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To: Adult Social Services Policy Overview Committee -
1 April 2008

Subject: **NATIONAL FRAMEWORK FOR NHS CONTINUING
HEALTHCARE**

Classification: Unrestricted

Summary: This paper sets out the essential summary of the National Framework for NHS continuing healthcare. The purpose of this report is to update Members on the implementation of the National Framework. Specifically on the local application process, appeal mechanism for individuals and the procedure for resolving disputes between the NHS and Kent Adult Social Services (KASS).

Introduction

1. (1) **'NHS continuing healthcare'** is the term used to describe a package of services for people either in care homes or their own homes which is arranged and funded solely by the NHS. NHS services are free unlike services arranged or provided by adult social services, which may be subject to a charge.

(2) The Department of Health (DH) published the *'National Framework for NHS continuing healthcare and NHS-funded nursing care'* on 26 June 2007, with an **implementation date** of 1 October 2007. The Association of Directors of Adult Social Services (ADSS) and the Local Government Association (LGA) have also published a *'Commentary and Advice for Local Authorities'* document that provides local authorities with advice on how to interpret the DH National Framework.

(3) Copies of the *'Public information booklet'* have been placed in the Member Library. The booklet is accessible via the following link: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_079515. The full list of the associated documents is shown at the end of this report.

(4) Ivan Lewis, Minister for Care Services, provided information about the number of people receiving NHS continuing healthcare in each Primary Care Trust (PCT) area for 2007, in a parliamentary answer on 22 February 2008. The comparative information in the South East Coast Strategic Health Authority area and also in the Kent Local Authority comparator areas is set out in Appendix 1.

Essential Summary of the Policy

2. (1) The introduction of the National Framework, which only applies in England, removed the need for each of the 10 Strategic Health Authorities to have their own rules for deciding who qualifies for NHS continuing healthcare. The eligibility 'test' is based on a person having a '**Primary Health Need**' (PHN). PHN is determined by decisions about the:

- **Nature** - the type of needs, and the overall effect of those needs on the individual, including the type ("quality") of interventions required to manage them;
- **Intensity** - both the 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.

(2) Any one of these factors may, alone or in combination, indicate PHN. The eligibility for NHS continuing healthcare is not decided nor influenced by the setting of where the care is provided or by the characteristics of the person who delivers the care.

(3) A local authority will be acting unlawfully in funding people with needs above the level that it has a legal duty to provide, that is, individuals with PHN. There is a **legal upper limit** to the nursing and healthcare that a local authority can provide whilst there is **no legal lower limit** to what the NHS can provide. This means those occasions where gaps arise between the local authority provision and NHS continuing healthcare entitlement, a pragmatic solution such as a **joint package of care** is the sensible way forward, provided that both bodies agree the an individual does not have a PHN.

(4) The Secretary of State for Health has issued statutory instructions (*The NHS Continuing Healthcare [Responsibilities] Directions*) under the powers of the National Health Service Act 2006 and of the Local Authority Social Services Act 1970. These define the duties of the Primary Care Trust in determining eligibility for NHS continuing healthcare. The **Directions** also place a requirement on the NHS and Councils to resolve any dispute in accordance with a dispute resolution procedure agreed between the two bodies.

(5) The Government replaced the three Registered Nursing Care Contribution bands (High, medium and low) with a single rate of £101.00 for 2007/08. As yet, no decision has been made on adjusting the rate for 2008/09.

Local Implementation Arrangements

3. (1) Kent and Medway PCTs, Kent County Council and Medway Council have developed **operational protocols** that set out the roles and responsibilities for key health and social care staff. The protocols take staff through a step-by-step process with defined timescales for the completion of work.

(2) The **application process** starts with the completion of an assessment of a person's health and care needs, by a multi-disciplinary team (at least two professionals from the NHS and social services). If appropriate, the team makes a recommendation for NHS continuing healthcare. The Primary Care Trust Continuing Care Co-ordinator completes a Decision Support Tool for the PCT Panel to make its decision.

(3) Key frontline staff from both health and social services have been **trained** and have the requisite knowledge to apply the new policy.

(4) A person has a **right to appeal** against a decision by the PCT if he or she is not happy with the outcome of the assessment. It is the PCT's responsibility to inform the person that they may apply for a review of the decision. This is known as the Independent Review Panel (IRP). The purpose of the panel is to check that proper procedures have been followed in reaching a decision about eligibility. The review process does not apply where individuals or their families and any carers wish to challenge:

- content of the eligibility criteria;
- type and location of any offer of NHS funded continuing care services;
- the contents of any alternative care package which may be offered;
- their treatment or any other aspect of the services they are receiving or have received.

(5) There are separate procedures for **resolving disputes** between the NHS and KASS. Both bodies have agreed that whilst this process is on-going, the care of the individual should not be compromised or delayed. The PCTs and the KASS have agreed to adopt a "**Without Prejudice**" approach to such situations whereby the final outcome of the dispute will be backdated to the time of the original funding request. People in their homes or care homes funded by the local authority will continue to be supported by the Council. Similarly, anyone in hospital or funded by the PCT will remain funded by the NHS until the dispute is resolved. If the Council continued to fund the care that consequently is decided to have been the responsibility of the NHS, the PCT will backdate the repayment to the Council. Likewise, where the PCT continued to pay for a service that later is decided to have been the responsibility of the local authority, the Council will backdate the reimbursement to the PCT.

(6) It is important to evidence fairness and equal treatment, we have therefore put performance monitoring systems in place to assess the consistency of PCT decision-making.

Recommendations

5 (1) Members of the Policy Overview Committee are asked to note and comment on the contents of this report.

Background documents:

- a) *National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care*
- b) *NHS-funded Nursing Care Practice Guide*
- c) *Final versions of National Framework Decision Support Tools*
- d) *The NHS (Nursing Care in Residential Accommodation) (England) Directions 2007*
- e) *The Delayed Discharges (Continuing Care) Directions 2007*
- f) *The NHS Continuing Healthcare (Responsibilities) Directions 2007*
- g) *NHS Continuing Healthcare and NHS-funded Nursing Care – Public Information Leaflet*
- h) *The NHS Continuing Healthcare Frequently Asked Questions (FAQ)*

Michael Thomas-Sam
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NUMBER OF PEOPLE RECEIVING NHS CONTINUING HEALTHCARE
IN THE SOUTH EAST COAST HEALTH AUTHORITY AREA

	No of People Receiving Continuing Care				No of People per 50,000 Population			
	Q4 2006-07	Q1 2007-08	Q2 2007-08	Q3 2007-08	Q4 2006-07	Q1 2007-08	Q2 2007-08	Q3 2007-08
England	30,975	24,952	27,619	29,092	30.51	24.68	27.32	28.78
Brighton & Hove PCT (5LQ)	246	156	135	1112	48.92	30.34	26.26	21.79
East Sussex Downs and Weald PCT (5P7)	211	181	151	151	31.96	27.82	23.21	23.21
Eastern and Coastal Kent PCT (5QA)	692	329	304	319	48.02	23.17	21.41	22.47
Surrey PCT (5P5)	355	388	582	513	16.54	18.30	27.45	24.19
West Kent PCT (5P9)	152	305	278	318	11.47	23.23	21.17	24.22
West Sussex PCT (5P6)	687	365	494	293	44.57	23.74	32.14	19.06
Medway PCT (5L3)	81	117	155	149	16.09	22.11	29.29	28.16

NUMBER OF PEOPLE RECEIVING NHS CONTINUING HEALTHCARE
IN THE KENT LOCAL AUTHORITY COMPARATOR AREAS

	No. of People Receiving Continuing Care				Number of People per 50,000 Population			
	Q4 2006-07	Q1 2007-08	Q2 2007-08	Q3 2007-08	Q4 2006-07	Q1 2007-08	Q2 2007-08	Q3 2007-08
England	30,975	24,952	27,619	29,092	30.51	24.68	27.32	28.78
Bedfordshire PCT (5P2)	159	172	163	170	19.68	21.13	20.02	20.88
Bristol PCT (5QJ)	127	86	123	110	15.47	10.18	14.56	13.02
Central and Eastern Cheshire PCT (5NP)	163	100	169	188	18.07	11.27	19.04	21.19
Central Lancashire PCT (5NG)	192	206	214	224	21.25	23.50	24.41	25.56
East and North Hertfordshire PCT (5P3)	362	285	244	250	34.29	26.11	22.35	22.90
East Lancashire PCT (5NH)	130	116	117	135	16.89	15.51	15.64	18.05
East Sussex Downs and Weald PCT (5P7)	211	181	151	151	31.96	27.82	23.21	23.21

Gloucestershire PCT (5QH)	68	61	62	65	5.88	5.30	5.39	5.65
Mid-Essex PCT (5PX)	918	273	94	94	126.92	38.70	13.33	13.33
North East Essex PCT (5PW)	54	56	63	89	8.56	8.98	10.10	14.27
Norfolk PCT (5PQ)	269	233	262	301	18.20	16.30	18.32	21.05
Oxfordshire PCT (5QE)	193	145	224	205	15.89	11.91	18.40	16.84
South East Essex PCT (5P1)	298	111	169	174	45.21	16.84	25.63	26.39
South Gloucestershire PCT (5A3)	168	77	98	91	33.02	16.04	20.41	18.95
South West Essex PCT (5PY)	142	67	132	128	18.28	8.50	16.74	16.23
Southampton City PCT (5L1)	275	275	275	220	60.14	56.55	56.55	45.24
Suffolk PCT (5PT)	57	49	64	94	4.87	4.21	5.50	8.08
Surrey PCT (5P5)	355	388	582	513	16.54	18.30	27.45	24.19
West Essex PCT (5PV)	86	90	95	74	15.64	17.32	18.29	14.24
West Hertfordshire PCT (5P4)	333	290	238	265	31.37	27.20	22.33	24.86
West Sussex PCT (5P6)	687	365	494	293	44.57	23.74	32.14	19.06
West Cheshire PCT (5NN)	133	93	94	90	28.27	19.00	19.21	18.39