
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

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.

[^{F1}(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

^{F2}(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 [^{F3}1st March 2018] to inform that decision;
- (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

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(ii) uses that assessment of needs to complete the Decision Support Tool for NHS Continuing Healthcare issued by the Secretary of State and dated [^{F4}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.

^{F5}(7A)

^{F6}(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 [^{F7}the Fast Track Pathway Tool] stating reasons for the decision.

[^{F8}(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

^{F9}(b)]

[^{F10}(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.]

(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—

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- (a) responsible for the diagnosis, treatment or care of the person under the 2006 Act in respect of whom [^{F11}the Fast Track Pathway Tool] is being completed, and
 - (b) a registered nurse ^{M1} or a registered medical practitioner ^{M2};
- ^{F12} ...
- “healthcare profession” means a profession which is concerned (wholly or partly) with the physical or mental health of individuals [^{F13}(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 [^{F14}an adult’s needs for care and support] under [^{F15}section 9 of the Care Act 2014 (assessment of an adult’s needs for care and support)].

Textual Amendments

- F1** 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)**
- F2** 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)**
- F3** 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)**
- F4** 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)**
- F5** 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)**
- F6** 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)**
- F7** 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)**
- F8** 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)**
- F9** 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)**
- F10** 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)**
- F11** 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)**

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- F12** 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)**
- F13** 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)**
- F14** 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)**
- F15** 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

- M1** See Schedule 1 of the [Interpretation Act 1978 \(c. 3\)](#) for the definition of a registered nurse.
- M2** See Schedule 1 of the [Interpretation Act 1978 \(c. 3\)](#) for the definition of a registered medical practitioner.

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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\(5\)\(c\)](#)