

# **NHS Funded Continuing Healthcare**

**Independent Review Panels - Public Information**



**March 2013 (revised)**

***Please read this carefully as it includes important information about the independent review panel (IRP) process***

### **Remit of the Independent Review Panel**

The Independent Review Panel can only:

- Look at the procedure followed by a Clinical Commissioning Group (CCG) or Commissioning Support Unit (CSU) or an NHS Trust in reaching a decision about a person's needs for NHS continuing healthcare (i.e. primary healthcare need);
- Look at the application of the National Framework (and/or former SHA eligibility criteria) by a Clinical Commissioning Group (CCG) or Commissioning Support Unit (CSU) or an NHS Trust in relation to the decision about a person's eligibility for fully funded NHS continuing healthcare;

### **You Should be Aware That the Panel Cannot**

- Consider challenges to, or make rulings against, the lawfulness of the National Framework for NHS continuing healthcare or NHS funded nursing care (applicable to claim periods after 1 October 2007) - these would need to be sent to the Department of Health who would respond within their complaints procedures
- » Consider challenges to, or make rulings against, the lawfulness of former SJHA eligibility criteria (these would apply to cases for the period 1 April 1996 to 1 October 2007)
- Review challenges to decisions relating to claims for funding prior to 1 April 1996 because there was no requirement for NHS organisations to have eligibility criteria in place prior to that date
- Review challenges to decisions relating to claims for funding up to 1 April 2004 as the period for such claims expired in November 2007 unless exceptional circumstances apply
- Deal with complaints regarding decisions made by the local authority/social services departments, e.g. policies for means testing; quality of information about care homes; policies regarding the sale of assets in order to fund care - these should be sent to the relevant local authority who will respond within their complaints procedures
- Deal with complaints about the length of time taken to process your claim for NHS continuing healthcare - these should be sent to the relevant CCG who will respond within NHS complaints procedures
- Deal with complaints about the type and location of any offer of NHS funded continuing care services - these should be sent to the relevant CCG who will respond within NHS complaints procedures

- Deal with complaints about the content of any alternative care packages which have been offered - these should be sent to the relevant CCG/CSU who will respond within NHS complaints procedures
- Deal with complaints about the treatment or services a patient may be receiving or has received - these should be sent to the relevant CCG/CSU, or NHS Trust providing the services, who will respond within NHS complaints procedures

## Sharing of Patient Information

The NHS Commissioning Board (NCB) regional teams have to be careful that they comply with all the legal rules that govern when we can share patient information. We want to be sure that we are able to fully consider all relevant information and share this with families who may be seeking a review, whilst taking care that we do not share patient information inappropriately. The NHS Commissioning Board have adopted the following policy for sharing of patient information in relation to NHS continuing healthcare:

### 1. For individuals lacking capacity and therefore unable to take their own decisions

If you are acting on behalf of the patient and hold an *Enduring Power of Attorney registered with the Court of Protection (prior to 1 October 2007)*; or hold a *Lasting Power of Attorney (post 1 October 2007)* you may in general exercise the patient's right of access under the Data Protection Act 1998 on behalf of the patient.

The NHS Commissioning Board will need to have a copy of this documentation before records are shared.

Where there is no right of access to patient records, the NCB may disclose some information on a voluntary basis. Any such disclosure must, however, take into account the duty of confidence owed to the patient.

Any information disclosed on a voluntary basis will be limited to the minimum information necessary for you to contribute usefully to the review procedure.

### 2. For deceased patients

Where you are the personal representative of the deceased or another person with a claim arising out of the patient's death, you have a right of access to information relevant to your claim under the Access to Health Records Act 1990.

The NCB will need to have a copy of your authorisation to act on behalf of the patient and disclosure of any information will be subject to the following limitations:

- The NCB must take into account the duty of confidence owed to the patient - this exists even if the patient has died. Therefore registered Power of Attorney must be provided with your application regardless of whether this has previously been supplied to the CCG/CSU.
- The NCB is under obligation to ensure that disclosure of patient information is not likely to cause serious harm to any other persons (for example, health professionals involved in the patient's care and treatment)

- The NCB must also consider whether the patient would have wanted or expected information to be disclosed to any other persons. This safeguard forms part of the Access to Health Records Act 1990.

In all cases, the NCB will seek the opinion of one of its senior clinical governance staff members to ensure that any records disclosed comply with the Data Protection Act 1998 and the Access to Health Records Act 1990.

### **3. For individuals with capacity**

Where an individual has capacity to make their own decisions, they have the right to be consulted about what information they want shared with relatives/advocates who may be supporting them. The individual can specify they do not want all information shared.

### **4. Third party information**

The panel will have access to all relevant documentation relating to the case under review and this may include information provided by third parties. Please note that the NCB and panel may not be in a position to share the totality of this documentation where third party information is held. This can include care home records, GP notes and records from the local authority (social services).

The NHS has a duty to protect the privacy of the individuals named in the records but also has a duty, as the data controller, to consider whether it is reasonable to disclose the records. Any such disclosure will be the minimum information necessary to satisfy the purposes of the disclosure, e.g. to enable someone representing an applicant to contribute usefully to the review process for NHS continuing healthcare.

If the NCB considers it inappropriate to release certain third party records as part of the review process, the individual is entitled to request copies from the originating organisation.

### **5. Additional information produced on the day**

If any additional information that you have not shared with the CCG/CSU is presented to the Chair on the day this may result in the IRP being postponed to a later date while the panel consider the evidence. Therefore, it is in your best interest to send all relevant information you feel could influence the outcome of the case to the NCB at least seven days before the IRP is due to take place. This rule also applies to the CCG/CSU representative who must share all their information with you before the IRP takes place. In providing additional information please take account of paragraph 3 above.

### **6. IRP procedure - what you can expect**

It is expected that the independent review panels follow a similar format. This will include:

- CCG/CSU and family representatives will be invited into the meeting at the same time and introduced to all those in the room. The panel will consist of a Chair; one representative each of an NHS and local authority not involved with the case. There may also be a clinical advisor present.

- The Chair will invite the patient and/or family representatives to set out the reason for their request for independent review of the CCG's decision and to make any opening remarks they feel appropriate. The Chair will then ask the patient/family to give their view on their relative's health needs, concentrating on the decision support tool and domains.
- The Chair will invite the CCG/CSU representative to present their case, making sure they are equipped to comment on each domain and can respond to some of the family's comments.
- The Chair and panel members may then choose to question either party so that they have clarification on any points that may be of concern to them.
- The CCG/CSU and the individual/family may ask questions of one another to clarify their understanding of the other party's position and to enable them to respond appropriately.
- At conclusion of the above process, the Chair will thank the CCG/CSU representative and family representatives for attending, set out the timescale for issue of the panel report and ask both parties to leave the room.

## **7. Attendance by solicitors**

Some families do appoint a solicitor to act as an advocate for them at IRP. It is important for them to note that the independent review panel meetings are not a legal process, or quasi judicial hearing. Chairs of panels will not allow proceedings to be drawn into discussions on points of law.

## **8. Role of the clinical advisor**

Some panels may have a clinical advisor present. Their role is to:

- Advise the IRP on the original clinical judgments and how they relate to the National Framework. They should not provide a second opinion on the clinical diagnosis, management or prognosis of the individual.
- Examine the information provided in the case file and through sensitive data.
- Panels may also wish to seek the advice of a Clinical Advisor to help understand the wider nature of conditions and how different needs may interact.
- Ensure that no significant clinical issues have been overlooked by the panel during their deliberations.
- Provide any other observation on the holistic clinical care needs associated with the condition.
- Ensure no significant clinical issues have been overlooked.