

NHS Norfolk and Waveney CCG received a query relating to Continuing Healthcare services across Norfolk and Waveney.

The query and answers provided in a written response can be found below:

The issue I raised is people who have been assessed as eligible for full NHS Continuing Healthcare funding being made to pay for large percentages of their care package. This issue concerns a specific group of people- those who have had a personal injury compensation pay out and have a court of protection appointed deputy managing the compensation as they lack the mental capacity to manage it themselves.

I am concerned about this issue because I believe it is in conflict with the NHS continuing healthcare framework and the NHS Act 2006 in regards that people being assessed for CHC should not have their finances taken into account, that if assessed as eligible for CHC the NHS should pay for the entirety of the care package and that NHS services should be free at the point of delivery.

This specific issue has been raised in case law- the case of Alyson Booker and NHS Oldham in which it was held that the NHS cannot charge for CHC on the basis that a person has been awarded PI compensation. The issue has also been addressed by the Ombudsman in a recent report ('Continuing Healthcare: getting it right the first time' pg 18). I am concerned that very vulnerable people- those who have suffered catastrophic life changing injuries due to negligence and have been paid compensation are being made to use this to pay for their NHS care and in addition to this it has been confirmed that this is only happening to those who lack the mental capacity to manage the compensation, as quoted in the response from NCCP (which I have attached for your information) this is only in cases where "a court of protection order is in place", the court of protection's jurisdiction is granted via the Mental Capacity Act and therefore deals only with people lacking the mental capacity to manage their own affairs.

Thank you for raising your concerns regarding individuals eligible for NHS CHC 'being made to fund large percentages of their care needs when (NHS Norfolk and Waveney Clinical Commissioning Group) are aware that they have received compensation for personal injuries'.

You may be aware that the five clinical commissioning groups (CCGs) in Norfolk and Waveney became a single CCG on 1 April 2020. The NHS CHC team are now an integral part of the CCG and commission care for individuals in receipt of NHS CHC.

Our team, after assessment of need for individuals eligible to receive NHS CHC, will work with individuals and representatives to develop a care plan in order to commission care. The commissioning of care is very much a partnership approach. All commissioned care is based on need and identified outcomes.

There are times when patients or their representatives decide that care assessed by the CCG to be required by an individual to meet identified needs is not in keeping with the wishes of an individual or their representative.

In these circumstances the CCG will work with the individual to establish what steps can be taken to safely incorporate the expressed wishes, while ensuring that the CCG complies with its statutory duties. When making commissioning decisions the CCG is able to consider value for money.

The National Framework for NHS Continuing Healthcare 2018 (revised) states at PG 45:

Can CCGs take comparative costs and value for money into account when determining the model of support to be provided to an individual?

45.1 (Yes, subject to the following guidance and the guidance set out in paragraphs 279-290 of the National Framework). In some situations a model of support preferred by the individual will be more expensive than other options. CCGs can take comparative costs and value for money into account when determining the model of support to be provided.

Since coming into post on 1 January 2020, our Head of NHS CHC has not become aware of the commissioning practice that you have highlighted as a concern.

However, if you are able to highlight specific concerns with individual commissioning practices that you believe to not comply with the CCG's statutory requirements, we would be very happy to investigate further.