

Interagency Disputes – Continuing Healthcare and Social Care

This factsheet explains what happens when there is a dispute between health services and social care services, over who is responsible for a person's package of care. Health services are often referred to as 'NHS Continuing Healthcare' run by Clinical Commissioning Groups (CCGs).

This is separate to disputes between different local authorities, or between local authorities and education services. Mencap has produced a series of factsheets on those issues.

When do disputes between healthcare and social care services arise?

It is the nature of a person's needs (i.e. whether it is a health care need or a social care need) that determines where funding should come from.

Most Continuing Healthcare disputes and appeals are caused by errors in defining the type of needs. For example, some health needs may have been incorrectly recorded as social care needs and vice versa.

What is Continuing Healthcare (CHC)?

NHS Continuing Healthcare is the name given to a package of care that is arranged and funded solely by the NHS for individuals who are not in hospital and have been assessed as having a primary health need.

There is no charging for NHS care and this means that NHS Continuing Healthcare funding covers 100% of the cost of receiving full time care either at home, in a care home or elsewhere. An assessment will take place if a person:

- needs full time care; and
- has a primary health need

This is not a financial or means tested assessment. If a person is being assessed by a local authority for social care needs, the LA can also refer the person for a CHC assessment. The assessment will look at, amongst other things, a person's needs and whether they are health needs.

CHC funding covers 100% of the cost of care. If a person is eligible for CHC then the NHS will pay for and arrange both their health care and their social care needs. This differs from

social care support, which often requires the person to make contributions to the cost of their care. If a person is not eligible for CHC then the local authority will be responsible for arranging to meet their eligible social care needs and the NHS will arrange and meet their health care needs. In other words, continuing healthcare is free and social care is not.

How do I know if a need is a healthcare need or a social care need?

The National Framework for NHS Continuing Healthcare provides guidance on how to determine a person's needs.

Whilst there is not an exact legal definition of a healthcare need, in general terms it can be said that a healthcare need is one related to the treatment, control or prevention of a disease, illness, injury or disability, and the care or aftercare of a person with these needs (whether or not the tasks involved have to be carried out by a health professional). The National Framework also explains that in general terms, it can be said that a social care need is one that is focused on providing assistance with:

- activities of daily living
- maintaining independence
- social interaction
- enabling the individual to play a fuller part in society
- protecting the individual in vulnerable situations
- helping them to manage complex relationships
- in some circumstances, helping them to access a care home or other supported accommodation

Some situations are very clear as to whether it is a health need or social care need, for example someone who needs full time nursing care would not be suitable for a social care package on its own. In fact, it is illegal for a local authority to take on responsibility for providing care to someone who should be receiving care from the NHS. Sometimes public bodies misunderstand the law surrounding whether a need is a healthcare need or social care need.

Where do disputes arise?

An example:

Mr Williams receives general nursing care three times every day and has support with shopping and accessing his local community centre. He is currently paying for some of this support as his package is funded by his local authority as a social care package with relevant financial contributions from Mr Williams. He asked his social worker if he could get CHC funding but was told that because he was not receiving specialist nursing or treatment he wouldn't qualify.

Sometimes, disputes arise because social workers and healthcare practitioners misunderstand the law. The Coughlan Test, a landmark legal test following a Court of Appeal case, established that both general and specialist nursing care falls under CHC funding as a general rule, if it goes beyond what can be expected of a local authority.

The dispute is taking a long time to resolve, and the person in need of care and support is without a package of care. What should I do?

Local authorities and CCGs have dispute resolution procedures regarding CHC and joint packages. However, there should be no gap in provision whilst disputes are resolved. In NHS England's guidance, 'Who Pays?', the underlying principle is that there should be no gaps in responsibility. Therefore no treatment should be refused or delayed due to uncertainty or ambiguity as to which agency is responsible for funding an individual's healthcare provision.

The NHS is expected to act in the best interests of the patient at all times and work together in the spirit of partnership. Local authorities also have a duty to collaborate with other agencies in the best interests of the individual.

Mencap have produced a precedent letter which you can send to your local authority and CCG explaining the law and what should happen in the event of disputes.

If you would like further advice on this issue, contact the Learning Disability Helpline on 0808 808 1111.

Learning Disability Helpline

0808 808 1111

helpline@mencap.org.uk

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