

REPORT TO EXECUTIVE DIRECTOR FOR COMMUNITY SERVICES		
<b>Report Title:</b>	Savings Proposal A10 - to recoup money from Health £600K	
<b>Ward:</b>	All	
<b>Contributors:</b>	Head of Adult Social Care & Head of Joint Commissioning	
<b>Class:</b>	Part 1	<b>Date:</b> 14 January 2015

## 1. Purpose of the Report

- 1.1 This report is to advise the Director of Community services on how we share the costs with the CCG for those people with significant healthcare needs including those people that meet the eligibility for fully funded continuing healthcare.

## 2. Recommendations.

- 2.1 The Executive Director for Community Services is recommended to:
- To build on the discussions that are taking place regarding the application of the Better Care Fund to ensure that adult social care is protected as more services are developed within the community to support people with both health and social care needs.
  - Note the process that will be implemented to improve the quality and timeliness of Continuing Healthcare assessments.

## 3. Background

- 3.1 **Framework for NHS Continuing Healthcare and NHS-funded Nursing Care November 2012 (Revised)** - 'NHS Continuing Healthcare' means a package of ongoing care, for an individual aged 18 or over, that is arranged and funded solely by the NHS. This applies where the individual has been found to have a 'primary health need'.
- 3.2 **The £3.8 billion Better Care Fund (BCF)** was announced by the Government in the June 2013 Spending Round, to support transformation and integration of health and social care services to ensure local people receive better care. The BCF is a pooled budget that looks to redirect resources into social care and community services for the benefit of residents who have both health and primary and community care needs.

- 3.3 **Personal health budgets** - From April 2014, everyone who receives NHS continuing healthcare funding has been able to request a personal health budget rather than receiving commissioned services. The aim for these patients is to have greater control over planning their care.
- 3.4 **Process to be used to recoup the costs for Continuing Healthcare care** - This savings proposal builds on the principles of the National framework for NHS Continuing Healthcare, NHS-funded nursing care and the *Better Care Fund* which is focused on health and social care integration.
- 3.5 **Better care fund**
- 3.5.1 As financial and service pressures facing the NHS and local government intensify, the need for the efficient use of resources becomes more relevant - The full *Better Care Fund* comes into effect in 2015/16. The purpose of this budget is to build on the momentum of integrated work across health and social care which is outlined within the Adult Integrated care programme overseen by the Health and Wellbeing Board.
- 3.5.2 A key element of the fund is to support adult social care services that have a health benefit. Some funds have been transferred from the CCG to adult social care and the Better Care Fund plan agreed between the local authority and the CCG has been approved by NHS England. This saving will be identified through building on the neighbourhood working and producing co-ordinated joint health and social care assessments. The detail of the scheme is still under discussion but will take effect from April 2015 onwards.
- 3.6 **Continuing care assessments**
- 3.6.1 A comprehensive assessment of an individual's care and support needs informs the decision as to whether or not they are entitled to NHS fully funded continuing healthcare. This is a multidisciplinary assessment and the eligibility for Continuing Healthcare is nationally set.
- 3.6.2 The current arrangements have a cost implication for adult social care:- costs are covered by the adult social care budget whilst a continuing health care assessment takes place, and there is often a delay in these taking place, particularly for those people receiving support in the community.
- 3.6.3 A new process has been agreed by the CCG and Lewisham and Greenwich Health Care Trust (LGHT) in order to improve on both quality and timeliness of these assessments, so as to enable people to be moved to health funding if eligible.

3.6.4 Adult social care and LGHT are in the process of establishing a Complex Care team to specifically focus on both inpatient and community Continuing Healthcare assessments and reviews. This will result in a greater number of high quality assessments, reducing delays and ensuring that decisions can be taken in a timely manner.

3.6.5 The rollout of Personal health budgets for those eligible for fully funded NHS care will ensure that those people who are currently in receipt of a direct payment can have their funding picked up by Health and continue to have the choice and control on how their health care needs are met which will provide continuity of provision and prevent delays in transferring from one service provider to another.

#### **4. Financial Implications**

4.1 These proposals support the delivery of the £600K savings.

#### **5. Legal Implications**

5.1 NHS continuing healthcare is provided by virtue of the NHS framework and structures created by the Health and Social Care Act 2012 effective from 1 April 2013. Standing Rules Regulations have been issued under the National Health Service Act 2006, and directions are issued under the Local Authority Social Services Act 1970 in relation to the National Framework.

5.2 These require the relevant authorities (including the Local Authority) to jointly work together, with the Local Authority providing advice and assistance to the relevant health bodies as required, and to co-operate in multi-disciplinary teams. None of these arrangements negate the Local Authority's responsibilities to undertake assessments under the NHSCCA 1990, and provide non-healthcare funded services, nor the health body's responsibilities (see below).

#### **5.3 Joint and separate responsibilities**

Primary legislation governing the health service does not use or define the expressions 'continuing care', 'NHS continuing healthcare', or 'primary health need'. However, section 1 of the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) requires the Secretary of State to continue the promotion in England of a comprehensive health service, designed to secure improvement:

- in the physical and mental health of the people of England; and
- in the prevention, diagnosis and treatment of illness.

- 5.4 There are also requirements to secure continuous improvement in services provided for:
- the prevention, diagnosis or treatment of illness, or
  - the protection or improvement of public health, whilst reducing inequalities with respect to the benefits individuals can obtain from the health service, Ref: National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care.
- 5.5 Section 3 of the 2006 Act requires CCG's to provide a range of services, to such an extent as they consider necessary to meet all reasonable requirements. These services must include, amongst other categories, 'such other services or facilities for the prevention of illness, (including mental illness, injury or disability requiring nursing or dental care), the care of persons suffering from illness, and the after-care of persons who have suffered from illness as the group considers are appropriate as part of the health service' (section 3 (1)(e) of the 2006 Act).
- 5.6 Similarly, as noted above, each Local Authority retains the responsibility for assessment and provision of social care services. The Local Authority must also notify the relevant CCG if, in carrying out the assessment, it becomes apparent to the authority that the person has needs which may fall under the 2006 Act, and invite the CCG to assist in making the assessment s47(3) NHSCCA 1990). If an NHS body is assessing a person's needs (whether or not potential eligibility for NHS continuing healthcare has been identified) and the assessment indicates a potential need for community care services that may fall within an LA's responsibilities, it should notify the LA of this in order for the LA to then fulfil its responsibilities.
- 5.7 Section 21(8) of the National Assistance Act 1948 states that nothing in section 21 authorises or requires an Local Authority to make any provision that is authorised or required to be provided under the 2006 Act. This principle was confirmed by the Court of Appeal in Coughlan, (see below) where it was held that an Local Authority is excluded from providing services if the NHS has, in fact, decided to provide those services.
- 5.8 However, Guidance states that "Section 21 should not be regarded as preventing a local authority from providing any health services. The subsection's prohibitive effect is limited to those health services which, in fact, have been authorised or required to be provided under the 2006 Act. Such health services would not therefore include services which the Secretary of State legitimately decided under section 3(1) of the 2006 Act it was not necessary for the NHS to provide". The Local Authority also has the function of providing welfare services under section 29 of the National Assistance Act 1948 (which includes functions under section 2 of the Chronically Sick and Disabled Persons Act 1970). Section 29(6)(b) of the National Assistance Act 1948 only

prohibits Local Authorities from providing such services under section 29 as are 'required' to be provided under the 2006 Act and so excludes only those services that must, as a matter of law, be provided under the 2006 Act.

- 5.9 Section 49 of the Health and Social Care Act 2001 prohibits Local Authorities from providing, or arranging for the provision of, nursing care by a registered nurse in connection with the provision by them of community care services. 'Nursing care by a registered nurse' is defined as 'services provided by a registered nurse and involving either the provision of care of the planning, supervision or delegation of the provision of care other than any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a registered nurse'.
- 5.10 Deciding on the balance between Local Authority and NHS responsibilities with respect to continuing care has been the subject of key court judgements. The Court of Appeal in *R v North and East Devon Health Authority, ex parte Coughlan* (1999) considered the responsibilities of health authorities and Local Authorities for social service provision, in particular the limits on the provision of nursing care (in a broad sense, i.e. not just registered nursing care), by Local Authorities. This case was decided before the enactment of section 49 of the Health and Social Care Act 2001. The court set out a very general indication of the limit of LA provision in the context of a person living in residential accommodation, saying that if the nursing services are:
- merely incidental or ancillary to the provision of the accommodation that a Local Authority is under a duty to provide, pursuant to section 21 NAA1948; and
  - of a nature that an authority whose primary responsibility is to provide social services can be expected to provide then such nursing services can be provided under section 21NAA 1948.
- 5.11 Since the enactment of the Health and Social Care Act 2001, care from a registered nurse cannot be provided by the Local Authority as part of community care services.
- 5.12 Eligibility for NHS continuing healthcare must always be considered, and a decision made and recorded prior to any consideration of eligibility for NHS-funded nursing care. The interaction between NHS continuing healthcare and NHS-funded nursing care was also considered by the High Court in *R v Bexley NHS Trust, ex parte Grogan* (2006). Full details of both cases are contained in the Continuing Healthcare Practice Guidance to which members are referred for further information.

**6. Equalities Implications**

6.1 Non specific to this proposal.

**7. Crime and Disorder Implications**

7.1 Non specific to this proposal

**8. Environmental Implications**

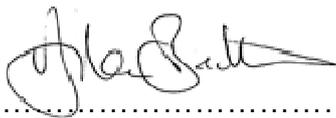
8.1 Non specific to this proposal

**9. Conclusion**

9.1 The Mayor agreed to the delegation of this savings proposal on 12th November, 2014 for the recoup of £ 600K costs associated with adult social care spend on primary healthcare needs. The recommendation is for the Director for Community Services to recharge the CCG for the costs of £600K and to use the Better Care Fund planning process to bring resources together to address the pressures on adult social care services and lay the foundations for more integrated health and social care service delivery.

**Decision:**

Acting in accordance with Standing Orders, I hereby agree to the recommendations contained within this report.



..... Date 16/1/15

**Aileen Buckton** – Executive Director for Community Services