

Equality and Human Rights
Commission
Fleetbank House
2 - 6 Salisbury Square
London
EC4Y 8JX

Bevan House
Barony Court
Nantwich
Cheshire
CW5 5RD

06/04/2018

Sent by email only

Tel: 01270 275303

www.southcheshireccg.nhs.uk

www.valeroyalccg.nhs.uk

contact Karen Smith :
karensmith12@nhs.net

Dear Sirs

Re: CHC Policy Challenge

We respond on behalf of the following 4 CCGs ("the CCGs").

- NHS Eastern Cheshire CCG
- NHS South Cheshire CCG
- NHS Vale Royal CCG
- NHS West Cheshire CCG

We are writing to respond to your letter dated 19 March 2018 relating to legality of NHS Continuing Healthcare ("CHC") Policies adopted by our CCGs.

The CCGs have carefully considered the points raised by you on the 19 March 2018. That letter followed previous correspondence in which the EHRC suggested that policies adopted by our CCGs concerning the allocation of resources to support NHS patients who are entitled to CHC may not be lawful. The particular focus of your concerns was the extent to which CCGs were required to take personal circumstances of the patients into account in deciding whether to allocate additional resources to enable patients to remain in their own homes.

You have also referred in your letters to the revisions to the "National Framework for NHS Continuing Healthcare and NHS Funded Nursing Care" which will become operational from 1 October 2018.

Whilst we are not accepting that our policy is required to change to a) comply with the new Guidance or b) the need to comply with the legal duty to act in compliance with the EHRC rights of NHS patients, the CCGs consider that a combination of your letters and the new Guidance means that it would be a sensible time to review their policies.

The CCGs are also of course aware of their duties under s. 149 of the Equality Act 2010. They will carefully consider the extent to which any policies will have an impact on NHS patients with protected characteristics as part of the review process. The CCGs confirm they will give due regard to the impact of any proposed policies on their equality duties to all NHS patients for whom they have NHS commissioning responsibility (which will include but not be limited to those who may seek additional CHC funding to remain in their own homes).

In the interim period, pending the fuller review, the CCGs will with immediate effect revise its existing policy by amending section 7.2 of its current policy, and removing the underlined section as outlined below.

7.2 The duty to fund services does not extend to funding for the wide variety of different, non-health and non-personal care related services that may be necessary to maintain the patient in their home environment. Should the Commissioner identify that such basic needs are not going to be (or have not been) properly met, the Commissioner may find that a 'care at home' package is not or is no longer appropriate. The cost of funding a care at home package of care will not usually be met if it exceeds more than 10% over the cost of providing care within a care home setting. If this occurs the following options arise:

1) Care package in the Care Home setting is accepted.

2) If not accepted, then the individual will be declining the offer of a funding for a care package.

Whilst the CCGs do not accept that their existing policies are necessarily unlawful on the grounds advanced by the EHRC, the review will provide an opportunity to reconsider the issues in the round. That consideration will include careful account of the views expressed by the EHRC. The CCGs propose to keep the EHRC informed of the progress of this review and will provide an opportunity for the EHRC to feed in any views you wish to provide to the review process.

We trust that the actions and commitment outlined by the CCGs address the immediate concerns raised by the EHRC and will enable you to reconsider any further proceedings at this time.

Yours sincerely,



Service Lead
Continuing Healthcare and Complex care

Eastern Cheshire CCG
West Cheshire CCG
South Cheshire CCG
Vale Royal CCG

Cc:

Clare Watson, Chief Officer, *NHS South Cheshire CCG, NHS Vale Royal CCG*
Alison Lee, Chief Executive Officer, *NHS West Cheshire CCG*
Jerry Hawker, Chief Officer, *NHS Eastern Cheshire CCG*
Tracey Cole, Executive Director of Commissioning, *NHS SCCC & NHS VRCCG*
Paula Wedd, Director of Quality and Safeguarding, *NHS WCCCG*
Alex Mitchell, Chief Finance Officer, *NHS ECCCCG*