Changes to NHS Continuing Healthcare Framework: Is your CCG ready?

Published 21 March 2018

Summary

As of 1 October 2018, the national framework which sets out how decisions are made about NHS Continuing Healthcare (CHC) will be changing.

Although CHC eligibility criteria will be staying the same, the revised framework includes a number of important changes which will impact on local NHS Continuing Healthcare protocols, including:

- Revised guidance on use of the screening Checklist;
- New emphasis on CHC assessments being done after hospital discharge;
- Focus of 3 and 12 month reviews moving away from re-assessing CHC eligibility;
- Greater steer on process for individuals challenging eligibility decisions;
- More detail on resolution process for inter-agency disputes.

We look at what CCGs need to be doing to get ready for these changes.

What's changing?

When CCGs make decisions about whether someone is eligible for CHC funding, they must have regard to the national framework.

CCGs now need to familiarise themselves with a new version of the framework because, as of 1 October 2018, the current 2012 version will be replaced by a revised 2018 version.

The CHC eligibility criteria themselves are not changing, meaning that - whilst the layout and wording of the 2018 version is generally more 'user friendly' than before - the substance of what is says about the core issue of 'primary health need' and the respective funding responsibilities of CCGs and Local Authorities remains as before.

The revised version is easier to navigate and a number of key issues previously covered only in the Practice Guidance at the back have now been incorporated into the main body of the framework (e.g. 'top-ups' and who pays for what in a person's own home). It also reflects legislative changes since the current version came out, especially the Care Act 2014 and how this assists with distinguishing between health and social care needs. Plus, there is a greater focus on the importance of strong leadership and governance in relation to implementation of the framework.

The most substantive changes, however, are aimed at minimising unnecessary stays in hospital, reducing unnecessary assessments and resolving challenges/disputes more quickly and consistently.

What are the 'headline' changes?

Checklist

The Checklist is the screening tool used to help identify individuals who may need a full CHC assessment. Whilst the Checklist itself will remain largely the same (apart from updated user notes and the care domains being arranged in a different order), the revised version of the framework:

- Is clearer about the potential outcomes - i.e. either a 'negative' checklist (not eligible and no full assessment needed) or a 'positive' checklist (i.e. full assessment needed to determine if eligible);
- Lists situations where it is not necessary to complete a Checklist, including where it is clear to practitioners that there is no need for CHC at the current time or where the person has a rapidly deteriorating condition and the fast track pathway tool should be used instead;
- Echoes current guidance that CCGs should give 'due consideration' to requests to reconsider a Checklist outcome, but

goes further by clarifying that there is no obligation on CCGs to undertake a further Checklist.

Full assessments

Although the CHC assessment process itself will be largely unchanged under the revised framework (e.g. the revised Decision Support Tool is essentially the same apart from updated user notes and a re-arranging of the care domains), the guidance on where and when assessments should be done is different, with a new emphasis on the importance of not letting the process delay hospital discharge.

Key points to note:

- Under the revised framework, the full CHC assessment should *normally* take place when the individual is in a community setting (whereas the current version says that full eligibility assessments may take place in hospital or non-hospital settings); and
- In the *majority* of cases, it is preferable for CHC eligibility to be considered after discharge from hospital;

In terms of timescale from the CCG receiving a positive checklist to an eligibility decision being made, this will remain 28 days (max) as currently, although the revised framework includes an additional expectation that CCGs will normally respond to MDT recommendations within 2 working days.

3 and 12 month reviews

Under the revised framework, the system of an initial 3 month review and 12 month reviews thereafter will continue, but with a notable change of focus. Whereas the current framework says the purpose of these reviews is to reassess care needs and eligibility for CHC, the revised version says:

- These reviews should *'primarily focus'* on whether the care plan/arrangements remain appropriate to meet the person's needs;
- In the *'majority of cases'* there will be no need to reassess CHC eligibility;
- If a review indicates clear evidence of change that might impact on the person's eligibility, the CCG should arrange a full assessment of eligibility, with a new DST completed by a properly constituted MDT.

Challenges by individuals to eligibility decisions

The current version of the framework requires CCGs to have a 'local review process' to address situations where someone wishes to challenge a decision about CHC eligibility, but gives little steer on what this process should look like.

The revised version gives more detailed guidance on this, including a suggested 'two-stage' approach to local resolution, as follows:

- 'Informal' discussion - there should first be an informal discussion between the CCG representative and the individual (and/or their representative), giving the CCG an opportunity to explain how it came to its decision and the individual/their representative an opportunity to seek further clarification/provide further information. A written summary should be produced.
- 'Formal meeting' - if the matter remains unresolved, there should be a 'formal meeting' involving the individual/their representative and someone with authority to decide next steps on behalf of the CCG (e.g. to request further reports). There should be a full written record of this meeting.

Once the outcome of any next steps is known, the CCG should either uphold or change the original eligibility decision. If resolution is still not reached, the next stage would be to apply for an IRP, as currently.

Inter-agency disputes about funding responsibility

The revised version also gives a stronger steer on the elements to be encompassed within local processes for resolving disputes between CCGs and Local Authorities about whether someone is CHC eligible or about the contribution each agency should make to a joint package of care, including:

- An informal stage at operational level - e.g. immediately following MDT meeting;
- A formal stage involving managers/practitioners with authority to attempt resolution (which could involve referral to an inter-agency CHC panel);
- Further stages of escalation to more senior managers within the respective organisations;
- Independent arbitration (only as a last resort).

What do CCGs need to do?

Ahead of the revised national framework coming into effect, CCGs will need to review their local NHS Continuing Healthcare protocols to ensure they incorporate the changes.

In particular, local protocols will need to reflect the new emphasis on CHC assessments taking place after discharge from hospital and the revised guidance on the purpose of 3 and 12 month reviews, plus the expanded guidance on local processes for resolving challenges to CHC decisions and inter-agency disputes.

How can we help?

Our national team of healthcare regulatory lawyers regularly advises CCGs on a wide range of issues relating to NHS Continuing Healthcare and joint packages of care, including:

- Review of local CHC protocols, including dispute resolution procedures;
- Advice on challenges to eligibility decisions;
- Inter-agency funding disputes;
- S.117 after-care responsibilities;
- Personal Health Budget advice;
- Responsible Commissioner disputes;
- Advice on 'top-ups'/additional services;
- Court of Protection deprivation of liberty challenges and welfare applications relating to care and/or accommodation

We also provide tailored training packages covering these issues and the implications of the revised national framework.

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