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NHS Continuing Healthcare

Appeals Standard Operating Procedure

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Table of Contents

..... 1

Introduction..... 3

Purpose 3

Scope..... 3

Responsibility of NHS Croydon CCG 4

Consent 5

Appeal Request..... 6

Questionnaire and POA 6

Informal Meeting 8

Medical Notes..... 8

Local Resolution Meeting 8

Decision..... 9

Delayed Decision..... 9

Independent Review Process (IRP)..... 10

Reimbursement Process 10

Introduction

NHS Continuing Healthcare (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 Continuing Healthcare, 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 March 2018, revised October 2018.

NHS Croydon Clinical Commissioning Group (CCG) are responsible for the assessment and funding of NHS Continuing Healthcare and receive regular referrals for assessment from several different sources including NHS community teams, hospitals, social services, nursing homes and hospices. This document aims to set out how NHS Croydon CCG should approach an appeal when an individual or (if applicable) their representative does not agree with the decision for NHS Continuing Healthcare.

Purpose

The purpose of this procedure is to set out a clear pathway as to how individuals or their representatives, may challenge eligibility for NHS Continuing Healthcare. This procedure is not for use where there is a dispute with the Local Authority. The pathway will set out how the NHS Continuing Healthcare team process an appeal request.

Scope

To be used when an appeal is received against eligibility for NHS Continuing Healthcare from an individual or their representative where the individual is or was registered with a GP falling under NHS Croydon CCG at the time the referral for assessment was made.

It applies only to cases where NHS Croydon CCG is identified as the responsible commissioner. All challenges must be received by NHS Croydon CCG no later than 6 months following receipt of the decision regarding eligibility

The following challenges are outside the scope of this procedure:

- The content of the Department of Health National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care. These need to be pursued with the Department of Health and Social Care
- The type and or location of any offer of NHS Funded Continuing Healthcare services or NHS treatment. These need to be pursued through the standard NHS Complaints Procedure
- Disputes between public bodies as to funding responsibilities or disagreement regarding a recommendation for funding made by the multi-disciplinary team (MDT)
- Any unassessed periods of care (PUPOC). This needs to be pursued through the retrospective process

Responsibility of NHS Croydon CCG

The responsibility of NHS Croydon CCG is set out in the NHS Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012. NHS Continuing Healthcare (Responsibilities) Directions 2007 and 2009, and previously in the NHS Continuing Healthcare Directions 2004. The directions stipulate that CCG's have a duty to ensure that the CCG have agreed a local appeal process. A copy of the appeal process should be made available to anybody who requests a copy. The timescales set out in this document are a guide of what to expect, but there may be exceptions depending on circumstances of each case.

NHS Croydon CCG has a responsibility in establishing and maintaining governance arrangements for NHS Continuing Healthcare processes for appeals:

- Ensuring consistency in the application of the national policy on eligibility for NHS Continuing Healthcare including the principals and legal framework about eligibility
- Promoting awareness of NHS Continuing Healthcare
- Implementing and maintaining good practice

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- Ensuring quality standards are met and sustained
 - Ensure appropriate professions carry out assessments using the tools provided within the National Framework for NHS Continuing Healthcare
 - Ensure a robust ratification process
 - Ensure the recommendation remains in place during the appeal process

Consent

Where a CHC assessment has been carried out and the individual or their representative who holds the appropriate legal authority to do so, wishes to challenge the outcome of the decision, they must do so through the appeals process.

In cases where an individual does not have the mental capacity to manage their own affairs, a representative may request an appeal of an eligibility decision on their behalf if they hold one of the following documents:

- A Lasting Power of Attorney (LPA) which has been registered with the Office of the Public Guardian. This can be either a Health and Welfare Lasting Power of Attorney or a Property and Financial Affairs Lasting Power of Attorney
- An Enduring Power of Attorney which has been registered with the Office of the Public Guardian
- An order of the Court of Protection appointing them as Deputy and the order enables them to decide to request a review of an eligibility decision
- An order from the Court of Protection, deciding that a review of eligibility should take place

Where no person holds any of the documents from the above list, each case will be considered on an individual basis considering what would be in the best interests of the individual.

The appeal consent form will also detail the rationale for the appeal; enabling NHS Croydon CCG to be assured that the reason for the appeal is in line with the appeals process.

Appeal Request

A request for an appeal may be made in the following circumstances:

- An individual or their representative is dissatisfied with the decision regarding eligibility for NHS Continuing Healthcare following completion of the NHS Continuing Healthcare Checklist or Decision Support Tool. If an appeal is received following a Checklist, a full NHS Continuing Healthcare assessment using the Decision Support Tool (DST) must be completed in the first instance
- Where there has been a failure to follow the National Framework in reaching its decision as to determine the individual's eligibility for NHS Continuing Healthcare, another full NHS Continuing healthcare assessment using the Decision Support Tool must be completed
- A request for an appeal can only be made once the recommendation has been ratified by NHS Croydon CCG and the appellant has received a decision letter from NHS Croydon CCG
- All appeals of eligibility decisions are to be made in writing, no later than six months from the date they were notified of the decision regarding eligibility
- In accordance with the National Framework, the recommendation remains in place during the appeals process

On the day we receive your appeal request we will log the request onto our database, assign a duty administrator and a duty nurse who will be responsible for progressing your appeal. The duty Nurse will ensure the process was followed correctly, decision is robust and is compliant with the National Framework. If the case has not followed the National Framework a new assessment is to be completed.

Questionnaire and POA

On the day we receive your appeal request we will send you out a questionnaire and POA form to be completed and returned. If we don't hear from you within 14 days, we will resend. If we then don't hear from you after another 7 days, we will close your request.

Appeals 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 allow the company to act on their behalf should be logged but no further action taken. A request will be made to the solicitor or claims company to provide authority to act, however, if this cannot be produced within 4 weeks, the appeal will be closed.

On receipt of a completed questionnaire with the appropriate authority to act, NHS Croydon CCG will complete several preliminary checks to establish whether the appeal should continue.

NHS Croydon CCG will first have to establish whether it is the correct body to progress with the request by making sure it is the responsible commissioner for the individual. If it is not the responsible commissioner, NHS Croydon CCG will inform the appellant and the relevant CCG of the request.

If the patient lacks capacity, and the claim has been made by a relative, friend or carer, NHS Croydon CCG should make sure that the person making the claim is authorised to do so. NHS Croydon CCG will check whether the appellant (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 of Attorney registered with the Court of Protection
- A deputy appointed by the Office of the Public Guardian

If the appellant cannot satisfy any of the above-mentioned criteria, NHS Croydon CCG will refer to the Mental Capacity Act 2005 and decide if a best interest's decision should be made.

If the individual is deceased during the appeals process, NHS Croydon CCG should be satisfied that there is enough proof that the representative is an executor or administrator to the estate. If proof of this is not returned with the consent and questionnaire, NHS Croydon CCG will write to the appellant allowing a period of 4 weeks for its return. Whilst it is reasonable to allow 4 weeks, and after such time the application could be considered withdrawn, it is however recognised there may be exceptional circumstances which should be taken into account and an extension of time considered. For example, if there is a delay in obtaining a grant of probate or letters of administration.

Any decision to withdraw the appeal will be communicated to the appellant within 28 days.

Informal Meeting

The assigned duty Administrator will arrange an informal face to face meeting or telephone call with you and the duty Nurse within 14 days from receiving your consent to discuss the appeal and answer any questions you may have. After this meeting if you choose to proceed with the appeal we will move on to requesting medical records for the appeal period. This request will be made on same day, after the informal meeting.

Medical Notes

We will contact the GP, Nursing Home and Social Worker (if applicable) for medical notes for a period of 3 months leading up to the decision being appealed. It may also be necessary to obtain medical notes from other NHS services such as Community Mental health and Speech and Language Therapists (if applicable). We will give them 28 days to send us the information, if we don't hear from them within this time we will make a final request and allow another 28 days. If after this time we don't receive notes, we will proceed regardless with the appeal to book a Local Resolution Meeting.

Local Resolution Meeting

We will be in contact with you to book a Local Resolution Meeting, to take place no later than 28 days after medical notes arrive (or the request for notes expired).

The assigned duty Nurse will meet with the appellant/family to discuss the assessment completed and identify the care domains on the DST where there is disagreement. The decision by the MDT on eligibility will also be discussed.

Minutes will be taken either by the administrator in person or by using a Dictaphone to audio type at a later date. All recordings are permanently destroyed after they have been typed and approved by the duty Nurse.

Decision

Within 28 days of the Local Resolution Meeting concluding, we aim to provide you with a final decision on your appeal. The duty Nurse will add the views from the family and additional evidence onto the DST and identify if the original decision was correct at the time of assessment by examining and scrutinising all the records and evidence.

If the MDT's decision is upheld, in that the individual is not eligible for NHS Continuing Healthcare the duty Nurse will write to the appellant with a detailed rationale for this decision. A copy of the DST will be sent with the decision letter by recorded delivery.

If the duty Nurse considers the original decision was wrong, the case is to be presented to the ratification panel for NHS Croydon CCG to determine eligibility. The DST, additional evidence and family views will be presented. To ensure that the quality and quantity of care required is not more than the limits of Local Authority responsibilities, NHS Croydon CCG will consider whether the nature, complexity, intensity or unpredictability of the individuals needs indicate a primary health need. The case will then be ratified.

The decision from the ratification panel will be given to the appellant with a detailed rationale of the decision made. A copy of the DST will be sent with the decision letter by recorded delivery.

If NHS Croydon CCG overturns the original decision, making the individual eligible for NHS Continuing healthcare, NHS Croydon CCG will make arrangements to make a restitution payment in line the Department of Health Redress Guidance.

If the appellant remains dissatisfied, they can request an Independent Review Panel (IRP) with NHS England.

Delayed Decision

If we are unable to meet the proposed deadline to provide you with a decision, we will contact you with a revised deadline of no later than 2 further weeks.

Independent Review Process (IRP)

If NHS Croydon CCG has exhausted attempts at local resolution, the applicant should be advised that they can request a review by an IRP by contacting:

NHS England London Region

5th Floor, Skipton House

80 London Road

SE1 6LH

The IRP will make a recommendation to NHS England. The IRP will provide a detailed report of its recommendation which is sent to the appellant by NHS England in the form of a decision letter. If NHS England accepts the IRP's recommendation that the decision by NHS Croydon CCG was wrong, NHS England will recommend to NHS Croydon CCG that they make a restitution payment, for any care fees paid by the appellant that should have been funded by NHS Croydon CCG.

Should the IRP recommend upholding the decision of NHS Croydon CCG, and the appellant remains dissatisfied, the appellant can make a complaint to the Parliamentary and Health Service Ombudsman (PHSO). The decision letter will contain details of how to do this.

Reimbursement Process

NHS Croydon CCG will follow the NHS England Redress Guidance (2015) to ensure reimbursement is made correctly.

NHS Croydon CCG will apply the retail price interest (RPI) for calculations of compound interest when considering reimbursement. This allows placing individuals in the position they would have been if previously awarded NHS Continuing healthcare.

To reimburse the appellant, NHS Croydon CCG will obtain evidence that the claimant has paid for the services. Without this evidence, NHS Croydon CCG will not be able to proceed.

This includes:

- Copies of invoices that they have paid
- Bank statements evidencing the payments being made
- ID (Passport or Driving Licence)
- Proof of Address

The finance department will require evidence that the panel have determined the individual eligible for NHS Continuing Healthcare and a copy of the eligibility decision letter.

NHS Croydon CCG will calculate retail price interest (RPI) and obtain sign off from the Finance team. An indemnity/offer form to include bank account details for the funds to be paid into will be sent to the appellant.

When the appellant accepts the offer, and completes and returns the indemnity forms, NHS Croydon CCG will complete a CHAPS request form with relevant supporting information and pass it onto NHS Croydon CCG's finance lead to review and raise any query before presenting it to the Chief Finance Officer for authorisation to release the NHS funds to make payment.

The finance lead will pass on the signed CHAPS form to the financial accounts team to process payment.