

Welsh Government

Consultation Document

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Continuing NHS Healthcare (CHC) – The 2014 National Framework

Date of issue: **13 December 2013**

Responses by: **13 March 2014**

Overview This document seeks views on what arrangements the Welsh Government should put in place to support the effective delivery of Continuing NHS Healthcare (CHC) by the NHS. These arrangements will be set out in the 2014 National Framework for Continuing NHS Healthcare. The consultation poses a number of questions about the best way forward.

How to respond You can respond to this consultation by completing, **by 13 March 2014**, the consultation response form at the back of this document and returning it by post to:

Continuing NHS Healthcare Team
Integration, Policy and Delivery Division
Social Services and Integration Directorate
Welsh Government
4th Floor
Cathays Park
Cardiff CF10 3NQ

Alternatively, the consultation response form is available on our website (<http://wales.gov.uk/consultations/?lang=en>) and can be returned to us by e-mail to : CHCFrameworkConsultation@wales.gsi.gov.uk

Further information and related documents There are Easy-to-Read and Easy Read versions of this consultation document available.

Large print and Braille versions are also available on request.

Contact details For further information:

Continuing NHS Healthcare Team
Integration, Policy and Delivery Division
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Welsh Government
4th Floor
Cathays Park
Cardiff CF10 3NQ

E-mail: CHCFrameworkConsultation@wales.gsi.gov.uk

Telephone: Cardiff (029) 2082 5860 or 2082 6950

Data protection

Any response you send us will be seen in full by Welsh Government staff dealing with this consultation. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Summary

Arrangements for the delivery of Continuing NHS Healthcare (CHC) are set out in the existing guidance *The 2010 National Framework for Continuing NHS Healthcare in Wales* (the Framework), published in May 2010.

The Framework covers adults and sets out the Welsh Government's revised policy for eligibility for CHC and the responsibilities of Local Health Boards (LHBs) and Local Authorities (LAs). It sets out a process for the NHS, working with local authority partners, to assess health needs, decide on eligibility for CHC and provide appropriate care.

Our new Framework will be published this June and will replace the 2010 Continuing NHS Healthcare: The National Framework for Implementation in Wales. The new Framework will not be a complete re-write of existing arrangements. Instead, it will provide further robustness, clarity and assurance on areas identified for improvement by stakeholders. This consultation therefore focusses only on the proposed updated areas.

The new Framework will provide clear, practical and user-friendly guidance based on the views of stakeholders, including CHC nursing leads, the Wales Audit Office and Public Service Ombudsman for Wales.

The Framework will be accompanied by the CHC Toolkit, which will act as a web-based resource, as well as an implementation and training plan. Further work will be undertaken during the consultation period to pilot new processes and refine the content of the Toolkit, such as policies, protocols, resources, practical examples and Frequently Asked Questions.

All LHBs and Local Authorities in Wales will be required to follow it. The new Framework will set out a process for the NHS, working together with local authority partners, to assess health needs, decide on eligibility for CHC and provide appropriate care.

We therefore welcome your views in shaping the proposed Framework, in order to deliver more effective CHC arrangements.

Section 1

Purpose of this consultation

1. The purpose of this consultation is to revise the Framework to provide a consistent foundation for assessing, commissioning and providing CHC for adults across Wales. This is to ensure that there is a consistent, equitable and appropriate application of the process for determining eligibility. This framework is not intended to replace existing joint commissioning strategies.
2. We have identified various questions for you to consider in your response to the Framework. These are set out in detail in Section 4 of this consultation, and you are asked for your views on which option you support.
3. The options set out in this consultation will need to be developed further and fully costed before any final decision is taken. The Welsh Ministers will make a decision in June 2014 following this consultation.
4. The Welsh Government will want to monitor the impact of the Framework to make it is robust and practical. We would welcome your views on the best way to do this.

Section 2 Background and context

Definition of Continuing NHS Healthcare

5. Continuing NHS Healthcare (CHC) is a package of care arranged and funded solely by the NHS, where it has been assessed that the individual's primary need is a health need.

General Principles of CHC

6. CHC is just one part of a continuum of services that local authorities and NHS bodies need to have in place to support people with health and social care needs. CHC is one aspect of care which people may need as the result of disability, accident or illness to address both physical and mental health needs.
7. The Framework makes it clear that the whole process of determining eligibility and planning and delivering services for continuing NHS healthcare should be 'person centred'. This is vital since individuals going through this process will be at a very vulnerable point in their lives. There may well be difficult and significant choices to be made, so empowering individuals at this time is essential. The ongoing assessment and review process should therefore be explained to the individual and/or their representative from the outset and confirmed in writing. Communication tools and template letters for various stages of the process can be accessed via the CHC Toolkit.
8. Where an individual lacks capacity to make informed choices, under the Mental Capacity Act Code of Practice, staff may disclose information about the individual, providing it is in the best interests of the person concerned, or there is a lawful reason to do so.
9. CHC should not be viewed as a permanent arrangement. Care provision should be needs-led and designed to maximise ability and independence. Any care package, regardless of the funding source, should be regularly reviewed in partnership with the individual and/or their representative to ensure that it continues to meet their needs. CHC is just one part of a continuum of services that local authorities and NHS bodies need to have in place to support people with health and social care needs. CHC is one aspect of care which people may need as the result of disability, accident or illness to address both physical and mental health needs.

Responsibilities of the NHS and Local Authorities

10. The NHS is responsible for assessing, arranging and funding a wide range of services to meet the health care needs, both short and long term, of the population. In addition to periods of acute health care, some people need care over an extended period of time, as the result of disability, accident or illness to address physical and mental health needs. These services are normally provided free of charge.
11. An individual is eligible for CHC when they are assessed as having a primary health need. They then receive a package of support that is fully funded by the NHS. There are around 5,700 people in Wales who receive CHC at an annual cost to the LHBs of approximately £280 million. By its very nature, the provision of CHC is often long term and costly, although it can be episodic in nature, with some people moving in and out of eligibility. Given these pressures, CHC was identified as an area of healthcare that would benefit from a nationally co-ordinated approach and since 2010 has been supported by the National Framework for Implementation in Wales guidance, published by Welsh Ministers.
12. Local authorities also provide a range of services to support their local population, including people who require extended care. These services include accommodation, education, personal and social care, leisure and other services. Local authorities must charge for residential care in accordance with the Charging for Residential Care Guidance (CRAG) and they may charge for other care services subject to any guidance or regulation by the Welsh Government.
13. When an individual has been assessed as having a primary health need and is therefore eligible for CHC, the NHS has responsibility for funding the full package of health and social care. Where the individual is living at home, this does not include the cost of accommodation, food or general household support.
14. NHS bodies and local authorities have responsibilities to ensure that the assessment of eligibility for, and provision of, CHC takes place in a consistent fashion and the process is actively managed to avoid unnecessary delays.
15. If an individual does not meet CHC eligibility, they can still access a range of health and social care services that are likely to be both part of mainstream services or individually planned to meet specific need.

Issues

Wales Audit Office Review of the Framework

16. Over the last two years the Wales Audit Office (WAO) undertook a study into the implementation of the Framework and its effectiveness in ensuring individuals are dealt with fairly and consistently. The study did not examine in any detail the operational delivery of CHC, such as service redesign.

17. The WAO published their report, *“Implementation of the National Framework for Continuing NHS Healthcare”* in June this year. It recognised the current Framework delivered a number of benefits, including governance issues, arrangements for continuing eligibility and the basis for a consistent assessment of care needs. The Report raised concerns over the effectiveness of the implementation of the Framework as well as the fairness and consistency in decision-making on CHC by LHBs. In summary the Report noted:

- CHC governance issues within Health Boards had been strengthened, but provided limited assurance that people are being dealt with consistently and fairly;
- the effectiveness of joint working between health and social services was highly variable;
- there was a fall in the number and expenditure of CHC cases, albeit the impact of the Framework in this was not clear. The report noted mixed evidence on the extent and consistency that individuals and their families are involved in the assessment process
- despite additional funding provided, there was a perceived risk that processes to deal with backdated claims for CHC would not be processed to completion to meet the deadline of June 2014; and,
- Many of the challenges to CHC eligibility decisions not dealt with promptly, there is currently no deadline set for the cases that individual Local Health Boards are dealing with.

18. The Report also advocated the introduction of a Screening Tool, as used in England, would ensure clarity and consistency in the criteria used to assess people.

Public Service Ombudsman for Wales

19. Following a number of complaints received, the Public Service Ombudsman for Wales (“the Ombudsman”) has raised concerns over the consistency and fairness of these eligibility decisions, and a large number of backdated claims (“retrospective reviews”) have been made to Local Health Boards challenging earlier decisions. Following his investigation into the administration of some of those claims, the Ombudsman received legal advice from Queen’s Counsel on the funding and provision of CHC, which proposed a number of improvements to the Framework. These

include; “fast-tracking” cases, the issuing of refunds guidance, guidance to Local Health Boards on where their financial liabilities start, and setting out expectations on Local Health Boards where there has been inaction or delay in progressing a claim.

20. Some of those measures have already been taken. For example, over the last twelve months Welsh Ministers have issued interim guidance to clarify and strengthen arrangements relating to eligibility for CHC.

The Proposed 2014 Framework for CHC

21. These new measures are built into the proposed 2014 National Framework for Continuing NHS Healthcare. They aim to strengthen the guidance and strategic oversight given to LHBs. The proposed Framework is fairly complex in terms of detail but a breakdown of the areas in which it has been revised is set out in Section 3. The proposed Framework replaces the previous arrangements set out in the 2010 National Framework for Continuing NHS Healthcare and is supported through:

- communication tools;
- an online ‘CHC Toolkit’ to assist CHC staff, including template documentation for LHBs on contracts, policies and protocols;
- structured opportunities for shared learning, through annual conference, newsletters and an online staff forum for problem-solving; and,
- a National Performance Framework, to be implemented from the date of the launch of the updated Framework.

22. It should be noted that the proposed Framework refers to various legislation, regulations and statutory guidance. It should be borne in mind that some of these will be revised over the course of time. The interpretation of the guidance in this document should therefore take into account future changes.

Assessment

23. An individual’s eligibility for CHC is comprehensively assessed through a Multi Disciplinary Team (MDT) and in discussions with the person and/or their family. The complexities and unique circumstances surrounding each person’s claim for CHC mean that the entire process can take up to several weeks to proceed.

24. The LA should usually be represented on the MDT completing the CHC eligibility process. This means that, in most cases, the key assessment information needed for LA support is already available to prevent a delayed discharge. Therefore, where an individual is found to be ineligible for continuing NHS healthcare, the LA should be in a position to respond and action their responsibilities quickly.

25. Central to CHC arrangements is the multidisciplinary team's (MDT) assessment of the individual's care needs which inform the completion of a Decision Support Tool. Throughout the assessment process, the assessment team must keep the individual informed and detail the individual's view of their own care/support needs. This should all be done through a care co-ordinator, employed by the LHB. As part of the 'person-centred approach', individuals, their family, or their chosen representatives, should be actively involved in the process.
26. The differing levels of need and risk to the individual should be identified and reflected within an Integrated Assessment and the care planning and management approach must consider a number of care options, which should be recorded within the service delivery plan. Examples of these care options may include (but are not confined to):

The role of the DST

27. The purpose of the Decision Support Tool is to help identify eligibility for continuing NHS healthcare; it is not designed as an assessment tool in its own right. A good quality multidisciplinary assessment may well identify care/support needs requiring a response by the LHB or LA regardless of eligibility for continuing NHS healthcare.
28. Any new CHC arrangements will need to be fully integrated into the new Integrated Assessment process. This is set out in Chapter 7 of the Framework.

Section 3

The Revision of the Framework

29. We recognise the existing CHC arrangements need to be looked at. We have acted on this, taking on board the views of the WAO and other parties to produce a plan for revising those arrangements, in partnership with stakeholders. In doing so, we have acknowledged their consensus that a complete rewrite of the Framework is not necessary. Instead we have revised certain areas, adopting best practice as appropriate, to ensure the Framework provides clear, practical and user-friendly guidance.
30. The proposed Framework sets out the underpinning principles where practitioners must be able to demonstrate that they have adopted good practice in the following areas:
- Putting the needs of the individual first (“People first”).
 - ‘No decisions about me without me’; involving the individual, or their families or carers.
 - No delays in meeting an individual’s needs due to funding discussions.
 - Focus on need not diagnosis.
 - Co-ordinated care.
 - Communication.
31. In implementing the principles detailed above, the proposed Framework clarifies the roles and responsibilities of those being assessed, their carers/representatives, the lead professional (“care co-ordinator”) responsible for the assessment, the multi-disciplinary team members (MDT) who assess and recommend any package of care and the panel that commissions the persons required services.

The proposed Framework also provides contains the following excerpts:

Underpinning Principles – Welsh Language

32. The updated Framework contains a new provision reinforcing that for Welsh speakers, effective communication through the medium of Welsh is a key requirement of assessment and the provision of any support required.

Chapter 2 - Governance and Strategic Ownership

33. Chapter 2 of the proposed Framework strengthens LHB ownership of CHC by setting out, at Director Level, responsibility for monitoring CHC performance and maintaining strategic oversight.

34. Under the new Framework, each LHB must identify a named executive, at Director level, who is responsible for monitoring CHC performance and maintaining strategic oversight. They should present, as a minimum, a quarterly CHC performance report to their Board, as well as an annual report based on the CHC Toolkit. They will escalate required actions for which the LHB will be held to account. LHBs are required to utilise the national CHC Performance Framework which can also be accessed via the CHC Toolkit and the Self-Assessment Tool developed by the Wales Audit Office.
35. The Welsh Government will collate a national report and will provide the support mechanisms required to share learning

Chapter 7 – The Assessment process and Decision Support Tool (DST)

a) The Assessment Process

36. The proposed Framework notes that the guidance document ‘Creating a Unified and Fair System for Assessing and Managing Care’ (National Assembly for Wales 2002)¹ has now been replaced in relation to older people by the new interim guidance – Integrated Assessment, Planning and Review Arrangements for Older People. This interim guidance aims to simplify and minimise administrative burdens so the professional can spend more time working directly with people to better understand their needs and act earlier in helping them. It should also serve to integrate assessments more effectively by rationalising processes for gathering and recording information to avoid duplication of effort. More effective assessments should, for example, reduce the burden concerning the application of the ‘decision support tool’ used for CHC purposes.
37. The proposed Framework stipulates that the new assessment process should utilise, not duplicate, the integrated or unified assessment framework and align with good discharge practice, as detailed in Welsh Government Guidance² and *Passing the Baton*³.
38. The Multi-Disciplinary Team also consider the optimum environment in which the assessment for longer-term care should take place in order to maximise the individual’s potential for independence. Care must be taken to ensure that no premature presumptions are made. regarding the requirements for long-term care whilst the individual is acutely unwell. ‘Home first’ should be the default position and rehabilitation/ reablement to support the retention of as much independence as possible, must

¹ Creating a Unified and Fair System for Assessing and Managing Care, National Assembly for Wales 2002

² NAFWC 17/2005 Hospital Discharge Planning Guidance

³ Passing the Baton: A Practical Guide to Effective Discharge Planning (2008)

always be considered. Options to be considered include step-down/intermediate assessment facilities in the community, or the person's own home with intensive short-term support.

b) The Decision Support Tool (DST)

39. We have carefully considered the findings of the WAO report and agree that there are benefits of adopting the English DST, including its user-friendly approach. We shall therefore adopt this as part of the new Welsh arrangements. Our new DST will address the anomalies highlighted in the WAO report and facilitate seamless cross-border delivery of CHC. We will monitor this through the Performance Framework.
40. The focus must be on a rounded and holistic assessment of the individual rather than DST scores. If the integrated assessment and care plan are sufficiently robust there is no requirement to duplicate paperwork by copying information into the DST document. It will be acceptable in these circumstances to only complete the DST matrix plus the summary record of the MDT discussion and recommendation on eligibility. We have also stipulated that the final discussion and recommendation on CHC eligibility should be undertaken in a formal MDT meeting, to which the person and/or their carers must be invited.
41. Finally, the proposed Framework requires LHBs to have robust quality assurance mechanisms in place to ensure consistency of decision making. A decision not to accept the recommendation must not however be made by one person acting unilaterally. In such circumstances the nominated manager should refer the case to the decision Panel. We have also made clear in the proposed Framework that LHB's responsibility for the funding of CHC commences at the point at which the Panel makes the final decision on behalf of the Board.

Chapter 8 - Care Provision and Monitoring

42. The Proposed Framework sets out the support carers must have provided to them and also stipulates the responsibilities LHBs have in commissioning and delivering the care package for the individual. This section also sets out the requirements for the contracts and service specifications for registered settings and the operational procedures to ensure its responsibility for commissioned services are effectively secured and monitored, where care is provided by external agencies. The chapter also notes the need for a written agreement between the LHB and the individual and/or their representative, clearly setting out what is covered

by CHC funding. It also expects that LHBs and local authorities must work together to identify gaps in current and future service provision

43. The Chapter also instructs LHBs to have regard to compliance with statutory guidance, including '*Escalating Concerns With, and Closures of, Care Homes Providing Services for Adults*' (8.13)

44. The proposed Framework also sets out new arrangements for additional Personal Contributions from a person who is eligible for CHC, including additional services and extras, as well as retaining an existing provider. It also clarifies the use of Direct Payments and CHC as well as joint funding arrangements.

Chapter 9 - Reviews

45. Chapter 9 strengthens arrangements for existing reviews, stipulating that the individual and/or their representative and the service provider must be provided with the contact details of a named care co-ordinator/lead professional, so that any changes in the person's condition or circumstances can be promptly addressed.

46. Those receiving NHS Funded Nursing Care in a care home must also be reviewed on at least an annual basis. It adds that such a review should include the completion of the CHC Checklist Screening Tool in order to identify those whose needs may now indicate eligibility for CHC. The LHB must ensure that the individual, their family/representative and care home provider have the information and contacts available to enable them to identify changes in need which indicate a timely review is required. Care home providers should be encouraged to complete the Checklist themselves and alert the health board when a full assessment for CHC eligibility is required.

Chapter 10 - Other Policies and Specialist Areas of Practice

47. The proposed Framework now also contains a section highlighting how it will link to other areas, such as:

- Mental Health Act 1983 After Care Services;
- Deprivation of Liberty Safeguards;
- The Transition from Child and Young Persons to Adult Services;
- Applying the CHC Framework to adults with a Learning Disability;
- Entitlement to other NHS Funded Care;
- Community Equipment; and,
- Joint Training.

Chapter 11 - Dispute Resolution

48. Chapter 11 of the proposed Framework sets out the expectation that LHBs and their partners work together to deliver the best possible outcomes for the citizens of Wales through effective partnership working and integration. It specifies where the MDT is unable to reach a consensus view on CHC eligibility, they should escalate the dispute to the appropriate manager and access objective expertise from within, or outside of, their LHB. Where the individual and/or their representative disputes the clinical assessment of the MDT, external peer review should be offered to avoid escalation to the formal disputes or complaints procedure and applications for retrospective reviews.

49. This chapter also notes that LHBs are expected to participate in an annual case review exercise which will be co-ordinated by Welsh Government and supported with materials in the CHC Toolkit.

Chapter 12 - Independent Review Panel (Appeals Process) and Complaints

50. The proposed Framework sets out the need for consistency in the operation of Independent Review Panels and that the deliberations must be properly recorded and communicated.

Chapter 13 - Retrospective Claims for Reimbursement.

51. The final chapter of the Framework is a new one, devoted to backdated (“retrospective”) claims for when an individual paid for their care but met the eligibility criteria for CHC which were applicable at that time. It notes an individual or their representative(s), may request a retrospective review where they contributed to the cost of their care, but have reason to believe that they may have met the eligibility criteria for CHC which were applicable at that time. If eligibility is demonstrated for either the full or part period of the claim, the principles of good public administration demand that timely restitution be made. No retrospective claim should take more than two years to process.

52. This section outlines the process for making a claim and the cut-off dates by which a claim must be made, as well as the responsibility for managing such claims.

Section 5 Questions

1. The Wales Audit Office concluded elements of the existing Framework lacked clarity. Does the updated Framework successfully address this? Are there areas which require further attention?
2. Does the Framework provide a clear overall road map to help you understand where you are within the process?
3. Does the proposed Framework provide sufficient assurance about the responsibility, ownership and governance of CHC by Welsh Government, LHBs and their partners?
4. Are the proposed Assessment Process, Checklist/Screening Tool and Decision Support Tool, fit for purpose?
5. Do you think it is helpful to move from the existing Welsh Decision Support Tool (DST) within the existing Framework, to the new proposed version, which will be based on the English DST?
6. Do you think that individuals and their families are involved enough in the updated assessment process? If not, in which additional ways would you like to see the process improved?
7. In your view does the proposed Framework link effectively with other health and social services policy and guidance? Are there any other linkages to good guidance or innovative practice we should be making?
8. An online-based toolkit of resources to support the implementation of CHC will be developed (the contents list is annexed to the Draft Framework). Are there other products you would wish to see addressed in such a toolkit?
9. The Framework is a technical document aimed at specialist professionals who oversee assessment and care provision. We would welcome your thoughts on the potential publication of a simplified Framework for frontline practitioners (e.g. ward staff) and service users. Comments on its appropriateness, including suggested format, content and style are welcome.

Consultation Response – The CHC Framework

Consultation Response Form

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

If you are responding on behalf of your organisation, please tick here:

Question 1: The Wales Audit Office concluded elements of the existing Framework lacked clarity. Does the updated Framework successfully address this? Are there areas which require further attention?

Comment:

Question 2: Does the Framework provide a clear overall road map to help you understand where you are within the process?

Comment:

Question 3: Does the proposed Framework provide sufficient assurance about the responsibility, ownership and governance of CHC by Welsh Government, LHBs and their partners?

Comment:

Question 4: Are the proposed Assessment Process, Checklist/Screening Tool and Decision Support Tool, fit for purpose?

Comment:

Question 5: Do you think it is helpful to move from the existing Welsh Decision Support Tool (DST) within the existing Framework, to the new proposed version, which will be based on the English DST?

Comment:

Question 6: Do you think that individuals and their families are involved enough in the updated assessment process? If not, in which additional ways would you like to see the process improved?

Comment:

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