they may have submitted.

1.3. Any requests that are made to look at a period of care before 1 April 2012 will not be accepted as this period has been subject to a Department of Health closedown.

1.4. Claims made by solicitors or claims companies should only be accepted where the company can show they have authority to act on behalf of the individual. Therefore, any request that is not accompanied by the individual’s instruction to the company to act on their behalf should be logged but no further action taken if the company cannot produce its authority to act within a reasonable timeframe of three months.

If NHS Cheshire and Merseyside do not receive the authority to act within three months of the date of receipt of the letter, they will consider the request has been withdrawn; this will be confirmed in writing. Requests for an extension will need to have been previously agreed as per section 1.6 below.

1.5. If the patient lacks capacity, and the claim has been made by a relative, friend or carer, NHS Cheshire and Merseyside will make sure that the person making the claim is authorised to do so.

NHS Cheshire and Merseyside will check whether the applicant (or the client of the solicitor making the claim) is one of the following:

* A person holding Lasting Power of Attorney registered with the office of the Public Guardian.
* The holder of Enduring Power or Attorney registered with the Court of Protection.
* A deputy / receiver appointed by the Public Guardianship Office of the Court of Protection.

If the applicant cannot satisfy any of the above-mentioned criteria, NHS Cheshire and Merseyside will refer to the Mental Capacity Act[[4]](#footnote-4) and decide if a Best Interest’s Decision should made.

1.6. If the individual is deceased, NHS Cheshire and Merseyside will ensure that there is sufficient proof that the representative is an executor or administrator to the estate. The representative will need to provide a copy of one of the documents listed below:

* The deceased’s will
* Grant of Probate
* Letters of administration

If ICB do not receive the appropriate authority to act within three months of the date of receipt of the letter, ICB will consider the request has been withdrawn.

It is however recognised there may be exceptional circumstances which should be considered, and an extension of time considered, for example, if there is a delay in obtaining a grant of probate or letters of administration.

Applicants need to be aware that should NHS CHC funding be awarded to receive this the applicant will need to hold the appropriate authority and be able to provide proof of payment[[5]](#footnote-5). NHS Cheshire and Merseyside will support obtaining proof of payment, if entitlement to reimbursement is proven but the amount of money paid in care costs is not, NHS Cheshire and Merseyside should reimburse the claimant at the known rate of care home bed cost at that time.

For financial governance, audit and accountability purposes it is appropriate to ask the individual or representative to provide the required proof within 6 months unless exceptional circumstances apply such as delays due to other agencies. NHS Cheshire and Merseyside will evidence that it has monitored the progress with the individual or their representative, delays due to other agencies are evidenced and any exceptional circumstances have been considered.

Every effort should be made to obtain proof of fees paid. The onus of proof is on the individual or their representative to provide evidence of their loss

1.7. Once NHS Cheshire and Merseyside are in receipt of the completed consent, authority to act and questionnaire they will aim to complete the retrospective review within six months – however this is dependent upon care providers delivering copies of requested records in a timely way.

1.8. ICB will make sure that the PUPoC request does not relate to a previously assessed period of care.

NHS Cheshire and Merseyside will check its records to consider the following:

1. Has the person been considered for continuing healthcare previously for the period for care being requested? This may be either using the Checklist process, or a full continuing healthcare assessment.
2. If a Checklist was carried out, it should:

* Have been completed appropriately.
* Be clinically sound.
* Reflect the patient information known at the time; relate to the relevant period(s).
* The appropriate patient/representative was informed how to challenge this decision in writing. (NB where the patient is recorded at the time of the assessment not to have capacity the outcome letter being sent to them only is not appropriate)

1. Was the individual in receipt of NHS Funded Nursing Care (FNC)? If so a FNC assessment should have taken place once it had been established that the individual was not eligible for NHS CHC. Providing a proper consideration of the need for NHS CHC was made prior to the FNC assessment or annual review, then a further assessment of the past period of care may not be necessary, (Dennison 2014)[[6]](#footnote-6)
2. If there is evidence that the individual or their representative refused consent for assessment of a past period of care at the time, the NHS should not accept a new request for an assessment of the same period.

**2.0 Retrospective Review Process: Completing an assessment of eligibility for a previously unassessed period of care.**

**Acknowledgment of application, consent, and applicant questionnaire.**

2.1. A request for a retrospective review will be acknowledged within five working days of its receipt, the applicant will be sent a letter of acknowledgement and an applicant questionnaire which includes a section to provide patient and applicant details, reasons for making the request and consent.

2.2. NHS Cheshire and Merseyside must obtain the individual’s informed consent for the retrospective review to go ahead. If the individual does not have capacity or the application is from the estate of a deceased person, then NHS Cheshire and Merseyside will obtain consent from the appropriate party with authority to act:

2.3. The consent should include informing the applicant that they are agreeing to the gathering, scrutiny and sharing of records and information with all persons involved in the review process. On occasions it may be necessary to share the applicants details when requesting records.

2.4. Work to progress the review cannot start until the questionnaire and supporting documentation are returned to NHS Cheshire and Merseyside. Applicants are asked to return their questionnaire and consent within 28-days, where this is not possible the applicant needs to contact NHS Cheshire and Merseyside team to request an extension.

**The Checklist**

2.3. The first step in the assessment process for most people will be the NHS CHC Checklist[[7]](#footnote-7) . The Checklist is a screening tool, which will help NHS Cheshire and Merseyside work out whether a full assessment of the past period of care is required.

2.4. The threshold of the Checklist is set intentionally low, to ensure that all those who may be entitled to NHS CHC have a full assessment.

2.5. The Checklist is intended to be a relatively quick and straightforward process. NHS Cheshire and Merseyside will use the information supplied by the applicant in their completed questionnaire, where it evident that the applicant is unsure of the details required NHS Cheshire and Merseyside will gather and reference additional evidence until there is sufficient to complete the checklist.

2.6. If the claim spans a few years, the Checklist will be applied periodically, either where there is significant change or annually, to ensure it picks up deterioration, for example it may be that applying the Checklist at the beginning of the claim period will indicate a full CHC assessment is not necessary, however later in the claim period, due to the progression of their illness, the Checklist may indicate a full assessment is necessary.

2.7. If a Checklist indicates a full assessment is not necessary, for all or part of a claim period, the applicant should be advised in writing and reasons given, including a copy of the completed Checklist. The letter should explain the next steps – i.e. If dissatisfied with the decision, the applicant can request that the checklist and decision is reviewed. Should they remain unhappy with the outcome following this review they will be advised of their option to make a complaint via the organisations Complaints process.

**Gathering and scrutinising the evidence, completing the CHC assessment**

2.8. To complete a robust retrospective assessment NHS Cheshire and Merseyside will collect any available contemporaneous evidence from relevant sources.

If the individual was in a care home, then care home records relevant to the claim period will be requested, along with GP records, hospital records if applicable, social care assessments if applicable, any relevant notes from other NHS services such as Community Mental Health or Speech and Language Therapists.

**Process for record requesting:**

If the applicant has any patient records or relevant information, it is requested that they share them with the team completing the review at the time of sending in their completed application questionnaire.

Legislation exists and where a Subject Access Request is made for records and the record holder is expected to provide copies of records within a calendar month of receipt of request [[8]](#footnote-8).

An ‘Access to Records Request’ is required for deceased patients and the record holder should provide copies of records within 21 days where the record has been added to in the last 40 days, and within 40 days otherwise[[9]](#footnote-9).

Three attempts to gather records from each care provider will be made, this may be either by telephone, email or letter and a record of these attempts will be kept.

The applicant and NHS Cheshire and Merseyside will be informed when records are not provided following the first request, and the applicant will be asked if they are able to provide any support in obtaining copies of records.

If any records are not available, the care provider will be asked to sign a disclaimer stating that they cannot provide copies of the records, should this happen, the applicant will be informed.

It is important to be aware that the various care providers cited above are obliged to retain records for limited periods of time. Private care homes are guided by the Care Quality Commission and determine their own local policy; at the time of writing this guidance the general retention period is three years. There is a Records Management Code of Practice for Health and Social care which provides details of the required record retention periods, and these range from 8-30 years depending on the type of record[[10]](#footnote-10)

2.9. An appropriately trained healthcare practitioner will scrutinise the evidence and compile a needs portrayal document. The needs portrayal will combine all the relevant information from the different sources of evidence to build up a comprehensive picture of the individual’s needs across the whole period under review. The evidence will be compiled in chronological order and broken down into the different care domains within the eligibility criteria.

2.10 The needs portrayal document is the starting point after collecting all the evidence. The nurse assessor will complete a first draft of the needs portrayal and share it with the applicant and make arrangements to discuss the content with them. This could be via a ‘virtual’ meeting, teleconference, face to face meeting or, if preferred the applicant can provide a written response to the need’s portrayal document.

This is the main opportunity for the applicant to discuss their case with the team managing their application and they are encouraged to use this meeting to discuss the content of the need’s portrayal document. The purpose of this consultation is to ensure the document is accurate and to obtain the applicant’s views, gathering any additional evidence they may have to get a full picture of the individual’s needs.

2.11 Following this consultation with the applicant the details discussed will be recorded in writing, if a written submission is provided by the applicant this will be appended to the needs portrayal and considered at the assessment stage with the evidence within the care needs portrayal; this consideration should be reflected within the decision support tool document (DST).

2.12 Once the needs portrayal is finalised the information will be used to compile a DST and to complete a CHC assessment to determine if the patient was eligible for CHC funding.

2.13 A ‘closed’ multi-disciplinary team (MDT) of professionals will consider the case, they will complete a DST to assist in the analysis of the case; the applicant will not be invited to attend this meeting; however, their views and opinions will be considered by the MDT. Where a claim period spans several years, then the eligibility criteria may need to be applied several times.

The core purpose of the MDT is to make a recommendation on eligibility for NHS Continuing Healthcare drawing on the multidisciplinary assessment of needs and following the processes set out in this National Framework.

In accordance with regulations an MDT in this context means a team consisting of at least:

* two professionals who are from different healthcare professions,

or

* one professional who is from a healthcare profession and one person who is responsible for assessing persons who may have needs for care and support under part 1 of the Care Act 2014.

Whilst as a minimum requirement an MDT can comprise two professionals from different healthcare professions, the MDT should usually include both health and social care professionals. Standing Rules require that, as far as is reasonably practicable, NHS Cheshire and Merseyside must consult with the relevant local authority before making any decision about an individual’s eligibility for NHS Continuing Healthcare and in doing so cooperate with that local authority in arranging for such persons to participate in an MDT for that purpose.

2.14 The claim period should be broken down into manageable chunks with the criteria applied to each separate timeframe. A good guide is to split the claim into periods of 12 months; however, there may be a significant event or clear deterioration that will determine the split. For example, if after the initial 13 months the individual has a stroke, or a serious pressure sore, then this may be a good point to split the periods under consideration.

2.15 The Primary Health Need Test will be applied as part of the MDT deliberations. A patient has a ‘Primary Health Need’ when the nature of their care is judged to be beyond that which a local authority could legally provide. To assist in their deliberations NHS Cheshire and Merseyside will consider whether the nature, complexity, intensity, or unpredictability of the individual’s needs indicate they had a ‘primary health need’ during the period under review.

2.16 The National Framework requires that the MDT completes the DST and makes an eligibility recommendation to NHS Cheshire and Merseyside which should be accepted unless in exceptional circumstances, this principle also applied to retrospective CHC assessments. using the National Framework and will be adhered to; NHS Cheshire and Merseyside will complete the DST, apply the Primary Health need test, and make a funding recommendation. NHS Cheshire and Merseyside may follow a local decision-making process prior to issuing the outcome of the assessment – such as verification by an ICB third party who has not been involved in the retrospective review and MDT process. This is not mandated and is to be determined by each locality.

**3.0 Retrospective Review Process****: Communicating the CHC Eligibility Decision**

3.1 Once approval from NHS Cheshire and Merseyside has been provided NHS Cheshire and Merseyside will write to the applicant to inform them of the outcome of their requested review. A copy of the needs portrayal and DST(s) will be sent with the decision letter; the DST(s) will provide a detailed rationale for the recommendation that has been made.

3.2 If the individual was found eligible for all or part of the period under consideration, NHS Cheshire and Merseyside will arrange to make a restitution payment in line with the Department of Health Redress Guidance[[11]](#footnote-11).

3.3 If the individual was found not to be eligible for NHS CHC funding for all or part of the period being considered, then the decision letter will be sent to the applicant with details of who to contact if they disagree with the decision.

1. **Appeals (Dispute Resolution)**

4.1. If the applicant disagrees with the decision made by NHS Cheshire and Merseyside, NHS Cheshire and Merseyside should make it clear in the decision letter how to formally dispute the outcome of a PUPoC review.

4.2. There are two stages involved in dealing with a CHC eligibility decision dispute against an NHS CHC retrospective review recommendation outcome.

A local resolution dispute process at ICB level;

and

A review by an Independent Review Panel (IRP) arranged NHS England and Improvement.

4.3. All reasonable attempts should be made by NHS Cheshire and Merseyside to resolve an appeal locally. This will include:

* A face to face/virtual meeting or telephone conversion (if preferred) with the applicant to discuss their reasons for appealing the PUPoC outcome.
* A review of the decision, if key evidence has been overlooked NHS Cheshire and Merseyside may return the case for the team to review it again including the missing evidence.

There will be a local Standard Operating procedure in place which will provide applicants with more details of the appeal process.

4.4. Once the appeal process has been completed the claimant will be informed of the outcome. The outcome letter will provide details of ‘next steps’ that the applicant can take if they are unhappy with the outcome. NHS Cheshire and Merseyside should make it clear in the decision letter how to formally dispute the outcome of a PUPoC review this will include their option to contact NHS England for an Independent Review of their case.

**5. Independent Review and The Parliamentary Health Services Ombudsman.**

If NHS Cheshire and Merseyside has exhausted attempts to resolve the applicants appeal at a local level, they will be advised that they can request a review by an Independent Review Panel.

To do this the applicant will need to contact their local NHS England Continuing Healthcare Department within six months of the date of their local appeal outcome letter.

Details of the Independent review process can be found within the National framework In addition, the NHS England, NHS Continuing Healthcare: Independent Review Process Public Information Guide, will be shared within the applicant’s outcome letter.

Following completion of the Independent Review Process if the claimant is unhappy with the outcome, they will be advised that they have the option to raise a complaint with the Parliamentary Health Services Ombudsman; the details of this will be included in the Independent Panel’s outcome letter.

1. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/1087562/National-Framework-for-NHS-Continuing-Healthcare-and-NHS-funded-Nursing-Care-July-2022-revised.pdf [↑](#footnote-ref-1)
2. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/1112535/NHS-continuing-healthcare-decision-support-tool-referral-form.pdf [↑](#footnote-ref-2)
3. The responsible Commissioner is determined by the CCG that the patients’ GP is registered with at the start of the period requested. The responsible commissioner may change depending on if and when the patient is found eligible for CHC funding and if they moved during the review period. https://www.england.nhs.uk/wp-content/uploads/2022/06/B1578\_i\_who-pays-framework-final.pdf [↑](#footnote-ref-3)
4. <https://www.nhs.uk/conditions/social-care-and-support-guide/making-decisions-for-someone-else/mental-capacity-act/> [↑](#footnote-ref-4)
5. <https://www.england.nhs.uk/wp-content/uploads/2015/04/nhs-cont-hlthcr-rdress-guid-fin.pdf> [↑](#footnote-ref-5)
6. Dennison, R (on the application of) v Bradford Districts Clinical Commissioning Group [2014] EWHC 2552(Admin) (23 July 2014) <https://www.bailii.org/ew/cases/EWHC/Admin/2014/2552.html> [↑](#footnote-ref-6)
7. <https://www.gov.uk/government/publications/nhs-continuing-healthcare-checklist> [↑](#footnote-ref-7)
8. <https://ico.org.uk/your-data-matters/time-limits-for-responding-to-data-protection-rights-requests/> [↑](#footnote-ref-8)
9. <https://researchbriefings.files.parliament.uk/documents/SN07103/SN07103.pdf> [↑](#footnote-ref-9)
10. NHS Digital – Records Management Code of Practice for Health and social care 2016. <https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/codes-of-practice-for-handling-information-in-health-and-care/records-management-code-of-practice-for-health-and-social-care-2016> [↑](#footnote-ref-10)
11. NHS England Redress Guidance (NHSE 2015) Source: <https://www.england.nhs.uk/wp-content/uploads/2015/04/nhs-cont-hlthcr-rdress-guid-fin.pdf> [↑](#footnote-ref-11)