



Report of the Director of Adult Social Services

Executive Board

Date: 17 October 2007

Subject: Local Implementation of The National Framework for Continuing NHS Care

Electoral Wards Affected:

All

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

(Details contained in the report)

EXECUTIVE SUMMARY

- 1.1 This report updates members in relation to the national policy which governs the relative responsibilities of Health bodies and Local Authorities for the provision of health care to local populations. The report follows a previous report to executive Board in October 2005 which reported on the interim adoption of an agreed criteria within the West Yorkshire Strategic Health Authority area.
- 1.2 The previous report alerted Members to the Government's intention to introduce a new national framework designed to address variations in practice created by previous policy implementation, to take account of case law set in place since 2000 and to incorporate key recommendations made by the Health and Parliamentary Ombudsman over the same period.
- 1.3 Although originally planned for implementation in April 2006, the Framework was published after a period of consultation in June 2007, the framework becomes effective from the 1st October.
- 1.4 Leeds City Council social services officers, alongside their other West Yorkshire social care colleagues, have played an important role in ensuring that the new National framework has a strong essence of the former West Yorkshire policy. This had gained national recognition for the both the thoroughness of the systems used to determine the eligibility of an individual for continuing NHS care and the robust and independent appeals process it established.
- 1.5 Members of the Executive Board are asked to note the adoption by Health and Social Care community in Leeds of this new national framework which brings further clarity to patients, service users and their carers with regard to the circumstances in which they might be entitled to fully funded NHS care. A copy of the policy is available from the clerk named on the front of this Board's agenda sheet.

2. **Background:**

- 2.1. The existing policy for West Yorkshire was developed to comply with national guidance HSC2001/015: LAC 2001 (18), "Continuing Care: NHS and Local Councils Responsibilities" and subsequent guidance which was issued in May 2002 to reflect the new organisational arrangements in the NHS (the creation of new Strategic Health Authorities at that time).
- 2.2 A single set of criteria was required under the guidance to replace all previous agreements in West Yorkshire (where they existed). In October 2002 it was adopted by the (then) 15 Primary Care Trusts and 5 Local Authorities within the West Yorkshire Strategic Health Authority. A report outlining this development was presented to the Executive Board (Health & Social Care) in December 2002.
- 2.3 Members of the Board were asked to agree the framework for continuing care determinations which had been devised at that time, to note the requirement for further work on the adaptation of criteria for more specialist areas of care and to nominate a representative of the Council to sit on a review panel. These recommendations were accepted.
- 2.4 Further to the adoption of that local framework in 2002, detailed discussions continued, involving senior representation from all stakeholder organisations, this led to the re-issuing of a 'refreshed' document in April 2005. This did not significantly alter the content but updated the terms used to practice lessons from the operation of the policy. Significant improvements were made in relation to the resolution of disputes and the constitution and operation of independent review panels. The outcome of these revisions culminated in the production of the revised West Yorkshire Policy which was presented to the Executive Board in October 2005.
- 2.5 At that time, all stakeholders were aware of the piece of work commissioned by the Department of Health, announced on 9 December 2004, to produce national minimum eligibility criteria for entitlement to Continuing Care to replace local criteria in each Strategic Health Authority region in England and Wales. The Department of Health stated timescales for implementation of a National Framework in April 2006, However, following a period of consultation completed earlier this year, the Government announced it's intention to implement the new national policy framework from the 1st October 2007.

3. **Recent Events leading to this Report**

- 3.1 The National Policy Framework, (the Executive summary of which is attached to this report), was published on the 26th June 2007 and became effective from the 1st October 2007. Directions accompanying the framework ensure that its adoption is a binding requirement on Health organisations and Local Authorities.
- 3.2 The statutory guidance accompanying the policy now supersedes Local Authority Circular (LAC) 2001(18).
- 3.3 The new national framework incorporates many of the key features of the existing West Yorkshire policy, however, it introduces several new concepts principally that of the 'primary health need'.
- 3.4 The new Policy Framework introduces the concept of a 'Primary Health need'. The policy states that " where a persons primary need is a health need, the NHS is regarded as responsible for providing for all their needs, including accommodation, if that is part of their overall need, and so they are eligible for NHS Continuing healthcare"
- 3.5 The policy makes it clear that "there should be no gap in the provision of care, such that people might be in a situation where neither the NHS nor (subject to the relevant means test) the relevant Local Authority, separately or together, will fund care".
- 3.6 As with other policy frameworks, the effective and fair implementation of the policy is dependent on the accurate interpretation of the presenting 'primary health need'. To that end,

the Department of Health has developed a 'Decision Support tool' designed to help health and social care practitioners to accurately assess and apply the primary health needs test consistently.

- 3.7 For the first time, the policy sets out a set of core values and principles which should be employed by professional staff responsible for making assessments on the eligibility of an individual and emphasises the requirement for such assessments to be multi-disciplinary in nature. The legal context of the policy framework in relation to the recent landmark judgements of *Coughlan* and *Grogan*, is clarified by the policy, the link between this policy and that of other, related policies (particularly the law relating to Mental Health) is also clarified.
- 3.8 The other significant change brought about by the policy is the abolition of the three tier funding contribution (the Registered Nursing Care Contribution) made by Primary Care Trusts. From October, residents in nursing care establishments will be assessed in relation to only one contribution level which has been set by the Department of Health at £101 per week.
- 3.9 Existing recipients of one of the 3 current payments (£40pw/£87pw/£139pw) will all, over the coming months, need to be reviewed against the National Framework. In Leeds this is some 1,400 nursing Home residents. The Department of Health has issued clear and helpful advice to Primary Care Trusts on how to manage this fairly and equitably for all residents. This locally includes a commitment to work closely with social care staff, reflecting the local authorities existing funding responsibilities for a significant proportion of these residents

4.0 Financial Implications

- 4.1 In the publicity accompanying the implementation of the National policy the Department of Health has estimated the total additional costs to the healthcare system to be of the order of £220 million for this year. It has not indicated whether it intends to make additional funding available to Primary Care Trusts in this or subsequent financial years.
- 4.2 The financial implications for the Local Authority are difficult to predict at this time, however, given the very positive way in which the previous policy has been adopted and implemented it is assumed that the impact will be largely neutral. Officers will ensure that any financial impacts arising out of the application of individual decisions continue to be monitored.

5.0 Legal Implications

- 5.1 It is anticipated that larger numbers of Leeds residents will become eligible for NHS funded care as a consequence of the adoption of the new national policy, Council officers will continue to ensure that people who may be eligible are provided with the fullest information and support to access their legal entitlement.

6.0 Conclusions

- 6.1 The adoption of national criteria for NHS continuing care seeks to remove a number of existing anomalies which have served to create a fractured national picture and which have clearly lead to individuals being disadvantaged.
- 6.2 Over the last three years local staff in both health and social care have worked hard to ensure that Leeds residents have been able to be assessed within a system designed to be fair and transparent.
- 6.3 The new national policy framework accommodates many of the most positive features of the previous local policy and the staff responsible for it's implementation remain committed to upholding the good practice which has been developed.

7.0 Recommendation

7.1 Members of the Executive Board are invited to note the content of this report and to approve the formal local adoption from October 1st of the National NHS Continuing Care Policy.

Appendix 1

Executive summary

1. The national framework

This sets out the principles and processes of the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care. We will also issue Directions in time for an implementation date of 1 October 2007. Until that date, we are encouraging Strategic Health Authorities (SHAs), Local Authorities (LAs), Primary Care Trusts (PCTs) and NHS Trusts to use the Framework and associated tools to prepare for implementation.

2. Legal framework

We set out the main responsibilities for the NHS and LAs that are in primary legislation, and explain the influence of key court cases. The Coughlan judgment examined the responsibilities of NHS and LAs, particularly in the provision of nursing care. The Grogan judgment examined the interaction between NHS continuing healthcare and NHS-funded nursing care.

3. Primary health need

We describe how the phrase a 'primary health need' has developed and how this idea helps to make the decision about when someone should receive NHS continuing healthcare.

4. Core values and principles

We set out the main things to remember when assessing somebody and deciding whether they should receive NHS continuing healthcare. The individual, the effect their needs have on them, and how they would prefer to be supported, should be kept at the heart of the process. Access to assessment and provision should be fair, consistent and free from discrimination

5. Eligibility considerations

At the heart of this document is the process for deciding whether someone is eligible for NHS continuing healthcare or NHS-funded nursing care. Assessments should be carried out by a multi-disciplinary team in line with the core values and principles section and taking into account other existing guidance.

6. Links to other policies

We point to other areas of law and policy that may be relevant to this framework, especially around mental health.

7. Care planning and provision

The PCT should identify and arrange all services required to meet the needs of all individuals who qualify for NHS continuing healthcare, and for the health care part of a joint-care package. We set out the key principles in both cases.

8. Review

Regular reviews should be carried out, no later than three months following the initial decision, and then at least once a year after that. Some people will need more frequent reviews. We describe this in more detail.

9. Dispute resolution

If there is a disagreement about a decision, or about who pays for necessary care, the PCT's "local resolution" process will usually be the first step. We also describe the other possible steps, if this does not provide a satisfactory solution, or if the person wants to complain separately using the relevant complaints procedure.

10. Governance

Both PCTs and SHAs have roles in overseeing the process, as they do in other areas, and we indicate this in this final part.