NHS
Telford and Wrekin
Clinical Commissioning Group

29th May 2013.

Formal Response from Telford and Wrekin Clinical Commissioning Group to Health and Adult Care Scrutiny Committee Report on Continuing Healthcare.

Introduction

The Telford and Wrekin Clinical Commissioning Group (CCG) has received a report from the Telford and Wrekin Health and Adult Care Scrutiny Committee in relation to NHS Continuing Healthcare (CHC) in Telford and Wrekin. This report was formally presented to the Health and Wellbeing Board on 15th May 2013.

A draft response to the report was prepared in consultation with the Regional Lead for CHC from NHS England and the CCG's solicitor, to enable full consideration and discussion at the CCG Governance Board's public meeting on 14th May 2013.

The CCG welcomes the Scrutiny Committee's interest in this area and has given full consideration to the contents of the report as all are keen to ensure that that potentially vulnerable individuals receive the care required to meet their needs.

The CCG is though, very concerned about the content of this report, in that it would appear the Committee do not appreciate the legal framework that the CCG is required to operate within, failure to do so could result in Judicial Review.

Furthermore, the Committee has referred to unsubstantiated issues and evidence in the report that the CCG previously had not been informed about and is still unaware of, such as staff and patient concerns.

The CCG considers this report is presented in a one - sided manner by the Committee without due consideration given to submissions by the CCG.

The CCG is clear that the National Framework for Continuing Healthcare (2012) is appropriately adhered to and implemented in the spirit for which it is intended. The CCG has assurance of this via several mechanisms:

- external peer review of 45 cases selected by the LA
- review of challenged cases at the Independent Review chaired by NHS Midlands and East.
- Internal audit of CHC carried out in August 2012- "significant assurance" given

The CCG, as a new organisation, has given a real commitment to work with the Local Authority (LA) and others to build effective working relationships.

2.0 The Content of the Report and the CCG's response

2.1 - Page 2

The historical description of how continuing healthcare (CHC) has developed is accurate within the introduction of the report. The Government sought to try to apply a consistent framework across the NHS for the consideration of when the NHS should pay for a person's care.

The National Framework for Continuing Healthcare was introduced in 2007, revised in 2009 and again in 2012.

CHC process is about whom pays for a persons care. It's not about "cost shunting" to either the Local Authority or the individual.

In simple terms, the process involves a holistic view of an individual's overall needs to determine their health needs and their need for personal and social care. (Personal care being washing, dressing, mobility and moving, nutrition, elimination needs, maintaining a safe environment.)

This process of review will lead to a determination of whether a person's needs are primarily for health care (and not personal and social care). If so, then the NHS is responsible for meeting the entirety of their care costs - including those that support social care activities to meet that persons assessed needs.

2.2 - Page 3

Reference is made of the report to Funded Nursing Care (FNC) being:

"applied to each nursing home resident whether or not they had been assessed as meeting CHC criteria"

This is factually incorrect- each person is entitled to have a CHC assessment if their level of need, as identified on the screening tool, triggers the need for a full assessment. CHC eligibility should be considered first, then if criteria not met Funded Nursing Care to be considered. FNC is not an automatic right if an individual is placed in a nursing home, but awarded when the level of assessed needs are duly considered.

2.3 - Page 7

"CHC Funding in Telford and Wrekin"

The national benchmarking across England commenced in 2009/2010. At this time guidance on data submission was unclear and PCTs did not readily have information in the required format to submit. This resulted in widely different data sets being submitted across the country. All reports from this data still carry with them a "health warning".

What the PCT did at this time, was to realign expenditure that was previously within CHC expenditure to the appropriate budget line e.g. supports for

patients receiving NHS funding as a result mental health formal detention (section 117) was removed from the CHC expenditure and moved to the PCTs mental health lines. In essence the PCT continues to fund this care for patients but not from the CHC budget. In the accounts this realignment of expenditure will demonstrate a reduction in CHC funding but an increase in the resulting PCT spend on mental health care.

A further example is evident in the increase of specialist placement costs:

2009/2010	2010/2011	2011/2012	2012/2013
£1.356m	**£1.744m**	**£1.724m**	**£1.85m (FOT)**

Therefore the reported 73% reduction in CHC expenditure is not an accurate reflection of PCT (now CCG) expenditure in relation to ongoing care funded by the NHS. Furthermore, this figure does not reflect additional funding given to the LA to support care of individuals in Telford and Wrekin.

The point made at the meeting was that comparisons are not easy to make across the country as each CCG will commission services that support individuals in a different way e.g. some areas fund 24/7 community nursing teams and have a resultantly low incidence of CHC in their population.

It must be made clear that Graph 1 within the report (page 11) is incorrectly referenced and as such is misleading. The graph relates to the number of individuals funded per 50,000 population and not to the “comparative funding rates” as referenced. It must be noted that the NHS does not cap the cost of care if a patient is awarded NHS CHC funding, but care is funded aligned to assessed need.

2.4 - Page 8

The numbers include all eligibility decisions made by clinicians and Multi disciplinary teams accepted by the CCG. This will include those individuals who received care for a short period e.g. via the fast track process and who may have subsequently died, as well as those in ongoing receipt of funding.

2.5 - Page 9

The PCT and now CCG have supported the Local Authority with the costs of care for individuals through use of additional funding in this and previous years. The LA then applies its Fair Access to Care criteria to determine whether individuals are required to funding their own care or not. There is no requirement on CCGs to support LAs in this way; in fact the NHS cannot lawfully pay for social care unless the individual is in receipt of CHC.

External peer review was requested by the LA and jointly agreed terms of reference and the process for the review were produced. The cases reviewed were selected by the LA and the review team reported appropriate application of the NHS national framework. The LA subsequently stated this was flawed. This comment is not agreed by the CCG.

2.6 - Page 10

Shropshire Partners in Care letter has not been shared with the CCG. It must be noted that all nursing homes/companies are businesses and do not provide services free of charge. Each home is required to ensure that it can meet the needs of each patient placed with it within the quote agreed – there is a process in place that should the needs of an individual change (which may result in higher costs) then a request for a clinical review can be made. The CCG works with SPIC to agree contract processes and costs and are happy to discuss concerns should they arise.

As reiterated at the meeting with the Health and Adult Care Scrutiny Committee there has been no agreed change in policy that would warrant a consultation process; the PCT was responding to changes in the revised national framework which was consulted on nationally.

2.7 - Page 11

Issues identified by the Committee

The CCG wishes to reiterate that patients and families are engaged in the process of assessment aligned to the national framework and practice guidance wherever possible.

The principles of the Mental Capacity Act need to be applied before discussing personal health issues with family members and this is explained to individuals when consent is taken for the process to begin.

National CHC information booklets are used and staff in the hospitals and community nursing teams are encouraged to attend training, which the CCG provides, to help them understand their roles in the assessment process.
The capping of care costs is not an issue for the CCG. The CHC process takes no account of an individual's ability to pay. This is carried out by the LA.

2.8 - Page 12

The Executive Nurse for the CCG would want to know about instances where the Complex Care Team, or indeed any member of CCG staff were considered to be anything but caring and compassionate. There is no evidence held by the CCG to suggest this is a problem, however if concerns were formally raised this would be fully investigated by the CCG.

Issues related to the LAs fee structures with providers are not for the CCG to comment on. Top up policies are not the business of the NHS. It must be pointed out that the LA has a duty to promote advocacy services and provide support for those individuals going through these complex health and social care process at a time when they are often most vulnerable.

The CCG request that actions for the LA are transparent within the recommendations of the Committees report.

2.9- Page 13

Anecdotal information cannot be verified by the CCG. We are happy to explore specific incidents should the need arise, to ensure families and patients are clear about the processes.

2.10 - Page 14

The Full assessment process

The CCG strongly disagrees with the Committee's statement that the assessment process is "*fundamentally flawed*".

The CCG process follows the National framework and practice guidance and incorrect application has not been demonstrated on review via various means.

2.11 - Page 15

"Multi disciplinary approach to the full assessment for CHC Funding"

The CCG is happy to reconsider how non NHS professionals can be more engaged in this assessment process, ensuring there is no conflict of interest.

The CCG Leads were very concerned to learn that LA staff felt their views were not considered in the decision making process and reportedly feel disillusioned and pressured by CHC assessors. No complaints or issues have been formally raised with the PCT or the CCG and therefore formal investigation of this matter has not taken place to date. Should staff feel this is the case there is a process for them to report to the CCG Leads. The LA has responsibility to follow process to support its staff in such circumstances and open dialogue in the event of such issues should take place to ensure effective working relationships. It is suggested that this matter is formally raised by the LA with the CCG Executive Nurse to ensure all staff are supported at work. The LA should also make clear to their staff what their role is in the MDT process, and if they cannot advocate on behalf of the social needs of the individual they are not effectively representing the needs of their client.

2.12 - Page 16

Comments related to the peer review process are not accepted by the CCG as previously discussed.

The CCG lead Executive has been working effectively with the LA Lead on the planning of a workshop to bring the 2 teams together to facilitate improved relationships.

2.13 - Page 17

"Other issues"
As part of the work across the health and social care economy the CCG is committed to improving discharge processes with all partners, to help improve

flow in and out of hospital. The CCG has agreed to work with partners to review the documentation in place.

The CCG is not aware that the full assessment "will take 16 weeks to complete" this is not agreed.

2.14 - Page 18

"Re-assessment"

The CCG follows the nationally set timelines for review of individuals and their eligibility status. As previously discussed providers or patients and their families may request a reassessment outside of these timelines should needs change.

The current agreed process between both the LA and the PCT now CCG (that was shared with the Committee) follows the same process for reassessment as for initial assessment and unilateral removal of funding is not in place.

This LA is one of few LAs that always provides a Social Worker for every case, whether it is a first or reassessment. This is agreed as best practice nationally, however the LA should ensure that their representatives in this process are clear of their roles and responsibilities in terms of decision making and raising concerns with their managers, via the disputes process when they do not support the decision made by the MDT of which they are an integral part.

2.15 - Page 19

Well managed needs require careful consideration in the assessment process and the evidence collated to support this should be fully considered by the MDT in making their recommendation to the CCG. Nationally, this is recognised as a complex issue and it is important that the assessors gain a full picture of an individual's needs when reaching their professional decision on eligibility. The care homes documentation will be fully considered as part of the assessment and review processes.

It is important to stress that the eligibility for CHC is needs based and not based on a diagnosis whether this be cancer or dementia. The Alzheimer's Society has been lobbying at a high level in this area. At present, a persons needs will form the basis on which the decision of eligibility is made and most of the time the person will require considerable levels of personal and social care to meet their needs as opposed to complex health care support (which is usually in the form of GP, Community Nurses and Mental Health Specialists which are already commissioned by the NHS).

"Appeals and reviews"

The CCG cannot comment on anecdotal information in this format but are willing to speak with individuals who feel they wish to raise concerns.

The CCG has an appeals process and advocacy signposting is integral to this. The CCGs Complex Care recognises this is a complicated and often distressing process and aim to tailor their support with the needs of the individual and/or their family. There are established relationships with Age UK in this process.

2.16 - Page 20

The LA does have a responsibility to support individuals who do not meet eligibility criteria. They can carry out a financial assessment and carer's assessment and can signpost to advocacy services such as Age UK as appropriate. The CCG team do sign post to such advocacy services as part of the assessment process and are always willing to help.

"Effect on LA Care services, Shrewsbury and Telford Hospital Trust, Shropshire Community NHS Trust, Care/Nursing Homes and Domiciliary Care Services"

The LA position on expenditure and austerity measures is for them to plan and is challenging all Local Authorities across England at this time. The CCG has committed to working together where this is lawful to do so to support the needs of the Telford and Wrekin population.

Transitional support from CCG to LA has been provided by both the former PCT and now the CCG as previously discussed; this has been in place to support the LA there is no requirement on the NHS to do this and the CCG will not to be able to continue this indefinitely without challenge from NHS auditors, as recognised by the Committee. The NHS cannot lawfully pay for social care unless as part of an individuals continuing healthcare package.

The CCG is very concerned to read in the report that LA staff feel that their input is not valued. The LA has a duty to formally raise this with the CCG in order for investigation of this claim to be carried out. The LA is failing its staff if they do not support their teams and the CCG.

2.17 - Page 21

Nursing Homes beds have increased in T&W over the past 3 year period therefore there is no reason to suggest that the market is unsustainable. The LA is the biggest user of Nursing home beds and therefore their actions to sustain this should be proactive in nature.

The CCG works on a daily basis with the Hospital Trust to facilitate safe and appropriate discharges and have over the winter period commissioned additional nursing home beds and packages of care in T&W to help improve the flow, working very successfully with LA colleagues on this process

Problems with the delivery of care should be raised with the CCG if the care is NHS funded, or if any vulnerable person is subject to harm via the safeguarding process. Substandard care should be reported to the LA who manages the provider contracts with those who are supported with social care

funding. The CCG and LA work together to promote all aspects of adult safeguarding.

2.18 - Page 22

The CCG is clear that there has been no policy change that would warrant a public consultation in relation to CHC. Each case is individually assessed using national framework and practice guidance. The revised National framework has not significantly changed the eligibility criteria and therefore there is no requirement for the CCG to consult with the public on its use of a national process.

Conclusion

The Committee's view that the assessment process is "fundamentally flawed" is not accepted by the CCG however the CCG is committed and willing to work constructively with the LA teams to re-establish working relationships and processes.

Similarly, there is a willingness to engage with patient groups on explaining processes if required.

Recommendations

The CCG should again point out that that this is a nationally prescribed process and it is not the HoSCommittee's remit to change this - in fact this could lead to a judicial review.

Practice in other areas can be shared to demonstrate best practice if required. It must be stated that the decision of individual's eligibility for NHS CHC is one made by the NHS/CCG following the Department of Health framework.

The CCG is clear there is no requirement for a public consultation on CHC within Telford and Wrekin as this process has already been followed as part of the National Framework and its subsequent revisions by the Department of Health. The CCG is merely following the national process, as it is required to do.

CCG Response to the Recommendations

1. Involving patients and families

Use of "patient opinion" website is welcomed if individuals chose to use this. The CCG PALS service and complaints processes are available for use if required.

2.& 3. Advocacy

Use of advocacy services before checklist may slow down the hospital discharge provision. In most referrals/cases the checklist is completed by a Community Nurse, a Hospital Nurse or Social Worker- outside of the control of the CCG. The CCG can ensure that all referrers are aware of this suggestion through training; however there is a

requirement to carry out the assessment in a timely manner within 28 days therefore this should be timely. This may not be practical.

4. MDT working

The CCG has committed to the workshop approach. The LA must ensure their representatives are aware of their roles and remit within the decision making process. There is space within the national assessment tools to record differences of opinion amongst professionals. Social workers should ensure they take this opportunity if they do not agree with the recommendation made.

5. The names of all professionals are recorded within the National Framework tools.

6. Joint training has already been agreed in the form of a workshop event

7. SPIC to work with CCG on training of care workers.

8 Initial Checklist
The CCG collates this information on its database- already in place.

9. The CCG carries out training for those who complete checklists. Further advocacy can be included in training programmes as required.

10. The Process between SaTH and the CCG for completion of checklists/IHA will be considered as part of health economy discharge planning work that is already planned.

11. Assessment Process.

The CCG cannot change the national framework and develop its own criteria. This is outside the law and would lead to judicial review.

12. The use of panel for decision making constituted in the recommendations is contrary to the guidance in the National framework. This recommendation is not agreed by the CCG or aligned to the national process. The decision on eligibility is a CCG decision based on the recommendation from the individual's MDT.

13. The disputes process will be jointly reviewed by both CCG and LA lead Officers to ensure suitability and then promote use when required.

14. Reassessment Process

The National framework and practice guidance should be followed. There is no requirement to have operational local polices on well managed needs.

15. Appeals Process

The CCG has a database that is in use to store all information.

16. **Advocacy signposting** is included in the CCGs letters to individuals. Providers, such as Age UK, should inform others who use their services of what they have to support them. The process is not a legal one and there is no requirement for legal advice. The CCG treats each case the same regardless of legal representation or not.

17. **The CCG is obliged to have a process** in place to reconsider cases that are appealed. There is no requirement for this to be an independent review at the first stage of appeal. However, the CCG has a Nurse from a Provider Trust – unrelated to the CCG to chair its panel to provide external challenge and scrutiny of its decisions. The second stage in the appeals process is that the individual can request an independent review carried out by the Commissioning Board (previously the Strategic Health Authority).

18.&19. **Funding**

The option to consider joint packages of care has always been available and where appropriate in line with practice guidance the CCG will consider. The CCg though cannot agree to moving funding to national and regional levels as funding decisions are based on individual cases.

20. **The CCG is willing to provide a report to the Health and Wellbeing Board** as required.

21. **For LA to address**

22. **For LA to address**

23. **CCG database has this information.** Not age based though as eligibility is not age but needs based.

24. **Operational processes are to be refreshed.**

Closing comments

The report has little regard for the national process laid down for NHS organisations to adhere to.

There is little regard to the report submitted by the CCG to the Committee prior to its meeting Committee or latterly in submissions.

The CCG considers the report is heavily focussed from the LA perspective and the CCG is concerned that is not usually the stance of a HoSC.

The Committee should note the genuine commitment made by the CCG to progress improved working relationships with the LA, Providers and not withstanding patients and families to ensure an equitable provision.

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Telford and Wrekin CCG

29th May 2013