
STATUTORY INSTRUMENTS

2012 No. 2996

The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012

PART 6

Standing rules: NHS Continuing Healthcare and NHS funded nursing care

Interpretation

20.—(1) In this Part—

“2008 Act” means the Health and Social Care Act 2008 ^{M1};

“Fast Track Pathway Tool” means the Fast Track Pathway Tool for NHS Continuing Healthcare issued by the Secretary of State and dated [^{F1}1st March 2018];

[^{F2}“flat rate payment” except in regulation 29(1), means a payment of [^{F3}£219.71] per week;]

[^{F4}“high band payment” except in regulation 30(1), means a payment of [^{F5}£302.25] per week;]

“low band payment” means a payment made at the low band rate following a RNCC determination;

“medium band payment” means a payment made at the medium band rate following a RNCC determination;

“National Framework” means the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care issued by the Secretary of State and dated [^{F6}30th May 2022];

“NHS Continuing Healthcare” means a package of care arranged and funded solely by the health service in England for a person aged 18 or over to meet physical or mental health needs which have arisen as a result of disability, accident or illness;

“nursing care” means nursing care by a registered nurse and “nursing care by a registered nurse” has the same meaning as in [^{F7}section 22(8) of the Care Act 2014];

“old Guidance” means the documents entitled “Guidance on Free Nursing Care in Nursing Homes” dated 25th September 2001 ^{M2} and “NHS Funded Nursing Care Practice Guidance and Workbook (August 2001)” dated 5th September 2001 ^{M3}, as supplemented by “NHS Continuing Health Care: Action following the Grogan Judgement” dated 3rd March 2006 ^{M4};

“registered manager” means, in respect of relevant premises, a person registered with the Care Quality Commission under Chapter 2 of Part 1 of the 2008 Act as a manager in respect of the regulated activity carried on at those premises;

“registered person” means, in respect of relevant premises, a person who is a service provider or registered manager in respect of those premises;

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“regulated activity” means the activity of providing residential accommodation, together with personal or nursing care, specified in paragraph 2 of Schedule 1 to the Health and Social Care Act 2008 (Regulated Activities) Regulations [^{F8}2014];

“relevant premises” means premises where regulated activity is carried on and for which there is a registered person;

“relevant social services authority” means the social services authority appearing to a relevant body to be the authority in whose area a patient is ordinarily resident;

“RNCC determination” means a determination as to the Registered Nursing Contribution to Care taken in respect of a person in accordance with the National Health Service (Nursing Care in Residential Accommodation) (England) Directions 2001 ^{M5};

“service provider” means, in respect of relevant premises, a person registered with the Care Quality Commission under Chapter 2 of Part 1 of the 2008 Act as a service provider in respect of the regulated activity carried on at those premises;

“social services authority” means a local authority for the purposes of the Local Authority Social Services Act 1970 ^{M6} and the Council of the Isles of Scilly;

“social services authority area” means an area for which a local social services authority is responsible.

(2) For the purposes of this Part a relevant body has responsibility for a person if the body is responsible—

[^{F9}(a) in the case of an integrated care board—

(i) by virtue of section 3(2)(a) of the 2006 Act, except where the person is a person for whom another integrated care board is responsible by virtue of paragraphs 2(b), (d), (e), (f), (h) or (j) of the Schedule to the National Health Service (Integrated Care Boards: Responsibilities) Regulations 2022, or

(ii) by virtue of regulations 3(1), 5 and 6 of the National Health Service (Integrated Care Boards: Responsibilities) Regulations 2022, except where the person is a person to whom paragraph 2(a) of the Schedule to those Regulations applies; or]

(b) in the case of [^{F10}NHS England], by virtue of regulation 7 (secondary care services and community services: serving members of the armed forces and their families) or regulation 10 (services for prisoners and other detainees).

(3) For the purposes of this Part, an assessment in relation to a person's need for nursing care means such assessment as the relevant body considers appropriate in the circumstances in order to determine whether the person has a need for nursing care.

Textual Amendments

- F1** Words in reg. 20(1) substituted (1.10.2018) by [The Responsibilities and Standing Rules, and Care and Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/283\)](#), regs. 1(3)(a), **2(2)(a)**
- F2** Words in reg. 20 substituted (1.10.2014) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 3\) Regulations 2014 \(S.I. 2014/1611\)](#), regs. 1(1), **3(1)(a)**
- F3** Sum in reg. 20 substituted (1.4.2023) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) Regulations 2023 \(S.I. 2023/288\)](#), regs. 1(2), **2(2)(a)**
- F4** Words in reg. 20 substituted (1.10.2014) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 3\) Regulations 2014 \(S.I. 2014/1611\)](#), regs. 1(1), **3(1)(b)**

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- F5** Sum in reg. 20 substituted (1.4.2023) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2023 (S.I. 2023/288), regs. 1(2), **2(2)(b)**
- F6** Words in reg. 20(1) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **58(3)**
- F7** Words in reg. 20(1) substituted (1.4.2018) by The Responsibilities and Standing Rules, and Care and Support (Miscellaneous Amendments) Regulations 2018 (S.I. 2018/283), regs. 1(2), **2(2)(e)**
- F8** Word in reg. 20(1) substituted (1.4.2018) by The Responsibilities and Standing Rules, and Care and Support (Miscellaneous Amendments) Regulations 2018 (S.I. 2018/283), regs. 1(2), **2(2)(f)**
- F9** Reg. 20(2)(a) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(4)**
- F10** Words in Regulations substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), reg. 1(1), **Sch. para. 1**

Marginal Citations

- M1** 2008 c. 14.
- M2** The guidance can be found at www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Healthservicecirculars/DH_4003954.
- M3** The guidance and workbook can be found at webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4009471.
- M4** The guidance can be found at www.dh.gov.uk/en/Publicationsandstatistics/Publications/Publicationspolicyandguidance/DH_4131162.
- M5** The Directions can be found at www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_4003016.
- M6** 1970 c.42. See section 1, to which a relevant amendment was made by section 195(3) of the [Local Government Act 1972 \(c. 70\)](#).

Duty of relevant bodies: assessment and provision of NHS Continuing Healthcare

21.—(1) In exercising its functions under or by virtue of sections 3, 3A or 3B of the 2006 Act, insofar as they relate to NHS Continuing Healthcare, a relevant body must comply with paragraphs (2) to (11).

(2) A relevant body must take reasonable steps to ensure that an assessment of eligibility for NHS Continuing Healthcare is carried out in respect of a person for which that body has responsibility in all cases where it appears to that body that—

- (a) there may be a need for such care; or
- (b) an individual who is receiving NHS Continuing Healthcare may no longer be eligible for such care.

[^{F11}(3) If an assessment of a person’s need for NHS Continuing Healthcare is required under paragraph (2)(a), the relevant body must ensure that it is carried out before—

- (a) any assessment pursuant to regulation 28(1) (persons who enter relevant premises or who develop a need for nursing care) is carried out in relation to that person; and

^{F12}(b)]

(4) If a relevant body wishes to use an initial screening process to decide whether to undertake an assessment of a person's eligibility for NHS Continuing Healthcare it must—

- (a) complete and use the NHS Continuing Healthcare Checklist issued by the Secretary of State and dated [^{F13}1st March 2018] to inform that decision;

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- (b) inform that person (or someone lawfully acting on that person's behalf) in writing of the decision as to whether to carry out an assessment of that person's eligibility for NHS Continuing Healthcare; and
- (c) make a record of that decision.

(5) When carrying out an assessment of eligibility for NHS Continuing Healthcare, a relevant body must ensure that—

- (a) a multi-disciplinary team—
 - (i) undertakes an assessment of needs, or has undertaken an assessment of needs, that is an accurate reflection of that person's needs at the date of the assessment of eligibility for NHS Continuing Healthcare, and
 - (ii) uses that assessment of needs to complete the Decision Support Tool for NHS Continuing Healthcare issued by the Secretary of State and dated [^{F14}1st March 2018]; and
- (b) the relevant body makes a decision as to whether that person has a primary health need in accordance with paragraph (7), using the completed Decision Support Tool to inform that decision.

(6) If a relevant body decides that a person has a primary health need in accordance with paragraph (5)(b), it must also decide that that person is eligible for NHS Continuing Healthcare.

(7) In deciding whether a person has a primary health need in accordance with paragraph (5)(b), a relevant body must consider whether the nursing or other health services required by that person are—

- (a) where that person is, or is to be, accommodated in relevant premises, more than incidental or ancillary to the provision of accommodation which a social services authority is, or would be but for a person's means, under a duty to provide; or
- (b) of a nature beyond which a social services authority whose primary responsibility is to provide social services could be expected to provide,

and, if it decides that the nursing or other health services required do, when considered in their totality, fall within sub-paragraph (a) or (b), it must decide that that person has a primary health need.

^{F15}(7A)

^{F16}(7B)

- (8) Paragraphs (2) to (6) do not apply where an appropriate clinician decides that—
 - (a) an individual has a primary health need arising from a rapidly deteriorating condition; and
 - (b) the condition may be entering a terminal phase,

and that clinician has completed [^{F17}the Fast Track Pathway Tool] stating reasons for the decision.

[^{F18}(9) A relevant body must decide that a person is eligible for NHS Continuing Healthcare upon receipt of—

- (a) the Fast Track Pathway Tool completed in accordance with paragraph (8); or

^{F19}(b)]

[^{F20}(10) Where a relevant body makes a decision about a person's eligibility for NHS Continuing Healthcare, it must—

- (a) notify the person (or someone lawfully acting on that person's behalf), in writing, of the decision made about their eligibility for NHS Continuing Healthcare, the reasons for that decision and, where applicable, the matters referred to in paragraph (11); and
- (b) make a record of that decision.]

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(11) Where a relevant body has decided that a person is not eligible for NHS Continuing Healthcare, it must inform the person (or someone acting on that person's behalf) of the circumstances and manner in which that person may apply for a review of the decision if they are dissatisfied with—

- (a) the procedure followed by the relevant body in reaching that decision; or
- (b) the primary health need decision made in accordance with paragraph (5)(b).

(12) In carrying out its duties under this regulation, a relevant body must have regard to the National Framework.

(13) In this regulation—

“appropriate clinician” means a person who is—

- (a) responsible for the diagnosis, treatment or care of the person under the 2006 Act in respect of whom ^{F21}the Fast Track Pathway Tool] is being completed, and
- (b) a registered nurse ^{M7} or a registered medical practitioner ^{M8},

^{F22} ...

“healthcare profession” means a profession which is concerned (wholly or partly) with the physical or mental health of individuals ^{F23}(whether or not a person engaged in that profession is regulated by, or by virtue of, any enactment)];

“multi-disciplinary team” means a team consisting of at least—

- (a) two professionals who are from different healthcare professions, or
- (b) one professional who is from a healthcare profession and one person who is responsible for assessing ^{F24}an adult’s needs for care and support] under ^{F25}section 9 of the Care Act 2014 (assessment of an adult’s needs for care and support)].

Textual Amendments

- F11** Reg. 21(3) substituted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **2(1)(a)**
- F12** Reg. 21(3)(b) omitted (1.7.2022) by virtue of The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(5)(a)**
- F13** Words in reg. 21(4)(a) substituted (1.10.2018) by The Responsibilities and Standing Rules, and Care and Support (Miscellaneous Amendments) Regulations 2018 (S.I. 2018/283), regs. 1(3)(a), **2(3)(a)**
- F14** Words in reg. 21(5)(a)(ii) substituted (1.10.2018) by The Responsibilities and Standing Rules, and Care and Support (Miscellaneous Amendments) Regulations 2018 (S.I. 2018/283), regs. 1(3)(a), **2(3)(b)**
- F15** Reg. 21(7A) omitted (1.7.2022) by virtue of The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(5)(b)**
- F16** Reg. 21(7B) omitted (1.7.2022) by virtue of The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(5)(b)**
- F17** Words in reg. 21(8) substituted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **2(1)(c)**
- F18** Reg. 21(9) substituted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **2(1)(d)**

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- F19** Reg. 21(9)(b) omitted (1.7.2022) by virtue of The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(5)(c)**
- F20** Reg. 21(10) substituted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **2(1)(e)**
- F21** Words in reg. 21(13) substituted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **2(1)(f)(i)**
- F22** Words in reg. 21(13) omitted (1.7.2022) by virtue of The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **209(5)(d)**
- F23** Words in reg. 21(13) substituted (1.4.2014) by The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891), regs. 1(2), **2(1)(f)(iii)**
- F24** Words in reg. 21(13) substituted (1.10.2018) by The Responsibilities and Standing Rules, and Care and Support (Miscellaneous Amendments) Regulations 2018 (S.I. 2018/283), regs. 1(3)(a), **2(3)(c)**
- F25** Words in reg. 21(13) substituted (1.4.2015) by The Care Act 2014 (Consequential Amendments) (Secondary Legislation) Order 2015 (S.I. 2015/643), art. 1(2), **Sch. para. 38(2)(b)** (with art. 4); S.I. 2015/993, **art. 2(a)**

Marginal Citations

- M7** See Schedule 1 of the Interpretation Act 1978 (c. 3) for the definition of a registered nurse.
- M8** See Schedule 1 of the Interpretation Act 1978 (c. 3) for the definition of a registered medical practitioner.

Duty of relevant bodies: joint working with social services authorities

22.—(1) A relevant body must, insofar as is reasonably practicable—

- (a) consult with the relevant social services authority before making a decision about a person's eligibility for NHS Continuing Healthcare, including any decision that a person receiving NHS Continuing Healthcare is no longer eligible to do so; and
- (b) co-operate with the relevant social services authority in arranging for persons to participate in a multi-disciplinary team for the purpose of fulfilling its duty under regulation 21(5).

(2) Where there is a dispute between a relevant body and the relevant social services authority about—

- (a) a decision as to eligibility for NHS Continuing Healthcare; or
- (b) where a person is not eligible for NHS Continuing Healthcare, the contribution of a relevant body or social services authority to a joint package of care for that person,

the relevant body must, having regard to the National Framework, agree a dispute resolution procedure with the relevant social services authority, and resolve the disagreement in accordance with that procedure.

(3) In complying with its duties under regulation 21 and this regulation, a relevant body must have due regard to the need to promote and secure the continuity of appropriate services for persons who—

- (a) are receiving community care services under ^{F26}Part 1 of the Care Act 2014 (care and support) or section 117 of the Mental Health Act 1983 (after-care)] on the date on which they are found to be eligible to receive NHS Continuing Healthcare;

- (b) have been in receipt of NHS Continuing Healthcare but are determined to be no longer eligible for NHS Continuing Healthcare; or
- (c) are otherwise determined to be ineligible for NHS Continuing Healthcare.

Textual Amendments

F26 Words in reg. 22(3)(a) substituted (1.4.2015) by [The Care Act 2014 \(Consequential Amendments\) \(Secondary Legislation\) Order 2015 \(S.I. 2015/643\)](#), art. 1(2), [Sch. para. 38\(3\)](#) (with art. 4); S.I. 2015/993, [art. 2\(a\)](#)

[^{F10}NHS England's] duty: reviewing decisions

23.—(1) [^{F10}NHS England] must—

- (a) appoint such number of persons to act as chairs of the panels referred to in paragraph (4) (“chairs”) as [^{F10}NHS England] considers reasonable to ensure that applications for a review under paragraph (3) can be considered by such a panel within a reasonable time; and
- (b) establish a list consisting of the following persons—
 - (i) at least one person (“^{F27}an integrated care board] member”) appointed by [^{F10}NHS England] in respect of each [^{F27}integrated care board], and
 - (ii) at least one person (“a social services authority member”) appointed by [^{F10}NHS England] in respect of each social services authority.

(2) In complying with its duty under paragraph (1), [^{F10}NHS England] must ensure that the persons it—

- (a) appoints under paragraph (1)(a); or
- (b) includes in a list pursuant to paragraph (1)(b),

reside in locations that have a sufficient geographical distribution to ensure that a review panel can be held in any social services authority area in England.

(3) Where a person, or someone lawfully acting on a person's behalf—

- (a) is dissatisfied with—
 - (i) the procedure followed by a relevant body in reaching a decision as to that person's eligibility for NHS Continuing Healthcare pursuant to regulation 21(5), or
 - (ii) the primary health need decision by a relevant body pursuant to regulation 21(5)(b); and
- (b) the person has—
 - (i) used the resolution procedure of the relevant body in question, but that has not resolved the matter, or
 - (ii) not used that resolution procedure and [^{F10}NHS England] is satisfied that requiring the person to do so would cause undue delay,

that person may apply in writing to [^{F10}NHS England] for a review of that decision.

(4) Following receipt of an application for a review under paragraph (3), [^{F10}NHS England] may refer the matter for a decision to a panel of members (“a review panel”) consisting of—

- (a) a chair;

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- (b) one [F27integrated care board] member drawn from the list established under paragraph (1) (b) who has been appointed in respect of a [F27integrated care board], other than [F27an integrated care board] whose procedure or decision is the subject of the review; and
- (c) one social services authority member drawn from that list who has been appointed in respect of a social services authority other than one in whose area is situated all or part of the area of [F27an integrated care board] whose procedure or decision is the subject of the review.

(5) Where an application for a review under paragraph (3) relates to the procedure followed by, or a decision taken by, [F10NHS England], it must ensure that in organising a review of that decision, it makes appropriate arrangements as regards the manner in which it organises such a review so as to avoid any conflict of interest.

(6) The procedure and operation of the review panel are to be a matter for the chair of the review panel, having regard to the National Framework.

(7) [F10NHS England] must, as soon as reasonably practicable, give notice in writing of the review decision and the reasons for it to the applicant and, where the relevant body is [F27an integrated care board], to the [F27integrated care board] whose decision has been the subject of review.

(8) A relevant body must, unless it determines in accordance with paragraph (9) that there are exceptional reasons not to do so, implement the decision of the review panel as soon as reasonably practicable.

(9) In determining whether under paragraph (8) there are exceptional reasons, a relevant body must have regard to the National Framework.

Textual Amendments

- F10** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), [Sch. para. 1](#)
- F27** Words in Regulations substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), reg. 1(2), [Sch. para. 1\(1\)\(3\)](#) (with [Sch. para. 1\(2\)](#))

Appointment and term of appointment

24.—(1) Subject to regulation 25 (disqualification for appointment), the [F27integrated care board] members and social services authority members must be appointed by [F10NHS England] following nomination by [F27an integrated care board] or a social services authority in respect of which they are to be appointed.

(2) [F27An integrated care board] must—

- (a) when requested to do so by [F10NHS England], provide its nomination pursuant to paragraph (1) as soon as is reasonably practicable; and
- (b) ensure that [F27integrated care board] members are, so far as reasonably practicable, available to participate in review panels.

(3) Subject to regulation 27 (termination of appointment), the term of appointment of a chair, [F27an integrated care board] or a social services authority member is to be such period, not exceeding three years, as [F10NHS England] specifies on making the appointment.

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(4) Subject to regulation 25 (disqualification for appointment), a chair, [F27integrated care board] member or social services authority member is to be eligible for reappointment on the termination of the period of that chair or member's term of appointment.

(5) [F10NHS England] must pay to a chair such remuneration and expenses as appear to it to be reasonable.

Textual Amendments

- F10** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), [Sch. para. 1](#)
- F27** Words in Regulations substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), reg. 1(2), [Sch. para. 1\(1\)\(3\)](#) (with [Sch. para. 1\(2\)](#))

Disqualification for appointment

25.—(1) A person is disqualified for appointment as a chair if that person is—

- (a) the chair, a member (other than a member of an NHS foundation trust), a director, a governor or an employee of an NHS body;
- (b) the chair or a member of the governing body of [F27an integrated care board] ; or
- (c) an elected member or employee of a social services authority in England and Wales or of an equivalent body in Scotland or Northern Ireland.

(2) A person is disqualified for appointment as [F27an integrated care board] member or social services authority member if that person is—

- (a) the chair, the chief executive, a non-executive director or a non-officer member of an NHS body (other than a member of an NHS foundation trust);
- (b) the chair or a member of the governing body of [F27an integrated care board]; or
- (c) an elected member of a social services authority in England and Wales or of an equivalent body in Scotland or Northern Ireland.

(3) Persons of the description set out in Schedule 5 are, subject to regulation 26 (cessation of disqualification), disqualified for appointment as a chair, [F27integrated care board] member or social services authority member.

Textual Amendments

- F27** Words in Regulations substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), reg. 1(2), [Sch. para. 1\(1\)\(3\)](#) (with [Sch. para. 1\(2\)](#))

Cessation of disqualification

26.—(1) Where a person is disqualified under paragraph 5 of Schedule 5—

- (a) that person may, after the second anniversary of the day on which they were dismissed, apply in writing to [F10NHS England] to remove the disqualification for appointment as a chair, [F27integrated care board] member or social services authority member; and
- (b) [F10NHS England] may decide that the disqualification is removed.

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(2) Where [F10NHS England] refuses an application to remove a disqualification, no further application may be made by that person to [F10NHS England] until the second anniversary of the day of the refusal and this paragraph applies to any subsequent application.

(3) Where a person is disqualified under paragraph 6 of Schedule 5, the disqualification is to cease on the second anniversary of the termination of the person's appointment, or at the end of such longer period as may have been specified on termination.

Textual Amendments

- F10** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), [Sch. para. 1](#)
- F27** Words in Regulations substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), reg. 1(2), [Sch. para. 1\(1\)\(3\)](#) (with [Sch. para. 1\(2\)](#))

Termination of appointment

27.—(1) A chair, [F27integrated care board] member or social services authority member may resign at any time during their term of appointment by giving notice in writing to the Chief Executive of [F10NHS England].

(2) Subject to paragraph (3), where [F10NHS England] is of the opinion that it is not in the interests of the health service that a chair, [F27integrated care board] member or social services authority member should continue to hold office, it may terminate that person's appointment with immediate effect by giving notice to that person in writing to that effect.

(3) The term of appointment of a [F27integrated care board] member or social services authority member must not be terminated under paragraph (2) unless the body responsible for nominating that member has been consulted.

(4) Where a person has been appointed by [F10NHS England] to be a chair, [F27integrated care board] member or social services authority member, if it comes to the attention of [F10NHS England] that—

- (a) that person has become disqualified for appointment under regulation 25, [F10NHS England] must notify that person in writing of such disqualification; or
- (b) at the time of that person's appointment they were so disqualified, [F10NHS England] must declare that the person in question was not duly appointed and notify that person in writing to that effect.

(5) Upon receipt of any notification referred to in paragraph (4), the person's term of appointment, if any, terminates with immediate effect and that person must cease to act as a chair, [F27integrated care board] member or social services authority member.

Textual Amendments

- F10** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), [Sch. para. 1](#)
- F27** Words in Regulations substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), reg. 1(2), [Sch. para. 1\(1\)\(3\)](#) (with [Sch. para. 1\(2\)](#))

Persons who enter relevant premises or who develop a need for nursing care

28.—(1) Subject to paragraphs (2) and (3), where it appears to a relevant body in respect of a person for whom it has responsibility that that person—

- (a) is resident in relevant premises or may need to become resident in such premises; and
- (b) may be in need of nursing care,

that body must carry out an assessment of the need for nursing care.

(2) Before carrying out an assessment under paragraph (1), the relevant body must consider whether its duty under regulation 21(2) is engaged, and if so, it must comply with the requirements of regulation 21 prior to carrying out any assessment under this regulation.

(3) Paragraph (1) does not apply if a relevant body has made arrangements for providing the person with NHS Continuing Healthcare.

(4) Where—

- (a) the relevant body has carried out an assessment pursuant to regulation 21(2); but
- (b) paragraph (3) does not apply because a decision has been made that the person is not eligible for NHS Continuing Healthcare,

that body must nevertheless use that assessment, wherever reasonably practicable, in making its assessment under paragraph (1).

(5) Where—

- (a) the relevant body determines that a person has a need for nursing care pursuant to this regulation; and
- (b) the person has agreed with that body that that person does want to be provided with such nursing care,

paragraph (6) [^{F28}or, as the case may be, (6A)] applies.

(6) The relevant body must pay to a registered person for the relevant premises the flat rate [^{F29}payment] in respect of that person's nursing care unless or until that person—

- (a) has their need for nursing care assessed and it is determined that that person no longer has any need for nursing care;
- (b) is no longer resident in the relevant premises;
- (c) becomes eligible for NHS Continuing Healthcare pursuant to this Part; or
- (d) dies.

[^{F30}(6A) Where the relevant body consents to the arrangement by a local authority, in accordance with section 22(4) and, where applicable, sections 22(5) and 22(9) of the Care Act 2014, for the provision of nursing care in accommodation arranged by the local authority in Northern Ireland or Scotland, the relevant body must pay to the relevant provider in respect of the person receiving nursing care—

- (a) £100 per week, where nursing care is provided in accommodation in Northern Ireland, or
- (b) £78 per week, where nursing care is provided in accommodation in Scotland,

unless or until paragraph (6B) applies.

(6B) This paragraph applies where a person receiving nursing care in accommodation in Northern Ireland or Scotland—

- (a) has their need for nursing care assessed and it is determined that that person no longer has any need for nursing care;
- (b) is no longer resident in that accommodation;

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- (c) becomes eligible for NHS Continuing Healthcare pursuant to this Part; or
- (d) dies.

(6C) In paragraphs (6A) and (6B)—

“accommodation” means—

- (a) in relation to Northern Ireland, residential or other accommodation in Northern Ireland of a type which may be provided under article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 and includes a nursing home within the meaning of article 11 of the Health and Personal Social Services (Quality Improvement and Regulation) (Northern Ireland) Order 2003;
- (b) in relation to Scotland, residential accommodation in Scotland of a type which may be provided under or by virtue of section 12 or 13A of the Social Work (Scotland) Act 1968 or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003;

“local authority” has the same meaning as in section 1(4) of the Care Act 2014; and

“relevant provider” means—

- (a) in relation to Northern Ireland, the person registered under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 in respect of that accommodation;
- (b) in relation to Scotland, the person who provides in respect of that accommodation a care service registered under section 59 of the Public Services Reform (Scotland) Act 2010.]

Textual Amendments

- F28** Words in [reg. 28\(5\)](#) inserted (1.4.2015) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) Regulations 2015 \(S.I. 2015/415\)](#), [regs. 1\(1\), 3\(a\)](#)
- F29** Word in [reg. 28\(6\)](#) inserted (1.10.2014) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 3\) Regulations 2014 \(S.I. 2014/1611\)](#), [regs. 1\(1\), 3\(2\)](#)
- F30** [Reg. 28\(6A\)-\(6C\)](#) inserted (1.4.2015) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) Regulations 2015 \(S.I. 2015/415\)](#), [regs. 1\(1\), 3\(b\)](#)

Persons in receipt of flat rate payments immediately before the relevant date

29.—(1) Where, immediately before the relevant date, a Primary Care Trust was making a flat rate payment in respect of any person pursuant to the National Health Service (Nursing Care in Residential Accommodation) (England) Directions 2007^{M9}, paragraph (2) applies.

(2) The relevant body which has responsibility for a person falling within paragraph (1) must^{F31} ... pay to a registered person for the relevant premises the flat rate payment in respect of the person falling within paragraph (1)^{F31} ... unless or until that person—

- (a) has their need for nursing care assessed on or after the relevant date and it is determined that that person no longer has any need for nursing care;
- (b) is no longer resident in the relevant premises;
- (c) becomes eligible for NHS Continuing Healthcare pursuant to this Part; or
- (d) dies.

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Textual Amendments

F31 Words in reg. 29(2) omitted (1.10.2014) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 3\) Regulations 2014 \(S.I. 2014/1611\)](#), regs. 1(1), **3(3)**

Marginal Citations

M9 The Directions can be found at www.dh.gov.uk/en/Publicationsandstatistics/Legislation/DH_078061.

Persons in receipt of high band payments immediately before the relevant date

30.—(1) Where, immediately before the relevant date, a Primary Care Trust was making a high band payment in respect of any person pursuant to direction 4 of the National Health Service (Nursing Care in Residential Accommodation) (England) Directions 2007, paragraphs (2) and (3) apply.

(2) The relevant body which has responsibility for a person falling within paragraph (1) must ^{F32}... pay the high band payment to a registered person for the relevant premises in respect of the person falling within paragraph (1) ^{F32}... unless or until that person—

- (a) has their need for nursing care assessed on or after the relevant date and it is determined that that person no longer has any need for nursing care;
- (b) is no longer resident in the relevant premises;
- (c) becomes eligible for NHS Continuing Healthcare pursuant to this Part; or
- (d) dies,

unless paragraph (3) applies.

(3) Where a person in respect of whom a high band payment is being made pursuant to this regulation—

- (a) has their need for nursing care assessed on or after the relevant date; and
- (b) following that assessment it is determined that that person's need for nursing care has diminished to the extent that if the old Guidance were applied, that person would be eligible only for a medium band payment or low band payment,

the relevant body with responsibility for that person must comply with paragraph (4).

(4) Where paragraph (3) applies, the relevant body must give—

- (a) the person in respect of whom the high band payment was being made (and where appropriate that person's representative); and
- (b) the registered person,

written notice of the outcome of the assessment referred to in paragraph (3) and must, no sooner than 14 days beginning with the date that notice is given, thereafter pay the flat rate payment in respect of that person unless or until paragraph (2)(a), (b), (c) or (d) applies.

Textual Amendments

F32 Words in reg. 30(2) omitted (1.10.2014) by [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) \(Amendment\) \(No. 3\) Regulations 2014 \(S.I. 2014/1611\)](#), regs. 1(1), **3(4)**

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Urgent need

31. Nothing in regulations 28 to 30 prevents a relevant body from temporarily providing nursing care to a person without carrying out an assessment if, in the opinion of that body, the condition of that person is such that those services are required urgently.

Revocation and transitional provisions

32.—(1) Where a Primary Care Trust has, before the relevant date, determined that a person is eligible for NHS Continuing Healthcare under direction 2 of the NHS Continuing Healthcare (Responsibilities) Directions 2009^{M10} (“the Responsibilities Directions”) or the Delayed Discharges (Continuing Care) Directions 2009^{M11} (“the Delayed Discharges Directions”) [^{F33}and that healthcare was being provided immediately before 1st July 2022], the relevant body with responsibility for that person on [^{F34}1st July 2022] must continue to provide NHS Continuing Healthcare unless—

- (a) regulation 21(2)(b) applies;
- (b) an assessment of eligibility for NHS Continuing Healthcare is undertaken pursuant to regulation 21; and
- (c) that body determines that the person is no longer eligible for NHS Continuing Healthcare.

[^{F35}(1A) Where a clinical commissioning group has, before 1st July 2022, determined that a person is eligible for NHS Continuing Healthcare, the relevant body with responsibility for that person on 1st July 2022 must continue to provide NHS Continuing Healthcare unless—

- (a) regulation 21(2)(b) applies;
- (b) an assessment of eligibility for NHS Continuing Healthcare is undertaken pursuant to regulation 21; and
- (c) that body determines that the person is no longer eligible for NHS Continuing Healthcare.]

[^{F36}(2) Where a clinical commissioning group has, before 1st July 2022—

- (a) started an initial screening process to decide whether to undertake an assessment of a person’s eligibility for NHS Continuing Healthcare but not completed the process, the relevant body with responsibility for that person must—
 - (i) complete the initial screening process as if it had commenced under regulation 21(4), and
 - (ii) where the outcome of that process is that an assessment for NHS Continuing Healthcare is required, assess that person’s eligibility for NHS Continuing Healthcare under this Part; or
- (b) started to assess a person’s eligibility for NHS Continuing Healthcare, the relevant body with responsibility for that person must complete the assessment as if it had commenced under regulation 21.]

^{F37}(3)

^{F38}(4)

(5) Subject to regulation 27, the appointment of a person appointed as a chair in accordance with the Responsibilities Directions continues for such period as it would have continued if those directions had not been revoked, and such a person must be treated as if they had been appointed by [^{F10}NHS England] under regulation 23.

[^{F39}(6) Subject to regulation 27, the appointment of a person appointed as a CCG member in accordance with regulation 24 before 1st July 2022—

- (a) continues for such period as it would have continued if the clinical commissioning group had not been abolished, and

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- (b) as if that person were appointed as an integrated care board member in respect of each integrated care board whose area falls wholly or partly within the area of the clinical commissioning group in relation to which they were a CCG member.]
- (7) The following directions are revoked—
- (a) the National Health Service (Nursing Care in Residential Accommodation) (England) Directions 2007 ^{M12} which came into force on 1st October 2007;
 - (b) the National Health Service (Nursing Care in Residential Accommodation) (Amendment) (England) Directions 2009 which came into force on 1st October 2009 ^{M13};
 - (c) the NHS Continuing Healthcare (Responsibilities) Directions 2009 ^{M14} which came into force on 1st October 2009; and
 - (d) the Delayed Discharges (Continuing Care) Directions 2009 which came into force on 28th September 2009 ^{M15}.

Textual Amendments

- F10** Words in Regulations substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), reg. 1(1), [Sch. para. 1](#)
- F33** Words in reg. 32(1) inserted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), [209\(6\)\(a\)\(i\)](#)
- F34** Words in reg. 32(1) substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), [209\(6\)\(a\)\(ii\)](#)
- F35** Reg. 32(1A) inserted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), [209\(6\)\(b\)](#)
- F36** Reg. 32(2) substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), [209\(6\)\(c\)](#)
- F37** Reg. 32(3) omitted (1.7.2022) by virtue of [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), [209\(6\)\(d\)](#)
- F38** Reg. 32(4) omitted (1.7.2022) by virtue of [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), [209\(6\)\(d\)](#)
- F39** Reg. 32(6) substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), [209\(6\)\(e\)](#)

Marginal Citations

- M10** The Directions can be found at www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_106176.
- M11** The Directions can be found at www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_106178.
- M12** The Directions can be found at www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_078061.
- M13** The Directions can be found at www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_106179.
- M14** The Directions can be found at www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_106176.
- M15** The Directions can be found at www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_106178.

Changes to legislation:

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 39(9) inserted by [S.I. 2024/302 reg. 2\(5\)\(c\)](#)