

Meeting:	Adults and wellbeing scrutiny committee
Meeting date:	Thursday 20 September 2018
Title of report:	NHS Continuing Healthcare Framework applicable to Herefordshire
Report by:	Director for adults and wellbeing

Classification

Open

Decision type

This is not an executive decision

Wards affected

All Wards

Purpose and summary

To inform the Adults and wellbeing scrutiny committee of a review that has been undertaken in relation to the application of the National Health Service Continuing Healthcare (CHC). The review was jointly commissioned by the council and the Herefordshire Clinical Commissioning Group (CCG) and the terms of reference for the review were:

- An analysis of CHC data, locally and nationally;
- Current understanding amongst staff;
- Relationships across the council and the CCG allied to CHC;
- Trends allied to activity over an eighteen month period;
- To identify the case for change based on staff understanding and nationally available data
To identify ways to improve professional and clinical relationships;
- Finally to make recommendations for the way forward.

Attached to this report – Appendix 1 provides a summary of the final review report.

To afford the opportunity to the Adults and wellbeing scrutiny committee to review the draft action plan that has been jointly developed with the CCG to take matters forward to improve the operation of systems and processes applicable to CHC, and identify any recommendations the committee wishes to make with a view to securing further improvement.

Recommendation(s)

That the Adults and wellbeing scrutiny committee review the robustness of the action plan at appendix 2 and determine any recommendations it wishes to make to either the council's executive or the Herefordshire Clinical Commissioning Group in order to secure further improvement.

Alternative options

1. It is a function of the committee to make reports or recommendations to the executive with respect to the discharge of any functions which are the responsibility of the executive and to review and scrutinise any matter relating to the planning, provision and operation of the health service in its area, and make reports and recommendations to a responsible person on any matter it has reviewed or scrutinised. As such there are no alternative recommendations.

Key considerations

2. NHS Continuing Healthcare (CHC) is a package of continuing care that is arranged and funded solely by the NHS as part of the duty to provide healthcare services. It applies where the individual is assessed as having a primary health need. A primary health need defines who is eligible for CHC. A person is judged as having a primary health need through a CHC assessment which looks at the totality of a person's relevant needs. These are measured against the following criteria:
 - Nature, the particular characteristics of an individual's needs, which can include physical, mental health or psychological;
 - Intensity, the severity of needs present and the support required;
 - Complexity, this is how the needs present and interact to increase the skills required to support; and
 - Unpredictability, the degree to which needs fluctuate and thereby create challenges in managing them.
3. A jointly commissioned review of CHC and the associated actions aimed to enhance relationships, establish greater understanding and joined ownership of operational systems and processes in relation to CHC.
4. The review coincided with a national revision of the CHC Framework as many health and social care systems had experienced challenges in terms of application. The review in Herefordshire was jointly commissioned by the council and the CCG and arose because of an apparent shift in the numbers of individuals eligible for CHC. The review has analysed CHC data, both locally, regionally and with comparator CCGs, looked at trends over an 18 month period and taken a view with regard to relationships between the Council and the CCG. The review has identified a number of recommendations.
5. Appendix 1 contains a summary of the review, in the form of a slide deck and a draft action plan to take forward the review report recommendations is at appendix 2.

Appendix 3 shows the Herefordshire CCG benchmark against recognised statistical neighbours CHC Eligibility by 50k Population

6. It must be noted that this review did not:

- Review any individual cases or any decision making
- Formally review or evaluate the operational functioning of decision-making processes
- Review by attending any operation forum or committees

The review report recognises the impending revision to CHC and a revised 2018 National Framework which sets out the principles and processes of NHS Continuing Healthcare and NHS funded Nursing Care. The guidance replaces the previous version of the National Framework published in November 2012 and will be implemented on 1st October 2018. It will include practice guidance to support staff to deliver NHS Continuing Healthcare. This revised 2018 National Framework follows an extensive period of external engagement with stakeholders across the NHS, councils and patient representative groups. The 2018 National Framework has been collaboratively written by the Department of Health, NHS England and councils.

7. In addition to the 2018 revision of the National Framework there is also an update to the Practice Guidance and the annexes which accompany the Framework. This captures the CHC Checklist, Decision Support Tool and the Fast Track Pathway Tool, all aimed to support and aid user applications. There are also some minor changes to key domain wordings and descriptions which are the building blocks to CHC multi-disciplinary team working and recommendations. The updated tools should be used from 1 October 2018 but the changes planned locally following the review report will reflect the national revised operating position.

8. The 2018 National Framework is intended to:

- Provide greater clarity to individuals and staff, through a new structure and style;
- Reflect legislative changes since 2012 National Framework was published, primarily to reflect implementation of the Care Act 2014.
- Clarify a number of policy areas including:
 - Setting out that the majority of NHS CHC assessments should take place outside of hospital settings. This will support accurate assessment of need and reduce unnecessary stays in hospital; N.B. - this will be reliant on having discharge to assess pathways in place within Herefordshire.
 - Providing additional advice for staff on when individuals do and do not need to be screened for NHS CHC in order to reduce unnecessary processes and to respond to a greater call for clarity on this;
 - Clarifying the main purpose of the three and twelve month reviews is to review the appropriateness of the care package, rather than reassess eligibility. This should reduce unnecessary reassessments.
 - Introducing new principles for CCGs regarding local resolution process for situations where individuals who request a review of CHC eligibility

decision. The aim is to resolve such situations earlier and establish greater consistency.

- Providing clearer guidance, including dedicated sections on – the roles of CCG and Local Authorities, NHS-funded Nursing Care, inter-agency disputes, well managed needs and the Fast Track Pathway Tools.

9. Importantly, none of the 2018 amendments and clarifications to the National Framework, annexes or national tools are intended to change the eligibility criteria for NHS CHC. All those involved with NHS CHC should become familiar with the revised positions. The National Framework sets out the principles and processes for NHS CHC and NHS Funded Nursing Care. As indicated the revised position operable from 1 October 2018 will replace the existing position which was implemented in November 2012.
10. At the heart of the National Framework is the process for determining whether an individual is eligible for CHC or NHS-funded Nursing Care. An individual is eligible for NHS CHC if they have a primary health need. This is a concept developed by the Secretary of State to assist in determining when the NHS is responsible for providing all of the individual's assessed health and associated social care needs. In order to determine whether an individual has a primary health need, a detailed assessment and decision-making process must be followed, as set out in the National Framework. Where an individual has a primary health need and is therefore eligible for NHS CHC, the NHS is responsible for commissioning a care package that meets the individual's health and associated social care needs.
11. The National Framework is underpinned by Standing Rules Regulations, issued under the National Health Service Act 2006. The regulations, referred to henceforth as the Standing Rules, require CCGs to have regard to the National Framework. This revised National Framework takes account of legislative changes brought about by the Care Act 2014, which preserves the existing boundary and limits of local authority responsibility in relation to the provision of nursing and/or healthcare.
12. The individual, the effect their needs have on them, and the ways in which they would prefer to be supported should be kept at the heart of the process. Access to assessment, care provision and support should be fair, consistent and free from discrimination. CCGs, the NHS Commissioning Board (NHS England), and Local Authorities have legal duties and responsibilities in relation to NHS CHC. Those eligible for CHC continue to be entitled to access to the full range of primary, secondary and other health services.
13. Key Definitions: NHS CHC means a package of care and support of on-going care that is arranged and funded solely by the NHS, where the individual has been assessed and found to have a primary health need as set out in the National Framework. Such care is provided to an individual age 18 years and over to meet health and associated social care needs that have arisen as a result of disability, accident or illness; NHS-funded Nursing Care is the funding provided by the NHS to Care Homes with nursing to support the provision of nursing care by a registered nurse. In all cases individuals should be considered eligible for NHS CHC before a decision is reached about NHS-funded Nursing Care.
14. The review that has been undertaken within Herefordshire has endeavoured to further understanding on a number of levels to aid operational practice and ensure appropriate outcomes for individuals requiring care and support. The review report recommendations have been accepted by both organisations and actions are now in train to respond appropriate. Key actions will involve a revised Dispute Resolution Policy to assure individual casework situations, policy and practice to ensure application of the national

framework to be applied from 1 October 2018, training to raise awareness amongst staff to support application and regular officer meetings to enhance communication and coordination of CHC. These actions are complementary to the Action Plan attached to this report.

15. In terms of a social care need, the Care Act 2014 states that an individual has eligible needs, where these needs arise from or relate to, a physical or mental impairment which results in them being unable to achieve two or more of the following outcomes which is, or is likely to have a significant impact on their wellbeing –

- Managing and maintaining nutrition;
- Maintaining personal hygiene;
- Managing toilet needs;
- Being appropriately clothed;
- Being able to make use of home safely;
- Maintaining an habitable home environment;
- Developing and maintaining family or other personal relationships;
- Accessing and engaging in work, training, education or volunteering;
- Making use of necessary facilities or services in local communities, including public transport and recreational facilities and services; and
- Carrying out any caring responsibilities the adult has for a child.

(Section 22 of the Care Act places a limit on the care and support that can be lawfully provided to individuals by councils, that limit is set out in Section 22(1)).

Community impact

16. In accordance with the adopted code of corporate governance, Herefordshire Council must ensure that it has an effective performance management system that facilitates effective and efficient delivery of planned services. Effective financial management, risk management and internal control are important components of this performance management system. The council is committed to promoting a positive working culture that accepts, and encourages constructive challenge, and recognises that a culture and structure for scrutiny are key elements for accountable decision making, policy development, and review.
17. The National Framework Revisions, the local Review of CHC and the proposed Action Plan to implement Review Report Recommendations will support two of the council's corporate plan priorities (2017 – 2020) ensuring that residents are able to live safe, healthy and independent lives and that commissioning organisations secure better services, quality of life and value for money across the sector.
18. The Action Plan will provide assurance that health and social care are working in conjunction with the National Framework to enable appropriate responses to individual resident's needs.

Equality duty

19. Under section 149 of the Equality Act 2010, the "general duty" on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) Eliminate discrimination, harassment, victimisation and any conduct that is prohibited by or under this Act;
 - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
20. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes. The review of NHS CHC will ensure that the above protected characteristics are embedded in systems, processes and practice to ensure positive service user outcomes.

Resource implications

21. There are no resource implications associated with the recommendation. If the committee makes any recommendations the resource implications of those recommendations will inform a decision by the executive or CCG about a response to those recommendations.
22. There are no resource implications associated with delivering the action plan as it is seeking adherence to the revised national Framework and improved practice guidance
23. The Review Report identified that Herefordshire CCG spend on CHC for 2016/17 was £12.1m and the forecast for 2017/18 was £11.6m. This forecast reduction in expenditure was in contrast to increased demand being seen across the system, so suggests an apparent shift in the numbers eligible for CHC which would have impacts for individuals but equally the Council in terms of funding responsibilities.
24. The review coincided with a national revision of the CHC Framework due to many health and social care systems experiencing challenges in terms of application of the framework. The review analysed CHC data, both locally, regionally and with comparator CCG's, developed an understanding amongst staff, looked at trends over an 18 month period and has taken a view with regard to relationships between the Council and the CCG. The review has identified recommendations to support the case for change and to assure continuous improvements. By implementing these recommendations and adhering to the revised national framework, there may well be a shift in numbers eligible for CHC, but this will be a by-product of applying the policy correctly and in a timely manner.

Legal implications

25. It is a function of the committee to:
- make reports or recommendations to the executive with respect to the discharge of any functions which are the responsibility of the executive; and
 - to review and scrutinise any matter relating to the planning, provision and operation of the health service in its area and make reports and recommendations to a responsible person on any matter it has reviewed or scrutinised

26. Section 1 National Health Service Act 2006 (as amended by the Health and Social Care Act 2012) requires the Secretary of State to continue the promotion in England of a comprehensive health service, designed to secure improvement a) in the physical and mental health of the people in England and b) in the prevention, diagnosis and treatment of illness.
27. Section 3 of the 2006 Act requires CCGs to provide a range of services, to such an extent as they consider necessary to meet all reasonable requirements.
28. As stated in paragraph 9 of this report there is a 'limit to social care' under the Care Act 2014. Section 22 of the Act provides that if a person has needs above a certain level (referred to as the Coughlan criteria, following the Court of Appeal judgement in R v North and East Devon Health Authority ex parte Pamela Coughlan 1999), it is unlawful for social services to fund their care and all their health and social care needs must be funded by the NHS.
29. Statutory Guidance to the Act under the heading NHS Continuing Care states that "if following an assessment, a person is not found to be eligible for NHS CHC, the NHS may still have a responsibility to contribute to that person's health needs – either by directly commissioning services or by part funding the package of support. A joint package of care could include NHS funded nursing care and other NHS services that are beyond the powers of a Local Authority to meet".
30. The recommendations of the report ensure that the council continues to comply with its statutory duties under the Care Act 2014 and associated Statutory Guidance.

Risk management

Risk Opportunity	Risk Mitigation
That local health and social care systems are not adhering to the national continuing healthcare framework as revised.	An independent review has been completed into the application and operation of continuing healthcare within Herefordshire to establish a shared understanding.
The review has resulted in a joint Action Plan, which when delivered will ensure adherence to the national revised framework. However a risk remains that the parties to the review do not implement the action plan as agreed within the timescales and resources available leading to reputational risks, legal challenge and escalation and a shunting of costs.	The Council and the CCG have established a Senior Officer Steering Group to oversee the progression of the Action Plan, to develop and implement a Dispute Resolution Policy and to ensure adherence to the national framework and shared decision making.

Consultees

31. None.

Appendices

Appendix 1 Review Report Slide Deck

Appendix 2 Review Report Recommendations Action Plan

Appendix 3 Herefordshire CCG benchmark against recognised statistical neighbours CHC Eligibility

Background papers

None identified