

# CHOICE POLICY

A joint policy between

Ealing Council – Adults Services  
London North West Healthcare NHS Trust  
NHS Ealing Clinical Commissioning Group

UPDATED APRIL 2015

## Policy Control

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| <b>Policy Application</b>            |   |
| <b>Related Policies</b>              |   |
| <b>List of staff for circulation</b> | Jane Batalona – Legal Services            |

## **Introduction**

This document sets out the jointly agreed policy for facilitating a patient's discharge from Ealing Hospital - part of London North West Healthcare NHS Trust - when the individual concerned is unable to return to live in their own home.

## **Purpose**

The purpose of this policy is to set out Ealing Council's, London North West Healthcare NHS Trusts and NHS Ealing Clinical Commissioning Group's joint approach to the arrangements for discharge of all adults who are assessed as being clinically fit for discharge from a hospital bed in Ealing or Clayponds Hospitals but require specialised accommodation to meet their needs.

## **Principles**

The following principles will govern the policy;

- a) All patients / customers will be treated fairly, openly and without discrimination
- b) All decisions under this policy will be taken in line with the legislation and guidance listed in Appendix 1
- c) Decisions by the Council will be guided by the responsibilities of the Council under the Care Act 2014 and taken following an assessment of the needs of patients and having due regard to national social care eligibility criteria
- d) Decisions made by NHS Ealing CCG will be guided by the responsibilities of CCG's under the National Health Service Act 2006 and the National Framework for NHS Continuing Healthcare and NHS funded Nursing Care November 2012 (revised) guidance
- e) All efforts will be made to fully involve the patient, their family and carers in both the assessment of need and the decision making processes through the use of effective and timely communication
- f) Patients, their families and carers will be informed of their right to challenge a decision made by each of the partner agencies under the relevant process of the organisation
- g) In this policy "other people with an interest in the patient's welfare" includes relatives, carers, Independent Advocates, Independent Mental Capacity Advocates, Court appointed Deputies, people holding Enduring or Lasting Power of Attorney and any person who the patient has indicated that they would like to be consulted
- h) Decisions by the partner organisations will be taken, having regard to the views of the patient, their family and carer, or advocate within reasonable timeframes so as not to result in a hospital bed being occupied inappropriately

## **Assessment**

There will be a comprehensive assessment approach that is person centred and multi-disciplinary and includes a carer's assessment where appropriate.

Patients will be screened and when appropriate assessed for eligibility for NHS Continuing Healthcare funding by the treating Multidisciplinary Team (MDT). If a person does not qualify for NHS Continuing Healthcare the CCG will consider its wider responsibility to meet health needs either by directly commissioning services or part funding care and support with the Council.

Services may be provided to a person after they have left hospital for a limited period of time to assist them to maintain or regain the ability to live independently prior to making decisions about their needs for long term care arrangements. During the discharge planning process, all patients will be assessed to establish their level of recovery and whether they may benefit from 'intermediate care services' aimed at preventing or delaying the development of needs for long term care and support before longer term decisions are made. In these circumstances patients may be offered a short period of community rehabilitation. According to their level of needs, this may be offered within their own home or in a choice of bedded inpatient rehabilitation units.

## **Accommodation for patients who are eligible for Council funding**

The care and support planning process will identify how best to meet a person's needs. If a person is assessed as needing one of the following types of accommodation

- residential or nursing care home accommodation;
- supported living accommodation;
- shared lives scheme accommodation

Then they have the right to choose between different providers of that type of accommodation subject to certain conditions being met. The choice is between different settings not different types. The conditions are:

- a) The accommodation is suitable to meet the persons' assessed needs.
- b) The accommodation would not cost Ealing Council more than the persons personal budget (the "usual cost") - having due regard to the assessed needs of the person
- c) The service provider is willing to provide the service subject to Ealing Council's usual contractual terms
- d) The accommodation is confirmed as available within a reasonable timeframe to facilitate discharge from the hospital setting

Five working days from the decision that the specified accommodation is required would be viewed as a reasonable timeframe unless there are exceptional circumstances.

Where possible all patients/families will be given up to three services to view. Where the patient and/or family do not like the accommodation offered and a vacancy is not available in the service of their choice then the patient will be placed in one of the available sourced options pending a vacancy arising in the preferred accommodation and subject to an agreement to fund from Ealing CCG / Ealing Council.

### **Third party top ups**

People may choose to enter accommodation that is more expensive than the amount identified for the provision of the accommodation in the personal budget. If so an arrangement will have to be made as to how the difference in cost will be met.

The Council will make placements in more expensive accommodation provided the person is able to demonstrate that a third party is able and willing to make-up the difference between the service providers rate and the personal budget (“top-up”). In exceptional circumstances it is lawful for the patient to pay a “top-up” themselves.

The person paying the “top-up” will be required to enter into a formal agreement with the Council.

*Reference must be made to the Council’s ‘customer and third party top up’ guidance when proposing or setting up a top up payment arrangement*

### **Decisions**

The initial service decision on the part of the Council is the responsibility of the Social Services Manager, having taken into account the recommendations of the MDT. Decisions about permanent arrangements are made following consideration by the relevant Panel and will not slow down the discharge process.

Decision making will be supported by all relevant, accurate and up-to-date documentation, information and assessments. Any decision made on behalf of a patient who has been assessed as lacking capacity and needing placement in specified accommodation will be made in accordance with the Mental Capacity Act 2005 and Best Interests guidelines.

Service provision decisions will be free from discrimination and decisions will be supported by clear evidence on how they are reached, which can stand up to challenge. All decisions by the Council regarding a patient’s future placement will be taken using the guiding principle of the patient’s individual needs. Where a decision is made not to offer a placement in a patient’s preferred choice of accommodation

the reasons will be communicated in writing to the patient or their representative and recorded in the ward and social care files.

## **Ealing CCG funding decisions**

Ealing CCG's funding decisions will be carried out in line with the "National Framework for NHS Continuing Healthcare and NHS funded Nursing Care, November 2012 (Revised)" and in accordance with its broader responsibilities under S3 and S3A of the NHS Act 2006.

## **Placements for patients who are eligible for full NHS Continuing Healthcare funding**

Ealing CCG has a responsibility to meet the assessed healthcare needs of the patient and will offer, when possible, three placement options. Ealing CCG will ensure that the views of the patient, their family and carers are taken into account when offering placement options.

The identified placement must meet legislative requirements under CQC regulations as well as meeting the patient's healthcare needs.

For each proposed placement Ealing CCG will consider the most recent CQC inspection report, intelligence concerning adult safeguarding and other relevant local knowledge that is pertinent, before any agreement is made to commission the placement.

## **Appendix 1**

In developing this policy the following legislation and guidance has been considered;

### **National Health Service Act 2006**

Under S3(1) a CCG must arrange for the provision of hospital accommodation, medical, ophthalmic, nursing and ambulance services to such extent as it considers necessary to meet the reasonable requirements of patients for whom it has responsibility.

Under S3A each CCG has the power to arrange for the provision of such services or facilities as it considers appropriate for the purposes of the health service that relate to securing improvement in;

- a) The physical and mental health of persons for whom it has responsibility, or
- b) The prevention, diagnosis and treatment of illness in those persons

### **Care Act 2014**

The care and support planning process will determine what type of accommodation will best meet the person's assessed / eligible needs. If that is in a care home, shared lives or support living placement then the person will have a right to choose the particular service provider or location for that type of accommodation, subject to certain conditions.

### **Mental Act 1983 and Code of Practice (revised 2015)**

The specified accommodation is being provided under Section 117 of the Mental Health Act 1983

### **Data Protection Act 1998**

Data Protection issues have been considered with regards to this policy. The parties to this joint policy have completed an Information Sharing Agreement under the Over Arching Ealing Information Sharing Agreement.

### **Human Rights Act 1998**

The Human Rights Act 1998 makes it unlawful for public authorities to act in a way that is incompatible with a Convention right.

Article 8 has been particularly considered with regards to this policy. Proportionality has been identified as the key to the compliance with Article 8. This means striking a fair balance between the rights of the individuals and those of the rest of the community. There must be a reasonable relationship between the aim to be achieved and the means used.

## **Equality Act 2010**

Section 149 requires public bodies, in the exercise of their functions to pay due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Act, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation. Compliance with the duties in this section may involve treating some persons more favourably than others.

## **Mental Capacity Act 2005 and Code of Practice**

The Mental Capacity Act 2005 has been considered with regards to this policy. The Act provides a statutory framework to empower and protect vulnerable people who are not able to make their own decisions. It makes it clear who can take decisions, in which situations, and how they should go about this. It enables people to plan ahead for a time when they may lose capacity.



## **Appendix 2**

### **The principles guiding discharge arrangements**

#### **Health factors**

- a) The patient is assessed by the responsible MDT as being fit for a safe discharge from hospital
- b) The proposed placement and support plan can meet the assessed health and physical care needs of the patient
- c) The proposed placement and support plan will support the patients future health and physical well-being
- d) The proposed placement and support plan will deliver any assessed rehabilitation needs of the patient

#### **Social factors**

- a) The proposed placement and care and support plan meets the assessed care and support needs of the patient having regard to their desired outcomes and the importance of promoting their wellbeing.

#### **Financial factors**

- a) The cost of the placement is within the amount of the persons personal budget and which the Council usually pays for similar levels of need