NHS
Liverpool
Clinical Commissioning Group

NHS Liverpool Clinical Commissioning Group
Policy for Personal Health Budgets
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In the event of any changes to relevant legislation or statutory procedures this policy will be automatically updated to ensure compliancy without consultation. Such changes will be communicated.

Version Number	Type of Change	Date	Description of change
V2.0	Edit	19.04.2022	Change to the payment process under paragraph 89.
V2.0	Edit	26.04.2022	Removal of paragraph relating to The Mental Capacity (Amendment) Act 2019 on page 4.

Contents

The following document should be read in conjunction with the Mental Capacity Act 2005 (MCA) including Deprivation of Liberty Safeguards (DoLS), the Mental Health Act 1983, amended 2007 (MHA), the Equality Act 2010, The Children and Families Act 2014, The National Health Service (Direct Payments) Regulations 2013 (SI 2013, No.1617), The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013, The Care Act (2014), The NHS 10 Year Plan 2019, Guidance for Personal Health Budgets for Liverpool CCG, and NHS England (NHSE) guidance relating to personal health budgets (PHBs).

Introduction and background

1. This policy document sets out Liverpool CCG's intentions on what its personal health budget (PHB) offer is.

2. This policy applies to people who are registered with a Liverpool General Practitioner (GP)

3. A PHB is a sum of money provided by the NHS to meet the health and wellbeing needs of individuals with serious long-term illness or health conditions. The PHB is spent on things that have been agreed between the person, named health professional, and the CCG. People who request a PHB can choose to receive it in one of three ways (See paragraph 66-69).

4. The aim of a PHB is to promote person-centred care and support and to give greater choice and control to the recipient. The aim in implementing these policies and systems should be to keep things as simple and flexible as possible whilst meeting legal and audit requirements.

5. Over the past decade personalisation has become an important strand of public service reform. There is now considerable activity across government to introduce PHBs, along with integrated PHBs between health, social care and, where appropriate, education. The NHS 10 Year Plan (2019) demonstrates a strong intent to increase personalised care to 2.5 million people by 2023/2024[i], and specifically to implement PHBs to 200,000 individuals nationally[ii].

6. A number of individuals currently have the 'right to have' a PHB as set out in national guidance. The Department of Health have set out intentions to extend this category of individuals. Liverpool CCG supports the intention to extend PHBs to further patient cohorts over the coming years.

Policy Statement

7. This policy sets out the principles for the ongoing rollout of PHBs by the CCG and focuses on PHBs for the following patient groups:

- Adults eligible for, or in receipt of, NHS Continuing Healthcare (CHC).
- Children eligible for, or in receipt of, Continuing Care (CC).
- Individuals who access wheelchair services whose posture and mobility needs impact their wider health and social care needs.
- Individuals eligible for Section 117 aftercare following inpatient admission under Sections 3, 37, 47, 48 or 45A of the Mental Health Act (1983, amended 2007).
- Individuals who have a long term condition who may benefit from a personal health budget and are not in receipt of NHS funded packages of care

8. These principles are to be applied by the CCG strategic partners which have a role in implementing PHBs for the CCG, and Liverpool City Council. This is an evolving policy that will be reviewed as national guidance and relevant legislation around PHBs develops.

9. This policy document sets out Liverpool CCG's intentions to ensure that all patients meeting the criteria for a PHB have the opportunity to be offered and/or receive a PHB in line with

national guidance and where possible, that PHBs are considered in other cases where there is a benefit for the individual. A key aim of this policy is to ensure that a consistent and transparent approach is applied to the development and approval of all support plans and budgets. (See appendix 1 for the support plan template)

10. Liverpool CCG will work in conjunction with its partner organisations to deliver an integrated PHB offer through the Personalised Care Commissioning Team. Whilst an initial financial offer is made at the indicative budget setting stage, a fully integrated PHB is achieved through a system of support planning for patients who have chosen to develop a PHB in response to their health and social outcomes. This document operates within wider guidance as stipulated at the beginning of the policy.

11. The CCG will ensure that PHBs achieve value for money for both the individual in receipt of one and the CCG. This will be done through the way in which PHBs are set up, through robust care & support planning, through effective monitoring of direct payments and clearly defined outcomes being agreed between all parties at the start of the process.

12. Following assessment of needs by a Nurse Assessor on behalf of the CCG, any support planning will assure the CCG that the patient has ownership throughout the process. The patient will lead the development of the support plan, with assistance from the Nurse Assessor if required. This is determined through patient choice. If the patient is unable to prepare their own support plan, their contribution should guide the preparation of the support plan as much as possible. Support planning will allow the identification of desired health and wellbeing outcomes and related goals which can be referred to by the patient, family/carer and health and social care professionals to promote improved health and wellbeing. In the case of children and young people with Special Educational Needs and Disabilities (SEND) and in receipt of an Education, Health and Care (EHC) Plan, assessment of need and support planning will be led by the Local Authority through this process, supported by clinicians and the CCG as set out in national guidance.

Principles of a Personal Health Budget

13. Liverpool CCG's underpinning principles for providing PHBs are:

- Patients and their carers will be central to all processes;
- Services will be personalised whether the care is provided by a statutory or private provider;
- The delivery of PHBs will be managed within the agreed budget;
- Patients have a right to request a PHB. The CCG will try to achieve this and need to ensure it is lawful, affordable, effective and appropriate
- The budget setting process will be based on the cost of provision of traditional services to meet the health and wellbeing outcomes identified and agreed;
- The CCG will ensure patients are supported throughout the PHB process

Due Regard and Equality

14. The CCG aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others or that some receive an advantage over others.

15. All policies and procedures are developed in line with the CCG Equality and Diversity Policy and need to take into account the diverse needs of the community that is served. The CCG will endeavour to make sure this policy supports its diverse workforce and look after the information the organisation needs to conduct its business. It will also endeavour to ensure that this information is protected on behalf of patients regardless of race, social exclusion, gender, disability, age, sexual orientation or religion/belief. Where it is identified that statements in this policy have an adverse impact for particular equality groups, this will be

raised with the Governance Manager (Compliance) and with the Head of Corporate Governance and Legal Affairs and solutions sought.

16. A full Quality Impact Assessment, Equality Impact Assessment and Financial Impact Assessment has been undertaken by the CCG in relation to PHBs.

Scope

17. The scope of this policy covers:

- All patients assessed as eligible for NHS CHC or CC for children and young people.
- Nominated[iii] PHB holder individuals.
- All staff irrespective of organisation that deliver PHBs on behalf of the CCG.
- CCG teams involved with the commissioning, contract management and governance of PHBs.

18. This policy document will act as a guide to support the process of planning, placing emphasis on ownership, co-production, transparency and support as and when required.

19. This policy document will compliment detailed guidance documents.

20. This policy promotes patient choice and control of services received within CHC and CC for children and will extend this choice to other cohorts such as S117 aftercare patients and long term wheelchair users. The aim is that there is an opportunity for patients and their families and carers to be proactive partners in agreeing the services which will meet their needs.

21. This document sets out the policy and practice guidance developed to ensure the consistent and transparent delivery of PHBs for Eligible Persons (see section 13 “Who can have a PHB” for definition). National policy in this area is still developing and the CCG will review this policy when new guidance, regulations, national policy is published or local offers reviewed.

Definitions

22. Agreement means either:

- the agreement between the CCG and the person receiving the direct payment agreement or the individual and the Third Party to receive the individual’s PHB payments.
  Or
- the agreement between the CCG and the Third Party which will receive the person’s payment from the CCG. (See appendix 2 for the agreement template)

23. Bank Account means the bank account held by the individual or Third Party as agreed by the individual and approved by the CCG into which PHB payments are paid under the terms of this agreement. This is a dedicated bank account used only for the purposes of the PHB.

24. Capacity refers to the ability of an individual to take valid autonomous decisions. Young children may lack capacity because of their age alone; adults may lack the mental capacity to take decisions for themselves in relation to a PHB because, for example, of a cognitive deficit. Every adult must be presumed to have mental capacity in relation to a particular issue unless it is established that they lack capacity, ie. that they are unable to:

- Understand the information relevant to the decision;
- Retain that information;
- Use or weigh that information as part of the decision-making process; or
- Communicate their decision (whether by talking, using sign language or any other means).

It is important to note that whether someone has capacity or not should be determined on a decision-specific basis but in accordance with the MCA (2005) and any future amendments to this act.

25. **Nurse Assessor** means the person nominated by LCCG to establish and monitor PHBs.

26. **Clinical Commissioning Group (CCG)** commissions the provision of healthcare services in a specific area and will work with local authorities and other agencies that provide health and social care locally to make sure that the local community's needs are being met.

27. **DBS** means the Disclosure and Barring Service or any replacement or successor service to it.

28. **Employment Costs** means costs associated with the employment of staff by the Third Party or the Individual for the purpose of (but not limited to) wages, DBS checks, national insurance, training, payroll, insurance and emergency cover, tax and any other costs.

29. **Eligible persons – and Right to Have -** Patients assessed as eligible for NHS CHC or CC for children and young people, have a Right to Have a PHB as defined the NHS Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules Regulations) 2013 and by guidance[1]. From the 1st April 2019, a PHB is now the default offer for CHC and CC funding for those living at home. Patients eligible for Section 117 Aftercare and patients accessing wheelchair services also have a Right to Have a PHB from 2/12/19 (see paragraph 49). The CCG will also consider on a case by case basis those individuals who express an interest in PHB.

30. I**ndividual** means the person who will receive the care.

31. **Personal Health Budget** means the budget for provision of healthcare services to the individual made by way of PHB payments in accordance with the agreed support plan.

32. **Personal Health Budget Payments** means the payments made to the Third Party on behalf of the Individual or their Representative and paid into the bank account by the CCG.

33. **Representative** is a person who is appointed to manage a direct payment where an individual lacks capacity. A Representative may be:

- Someone who holds an enduring or lasting power of attorney;
- A Deputy appointed by the Court of Protection;
- Someone with parental responsibility for a child or someone with parental responsibility for a 16 or 17 year old who lacks capacity; or
- Someone appointed by the CCG.

34. **Support Plan** means the plan the individual or their Representative develops with appropriate personalised assistance, which describes the health and wellbeing outcomes they want to achieve and the services to be secured by means of PHB payments to achieve the health outcomes. This plan is agreed by the individual or their Representative and the CCG. The support plan may also be termed care plan.

35. **Support** means the arrangements made to meet the individual's health and personal care needs as specified in the PHB support plan.

[1] Guidance on the "right to have" a Personal Health Budget in Adult NHS Continuing Healthcare and Children and Young People's Continuing Care www.england.nhs.uk/publication/guidance-on-the-right-to-have-a-personal-health-budget-in-adult-nhs-continuing-healthcare-and-children-and-young-peoples-continuing-care/

36. SEND Reforms refers to the Special Educational Needs and Disabilities (SEND) Reforms that came into force on 1st September 2014, and which are legislated under Part 3 of the Children and Families Act 2014. These reforms and the underpinning Code of Practice relate to children and young people aged 0-25 with special educational needs or disability.

37. Education, Health and Care Plan/Process refers to the multiagency assessment and planning process and the resultant support plan produced under the SEND Reforms.

38. Safeguarding is about safety and wellbeing of patients and providing additional measures for those least able to protect themselves from harm and abuse. Staff should familiarise and be aware of their responsibilities around this agenda by accessing the CCG Safeguarding Adults and Children policy.

Responsibilities

39. The Accountable Officer takes the ultimate responsibility for this policy and must ensure that:

a. They discharge their duties as required by legislation in relation to PHBs;
b. The CCG complies with this policy. This includes their role to ensure effective implementation of this policy.

40. The CCG Chief Nurse must ensure that:

a. Quality assurance of PHBs is a standing agenda item at monthly Individual Patient Activity Clinical Quality and Performance meetings between the CCG and any CHC provider organisations.
b. There is an opportunity for the provider to discuss any quality or concerns related to PHBs with the CCG as and when required
c. The Joint Funding Steering Group between the CCG and Liverpool City Council works to its terms of reference in relation to quality, and feeds back any concerns with regard to PHBs to the appropriate governance groups.

41. The CCG Chief Finance Officer must ensure that:

a. There are procedures in place for receiving financial assurance in relation to PHBs

42. The CCG Team must:

a. Ensure that PHB projects are delivered consistently across the CCG, Local Authority and partner organisations.
b. Attend relevant local meetings and produce and present reports to project boards, forums and stakeholders as required.
c. Raise the profile of PHBs across the city.
d. Support the development of contracts that reflect the aims of the PHBs.
e. Assist the CCG in the interpretation of national and local policy and planning initiatives.

43. Patients, representatives and/or their nominated individuals must ensure that:

- They are active participants in the PHB process.
- They use their budget in the spirit of PHBs.
- They follow the legislative requirements of PHBs and follow the Direct Payment Agreement as appropriate.

44. PHB Providers

All providers of PHBs will:

a. Ensure they follow the PHB processes in line with national and local guidance.
b. Capture all relevant data to enable a response to information requests as required.
c. Engage with their users to improve their PHB offering, in line with national guidance.
d. Engage with the Personalised Care Team to ensure compliance with the PHB standards.

Capacity and Consent

45. This section applies to those being considered for a PHB and those who already have one. In line with the MCA (2005), patients with a PHB will be empowered to make independent decisions wherever possible and where they lack capacity over certain decisions, this will be managed in line with the MCA (2005) and any future amendments to this act.

46. The MCA (2005) including Deprivation of Liberty Safeguards (DoLS) Policy must be followed and there are specific requirements for how direct payments are managed for those with and without capacity. See below:

a. **Direct payments for people with capacity** – The individual receives the funding that is available to them and they purchase the services and support they want in accordance with the agreed care plan. The individual can elect to receive and manage the payment themselves or decide for it to be received and managed by a person of their choosing (a nominee). If the individual chooses a nominee, that nominee becomes responsible for managing the funds and services and accounting for expenditure.

b. **Direct payments for people who lack capacity** – Where the individual lacks capacity, an agreed representative receives the funding that is available to the individual as a direct payment. The representative is responsible for managing the funds and services and accounting for expenditure. The representative takes full legal responsibility of having a direct payment and of being an employer. They can identify someone else to support them in managing the direct payment. The representative will be required to sign the direct payment agreement. The representative must involve the individual as much as possible and act in their best interests, in accordance with the MCA (2005) and any amendments. In the case of children a representative may be appointed to receive the direct payments on the child's behalf. The representative may be the child's parents or those with parental responsibility for that child or anyone else the CCG agrees to appoint in compliance with the relevant regulations. The employer cannot also be an employee with the exception of a 3rd party holding the budget.

Who can have a Personal Health Budget?

47. The following groups have a 'right to have' a PHB:

a. People who are eligible for NHS CHC (adults)[2];
b. Children and Young People eligible for CC[3]. In the case of children and young people this refers to the element of additional health need that cannot be provided by NHS commissioned services.
c. Patients in receipt of Section 117 aftercare;
d. Patients with a long term wheelchair need.

48. In accordance with the overall drive towards greater patient choice and control, PHBs for patients other than those listed above can still be offered a PHB and the benefit of personalised care plans for patients with long term conditions should be borne in mind, even though the "right to have" does not currently extend to those patients.

[2] National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care October 2018 (Revised). www.events.england.nhs.uk/upload/entity/30215/national-framework-for-chc-and-fnc-october-2018-revised.pdf
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213137/National-Framework-for-NHS-CHC-NHS-FNC-Nov-2012.pdf

[3] as defined by the National Framework for Children and Young People's Continuing Care http://www.nhs.uk/CarersDirect/guide/practicalsupport/Documents/National-framework-for-continuing-care-england.pdf

49. The Department of Health and Social Care and NHS England have extended the Right to Have to those in receipt of Section 117 aftercare and long term wheelchair users and have a broader programme to extend this further in subsequent years.

50. As part of the CCG's commitment to PHBs – the CCG will consider if a PHB may be available to the following groups. The CCG will consider applications on a case by case basis:

a. Joint funded packages. The CCG will especially consider cases where the individual is already in receipt of a direct payment from social care or through the fairer funding charge do not qualify for social care funding but already have personal assistants/agency that they wish to continue using;
b. Children or young adults with an EHC plan who do not qualify for CC;
c. Those who require a bespoke package of care as outlined by the Transforming Care agenda;
d. Other individuals on a case-by-case basis where the CCG considers the individual would benefit from a PHB rather than a traditionally commissioned service.

Informing people about Personal Health Budgets

51. All CCG policies relating to NHS CHC and CC continue to apply when an individual has a PHB. The Nurse Assessor will inform those individuals of their right to have a PHB (see paragraph 6 above). This will include information about the option of a direct payment. For point of clarity, any patients who relocate into the Liverpool CCG footprint that are eligible for a PHB will have it discussed at review stage.

52. Health professionals will also seek to identify other patients who do not fall within the current scope of the "right to have" a PHB but who may benefit from the provision of a PHB. PHBs are not restricted to those currently eligible and the CCG can seek to offer PHBs on a voluntary basis to a wider cohort. Where such patients are identified, the health professionals involved in their care will provide them with information about PHBs (including directing them to the CCG website) and the case will be discussed with the CCG as to the appropriateness of the request.

53. The Nurse Assessor will offer information or signpost individuals to a suitable organisation who can provide information, advice and guidance to prospective and existing PHB recipients and their families. The services provided by these organisations will include:

a. How a PHB can be used and managed.
b. Guidance on producing a personalised care support plan.
c. Advice and support to manage a PHB, including a direct payment.
d. Guidance on record keeping requirements.
e. Information about direct payments, including the responsibilities around financial monitoring that will need to be taken on by the recipient of the direct payments.
f. Procedures around payback or any surplus funds.

Short breaks and holidays

54. Short breaks are also referred to as respite care. The agreed number of respite hours per year will be detailed in the support plan. The named health professional will assist in finding a suitable short break service to build into the PHB.

55. Holidays - Although there is no formal entitlement to holiday funding within a PHB, the CCG recognises that a holiday can be beneficial to health and wellbeing. The CCG acknowledges that there may be additional staffing and equipment costs to support someone away from their home in an environment which may not be suitably adapted. In some instances two carers may be needed for safe care. In addition, people who do not normally require 24 hour care may need to take their own carers and require them to work longer hours. All of this should be

outlined in the support plan and come within the indicative budget allocation. If someone wishes to take a holiday, this is allowed within a PHB but as outlined above other needs may need to be met by alternative arrangements. The number of care hours will be agreed on an individual basis however the PHB cannot be used to fund the following: PA - accommodation, transport and insurance.

56. Flexibility - the CCG acknowledges that there are times when flexibility for a support plan may be required and individuals may want to accumulate their PHB to allow for flexibility of a temporary change in circumstances. Any savings made via the PHB should not reduce the ability to meet agreed outcomes, or be made at the expense of health or wellbeing. If flexibility of this nature is requested by the individual, it must be agreed by the CCG and reflected in the support plan. The CCG must be assured that the individuals needs continue to be met.

Exclusions for Personal Health Budgets

57. If an individual comes within the scope of the "Right to Have" a PHB, then the expectation is that one will be provided. However, the NHS England guidance[4] states:

- '*There may be some exceptional circumstances when a CCG considers a personal health budget to be an impracticable or inappropriate way of securing NHS care for an individual. This could be due to the specialised clinical care required or because a personal health budget would not represent value for money as any additional benefits to the individual would not outweigh the extra cost to the NHS.*'

58. The CCG will comply with NHS England guidance and where applications are declined individuals will be advised of the CCG's complaints process should they wish to use this.

59. A PHB cannot be used to pay for alcohol, tobacco, gambling or debt repayment, or anything that is illegal.

60. NHS England has also provided guidance on the circumstances a CCG may decide not to provide someone with a direct payment (Guidance on Direct Payments for Healthcare; Understanding the Regulations, March 2014). The CCG may decide not to offer a direct payment if, for example, it considers:

a. That the individual (or their representative) would not be able to manage a direct payment;
b. That it is inappropriate for that individual as a result of their condition or other circumstances;
c. That the benefit to the individual does not represent value for money for the CCG;
d. That providing services by way of a direct payment will not provide the same or improved outcomes;
e. That the direct payment will not be used for the agreed purposes.

[4]http://www.personalhealthbudgets.england.nhs.uk/_library/Resources/Personalhealthbudgets/2014/Personal_health_budgets_right_to_have_guidance.pdf

PHBs and Individual Funding requests[5]

61. A PHB is an amount of money to support the planned healthcare and wellbeing needs of an individual, which should be agreed by their named health professional. PHBs, therefore, give people more independence over how money for their healthcare is spent. For more on the operation of PHBs see: www.england.nhs.uk/healthbudgets/.

62. Individual Funding Requests are applications by clinicians on behalf of their patients relating to funding for treatment that is not routinely commissioned by NHS England, based on clinical exceptionality. PHBs by contrast are a different way to meet assessed needs that services are routinely commissioned to meet.

63. The CCG would not expect the IFR process to be used to agree services agreed as part of a PHB. However, having a PHB in place for some aspects of a patient's care would not exclude the patient's clinician from making an IFR request to meet needs that are not routinely met via commissioned services.

PHBs for people in nursing or residential care home settings

64. The Government's intention is for all Eligible Persons to have the "Right to Have" a PHB where they would benefit. Therefore, where Eligible Persons living in nursing or residential care may benefit from receiving care via a PHB, the option should be considered and discussed. However, CCG needs to be satisfied that the use of a PHB in such settings:

a. Is cost effective and;
b. Is a sensible way to provide care to meet or improve the individual's agreed outcomes and;
c. Gives patient choice of payment method.

65. PHBs should not generally be used to pay for care and support services being funded through NHS core commissioned services that a person will continue to access in the same way whether they have a PHB or not, for example GP services or A&E.

Options for Managing a Personal Health Budget

66. The most appropriate way to manage a PHB should be discussed and agreed with the individual, their representative or nominee as part of the care planning process.

67. PHBs can now be received and managed in the following ways, or a combination of them in some circumstances:

a. **Notional budget** – where an individual is informed of the amount of funding available to them and decides how the budget is used (by input into the care plan) but the CCG continues to commission services, manage contracts and make purchases etc. Notional budgets could be an option for individuals who want more choice and control over their healthcare but who do not feel able or willing to manage a budget.
b. **Third party budget** – A different organisation, legally independent of both the individual and the NHS, holds the money for the individual and arranges and pays for all of the services on behalf of the individual in accordance with the care plan.
c. **Direct payments** – The PHB is paid directly to the individual and their nominated bank account. The CCG will comply with the National Health Service (Direct Payments) Regulations 2013 when dealing with direct payments.

68. An individual does not have to receive their care through a PHB but can opt for a traditional package of support or mix the two approaches if this option is available.

[5] NHS England 2017. Commissioning Policy: Individual Funding Requests

69. Direct payments will be paid via Shared Business Service in advance on account i.e. for the month of June the payment will be received by the end of May. Payment by arrears is not best practice, however under exceptional circumstances this may occur as a one-off, i.e. on the set up of a PHB. The set up of a PHB within the finance system can take up to two weeks to ensure all validation checks are complete. This will be set up by the CCG finance department.

The Personal Health Budget proposal and support plan

70. The support plan is the central part of the management of PHBs. A good support plan is at the heart of a PHB. Although the support plan is written by an individual with the support of the Nurse Assessor, it is the responsibility of the CCG to ensure that an approved support plan is fit for purpose following the subsequent directions on lawfulness, affordability, effectiveness and contains all health and social care needs

The Personal Health Budget proposal and support plan

Lawful

71. The proposals must be lawful and meet all regulatory requirements where relevant. In deciding whether the support plan meets with legal requirements. It should show for example that:

a. Informed consent has been obtained;
b. Any legal responsibilities that an individual will incur under the PHB arrangement (eg. employment law, health and safety, HMRC regulations and monitoring information);
c. The assessed needs and desired outcomes of the individual and that the PHB will be able to meet those needs and outcomes;
d. It is person-centred and led by the needs of the individual;
e. It is well-balanced with the highest needs receiving priority;
f. There is provision for appropriate reviews of the care plan;
g. Risks have been properly identified and discussed with the individual, their representative or nominee and properly addressed to ensure such risks are eliminated, reduced or managed. These include risks to the individual or anyone else but also risks to the service or to the CCG.
h. Compliance with the MCA (2005) can be clearly demonstrated, and that the appropriate deprivation of liberty authorisation has been applied for if relevant. If the individual has been assessed as lacking capacity, the support plan must make it clear how their wishes have been ascertained and incorporated into the care and support plan;
i. Where people lack capacity or are more vulnerable, procedures such as safeguarding, promoting liberty and necessary restraint procedures (if required) have been included appropriately in the care plan and any necessary legal authorisations for those procedures have been obtained;
j. Any service providers identified in the plan must meet applicable regulatory requirements. A regulated activity cannot be purchased from a service provider that is not registered with CQC;
k. The individual, their representative or nominee and, where applicable, their carers, have received guidance on any health and safety issues or regulatory requirements in relation to any equipment to be used or any adaptations to their home;
l. A legally binding agreement or contract is in place;
m. Where a direct payment is used, The National Health Service (Direct Payments) Regulations 2013 are complied with.

Affordable

72. The CCG has a responsibility to meet all statutory obligations, which include manage its finances appropriately and ensure value for money. The CCG reviews and aligns its PHB rates with Liverpool City Council on an annual basis.

73. Whilst the CCG wants to maximise flexibility, it may decide to avoid using PHBs to commission packages of care which are being provided under existing NHS contracts, as long as they are able to meet an individual's needs.

74. Individuals with a PHB should not be unfairly advantaged when compared with those who do not have a PHB. Where the CCG already has a commissioned service under a block contract, this service must be investigated first. This may mean that a direct payment may not cover all of the budget requirements, and a notional budget is also required to cover those services already commissioned under the NHS standard contract. Where the commissioned service cannot deliver the care because it is outside the scope of its specification then a direct payment could be considered. However, where there is a capacity issue within the commissioned service a PHB cannot be used to 'jump the queue'. Where capacity problems exist they must be reported to the CCG.

In deciding whether the support plan is affordable, it must show that:

a. Where the support plan requires a budget that is lower than the indicative budget, the lower budget will be approved as the assessed needs are able to be met for this lower sum;
b. Where the support plan exceeds the indicative budget, the plan is thoroughly checked by the Nurse Assessor before being sourced to ensure best value;
c. Is reflective of the CCGs relevant policies, ensuring that best value of public money has been achieved;
d. The use of existing universal services, community resources, informal support and assistive technology has been explored as a first-line, and clear rationale are given and agreed as to why these **are not** appropriate to meet the individual's assessed needs;
e. All relevant sources of funding (eg. local authority provision) have been identified and utilised in conjunction with the PHB;
f. All costs have been identified and fall within the budget allocated;
g. The support plan fully meets the assessed, eligible needs in the most cost effective way possible;
h. Where NICE has concluded that a treatment is not cost effective, the CCG will apply its existing exceptions process before agreeing to such a service. However, when NICE has not ruled on the cost effectiveness or otherwise of a specific treatment, the CCG will not use this as a barrier to people purchasing the service, if it could meet the individual's health and wellbeing needs. NICE provide a lay version of their guidance that can help people make decisions about this type of healthcare.
i. All PHB final budgets must be authorised by the CCG prior to commencement of the PHB.

Effective

75. The CCG has a statutory duty to ensure funding is used effectively and in accordance with the principle of best value. The CCG will therefore make sure that the individual's needs and desired health outcomes are taken into account and that the measures proposed in the support plan represent an effective use of the PHB. In particular the CCG must be satisfied that:

a. The support plan has been appropriately risk assessed;
b. The support plan will be effective in meeting the individual's assessed needs and holistically supporting their health and wellbeing;
c. The support plan takes account of the views and needs of carers;
d. The support plan is adaptable and flexible, so individuals can revise their plans as they learn what works best for them or as their circumstances change;
e. The support plan has tangible outcomes and reviews are arranged at least annually;
f. Where outcomes are not being met, the review will ascertain the reason behind this and whether it is reasonable to continue with the PHB in its current format.

Appropriate

76. The support plan should not include the purchase of items or services that are excluded from PHBs as set out in Section 59.

The CCG recognises that:

a. Some measures that involve the CCG in an outlay of a significant short term cost can contribute to increased independence in the future and thereby reduce support needs or avoid further costs in the long term. In these circumstances the CCG will expect the Nurse Assessor to justify how short term measures will yield longer term benefits. Where longer term benefits are not met, the CCG will ensure that the support plan will be reviewed and, if necessary, the PHB will be changed.
b. Prioritising prevention and early intervention promotes greater wellbeing and independence and can reduce the need for ongoing support.
c. Full consideration needs to be given to the different kinds of health, care and support individuals will request. Some individuals will want to keep their existing support, but have it tailored better to their needs. Others will choose to spend their budget differently, on every day and community-based support not currently available from the NHS.
d. Unusual requests will not be excluded without examining the proposal on a case-by- case basis as these may have significant benefits for people's health and wellbeing. These requests will be considered taking into account the health outcomes to be achieved by the proposal.
e. Where an individual chooses to use their PHB flexibly to pay a PA differing amounts than that those traditionally commissioned by the CCG, they are able to do so as long the PHB remains in budget.

Managing the risk

77. Individuals should be supported to make fully informed choices about the risks they may be taking. Where risks are identified, a 'risk enablement' approach will be employed to mitigate all risks. During the care planning process, Nurse Assessor will have a detailed discussion with the individual, representative or nominee about potential risks, and how to manage them and the consequences of them. This should be part of an ongoing dialogue between all parties on how to effectively manage risk.

78. Examples of possible risks relating to PHBs are as follows:

a. The individual's health and wellbeing: clinical risk
b. The Individual's safety (or those around them): safeguarding risk
c. Those that are caring for the patient: employment risk
d. The individual's budget: financial risk
e. The Individual’s personal information: information governance risk
f. The availability/capability of providers to deliver PHBs across Liverpool: corporate risk

79. The support plan must contain details of the risks discussed and any proportionate means of eliminating, reducing or managing the risks agreed with the individual about managing the potential risk.

80. Where identified risk incidents occur, (eg. safeguarding, financial abuse etc.) the CCG’s reporting procedures should be followed. The Nurse Assessor is responsible for ensuring that the individual is aware of what constitutes risk incidents; knows the correct pathways for reporting them if they arise, and is furnished with the appropriate contact details.

81. Risks should be discussed between the CCG and provider through the CCG’s contract management process.

Complaint process

82. If the individual is dissatisfied with the process and/or final outcome decision, they have the right to complain to the CCG via the normal NHS Complaints procedure.

Assistance to manage Personal Health Budgets

83. Individuals in receipt of PHBs, and who require support, will be signposted by the Nurse Assessor to a choice of support services.

84. The costs associated with utilising support services are met as part of the PHB as long as they are agreed as part of the support plan.

Personal Health Budget Agreement and contracts

85. When taking up a PHB, there must be a contract or agreement in place.

86. For notional budgets, the provider will be issued with the NHS standard contract and the support plan will become the service specification of the contract.

87. For third party budgets, the agreement is tripartite between the CCG, the provider and the service user/budget holder. This agreement is made using an PHB agreement and NHS standard contract, as other agreements do not have measures to monitor quality of provision. The provider will be expected to furnish the CCG with a bank form that allows for the setting-up of an account for the individual ahead of the commencement of the PHB

88. For direct payment budgets, the individual or their representative must sign a PHB Agreement, which explains the responsibilities associated with the PHB and sets out the agreement that the PHB will be spent as set out in the support plan. If the patient is receiving the PHB as a direct payment, the PHB agreement will confirm that the PHB will be spent in accordance with the NHS (Direct Payments) Regulations 2013.

Payments of Personal Health Budgets

89. PHBs will be paid as outlined in the agreement or contract. For direct payments this will be made in advance. The overall budget will be split into 12 monthly parts and the individual or provider will receive a monthly payment. For third party or notional budgets, these will be paid on invoice in accordance with standard NHS terms.

Contingency will be paid in line with the contract/agreement.

Reconciliation of Funds

90. It is advisable for the CCG to review spend on a regular basis through out the year. Any unspent funds which are not identified for future use; *per* the support plan; will be reclaimed back in consultation with the individual or their representative.

Audit and Financial review

91. It is the responsibility of the patient / representative to maintain and retain proper accounting records. The CCG will request these records including bank account statements, payslips, timesheets and receipts and expect the patient/representative to provide explanation for spend. If the individual is unable to provide the appropriate audit evidence this may result in the PHB being changed or stopped and the monies paid being fully recovered.

92. It is expected that minimal spend will be made by Cash. If this is not possible all cash payments must be accounted for with a receipt. Cash may be paid to an employee as long as a payslip has been provided and the appropriate tax and NI has been withheld to be paid on to Her Majesty's Revenue and Customs.

93. Once the audit has been completed if the budget has been inappropriately used, the value would be required to be refunded to the CCG and may result in the PHB being changed or stopped.

Monitoring and review of this policy

94. A financial audit of the PHB will be undertaken by the CCG finance department on an annual basis to assess performance against this policy. A letter will be sent to the individual / representative to inform them of the audit evidence required. The CCG will allow sufficient time for the information to be gathered and sent as appropriate. The letter will outline the period under review, the information required and where this should be sent.

95. It may be appropriate to send original copies of receipts and payslips. Should this take place the CCG will take copies and return the originals as required. It would be more advantageous for the information to be sent electronically if possible. This will speed up the audit process and allow review by managers to occur effectively. The audit will follow the Liverpool CCGs PHB audit procedures which have been developed in line with the NHS England "Guidance on Direct Payments for Healthcare: Understanding the Regulations" and updates.

96. It is the responsibility of the representative to provide the information in a timely manner, recognising that not doing so may impact on the CCGs view on their ability to maintain the PHB budget in the future.

97. Should the financial information not be received by the agreed time set out in the letter, a second letter would be sent as approved by the Deputy Chief Finance Officer with a new agreed date (preferably no longer than one week).

98. If no information / contact is received following the deadline date set out on the second letter, a third letter would be drafted and approved by the Chief Nurse, a copy would be sent to the Nurse Assessor to inform them of the difficulty and to request assistance. It would be anticipated that by this stage a very small number, if any would not produce the financial information, however, should this occur, this should be reported through the provider contract management process and the CCG and provider team would seek to contact the patient / representative and review their ability to manage the PHB in the future.

Conducting the audit

99. It should be the intention of the CCG to conduct the audit no more than one month after the evidence for the financial audit is received. The audit will review the patient's / representative's ability to maintain and manage the PHB budget. The audit may reveal some minor issues that can be easily resolved with additional questions and further advice and help in managing the finances may be provided. The audit may however also reveal issues such as inappropriate spending, or under / over spending. Should this be the case, the finance team must immediately notify the Nurse Assessor to discuss the issues identified, so that any impact on the individuals care can be assessed.

100. The audit may result in an urgent review of the care to ensure that the PHB is still a viable option.

101. On a periodic basis, the CCG will update the PHB team on the progress of the PHB audits and any issues identified which may require updates and improvements to the policy and processes.

Audit process on Death of an individual

102. At times the CCG is notified of an individual's death. When this occurs, the financial accounts department and the Nurse Assessor must be informed.

103. If the Nurse Assessor confirms it is appropriate to do so, the financial accounts team will contact the patient representative / Next of Kin to discuss any return of unspent funds and a closure audit being conducted.

104. As a guide a grace period of 2-4 weeks would be given to the representative / Next of Kin if appropriate (this may be longer due to circumstances, each case would be assessed individually), to provide all audit documents from the date of the previous audit to present. A final Closure audit will be conducted to ensure that the PHB was used appropriately during this period. The representative would continue to be responsible to answer queries if required. If the patient managed their own budget, it may mean that the next of kin and executor of the will are required to help in answering queries. Every effort should be made to ensure that a thorough closure audit is conducted.

105. In situations where a death has occurred, it may be that it takes some time before all final bills are received and paid before a PHB bank account can be closed and any surplus funds be returned to the CCG. The CCG would in this instance maintain contact with the representative / next of kin to agree a sufficient time scale for the return of funds.

106. If any issues have been identified, the CCG should still inform the Nurse Assessor of this for lessons learnt.

107. Where necessary a remedial action plan will be produced.

Policy update

108. This policy will be reviewed and updated every three years or earlier in accordance with any of the following:

a. Legislative changes;
b. Good practice guidance;
c. Case law;
d. Significant incidents reported;
e. New vulnerabilities;
f. Changes to organisational infrastructure.

Legislation

a. National Health Service (Direct Payments) Regulations 2013 as amended by the National Health Service (Direct Payments) (Amendment) Regulations 2013).
b. Human Rights Act 1998, including the Article 8 Right to respect for private and family life, and Article 14 Prohibition of discrimination.
c. The Data Protection Act 2018.
d. The Carers (Equal Opportunities) Act 2004 provides carers with the right to receive assessment for support and a duty on various public authorities to give due consideration to a request to provide services to carers.
e. The Mental Capacity Act 2005. The MCA provides a framework for decision making applicable where people lack capacity to make a decision for themselves. The overriding principles of

the MCA are set out in section 46 and include a requirement to ensure that all practicable steps are taken to seek to enable a person to make a decision for himself. Where a person is unable to make a decision, any decision made on their behalf must be made in accordance with his/her best interests and must be the least restrictive of the person's rights and freedom of action. A person is not to be treated as unable to make a decision simply because he makes an unwise decision.

f. The Equality Act 2010. The Equality Act brought together the various earlier discrimination laws under one statute. It is unlawful to act in a discriminatory manner against any "protected characteristics", including race, sex and disability.

g. The Children and Families Act 2014, which is partially in force and due to be fully in force by April 2015. This Act intends to improve services for key groups of vulnerable children (e.g., those in adoption and those with special educational needs and disabilities).

More Information

The NHS England website has a section dedicated to PHBs. This has information about national policy, the implementation toolkit, stories and other resources. www.personalhealthbudgets.england.nhs.uk

The Peer Network, a user-led organisation for PHBs, has its own website: www.peoplehub.org.uk

Appendices

Appendix 1 - Support Plan Template

Support Plan Template.doc

Appendix 2 – Personal Health Budget Agreement Template

Personal Health Budget Agreement.do

[i] NHS Long Term Plan 2019; section 1.39 www.longtermplan.nhs.uk/wp-content/uploads/2019/01/nhs-long-term-plan.pdf
[ii] NHS Long Term Plan 2019; section 1.41. www.longtermplan.nhs.uk/wp-content/uploads/2019/01/nhs-long-term-plan.pdf
[iii] A person who you nominate to receive and manage your direct payment