My Care Consultant

Your guide to NHS Continuing Health Care

Practical information and tips to help secure a fair outcome when seeking NHS CHC funding

PRODUCED IN ASSOCIATION WITH JUST.

Contents

"*The whole process of determining eligibility and planning and delivering services for NHS Continuing 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.*"

Source: The National Framework for NHS Continuing Health Care and NHS Funded Nursing Care, July 2022 (Revised)

An Overview - 12 key facts you need to know before getting into the detail

1. NHS Continuing Health Care (NHS CHC) is a funding system that pays all of someone's care costs.

2. It is paid by the local NHS and is available for those who need support with long-term health needs. The decision as to whether someone is eligible for this funding or not should never be influenced by how tight the local NHS budget is.

3. An assessment for CHC Funding should always take place *before* any discussion of the person's finances, or any Local Authority (means-tested) assessment, if there is a possibility of health-related needs.

4. The process surrounding NHS CHC funding is set out by the government in a document called *The National Framework for NHS continuing healthcare assessments and NHS-funded nursing care - July 2022 (revised).*

5. You can apply for NHS CHC by visiting your GP, requesting an assessment from a social worker at your local authority or, if you are in hospital, by speaking with your ward consultant or discharge coordinator.

6. Nobody can be certain whether you will be eligible or not until an assessment has taken place.

7. Most people are assessed via a two-stage process: an initial 'Checklist' which if positive, is followed by a full assessment. If an individual is reaching the end of their life, they may instead have what is known as a Fast-Track Assessment.

8. If someone is assessed as eligible, be aware that it is not for life – NHS CHC is reviewed three months after the original decision and usually annually thereafter.

9. If someone is eligible for NHS CHC, some of their state benefits may be affected. For example Attendance Allowance (AA), the care component of Disability Living Allowance (DLA), and the daily living component of Personal Independence Payment (PIP), will normally stop 28 days after NHS CHC begins. For someone receiving care at home, AA, DLA and PIP should be unaffected by being awarded NHS CHC.

10. If the decision is made that an individual is not eligible for NHS CHC, but they feel that they *should* have been awarded the funding, they may be able to challenge the decision.

11. Someone who is judged to be not eligible for NHS CHC, might qualify for NHS Funded Nursing Care (FNC) instead. This is a contribution made by the NHS for residents of nursing homes to pay towards the cost of care delivered to them by a registered nurse.

12. This guide is designed to provide a useful overview of the process, what to look out for and how to ensure that the correct outcome is reached. Whilst it shouldn't be the case, making a successful claim for NHS CHC can often come down to having sufficient knowledge and expertise available to support you through the process.

What is NHS Continuing Health Care?

NHS Continuing Healthcare is a package of care for people aged 18 or over who are assessed as having a 'primary health need' that has arisen because of disability, accident, or illness. It is arranged and paid for by the NHS.

If an individual receives NHS CHC in their own home, the NHS covers the cost of the care and support they need in order to meet their assessed health and associated care needs. This includes personal care such as help with washing and getting dressed. If they receive NHS CHC in a residential or nursing care home, the NHS pays their care home fees.

What is a 'primary health need'?

It's important to appreciate what a primary health need is, as it is a "balancing judgement" that determines eligibility. In other words, if someone is assessed as *not* having a primary health need, then their application for NHS CHC funding will automatically be rejected. You will not often hear the phrase *"primary health need"* used within the NHS as it was created specifically to describe eligibility for NHS CHC funding.

The National Framework that contains the rules in respect of NHS CHC states:

'A primary health need is a concept developed by the Secretary of State for Health to assist in deciding when an individual's primary need is for healthcare (which is appropriate for the NHS to provide) rather than social care (which the Local Authority may provide under the Care Act 2014).'

This means that a person is deemed to have a 'primary health need' if the nature of the care they require is beyond that which a local authority can legally provide. A local authority is legally limited to providing nursing care which is merely incidental or ancillary to the provision of the accommodation (which a local authority is under a duty to provide), and which is of a nature that social services can be expected to provide. In practice, the nursing care that the local authority can be expected to provide covers issues such as dealing with minor injuries, giving prescribed medicine, and the provision of nursing care by a registered nurse if the local authority has obtained consent from the relevant **Integrated Care Board (ICB)*.**

*The ***Health and Care Act 2022*** established 42 Integrated Care Boards as the statutory bodies in England with responsibility for NHS Continuing Healthcare with effect from 1st July 2022. These ICBs replace what were previously known as Clinical Commissioning Groups (CCGs). At the time of writing, the transition from CCGs to ICBs is ongoing, so where we use the term ICB throughout this document, your own local organisation may still be referred to as a CCG.

It's important to appreciate that having a particular diagnosis does not automatically entitle someone to NHS CHC funding. Being deemed to have a primary health care need has more to do with what their overall day-to-day care needs are when considered as a whole.

The Assessment Process

The process surrounding NHS Continuing Healthcare funding is set out by the government in a document called *The National Framework for NHS continuing healthcare assessments and NHS-funded nursing care.* You can find a link to this document in the 'Sources of Further Information' section of this guide on page 33.

Anyone is entitled to an eligibility assessment if they reasonably believe they have a primary health need. Indeed, the NHS is under a statutory obligation to undertake an assessment in all cases where it 'appears that there may be a need for such care'. Eligibility for NHS CHC is, however, a decision ultimately taken by the relevant Integrated Care Board (ICB) that holds the contract with the GP practice responsible for an individuals' care at the time they apply. There are 42 ICBs in England, each responsible for commissioning services for their local populations. Details and a map of all ICBs can be found here: https://www.england.nhs.uk/publication/integrated-care-boards-in-england/

Stage 1 - The Checklist

The first stage in establishing eligibility for NHS CHC and determining whether an individual is entitled to free care involves the use of a screening tool called the Checklist. This should be used to identify people who should then have a full assessment to determine eligibility.

Completion of the Checklist should be triggered automatically in some circumstances, such as:

- When a person is ready for discharge from hospital, and before a local authority funding assessment takes place.
- When a person is going into a nursing home.
- When a person's physical or mental health appears to decline significantly.

However, anyone can ask for a Checklist assessment to be carried out and it can take place in a hospital, but the DHSCs expectation is that in the vast majority of cases, a checklist should be completed in a community setting such as a GP's surgery.
It can be carried out by a variety of health & social care practitioners trained in its use – for example, a registered NHS nurse, the individual's GP, social workers, or care managers.

Anyone is entitled to an eligibility assessment if they reasonably believe they have a primary health need.

The Checklist is based on 11 areas of care need, referred to as domains. These are:

1. Breathing*
2. Nutrition
3. Continence
4. Skin integrity
5. Mobility
6. Communication
7. Psychological/emotional
8. Cognition
9. Behaviour*
10. Drug therapies and medication: symptom control*
11. Altered states of consciousness

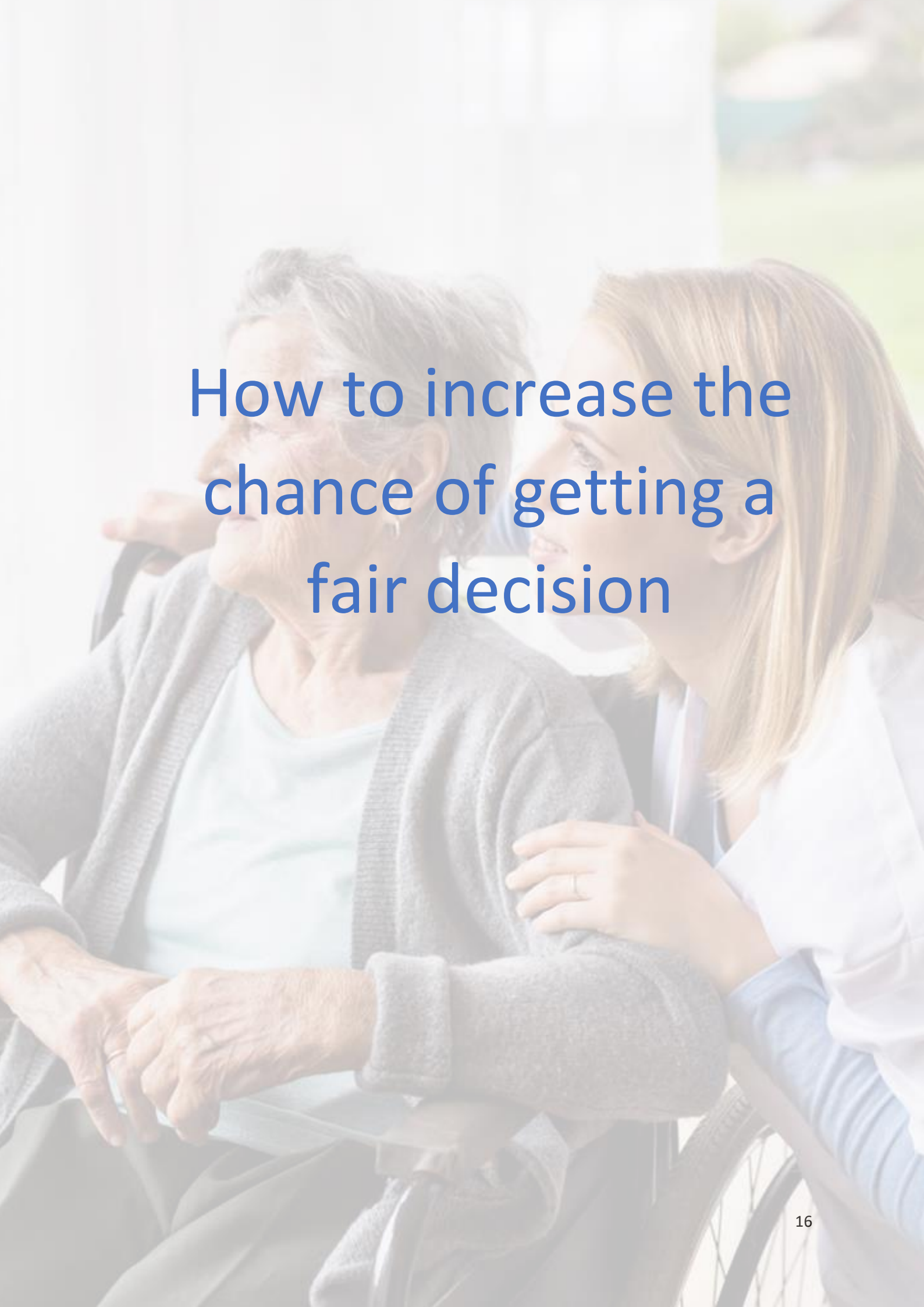
Each domain is broken down into three levels, A, B or C (where A indicates a high level of care need, and C a low level of care need). The outcome of the Checklist

The following table illustrates the level of need used within the Decision Support Tool in respect of breathing:

BREATHING - Description	Level of need
Normal breathing, no issues with shortness of breath.	**No needs**
Shortness of breath or a condition which may require the use of inhalers or a nebuliser and has no impact on daily living activities. **OR** Episodes of breathlessness that readily respond to management and have no impact on daily living activities.	**Low**
Shortness of breath or a condition which may require the use of inhalers or a nebuliser and limit some daily living activities. **OR** Episodes of breathlessness that do not consistently respond to management and limit some daily living activities. **OR** Requires any of the following: • low level oxygen therapy (24%). • room air ventilators via a facial or nasal mask. • other therapeutic appliances to maintain airflow where individual can still spontaneously breathe e.g. CPAP (Continuous Positive Airways Pressure) to manage obstructive apnoea during sleep.	**Moderate**
Is able to breathe independently through a tracheotomy that they can manage themselves, or with the support of carers or care workers. **OR** Breathlessness due to a condition which is not responding to treatment and limits all daily living activities.	**High**
Difficulty in breathing, even through a tracheotomy, which requires suction to maintain airway. **OR** Demonstrates severe breathing difficulties at rest, in spite of maximum medical therapy **OR** A condition that requires management by a non-invasive device to both stimulate and maintain breathing (bi-level positive airway pressure, or non-invasive ventilation).	**Severe**
Unable to breathe independently, requires invasive mechanical ventilation.	**Priority**

The Fast-Track Tool

The Fast-Track pathway tool is used when a person has a rapidly deteriorating condition and may be entering a terminal phase. It can only be completed by an 'appropriate clinician' with sufficient evidence to establish eligibility. Where it is appropriate to use the Fast-Track Pathway Tool, this replaces the need for a Checklist and DST to be completed. Instead, an appropriate clinician will complete and send the Fast-Track Pathway tool directly



How to increase the chance of getting a fair decision

So far, we have looked at the theory of how NHS CHC is delivered. The objective of the assessment process is to ensure that those who are eligible are identified as such. Unfortunately, both the pressures on the NHS and in some cases a lack of consistency in respect of applying the National Framework mean that some who should be eligible miss out. There is perhaps an inherent conflict of interest in operation too, given the cash-strapped NHS is itself responsible for deciding who is eligible for free NHS CHC funding. This section of our guide seeks to identify key areas to focus on to increase the chances of getting the right outcome from the assessment process.

TOP TIP

PREPARATION IS KEY. This means understanding all stages of the assessment process, becoming familiar with the language used and most importantly developing a full picture of the needs and circumstances of the person applying for support.

Consenting to the assessment process

The National Framework states that the 'individual's informed consent should be obtained before the start of the process to determine eligibility for NHS CHC' and that 'if there is a concern that the individual may not have the capacity to give consent, this should be determined in accordance with the Mental Capacity Act 2005'.

If the person being assessed lacks capacity this means a decision must be made in their best interests and a decision-maker identified, for example a registered Lasting Power of Attorney (LPA) or court-appointed deputy. In the absence of either of these, a continuing health care nurse may act as the decision maker.

Disclosure of medical and care records

The NHS CHC assessment process is complex and as already said, arguments in support of it need to be planned and properly presented to succeed. This often involves family securing health and social care records, scrutinising them and preparing reasoned arguments to support eligibility.

The rules governing information sharing are the same for NHS Continuing Healthcare as elsewhere and derive from several acts of Parliament, (including the Data Protection Act 1998, the Access to Health Records Act 1990 and the Mental Capacity Act 2005), the common law duty of confidence, and from a range of national guidance. As such, practical interpretation can vary.

Most NHS-related services will in our experience insist on a Health & Welfare LPA before liaising with family members on behalf of a patient and disclosing medical records. Some professionals point to the distinction between care cost decisions and care treatment decisions, maintaining that a Property and Finance LPA or an Enduring Power of Attorney (EPA) are both perfectly adequate when pursuing a claim for NHS CHC (as funding care costs fits the remit of this type of LPA and an EPA – for example, a person may have to sell their property and deplete

APPENDICES

A. Eligibility flowchart for NHS CHC in England
B. NHS CHC in Northern Ireland
C. Hospital based Complex Clinical Care (Scotland)
D. NHS CHC in Wales
E. Glossary of useful terms

Appendix A – Eligibility for NHS Continuing Health Care (England)

(Primary Source: Replication of flowchart within Care Box Online Resource, My Care Consultant)