Kernow Clinical Commissioning Group

NHS Kernow Clinical Commissioning Group Continuing Healthcare Response document

HEALTHWATCH CORNWALL : Report to commissioners on Feedback regarding Continuing Healthcare payments October 2015

11/6/2015
Cornwall NHS
Bernadette Edwards

Introduction

Thank you for your report dated October 2015 .Healthwatch Cornwall have expressed concerns from 6 comments and includes reflections from clients and their representatives. An individual who needs “continuing care” may require services from NHS bodies and/or from local authorities. Both NHS bodies and local authorities therefore have responsibilities to ensure that the assessment of eligibility for and provision of continuing care takes place in a timely and consistent fashion (DH 2007). NHS Kernow and Cornwall Council are committed to working in partnership to achieve this, together with local NHS Trusts, Cornwall Partnership Foundation Trust and Peninsula Community Health. The overriding intention of all agencies is to ensure that care and support is personalised, the least restrictive option and provided in the home or as close to home as is possible.

NHS Kernow takes its responsibility to administering the respective Continuing Health Care Service and its processes seriously and is fully committed to listening to and reflecting upon reports such as this.

I have asked Bernadette Edwards General Manager CHC IPF & Related Services to look into the report. Her response is as follows:

The report begins by offering an overview of the comments received and the subsequent communications Healthwatch has had with NHS Kernow in October 2015. Thus acknowledging some work already in place to improve on areas we have recognised could benefit from strengthening the process.

As detailed above the Healthwatch report identified 6 comments concerning CHC since March 2015 to Oct 2105.

Of one of these comments Healthwatch Cornwall acknowledges that a teleconference call with NHS Kernow CHC has taken place however since this call further comments have been received in view of process – *"One comment refers to the issue of Top Up fees being charged by Care homes after an award of CHC had been made a letter from Trading Standards Cornwall Council to provider has been sent reminding Care homes of their legal responsibilities".*

CHC Response:

A letter has been subsequently sent to Trading Standards informing the Council that the letter was incorrect and implied CHC were operating illegally out of framework which is not the case. It is unfortunate that the Trading Standards did not contact the CHC for help & clarity in this matter prior to sending an incorrect letter to all providers. CHC await a formal response from Trading Standards on how this will be rectified. CHC are fully committed and continue to work with the providers and the council to ensure all information regarding CHC is accurate and correct. Ideally all information sent to the public and providers in reference to such services like CHC should come direct from the NHS or with clear communication with the service prior to sending in order for this dilemma not to occur.

CHC response to top ups :

When the client is CHC eligible all assessed Health & Social Care needs are fully met by CHC funding from the date of eligibility.

CHC are unable to and not required to meet costs for un-assessed needs.

CHC are unable to and not required to meet any shortfall of non CHC funding

CHC are unable to and not required to meet any enhanced specific funded requests which are not included in CHC funding including enhancements such as a care home room request for additional cost due to a sea view or a larger than average square meter age for the particular room.

The Healthwatch report indicates a number of recommendations of which the CHC has offered a response as detailed below.

Healthwatch Recommendations:

1) ***NHS Kernow provides HC with clear guidance statement around what patients and families should expect when going through a CHC assessment at each stage of the process. This should include information and how and when multidisciplinary teams are involved and what exactly constitutes a MDT. It should also show how family or social worker can add to the assessments after they have been completed. We would wish to publish this on our website and use to advise people contacting us:***

CHC response:

A Nationally printed leaflet with the information above is available please see link and embedded copy

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/193700/NHS_CHC_Public_Information_Leaflet_Final.pdf

The leaflet includes a full description of the MDT which **indicates "*the presence of a multi-disciplinary team is made up of two or more health or social care professionals who are involved in your care. The assessment will, with your permission, involve contributions from all of the health and social care professionals involved in your care to build an overall picture of your needs.*"** The intention of the Department of Health in developing The National Framework was to improve consistency of approach to, and ease of understanding of, NHS Continuing Healthcare, and to simplify the interaction between NHS Continuing Healthcare and NHS-funded nursing care.

NHS Kernow CCG CHC has developed internal guidelines for their teams to follow in order to fulfil the NHS Framework and are underpinned by key quality principles.:

The principles and guidelines support the provision of a consistent, fair approach and equitable access to NHS Continuing Healthcare. These principles are as follows:

- health and social care professionals will work in partnership with individual patients/clients and their families throughout the process; how do we do this. Professionals from the council have had training and complete the Checklist which is the first part of the Continuing Healthcare process. NHS Kernow CCG invite a social care professional to all assessments. If they cannot attend they are asked for any assessments to support the evidence on the Decision Support Tool (DST). In order to give assurance I can confirm the council has sight of the completed DST for their comments if they have been part of the MDT and relevant for this client. The localities client list is sent to the council on a weekly basis informing them of all health funding decisions. A senior social worker sits on the CHC decision making panel in the North of the county and this model is to be replicated in the West.

- all individual patients and their families will be provided with information to enable them to participate in the process by way of invitation to all

assessments and if they are the appropriate person representing the patient. All patients or their representatives are given a public information leaflet regarding the CHC process in advance of the assessment. Their comments on the levels of need are captured on the DST document. The completed DST with the MDT recommendation is sent to the patients or their representative before the NHS Kernow CCG decision making panel for them to have the opportunity to provide any further information for the decision making panel to consider. The CCG realise that Local resolution meetings are pivotal throughout the appeals process.

- NHS Kernow will inform an individual who requires an advocate to assist him/her through the process of application for NHS Continuing Healthcare; how and when do we do this. At the bottom of all of the CHC letters individuals are informed of the SEAP advocacy service.

A recent introduction from NHS England is The Beacon advice line for Continuing Healthcare (CHC) and funded by NHS England. The advocacy part of this service is however not funded.

The electronic Link to this service is www.beaconCHC.co.uk.

The Beacon advice line is Tel 03455480300.

- the process for decisions about eligibility for NHS Continuing Healthcare will be transparent for individual patients/clients, their families/carers and for partner agencies; By sending them the completed DST with the recommendation prior to the decision making panel. Giving them the opportunity to provide any further evidence or information for the decision making panel to consider. How do we evidence this

- all assessments for Continuing Healthcare will be undertaken by the relevant agencies involved using the checklist and DST or fast track tool; Only Health professionals or Social Care workers complete these checklists. For assurance I can confirm The CHC team oversee all checklists and the appropriate trained and competent registered nurse completes Fast Track documents which require a time sensitive approach due to the nature of fast track applications .

Kernow CCG CHC team is required by the NHS Framework standards to complete a DST within 28 days of the Checklist completion date.

Kernow CCG confirms the CHC process follows the NHS recommendations and ensures two health professionals are present in a MDT team. There is clearly a requirement for discussion with Social Care if this is relevant to the client and as such Kernow CCG CHC is continuing to work with Cornwall Council to strengthen this attendance when and if required. More recently a positive approach to Adult Social care attendance at Panel meetings has been very successful and is now a consistent and sustained attendance in the North with anticipated to be the same in the West.

2) **Healthwatch recommendation – *NHS Kernow send HC the information they provide to patients and families***

CHC Response:

There are a number of communications during the CHC application and assessment process as detailed below:

Any person over the age of 18 whom a clinician or social worker has reason to believe may have continuing health care needs will be assessed for NHS Continuing Healthcare. People have a right to decline to be assessed therefore the process commences with a consent from the client.

The first step for most people will be a screening process using the NHS Continuing Healthcare checklist. Before applying the checklist it will be made clear to the individual and his /her representative, where appropriate that the checklist does not indicate the likelihood that the individual will be found eligible for NHS Continuing Healthcare. At this stage the threshold is set deliberately low to ensure that all those who require a full consideration of their needs get an opportunity to be fully assessed.

A nurse, doctor, or other qualified healthcare professional, or social worker may apply the checklist and, where indicated, refer an individual for full consideration of eligibility for NHS Continuing Healthcare. The checklist may only be completed by health or social care staff who have been authorised by the NHS Kernow to do so. They will be familiar with, and have regard to, The National Framework and the "decision support tool" (DST) and have been authorised by the NHS Kernow to complete.

If a completed checklist indicates it, a DST will be completed. If not, the clinician will inform the individual that a referral for further assessment using a DST is not required and give him/her a copy of the completed checklist and the public information leaflet.

The DST enables determination of eligibility by NHS Kernow and is completed by the CHC Assessor supported by a multi- disciplinary team (MDT). The MDT should include one or more Healthcare professionals from different disciplines who have an up-to-date knowledge of the individual's needs, potential and aspirations. It is best

practice, but not essential, for local authority staff to participate directly in an MDT **when they know** the individual. As a minimum, social care involvement should always include submission of community care assessment documentation to the MDT co-ordinator.

NHS Kernow will involve other specialist health staff when indicated, and always endeavour to involve the individual and/or his carers/advocate. It is necessary that a comprehensive MDT assessment of health and social needs take place as this MDT approach helps to inform the completion of the DST by the CHC Nurse Assessor. Communication to social care is made by the CHC assessor coordinator to invite to the MDT or submit the relevant information prior to the MDT

A letter is sent to the individual and relative to invite and inform them of the MDT assessment.

CHC8 - North and East - Eligble for CHC

The CHC Nurse Assessor will complete the DST, including a recommendation on the individual's eligibility for NHS Continuing Healthcare, using the information provided by the MDT and other sources. The DST is not an assessment in itself, but allows information about the individual to be collated within a standardised format. The practitioners use the DST to apply the primary health need tests, ensuring that the full range of factors that have a bearing on the individual's eligibility are taken into account in making this decision.

The DST cannot directly determine eligibility. However, it provides the basis from which a recommendation can be made by the MDT in exercising its professional judgment and in consideration of the primary health need. If the MDT cannot reach agreement on the levels of needs and the recommendation regarding eligibility, the CHC Nurse Assessor will note the disagreements on the DST and make a recommendation regarding eligibility.

The completed DST will be sent to the assessed individual, their carer or representative, prior to presentation at the Decision making panel.

The MDT and the local authority must agree the recommendations made before they are presented to the NHS Kernow eligibility panel.

In all cases, consent must be given by the individual or their legal representatives prior to undertaking the assessment. If the individual lacks the mental capacity to make decisions in relation to their health needs, then any action must be taken following Best Interest Decision making. The individual will be given the opportunity to participate fully in the assessment and to be supported by their relatives and carers if necessary. This is achieved by inviting individuals and their representatives

to the DST application and documenting their comments as part of the assessment process.

3) **Healthwatch recommendation:** ***Section 12 often left blank, potentially resulting in lower scoring. Can NHS Kernow advise if this is only filled in if further needs other than those stated in sections 11 are identified by the MDT team*****.**

CHC response: Section 12 of the DST is as described on the DST domain 12 should only be completed if particular needs do not fall into the previous care domains

4) **Healthwatch recommendation** ***: "Interlinking sections of the tool may show inconsistent entries – for instance altered states of consciousness, communication and cognition are related – but comments/grading didn't necessarily support this. Should comments and grading be consistent?"***

CHC response:

Each domain is a separate area of assessment and in such may seem inconsistent to someone not familiar with the NHS CHC Framework.

For example a person who has substantial cognitive impairment may equally still be able to communicate. It is essential that the CHC assessments are carried out by a suitably qualified and competent CHC assessor in order for these domains to be reflected upon within the recommendations made to the panel.

As a result of the Coughlan judgment (1999), and the Grogan judgement (2006), under the National Health Service Act 2006, the Secretary of State has developed the concept of "a primary health need" to assist in deciding which treatment and other health services it is appropriate for the NHS to provide.

Where a person has a primary health need, the NHS will be responsible for meeting all of that person's Healthcare needs, including accommodation if they are resident in a care home.

Determining the primary health need includes consideration of the characteristics of need and their impact on the care required to manage them. In particular, consideration is given to the following:

- **nature and type of need** - the overall effect of those needs on the individual, including the type ("quality") of interventions required to manage them

- **intensity** - both extent ("quantity") and severity ("degree") of the needs, including the need for sustained care ("continuity")

- **complexity** - how the needs arise and interact to increase the skill needed to monitor and manage the care

- **unpredictability** - the degree to which needs fluctuate, creating difficulty in managing needs, and the level of risk to the person's health if adequate and timely care is not provided.

For clarity, NHS Kernow's decision on eligibility will not be based on:

- the person's diagnosis
- the setting of care
- the ability of the provider to manage care
- the use (or not) of NHS employed staff to provide care
- the need for/presence of 'specialist staff' in care delivery
- the fact that a need is well-managed.

To minimise variation in interpretation of the principles and to inform consistent decision–making, the national DST has been developed for use by practitioners to obtain a full picture of the needs of individuals and to indicate the level of need that could constitute a primary health need. The DST, combined with the practitioners' own experience and professional judgement, should enable them to apply the primary health needs test.

5) **Healthwatch recommendation:** ***"If members of the multi-disciplinary team disagree the DST implies the higher score should be recorded. HC has seen evidence where the lower scoring has been selected. Is this grounds for appeal?"***

CHC response : Prior to the panel the completed DST is sent to the client or advocate/carer inviting comments to be included in the presentation to panel.

If there is disagreement within the MDT this is brought to the attention of the panel.

The panel can make one of the following decisions with regard to a recommendation about eligibility for NHS Continuing Healthcare:

- accept the recommendation of the multidisciplinary team;
- reject the recommendation of the multidisciplinary team where the evidence provided does not support the level of need indicated in the DST; or
- defer the decision and request further evidence to support decision making

NHS Kernow Continuing Healthcare Panel aims to ensure consistency and quality of decision making and provides governance to the decision-making for eligibility for NHS Continuing Healthcare. This ensures equity of access to NHS Continuing Healthcare and consistent decision-making for all applications.

Decisions of NHS Kernow Continuing Healthcare Panel are communicated to individual patients/clients, or their representatives, on whose behalf the application has been made, and to the lead health and social professionals making the application. Whenever possible, a formal letter is sent within 14 working days of the panel meeting by Recorded delivery

When an individual has been found ineligible for Continuing Healthcare funding, they or, where appropriate, their representative may appeal against the decision and have six months from the date of the decision letter to do so. During the appeal period, the individual will be required to pay for their care; but will be reimbursed for any costs they have met if eligibility for some or all of the period is subsequently found. The first stage of such an appeal would be a conversation between the applicant and the CHC Team Manager.

This stage is known as local resolution and may result in another DST being arranged by NHS Kernow if the applicant is able to show that due process was not followed or the MDT did not consider all of the relevant, available information.

If a further DST is deemed not necessary or if a further DST is completed and the applicant continues to state dissatisfaction, they may formally appeal against NHS Kernow panel decision using the appeals process. NHS Kernow requires applicants to complete a Review Request and Consent Form before commencing to investigate the appeal. If the form is not satisfactorily and fully completed, attempts will be made to chase the applicant for completion but if this is not forthcoming, NHS Kernow will be unable to demonstrate a rationale for carrying out an appeal and the applicant will be notified that the appeal has not been upheld.

Appeals that pass the above process will be fully investigated by NHS Kernow's Appeal Clinician. The Appeals Clinician will meet the appellant and the process will

be explained and every effort will be made to ensure that the individual/representative has a clear understanding of NHS Continuing Healthcare eligibility criteria and how it relates to their own situation. If the Appeal Clinician finds new evidence not found prior to this communication the case will be represented at a NHS Kernow CCG CHC decision making panel. This panel will be independent of the last panel.

If an investigation identifies that a primary health need was evidenced for all or some of the period, the case will be taken to the CHC decision-making panel, which, is chaired by a Senior CHC operations manager. If the panel agrees, it will inform the applicant, and funding may be agreed.

If the applicant remains dissatisfied with the decision of the review panel, they may make an application to NHS England for an independent review.

If the applicant remains dissatisfied with the Independent review panel decision they may approach the Parliamentary Health Service Ombudsman

6) **Healthwatch recommendation:** ***Dementia and cognitive impairment are these conditions that would necessitate a DST assessment or social care assessment ?***

CHC response: Eligibility for CHC is not dependent on diagnosis or prognosis as described above where a nurse, doctor, or other qualified healthcare professional, or social worker may apply the checklist and, where indicated, refer an individual for full consideration of eligibility for NHS Continuing Healthcare. The checklist may only be completed by health or social care staff who have been authorised by the NHS Kernow to do so. They will be familiar with, and have regard to, The National Framework and the “decision support tool” (DST) and have been authorised by the NHS Kernow to complete.

Conclusion

In view of these themes identified by Healthwatch Cornwall we will fully consider the report as part of our CHC quality review discussions within the CHC Management meeting in December 2015 and ascertain if we need to make any further changes to our systems processes and communications and indeed our involvement with outside agencies & providers who directly impact on clients in assessment and receipt of Continuing Health Care such as discharge processes within Acute NHS Trusts, Community Health services such as Community Hospitals and Community Nursing.

May I take this opportunity to thank you for your time offered to discuss some of these issues with us and hope we can continue to engage in such a way that allows a positive approach to discussing areas such as these.

I hope this has offered a full response to your recommendations and answered the areas of concerns you have reported. I also hope this has offered you assurance of Kernow CCG CHC commitment to engage, reflect and act upon concerns and comments such as these.

If you feel you require more information or further discussion on these cases please do not hesitate to contact me.