

Personal Health Budget Policy

Ref:	LSCICB_Qual09
Version:	V1
Purpose	This document sets out the policy and practice guidance developed to ensure a consistent and transparent approach is applied to the development, approval, delivery and oversight of Continuing Healthcare (CHC) and/or Health Personal Health Budgets (“PHB”s) for Eligible Persons.
Supersedes:	Any previous CCG PHB policy and procedures.
Author (inc Job Title):	Rakhee Jethwa, Associate Director CHC & IPA Rachel Melton, Deputy Associate Director CHC & IPA Jon Nelson, Clinical Lead Appeals & Retros
Ratified by: (Name of responsible Committee)	Quality Committee
Cross reference to other Policies/Guidance	N/A
Date Ratified:	18 September 2024
Date Published and where (Intranet or Website):	Website
Review date:	September 2027
Target audience:	All Staff

This policy can only be considered valid when viewed via the ICB website or ICB staff intranet. If this document is printed into hard copy or saved to another location, you must check that the version number on your copy matches that of the one published.

Document control:		
Date:	Version Number:	Section and Description of Change
08.06.2024	1	Initial draft outlined
01.07.2024	1	Sent to legal for review
22.07.2024	1	Additions around financial audits
18.08.2024	1	Sent to legal for review
22.08.2024	1	Amends highlighted by legal
30.08.24	1	
30.10.24	1	Amendment following comments from Quality Committee P32 – Final Version complete

Contents

1. EQUALITY STATEMENT	4
2. INTRODUCTION	5
3. BACKGROUND.....	5
4. SCOPE.....	6
5. DEFINITIONS	6
6. PHB PROCESS.....	8
7. PERSONALISED CARE AND SUPPORT PLANNING.....	15
8. FAST TRACK REFERRALS	17
9. MANAGING RISK	18
10. NAMED PHB OFFICER	19
11. DIRECT PAYMENTS.....	20
12. MONITORING AND REVIEW OF ELIGIBILITY FOR FUNDING AND A PHB	20
13. CHANGING THE AMOUNT OR TERMINATING A PHB	22
14. HOSPITAL STAY	24
15. PERSONAL WHEELCHAIR BUDGET	25
16. INDIVIDUALS WHO LACK CAPACITY IN RELATION TO PHBS	25
17. APPEALS	26
18. COMPLAINTS	28
19. INTEGRATION WITH LOCAL AUTHORITIES AND EDUCATION DEPARTMENTS.....	28
20. ONE OFF PHBS	29
21. DELEGATION OF HEALTHCARE TASKS AND INDEMNITY	29
22. REGISTRATION AND REGULATED ACTIVITIES	30
23. QUALITY AND FEEDBACK	31
24. GOVERNANCE AND OVERSIGHT OF PHBS	32
25. TRAINING.....	32
APPENDIX 1	33
APPENDIX 2.....	44

1. Equality Statement

Equality, diversity and human rights are central to the work of the Lancashire & South Cumbria (LSC) Integrated Care Board (ICB). This means ensuring local people have access to timely and high quality care that is provided in an environment which is free from unlawful discrimination. It also means that the ICB will tackle health inequalities and ensure there are no barriers to health and wellbeing.

To deliver this work ICB staff are encouraged to understand equality, diversity and human rights issues so they feel able to challenge prejudice and ensure equality is incorporated into their own work areas. ICB staff also have a right to work in an environment which is free from unlawful discrimination and a range of policies are in place to protect them from discrimination.

The ICB's equality, diversity and human rights work is underpinned by the following:

- NHS Constitution 2015
- Equality Act 2010 and the requirements of the Public Sector Equality Duty of the Equality Act 2010
- Human Rights Act 1998
- Health and Care Act 2022.

2. Introduction

- 2.1 This document sets out the policy and practice guidance developed to ensure a consistent and transparent approach is applied to the development, approval, delivery and oversight of Continuing Healthcare (CHC) and/or Health Personal Health Budgets (“PHB”s) for Eligible Persons.
- 2.2 A PHB is an amount of money used to support meeting an individual’s health and wellbeing needs. It is planned and agreed between the individual or their representative, and their local NHS team.
- 2.3 A PHB is not new or additional money, but a different way of managing health funding to meet the needs and outcomes of an individual.
- 2.4 Through the use of PHBs, the Integrated Care Board (ICB) strives to promote person centred care and support to give greater choice and control overall to its recipient. The provision of PHBs will provide ways to tailor services to individuals with a view to giving them increased choice, control, and flexibility over their care. The ICB also aims to maintain a simplistic and flexible approach whilst continuing to meet legal and auditing requirements. The ICB will ensure that PHBs are value for money for patients and the ICB. This will be achieved through regulating the manner in which PHBs are set up, through robust support planning and effective monitoring of PHB payments.

3. Background

- 3.1 PHBs are a way of personalising care, based around what matters to people and their individual strengths and needs, captured through shared decision-making conversations and a holistic personalised care and support plan. PHBs give people with long term conditions more choice, control, and flexibility over their healthcare.
- 3.2 This document sets out the framework that NHS Lancashire and South Cumbria Integrated Care Board (ICB) will follow in the delivery of PHBs.
- 3.3 Since October 2014, people eligible for NHS Continuing Healthcare (CHC) and children and young people’s continuing care have had the right to have a PHB. The right to have a PHB was extended to people eligible for section 117¹ after-care in mental health and people eligible for wheelchair services in December 2019.

¹ S.117 Mental Health Act 1983

3.4 There is further detailed and useful information in relation to who can have a PHB which should be considered alongside this policy in section 4 of the NHS England Guidance found here: <https://www.england.nhs.uk/wp-content/uploads/2014/09/Guidance-on-legal-rights-to-have-personal-health-budgets-or-personal-wheelchair-budgets.pdf> .

3.5 'One Off' PHBs can be used as part of the hospital discharge pathway to accelerate hospital discharge².

4. Scope

4.1 The aim of this policy is to ensure a consistent and transparent approach is applied to the process of offering and making PHBs available to people who are eligible and who wish to have choice and control of their care needs.

4.2 A PHB is an amount of money assigned to an eligible individual to meet assessed health and wellbeing needs. The PHB is planned and agreed between the individual and their local NHS team.

4.3 This policy also aligns with the ICB CHC Practitioner Guidance and wider clinical governance.

5. Definitions

Integrated Care Board (ICB) – statutory NHS body responsible for the planning and commissioning of health care services for their local area from July 2022.

Personal Health Budget (PHB) - an amount of money to support the healthcare and wellbeing needs of an individual, which is planned and agreed between the individual, or their representative, and the local ICB.

NHS Continuing Healthcare (CHC) – refers to a package of continuing care that is commissioned (arranged and funded) by or on behalf of the NHS in accordance with Regulation 20 of The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (as amended).

² <https://www.england.nhs.uk/wp-content/uploads/2021/12/C1489-One-off-personal-health-budgets-within-hospital-discharge-pathway-version-2.1-September-2022.pdf>

Childrens and Young Peoples' Continuing Care (or "CYPCC") – refers to a continuing care package which is required when a child or young person has needs arising from disability, accident or illness that cannot be met by existing universal or specialist services alone. Assessments are completed in accordance with The National Framework for Children and Young Peoples' Continuing Care (2016).

Representative/Authorised Person - In certain circumstances, including where you are under 16 or are unable to consent to your PHB, someone else may legally consent to and manage your PHB on your behalf. That person is called a 'representative'. Your representative will sign and agree to the terms of this agreement, and any other obligations on them under the relevant regulations.

Nominee - You or your representative are entitled to appoint a 'nominee' to take on the contractual responsibilities including arranging the services and support detailed in your support plan. Where we agree to it your nominee will sign and agree to comply with the terms of the agreement and any other obligations on them under the relevant regulations.

Support plan – a plan which identifies the goals that a person has for their health and wellbeing and sets out the services to realise those goals. There is no set menu, allowing the development of personalised and innovative solutions in line with this policy and supporting Direct Payment Agreement (DPA). The support plan is drawn up by a CHC Nurse Assessor in dialogue with the individual or their representative or nominee, family, carers, and other clinicians.

Mental capacity - Mental capacity refers to the ability to make and communicate specific decisions at the time they need to be made. To have mental capacity you must be able to understand, retain, use, and weigh the information relevant to the decision you need to make and be able to communicate that decision. The Mental Capacity Act (MCA) 2005 needs to be considered and followed by everyone involved in the care, treatment and support of people aged 16 and over living in England and Wales who are unable to make all or some of their own decisions. The MCA 2005 sets out a legal framework with important principles outlined to empower and protect people who lack capacity to make their own decisions.

Joint funded packages of care – a package of health and social care whereby the NHS and local social services authority both contribute towards the cost of care.

Personalisation – this means “starting with the individual as a person with strengths and preferences”, as opposed to a traditional approach to public services, where the starting point is the services available.

Personal Health Budget Officer - an allocated person provided to support the patient, nominee or representative with setting up, monitoring and running of the PHB.

Financial Audits - financial reviews completed around the PHB direct payment or third party account. These reviews are completed at least quarterly and may require the PHB holder to provide paperwork to support the review; some information may be obtained from the supporting companies e.g payroll.

6. PHB Process

6.1

Principle: the approval process for a PHB should be as 'light touch' as possible, focusing on whether outcomes and needs will be met rather than what is being purchased. The process should be transparent and auditable and a joint process between the individual and the relevant professional(s) involved for CHC. This will be the CHC Place Team and for S117 aftercare this will be the Individual Patient Activity (IPA) Team.

Step 1 – assessment of needs: the clinician will complete a care needs assessment with the individual to identify their health and wellbeing needs, and to find out what care and support they need to meet those needs.

Step 2 – budget allocation: the assessment of care needs is used by a PHB Officer to calculate an 'indicative budget'. An 'indicative budget' is an estimated amount of money needed to meet an individual's health and wellbeing needs.

Step 3 – support planning, care planning and using the budget: the clinician and the PHB Officer will work with the individual, and those who support them, to decide how best to use the PHB to meet the identified health and wellbeing needs and achieve the desired outcomes. This will involve a discussion exploring preferences for how the care might be delivered.

Step 4 – arranging care and support: when the support plan is agreed, the individual will receive their PHB, and their PHB Officer will support them to put in place the services agreed on the support plan.

Step 5 – review the support plan: the support plan will be reviewed regularly by a health professional and a PHB Officer to ensure it is meeting the desired health outcomes. If care needs change or the support is not meeting the identified care needs, a reassessment of care needs will be completed to ensure the support received is working well. Quarterly financial audits will be completed by the PHB Officer.

6.2 Resource Allocation and Budget Setting

The three financial management options for PHBs are set out below:

6.2.1

- **A Direct Payment**

Direct payments for healthcare are one of the ways of providing all or part of a PHB. The person, their representative or nominee, or for children their family/carers, will receive the funds into a bank account and arrange and pay for the care and support in their plan themselves. Support will be provided to help the patient or their representative to do this as independently as possible. There are specific rules as to how direct payments are managed. Direct payments may be in the form of:

- An annual personal budget which will be paid in 13 equal 4 weekly instalments, 4 weeks in advance, or other agreed payment schedule. It may be necessary to make an initial payment to cover the start-up costs e.g. recruitment and insurance. These 4 weekly payments are to purchase support, equipment, and services as stated in the PHB plan, and cannot be used to purchase services that are currently commissioned via other routes.
- One off direct payment to purchase items or one off support as defined and agreed in the PHB plan.

- **A Notional Budget**

A notional budget is where there is a defined budget amount, but management of the PHB remains with commissioners. Commissioners would continue to arrange services and support on behalf of the person.

Each individual or their representative is given details of their budget, and the person is fully involved in the development of their support plan.

- **A Third-Party Budget**

In this case, the PHB holder nominates an organisation independent of the person and the NHS commissioner to receive and manage the budget on their behalf and arranges support by purchasing services in line with the agreed personalised care and support plan. Again, support will be offered to the person to develop their support and care plan.

6.3 Personal Wheelchair Budget

Personal Wheelchair budget (“PWB”) is another form of a PHB which is managed in a slightly different way to the above. People who are referred and meet the eligibility criteria of their local wheelchair service and people who are already registered with the wheelchair service when they need a new wheelchair or specialist buggy, either because of a change in clinical needs or the condition of the current chair, have the right to a PHB. These people will be eligible for a personal health budget specifically related to wheelchairs. This can be requested at any time. Please also refer to the ICB Wheelchair Policy.

6.4 Indicative budget setting

The indicative budget will be used to inform the care and support planning process. The ICB will set the indicative budget based on its understanding of the Eligible Person’s identified health and wellbeing needs from the applicable assessment(s) for the Relevant Health Service(s) and such other assessments as considered appropriate in the circumstances. The purpose of the indicative budget is to understand from the outset how much money is available for a person to meet their care needs. The indicative budget amount is not final at this stage and a final budget will be confirmed once the PHB Support Plan, as agreed with the Eligible Person or their representative, has been signed off by the ICB. Indicative budgets will be set on a case-by-case basis to ensure each PHB has sufficient funds to meet an Eligible Person’s identified health and wellbeing needs. Depending on the level of an indicative budget, it may be necessary to seek authorisation via a funding panel e.g. Commissioning Decision Panel, Children and Young People. This would happen before the PHB moves into the care and support planning process.

6.5 What can a PHB be spent on?

A PHB can be spent on a wide range of care, services, items or activities that will meet identified health and wellbeing needs where they have been included within the individual’s PHB care and support plan.

The PHB care and support plan must be agreed by the ICB as well as the person receiving the care or their representative.

The ICB will agree the PHB care and support plan only if it is satisfied that the health and wellbeing needs of the person are clearly set out and can be met by the services and activities specified in the plan.

The ICB has specific duties and responsibilities related to PHBs, and the person receiving the PHB (whether it is the individual requiring support, their nominee, or a representative) is responsible for ensuring that PHBs are used as specified in the agreed support plan. If it is not, the ICB has the right to review the PHB, with the potential to stop any payments and to reclaim monies which have been misspent. PHB Officers will complete quarterly financial audits to support the ICB with understanding of budget spend and recover monies unused or misspent.

6.5.1 Consumables

The ICB would expect that all options for consumable delivery through commissioned contracts are explored through the individual's PHB care and support plan before agreeing a set cost for this in the PHB (e.g. through commissioned continence services). Where consumables cannot be provided through existing community services or prescriptions, the ICB will discuss with the individual an appropriate weekly amount to be included in the PHB. The ICB acknowledges that it is a requirement of infection control and health and safety legislation for all carers to have Personal Protective Equipment ("PPE") and will therefore include appropriate costs for this through the PHB (gloves, aprons etc.) where this is identified in the PHB care and support plan.

6.5.2 Administrative/Associated costs

Administrative costs are considered and included in the PHB amount and may include printer ink, paper, diaries, stationery, related to the administration of running a PHB and employing staff. Where these costs are requested to be included in the PHB by the Eligible Person or their representative or nominee, the ICB will consider the request and whether the items required relate specifically and exclusively to the cost of maintaining the PHB. In all cases the ICB would expect the PHB budget holder to appropriately source cost effective methods of meeting administrative costs.

Other associated costs will be funded by the ICB to support the use of a PHB, these can include but are not limited to payroll costs, managed account costs, suitable liability insurance.

6.5.3 Utilities

The ICB will not routinely fund utility bills/costs through a PHB. It is expected that in most cases where eligible individuals have higher utility costs due to the nature of their condition, additional costs should be met through existing benefits. The ICB will consider any request for additional costs on a case by case basis by exception.

6.5.4 Equipment

It is not expected that PHBs should be used to purchase equipment that an eligible individual requires to meet identified needs. The ICB expects that equipment would continue to be sourced through usual routes (i.e. community equipment store contracts). For those requiring the use of a wheelchair, individuals can access this via the Personal Wheelchair Budget policy noted at 5.3.

6.5.5 Transport

The ICB would expect that transport to and from appointments, e.g. activities would be met through existing resources (personal independence payment (PIP), patient transport services, Motability vehicles, their own resources). Where access to and from respite and day care has been identified as required to meet an individual's assessed health and support needs, the ICB will ensure appropriate funding is included within the PHB. If a PHB holder is referred to hospital or other NHS premises for specialist NHS treatment or diagnostic tests by a doctor, dentist or another primary care health professional, a request for a refund of reasonable travel costs under the Healthcare Travel Costs Scheme ("HTCS")³ may be appropriately made. The ICB offers patient transport services to individuals who cannot use regular transport due to medical reasons. This service provides planned, non-emergency transport for eligible patients to enable them to attend medical appointments.

6.5.6 Holidays

The ICB will not pay for holidays or trips, in terms of travel costs or accommodation for the patient and their family. The ICB may agree as part of an eligible individual's PHB care and support plan to fund increased personal assistant/carer hours or equipment hire to support the PHB holder whilst they are away. In most cases, discussions around holiday arrangements will happen in the care planning process but should a PHB holder wish to explore this option at a later date, he or she should discuss the request with their CHC Assessor in the first instance. The ICB has an

³ <https://www.nhs.uk/nhs-services/help-with-health-costs/healthcare-travel-costs-scheme-htcs/>

obligation to ensure the funds available are dispersed in a way which is fair and equitable. Any requests to increase funds for personal assistant/carer hours or equipment for holidays will be considered at the relevant funding panel. Individuals or PHB Officers can submit requests to the ICB. Where an additional funding request is made, the PHB Officers will update the PHB holder of progress. Written confirmation of the outcome will be provided.

6.5.7 Accommodation – Private Dwellings

A PHB should not be used to fund accommodation costs as it is expected that accommodation costs should be met through existing benefits or other income. The ICB may consider funding accommodation for the eligible individual where this represents respite provision and will review this on an individual basis. The ICB will not fund accommodation for personal assistant/carers but may fund their hours worked to support an individual during a period of respite. This would be considered on a case by case basis.

6.5.8 Non-care related tasks

For adults in receipt of a PHB, and in line with the principles of the NHS constitution, a PHB cannot be topped up by individuals/their families to meet assessed care needs. Top ups for non-care costs should not be added into the PHB account, as this is not appropriate for audit purposes/monitoring spend on the account/bringing back identified surplus' of public funds to the ICB.

If the PHB budget holder considers that the direct payments are insufficient to meet the assessed needs in the PHB care and support plan, the individual should request a review of the care package by the ICB.

The PHB holder may purchase additional services from their own funds which are not identified in the PHB care and support plan but this should take place separately with clear accountability (i.e. cleaning, shopping etc.)

6.6 Services for which a PHB cannot be used.

PHBs are not appropriate for all aspects of NHS care an individual may need. A PHB cannot be used for any of the following (list not exhaustive)⁴:

- To purchase primary medical services provided by GPs
- Dental care
- Vaccination or immunisation; including population-wide immunisation

⁴ This is not an exhaustive list

programmes

- Screening
- The national child measurement programme
- NHS Health checks
- Urgent or emergency service (such as unplanned admissions to hospital or accident and emergency). This is because by their nature they are unplanned and will not have been included into the support plan
- Surgical procedures
- NHS charges, such as prescriptions or dental charges
- Purchasing alcohol or tobacco
- For gambling
- To repay a debt (except for debts relating to services specified in the PHB care plan)
- To fund long term care in registered Care Homes, subject to some exceptions⁵
- Anything which is unlawful or illegal.

6.7 Calculating a PHB budget

The amount that an individual receives in their final PHB plan will depend on the assessment of their health and wellbeing needs and the cost of meeting these needs based on reasonable costs for such services or activities.

The ICB is committed to promoting patient choice, whilst supporting individuals to manage risk proportionately, positively and realistically. The ICB is committed to giving individuals more choice and control over their healthcare, including the use of PHBs, but must balance this with its financial obligations to the whole population it serves. The ICB also has a duty to consider its financial responsibilities to commission services for the wider local population when making decisions about whether to fund specific care packages or treatment.

The ICB will ensure that as far as possible, it commissions healthcare in a manner that reflects the choice and preferences of individuals, whilst balancing between patient choice, safety, sustainability and the effective use of finite NHS resources.

PHBs will be set at a level to cover the full cost of each of the services agreed in the care and support plan.

⁵ See page 25 - [Guidance-on-legal-rights-to-have-personal-health-budgets-or-personal-wheelchair-budgets.pdf \(england.nhs.uk\)](https://www.england.nhs.uk/guidance-on-legal-rights-to-have-personal-health-budgets-or-personal-wheelchair-budgets.pdf)

In most cases, people cannot add their own money into a personal health budget, and the budget should meet all the identified health and wellbeing needs of the person. The exceptions to this rule includes [people accessing wheelchairs](#) and some dental and ophthalmic services, where under existing legislation people can add their own money to NHS funds in order to purchase a different service or product. In these situations, the NHS must still ensure the NHS funding covers the service or product that meets someone's identified needs, as agreed in the care and support plan, so that any contribution is paying for any additional extras or changes that an individual wants outside of the agreed need.

In all other situations, if someone wants to access more services than those being provided by the NHS to meet their assessed needs, then they can do so. They would need to organise and pay for this, and it would be separate to the personal health budget. There needs to be clear separate lines of clinical accountability and governance. A person may not top up the PHB with their own money to purchase more expensive care than that agreed in the care plan.

If the amount of the PHB is not set at a suitable level, to meet assessed needs and support, it will be reviewed and adjusted in line with an assessment of need and evidence available to support the review.

7. Personalised Care and Support Planning

Personalised care and support planning is an essential process to agree PHBs. The person is central to all care and support planning and the process for PHBs is driven by the individual's choices and is written in the individual's own words unless this is not a viable option.

The care and support plan are a core agreement between the ICB, and the person receiving the PHB and includes responsibilities on both sides. It is essential to get this right and the ICB will ensure people have support available throughout the care and support planning process. This support can take different forms, for example it may be from their relevant healthcare professional or PHB Officer.

The personalised care and support plan, needs to be clear so that everyone involved in the process understands what the PHB is there to achieve and what services, equipment and activities are included.

The care and support plan are not just to achieve the meeting of health needs, it is intended to support health and well-being outcomes.

The ICB has broad powers to address peoples' health and well-being needs, and an effective care and support plan should also address peoples' needs holistically.

7.1 What should be included in the Personalised Care and Support Plan?

A clear care and support plan will be set out and agreed before a PHB is approved. An effective plan will include (list not exhaustive):

- What matters to the person – including broader wellbeing.
- The health needs of the individual and desired outcomes.
- How those health needs and outcomes will be met, by who, or which activity.
- Any specific training needed to ensure care is delivered appropriately and safely.
- Any specific activities or interventions that have been appropriately assessed in accordance with legal frameworks and agreed as required e.g. physical restraint or medication management.
- Any planned contingencies or alternatives for services that may be utilised.
- How the individual is to receive the PHB e.g., notional budget, direct payment, third party or a combination.
- What the PHB will be used to purchase, and any specific limitations or restrictions on what can be purchased relevant to that individual.
- The amount of the PHB and how frequently it will be paid (if appropriate).
- Who is responsible for monitoring and reviewing the health condition of the person receiving care.
- The anticipated date of the first clinical and financial review.
- Any potential risks and a contingency plan to deal with them.

7.2 Agreeing the Personalised Care and Support Plan

Care and support plans that are completed for all individuals eligible for, or in receipt of a PHB i.e. via a notional budget, direct payment or third party, need to be approved by the ICB. The ICB will only agree to a care and support plan, if the ICB believes:

- The health and wellbeing needs of the person can be met through the purchase of services or participation in activities, set out in the care and support plan.
- The budget in the care and support plan will be sufficient to cover the full cost of all eligible needs, delivered by services and activities set out in the plan.

- The care and support plan and management of the PHB will be reviewed regularly.
- Any potential risks have been identified and discussed fully with the individual, and appropriate contingencies have been put in place.
- Where people lack capacity, details of the person's representative and any relevant procedures or assurances such as safeguarding, promoting liberty and least restriction, but also detailing any necessary restrictive measures that may be required, are included in the care and support plan, and how those processes will be managed – including specific oversight or training.

The individual or their representative must also agree that:

- The individual's care needs will be met by the services agreed in the care and support plan.
- The budget amount is sufficient to cover the full cost of meeting the eligible needs in the care and support plan.
- The care and support plan will be reviewed clinically within the first 3 months and then at least annually. Financial reviews will be completed quarterly. The person's needs may be reassessed as part of that review, or earlier, should needs change prior to scheduled reviews or any other reason for review arises.

The ICB will not agree to services or activities set out during the care planning stage, if the ICB believes that the potential health outcomes are outweighed by possible risks to the individual's health or wellbeing.

If the ICB refuses to agree to a service or activity proposed during the care planning stage, the person, representative or nominee may request an explanation from the ICB. The individual can also ask the ICB to reconsider their decision and provide additional evidence or information to inform that decision. The ICB will reconsider their decision in the light of new evidence, then notify and explain the outcome in writing to the individual.

8. Fast Track Referrals

Where there is a 'fast track' referral or a referral from hospital, care as usual is provided, unless the individual already has direct payments from social services. If this is the case, then LSC All Age Continuing Care (AACC) & Individual Patient Activity (IPA) will seek to keep the existing care arrangement in place and either

put in additional care, as needed, or adjust the direct payments and ensure additional care is provided through that. When an individual who is 'fast track' or referred from hospital is reviewed for NHS continuing healthcare at three months, and they are still eligible, they go through the personal health budgets route.

Fast Track PHB's are prioritised by the PHB team, usually picked up within 48 hours of referral. If the patient has a direct payment in place from a local authority this should remain in place and funding streams arranged by a PHB Officer. If any additional care and support is required, the PHB Officer will draft the budget and gain agreement of this funding. A Fast Track care and support plan will be used to support the PHB meeting the care and support needs. The shortened plan is designed to obtain the information as quick as possible whilst ensuring the correct support is provided without burden.

9. Managing Risk

9.1 Clinical and personal support

The ICB is committed to promoting individual choice, while supporting individuals to manage risk positively, proportionately, and realistically. The ICB recognises the importance of positive risk taking in ordinary life where that may be in line with individual choice and will take reasonable steps to support people to identify and manage those risks proportionately, working with partner organisations where needed. Each person's risks will be considered on an individual basis, taking into account any potential mitigating factors and in line with the principles of the Mental Capacity Act 2005 and any supporting risk assessments.

During the care and support planning process, in-depth discussions will take place with the person, their representative or nominee about potential risks and how these risks will be managed.

This will be clearly documented in the personalised care and support plan.

9.2 Financial Risk

The PHB should always be sufficient to meet the outcomes identified in the care plan and allow for planned contingencies set out in the plan.

The financial arrangements and requirements are contained in the agreement between the ICB and the individual PHB holder (or their representative or nominee) in the case of PHB Direct Payments, or service providers in the case of Notional PHBs or Third Party PHBs. The agreements will be signed all parties.

PHB funds remain the property of the ICB until they are spent in accordance with the individual's care and support plan. If the PHB is terminated for any reason, all unused funds must be repaid to the ICB from all relevant parties. PHB Holders are responsible for ensuring that the PHB is only used to purchase care, items or activities agreed in the PHB care and support plan, or set out in their signed PHB User Agreement

Financial reviews are completed by the named PHB Officer on a 3 monthly basis (unless different frequency has been identified as required), the financial review requires all paperwork, bank statements, payroll information, invoices and receipts etc to be provided. When the review is completed notification is provided to the patient to keep them up to date.

If any misuse of funding is identified the PHB Officer makes contact with the patient to obtain information and ask for the funding to be repaid. If this is not able to be achieved the PHB direct payment/third party may be ended.

If fraudulent activity is identified this will be reported and investigated through referral to the ICB fraud team and the PHB team will support any investigation required.

10. Named PHB Officer

When a direct payment or third party PHB is requested, the ICB will name a PHB Officer. The PHB officer will be named in the care and support plan and should be someone who has regular contact with the individual, and their representative or nominee if they have one.

The PHB Officer is responsible for:

- Managing the assessment of the health needs, along with clinical staff, of the individual as part of the care and support plan.
- Ensuring provision of appropriate assistance and support regarding the PHB related policy and procedures.
- Ensuring the individual, representative and the ICB have agreed the care and support plan.
- Undertaking or arranging for the monitoring and reviews of the PHB, the care and support plan and the health of the person.
- Undertake joint reviews of the needs under the current care and support plan and the health of the person.
- Undertaking financial monitoring and reviews of the PHB.
- Ensuring provision of appropriate assistance and support regarding PHB process

The PHB Officer should be the primary point of contact for the individual and may include more than one person.

11. Direct Payments

Where it is agreed that a person is eligible to receive a PHB as a direct payment, the National Health Service (Direct Payments) Regulations 2013, and ICB guidance must be followed. The ICB guidance covering the requirements arising from the Regulations can be found in more detail in Appendix 1.

12. Monitoring and Review of Eligibility for funding and a PHB

The ICB will review how the PHB is being utilised at appropriate intervals based on individual circumstances. This will include the health needs of the person and, whether the care and support plan is achieving the agreed health and wellbeing outcomes. Reviews are part of a dynamic approach and an ongoing duty as part of the ICB's local processes to ensure that the eligible person's needs are met safely.

The ICB will review assessed and eligible needs against the current care and support plans within the first 3 months of the PHB being implemented. Thereafter reviews will be set out at appropriate intervals and will take place at least annually or more frequently as necessary due to a change in need or any other relevant factor.

The ICB is not required to complete more than one review at the request of an eligible person or their representative within a 6 month period following a decision being made by the ICB, though retains discretion to do so if it considers that to be necessary based on the individual circumstances of a case.

The care and support plan review will consider whether:

- The health needs and health and wellbeing outcomes of the individual continue to be met or need reassessing.
- The care and support plan are meeting and addressing the assessed health needs of the person.
- Any direct payment element has been used effectively and appropriately. Financial reviews will be completed every 3 months to support this review.

- The PHB budget is sufficient to cover the full cost of each of the services.
- The risks have changed, and whether the risk management is still effective and/or updated risk assessment is required.
- If it is the first review following implementation of a PHB, or if a service or activity has been changed, there should be re-assessment of indemnity and registration liaising with the PHB Officer.
- If the person lacks capacity and/or is considered to be vulnerable, the ICB will consider the requirements of the Mental Capacity Act 2005 as well as how the person's liberty and/or safeguarding is being promoted by the care and support plan.

If the ICB becomes aware of or is notified that the health of an individual has changed significantly, or if the eligible person or their representative or nominee makes a reasonable request for review, the ICB will consider whether it is appropriate to carry out a review of the care and support plan to ensure the individual's needs are being met.

If the ICB becomes aware of or is notified that the PHB is insufficient to purchase the services agreed in the care and support plan, or is not being followed, or expected health outcomes are not being met, or if concerns are raised such as safeguarding or fraud, it will carry out a review. If fraud is identified from financial audit referral will be made immediately to ICB fraud team. Any safeguarding identified by PHB Officers will be reported immediately and PHB Officer's will support any reviews or investigations required.

If the ICB becomes aware of any issues concerning the employer's conduct in managing PAs or not adhering to employment law and regulations, a decision may be made for the direct payment to be discontinued.

12.1 Following a review

Following a clinical and/or financial review, the ICB may:

- Decide no change to the care and support plan is required.
- Amend the care and support plan with the person or their representative.
- Decide to pay the direct payment to the person rather than a nominee or representative.
- Decide to pay the direct payment to a representative or nominee rather than the person.
- Increase, maintain or reduce the amount of the PHB in accordance with assessed needs.
- Require that a direct payment is not used to purchase a service from a

particular individual.

- Decide that use of a direct payment would not be appropriate. In these instances, the person and/or their representative may request a review. It should be emphasised that if it is considered impracticable or inappropriate to provide a direct payment, the person may still benefit from a PHB delivered in another form such as a notional budget or a third-party budget.
- Terminate the notional budget, direct payment or third party.

13. Changing the amount or terminating a PHB

The person in receipt of the PHB or their representative may request a termination of a PHB at any time. Any such request should be made in writing to the named PHB officer/ICB clinician.

The ICB may increase or decrease the PHB budget at any time following a review, if it is satisfied that the new amount is sufficient to cover the full cost of the needs set out in the current care and support plan.

Before making the decision to terminate or reduce a PHB, the ICB will consult the individual receiving the PHB or their representative to address any misunderstandings or inadvertent errors.

If a direct payment is stopped, the ICB will ensure the person receiving the direct payment will be given reasonable notice and a written explanation regarding the ICB's decision. The individual will be advised of other funding options i.e., a notional or third-party budget.

The ICB may reduce a PHB:

- If the ICB is satisfied that the reduced amount is sufficient to cover the full cost of the current care plan.
- If a surplus direct payment has accumulated that has remained unused. Clearly, a surplus may indicate the individual is not receiving the care they need or the cost of services is incorrect. As part of the review process, the ICB will establish why the surplus has occurred and remedial action will be taken.

When PHBs have been reduced, the person receiving care, a representative or nominee may request the ICB to reconsider the decision and may provide evidence or relevant information to be considered as part of the deliberation.

The ICB will inform the person receiving the PHB or their representative of their decision after reconsideration and will state the reason for the decision in writing.

The ICB will stop Direct Payments if:

- A person with capacity to consent withdraws their consent to receiving direct payments.
- A person who has recovered the capacity to consent, does not consent to direct payments continuing.
- A representative withdraws their consent to receive direct payments, and no other representative has been appointed.

Transition to adulthood from children health services to adult health services should not be a reason to stop an existing PHB. A timely review of need and a refreshed care and support plan should be in place so that young people and their carers are supported properly and consistently and the PHB continued in accordance with assessed needs.

The ICB may terminate a PHB arrangement if it is satisfied on review that it is appropriate to do so, following notice being given to the person or their representative.

Examples where termination would be considered appropriate may include:

- The person no longer needs care.
- The person is no longer eligible for the relevant health service giving a right to a PHB from the ICB and the ICB has considered that a PHB is no longer appropriate in the circumstances.
- Direct payments are no longer a suitable way of providing the person with care.
- Use of the PHB budget is not in accordance with the PHB care and support plan and user agreement and there is no reasonable explanation for this.
- The ICB has reason to believe that the individual, a representative or nominee is no longer suitable to receive direct payments, such as where continuous or material breach of the PHB user agreement has occurred, or where safeguarding concerns have arisen.
- The individual, a representative or nominee has been unable to demonstrate that they are able to use the direct payment to pay for a stable, appropriate or adequately staffed package of care.

- A nominee withdraws their consent, and the person receiving care, or their representative does not wish to receive direct payments themselves.
- The person has withdrawn their consent to the nominee receiving direct payment on their behalf.
- The direct payment has been used for purposes other than the services agreed in the care and support plan or any of the prohibited items mentioned on page 18/19.
- Fraud, theft, or an abuse in connection with the direct payment and/or care arrangements has taken place.
- The individual, representative or nominee is not deemed to be a suitable person to arrange with any person or body to provide any services secured by means of the direct payments - this may include concerns with regards to the unfair treatment of employed staff and/or mismanagement of finances.
- A clinical view/assessment has determined that the eligible person's health or safety is at risk if the arrangement was to continue.
- The eligible person is no longer capable of managing the PHB arrangement and there is no-one willing or able to support the management of the PHB on behalf of the individual.
- The individual moves into residential care or is admitted into hospital (for longer than 28 days) (**See section 14**)
- The person has died.

If the direct payment is stopped for any reason, the ICB is responsible for fulfilling the contractual obligations the person entered into. After the direct payment is stopped, all rights and liabilities acquired or incurred as a result of a service purchased by direct payments will transfer to the ICB⁶.

14. Hospital stay

There may be occasions when PHB holders require a stay in hospital. However, this should not mean that payment must be suspended while the individual is in hospital. Where the PHB recipient is also the person requiring care and support, consideration should be given to how the payment may be used in hospital to meet non-health needs or to ensure employment arrangements are maintained. Suspending or even terminating the payment could result in the person having to break the employment contract with a trusted personal assistant(s)/carer(s),

⁶ With some limited exceptions. If there is any uncertainty regarding the rights and liabilities acquired and/or contractual obligations, ICB professionals must seek advice internally.

causing distress and a lack of continuity of care when discharged from hospital. In these cases, the PHB Officer will explore the options with the person, their representative/ authorised person and carer to ensure that both the health and care and support needs of the person are being fully met in the best way possible.

For example, the person may prefer the PA/ carer to visit hospital to help with personal care matters. This may be especially so where there has been a long relationship between the direct payment holder and the PA/carer. This should not interfere with the medical duties of hospital personnel but be tailored to work alongside health provision.

In some cases, the nominee or representative/ authorised person managing the direct payment may require a hospital stay. In these cases, the ICB must conduct an urgent review to ensure that the person continues to receive care and support to meet their needs. This may be through a temporary nominee or representative/ authorised person, or through short term ICB arranged care and support.

The ICB may, at its absolute discretion pay personal assistant/carers for up to twenty-eight (28) days at the minimum hours outlined in their employment contracts. If an employment contract does not exist, or the contract is zero hours, the ICB will use its discretion over the appropriateness of the retainer period, taking into account the established staff team and difficulty in starting a new package should the personal assistant/carers need to find new employment while the individual is in hospital.

15. Personal Wheelchair Budget

See ICB Wheelchair Policy

16. Individuals who lack capacity in relation to PHBs

A PHB arrangement for a person who lacks capacity will require the appointment of a 'representative' by the ICB. A representative is someone who agrees to act on behalf of someone who is otherwise eligible to receive a PHB but cannot do so because they do not have capacity to consent to receiving one or because they are a child.

An appointed 'representative' could be anyone deemed suitable by the ICB, and who would accept the role. The representative can be:

- a friend, carer or family member.
- a deputy appointed by the Court of Protection.

- an attorney with health and welfare or finance decision-making powers created by a lasting power of attorney; or
- someone appointed by the ICB.

A representative must (unless they have appointed a nominee to do so):

- act on behalf of the person, e.g. to help develop a PHB care and support plan and to hold the direct payment.
- act in the best interests of the individual when securing the provision of services.
- be the principal person for all contracts and agreements, e.g. as an employer.
- use the PHB and direct payment in line with the agreed PHB care and support plan; and
- comply with any other requirement that would normally be undertaken by the individual (e.g. participating in a review, providing information).

In the case of adults who lack capacity, when choosing the ‘representative’ the ICB must adopt a decision-making process in line with the requirements of the Mental Capacity Act 2005 and within the context of the individual’s best interests. This includes seeking the views of the individual, where possible, about who they would want to manage their PHB. The decision-making process for the appointment of the ‘representative’ must be documented and discussed as part of care planning process and agreed by the ICB. The representative will take on the responsibilities associated with management of the PHB.

Where it is believed to be appropriate to provide a PHB by way of direct payments, the representative must be fully informed about, and consent to accepting, the responsibilities relating to the receipt and management of the direct payment on the individual’s behalf. The representative cannot undertake the role of managing the PHB and also be an employee on the care package. The involvement of the representative should be reviewed if the individual regains capacity and/or reaches the age of 16.

17. Appeals

When an individual wishes to appeal a decision of the ICB in relation to a decision relating to (a) a request for a PHB or (b) for a PHB to be delivered via a direct payment or (c) part of a PHB care and support plan, this should be made in writing to the ICB within not more than 14 days of the original decision being made. In these instances, the ICB will:

- Acknowledge receipt of the request in writing within 10 working days.

This acknowledgement will include details of how the review will be conducted and timeframes for when it should be completed.

- Any final decision will be sent in writing within 28 working days of acknowledgement of the original request.
- There may be instances where a complex situation requires a longer timeframe for reconsideration and response. In these instances, individuals will be kept informed of progress.
- If an individual and/or his or her representative is not satisfied, they can pursue the matter via the ICB /local NHS complaints processes.
- If the ICB decides not to give someone a PHB or a direct payment they will inform the person, and any nominee or representative, in writing and give their reasons. This will be in an appropriate format for the people involved to understand in line with the Equality Act 2010.
- On receipt of notice from the ICB, the person, representative or nominee may request that the ICB reconsiders its decision. They may also provide additional evidence or information to support their case within the timeframe advised by the ICB on receipt of a request for appeal.
- With regards to stopping, reducing or reclaiming a payment, the ICB will review the decision considering any new evidence, and then notify and explain the outcome in writing. The ICB is only required to reconsider its decision once. If the individual is still unhappy with the decision, they will be referred to the local NHS complaints procedure.
- The person, their nominee or representative may request that the ICB reconsider the decision not to give a direct payment, but they may only do so once in a six-month period.
- The ICB will make a decision based upon the information available; the outcome of their deliberations will be put in writing.
- If an individual is not suitable to receive a direct payment, the ICB, (where possible) will consider whether the individual would benefit from a notional budget, a managed account or third-party PHB.
- If the ICB needs to reclaim money as the result of theft, fraud or another criminal offence, legal advice will be sought.

18. Complaints

In addition to informing an individual of their right to request reconsideration of a decision regarding a direct payment, the ICB will make details of the NHS complaints' procedure available to all individuals receiving a PHB.

For complaints relating to providers, individuals will need to follow the provider's complaints procedures. In some circumstances, providers will not have a complaints procedure. This is not a barrier for people to purchase services from them, though the implications must be discussed as part of the risk management discussion.

Following the outcome of the ICB's complaint process, the individual or their representative still has the right to refer the matter to the Parliamentary and Health Service Ombudsman which can also investigate complaints about any service purchased by a PHB that is referred to them providing the ICB's own complaints process being followed. It is the ICB's responsibility to inform people how to make a complaint to the Ombudsman should they wish to.

If an individual in receipt of a PHB or their representative stops an employee from providing care, (e.g., personal care or healthcare) because they have caused harm to that person, the individual can refer that person to the Disclosure and Barring Service (DBS). The DBS will decide whether that person should be barred from working with adults or children.

19. Integration with Local Authorities and education departments.

Local Authorities are an integral partner in the effective delivery of PHBs. The ICB will work with Local Authorities to ensure that the processes for managing PHBs are aligned to minimise the impact on the individual where there is interface with care and support delivered via the local authority.

Typical examples include, but are not limited to:

- For individuals previously in receipt of a social care direct payment who become eligible for an NHS PHB;
- Where NHS CHC eligibility ceases for an individual with a PHB and the individual returns to a local authority social care direct payment.
- Developing a shared 'approved provider list' for services relating to PHBs.
- Developing a shared understanding of risk and risk information sharing

protocols.

- Safeguarding matters arising from packages of care.
- Joint agreements for people eligible for Section 117 Aftercare MHA 1983
- Joint agreements and protocols with Education for children with additional needs who are eligible (or their family / carer) to receive a PHB. This includes transition from children to adult health services.

20. One off PHBs

In 2021 NHSE set out guidance to enable systems to deliver One Off PHBs to support hospital discharge. In summary this means that the ICB can enable people, families and carers to access personalised care and support when an identified need cannot be met via commissioned services. Also see the NHSE guidance below:

[NHS England » One-off personal health budgets within hospital discharge pathway](#)

More recently, across other areas in England, these flexibilities have been increasingly used to support people who are not in hospital but who may benefit from a One Off PHB in other circumstances. The ICB is currently exploring these wider opportunities and this policy will be updated accordingly.

21. Delegation of Healthcare Tasks and Indemnity

Direct payments for healthcare can be used to employ a personal assistant (PA) to carry out certain personal care and health tasks that might otherwise be carried out by qualified healthcare professionals such as nurses, physiotherapists, or occupational therapists. In these cases, the healthcare professional delegating the task will need to be satisfied that the task is suitable for delegation, specify this in the care and support plan and ensure that the PA is provided with the appropriate training and development, assessment of competence and has sufficient indemnity and the right level of insurance cover.

In the first instance, it will be the responsibility of the person buying the service or their representative to check the indemnity cover of the provider from which they are buying services. They must make enquiries to ascertain whether the provider has indemnity or insurance, and if so, that it is at the appropriate level.

However, the person buying services can ask for the ICB to undertake these checks on their behalf. The ICB will make this option available during the care planning stage.

22. Registration and Regulated Activities

If a person wishes to buy a service which is a regulated activity under the **Health and Social Care Act 2022** and **Health and Social Care Act 2008 (Regulated Activities) Regulations 2014**⁷ as amended, they must inquire as to whether their preferred provider is registered with the Care Quality Commission (CQC). A PHB cannot be used to purchase a regulated activity from a non-registered service provider.

In the first instance, it will be the responsibility of the person buying the service to check whether the provider is appropriately registered. They can request the ICB investigate this, and if they ask the ICB, it is the ICB's responsibility to do this. As with the indemnity cover, the ICB will review this as part of their assessment as to whether any direct payment is being effectively managed.

If a person employs a care worker directly, without the involvement of an agency or employer, the employee does not need to register with the CQC.

The CQC guidance makes it clear that where a person, or a related third party on their behalf, makes their own arrangements for nursing care or personal care, and the nurse or carer works directly for them and under their control without an agency or employer involved in managing or directing the care provided, the nurse or carer does not need to register with the CQC for that regulated activity.

A related third party is:

- An individual with parental responsibility for a child to whom personal care services are to be provided.
- An individual with power of attorney or other lawful authority to make arrangements on behalf of the person to whom personal care services are to be provided.
- A group or individual mentioned (in either of the above) making arrangements on behalf of one or more persons to whom personal care services are to be provided.
- A Trust established for the purpose of providing services to meet the health or social care needs of a named individual.

⁷ See consultation currently live regarding the Regulations in 2024 for more information: <https://www.gov.uk/government/consultations/changes-to-regulations-relating-to-the-care-quality-commission/changes-to-regulations-relating-to-the-care-quality-commission>

This means that individual user Trusts, set up to make arrangements for nursing care or personal care on behalf of someone are exempt from the requirement to register with the CQC.

Also exempt are organisations that only help people find nurses or carers, such as employment agencies, who have no role in managing or directing the nursing or personal care that a nurse or carer provides.

If someone wishes to use a direct payment to purchase a service which is not a regulated activity, they may do so provided it is agreed in their care plan. If the care plan specified that a task or tasks require a registered professional to undertake it, the provider may also need to be a registered member of a professional body.

23. Quality and feedback

The ICB will review all processes and policy on PHBs in the context of the **NHS Shared Commitment to Quality** and specifically in accordance with the **NHSE PHB Quality Framework**. The PHB Quality Framework supports ICBs to create the conditions to meet PHB expectations, with a focus on improving operational delivery to:

- deliver [high quality care](#).
- improve the experience of PHB holders.
- realise the 'life changing' outcomes that PHBs can deliver.
- develop workforce confidence in commissioning and delivering PHBs.

[NHS England » Personal Health Budget \(PHB\) Quality Framework](#)

The ICB PHB strategic approach to PHB quality and development will ensure:

1. A plan is in place to implement the rollout of PHBs to people with a legal right to have one. It includes the expansion of PHBs across local populations, and considers opportunities for integration with social care and education.
2. Oversight and alignment of PHB offers and messaging across systems, taking into account the priorities and needs at place level.
3. Consistent and good quality information about PHBs is available across the ICS (integrated care system).
4. Advocacy support across the system is understood – ICBs to consider supporting the development of independent and accessible advocacy services to ensure people have independent support and advice if they need it.

The ICB will introduce mechanisms for seeking feedback and experience on PHB processes from PHB holders, their families, carers or representatives on a systematic basis to help improve and inform policy. This will synergise with feedback from aligned policies such as CHC where the outcome for the person is to have a PHB.

Ongoing monitoring and evaluation will be undertaken to include:

- breakdown of uptake of PHBs.
- individuals experience of PHBs.
- improvements in quality of life, (outcomes and benefits).
- receiving provider reports, to include activity data and a quality report.
- receiving reports relating to the audit of PHB or proactive reviews; and
- provide detail of any serious incidents or concerns (including safeguarding).

When seeking feedback from PHB holders, the ICB will do this in context of the NHSE/ Think Local Act Personal 'I Statements' found in the NHSE PHB Quality Framework⁸, so that the feedback is always given from the perspective of the person and not the perspective of the system.

24. Governance and oversight of PHBs

Governance and oversight of PHBs across the ICB will be the responsibility of Quality Hub.

25. Training

The allocated PHB Named Officers will have received training in relation to personalised care planning and training in relation to agreeing health and wellbeing outcomes or have prior experience of implementing PHBs.

As PHBs are a developing initiative, additional training needs and opportunities will be identified through practice and/or as guidance or legislation changes over time.

The PHB lead is contactable in the event that the Provider and/or individual or their representative requires support and/or guidance in the implementation and operation of PHBs.

⁸ <https://www.england.nhs.uk/long-read/personal-health-budget-phb-quality-framework/>

Appendix 1

a. Who can receive a direct payment?

ICBs must retain overall responsibility, including legal responsibility, for all decisions made under The National Health Service (Direct Payments) Regulations 2013, even where functions have been delegated to other statutory providers and organisations.

A direct payment can be made to, or in respect of, anyone who is eligible for NHS care (under the National Health Act 2006), where the person is:

- A person aged 16 or over, who has the capacity to consent to receiving a direct payment and consents to receiving one.
- A child under 16 where they have a representative who consents to the receiving of a direct payment.
- A person aged 16 or over who does not have the capacity to consent but has a representative who consents to the receiving of a direct payment.

And where:

- A direct payment is appropriate for that individual with regard to any particular condition they may have and the impact of that condition on their life.
- A direct payment represents value for money and, where applicable, any additional cost is outweighed by the benefits to the individual.
- The person is not subject to certain criminal justice orders for alcohol or drug misuse. However, such a person may be able to use another form of PHB to personalise their care.

Decisions about providing direct payments for healthcare are based around need rather than being based around a particular medical condition or severity of condition.

The national guidance document on direct payments for healthcare: *Understanding the regulations* has been updated to reflect the introduction of integrated care boards (ICBs) in July 2022. The document provides guidance for commissioners to support the implementation of The National Health

Service (Direct Payments) Regulations 2013 and The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2014 and (Amendment) (No. 2) Regulations 2019.

b. Receiving a direct payment

The ICB will support the individual during the process of a PHB Direct Payment being set up, ensuring that care is in place and/or needs are being met in the interim. Once the Direct Payment is in place, the ICB will make payments in advance, as a result of this, the individual should not find themselves in a situation (whilst eligible for CHC funding) where they are required to self-fund (and receive a reimbursement of) their pre-agreed and approved care package.

With the exception of one-off payments, direct payments will be paid into a separate bank account which will be used specifically for the direct payment. The bank account will be in the name of the person receiving the care, or their nominee or representative.

When receiving direct payments, the person holding the account will be asked to keep a record of money received and how it is spent, they are responsible for retaining statements and receipts for auditing.

Where someone is receiving a one-off direct payment, it can be paid into the individual's ordinary bank account (or that of a nominee or representative.) A one-off payment is used to buy a single item or service, or a single payment made for no more than five items or services, where the individual is not expected to receive another direct payment in the same financial year.

c. Deciding not to offer a direct payment.

The ICB may decide not to provide someone with direct payments, if the ICB believes:

- That the individual (or their representative) would not be able to manage a direct payment.
- That it is inappropriate for the individual, given their condition or the impact on the individual's condition.
- That the benefit of an individual having a direct payment will not represent value for money.
- That providing services in this way will not provide the same or improved outcomes.
- That the direct payment will not be used for the agreed purposes.

- That the individual (or their representative) has mismanaged money in the past or has been convicted of fraud.
- That the individual (or their representative) would not be a suitable person to arrange with any person or body to provide any services secured by means of the direct payments
- That the individual has an addiction to gambling, alcohol or illegal substances.

d. Consent

Direct payments can only be made where appropriate consent has been given by:

- A person aged 16 or over who has capacity to consent to the making of a direct payment to them.
- The representative of a person aged 16 or over who lacks the capacity to consent.
- The representative of a child under 16.

The ICB will only provide direct payments if it is satisfied that the person receiving the direct payments understands what is involved and has given consent.

When offering direct payments, the ICB will make it clear that receiving direct payments is voluntary and there is a choice to have another form of personal health budget, or not to have one at all.

e. Capacity to Consent

In accordance with the Mental Capacity Act 2005, the ICB will assume that a person aged 16 or over has the capacity to make decisions about direct payments, unless the person is assessed and found to lack capacity.

f. Ability to manage direct payments

The ICB will consider whether an individual (the patient or their representative) is able to manage direct payments by considering:

- Whether the individual would be able to make choices about, and able to manage the services they wish to purchase.
- Whether the individual has been unable to manage either a health care or social care direct payment in the past, and whether their circumstances have changed.

- Whether the individual can take reasonable steps to prevent fraudulent use of the direct payment and/or identify a safeguarding risk and if they understand what to do and how to report it if necessary.

If the ICB is concerned that an individual is not able to manage a direct payment, they must consider:

- The individual's understanding regarding direct payments, including the actions and responsibilities on his/her part.
- Whether the individual understands the implications of receiving or not receiving direct payments.
- What kind of support the individual may need to manage a direct payment.
- What help is available to the individual.

If the ICB is of the opinion that someone is unable to manage a direct payment, this will be made on an individual basis, considering the views of the individual, and the help they have available to them.

The ICB will not make blanket assumptions that groups of people will or will not be capable of managing direct payments.

The individual will be informed if the decision has been made that they are not suitable for direct payments.

g. What the ICB will consider when deciding whether to make a direct payment

- The ICB may contact a range of people for information to help make the decision whether a direct payment may be suitable, e.g., a personal assistant, occupational therapist, community mental health nurse, the social care team or any other person who provides care for the patient.
- If the person is aged between 16 years and 18 years, a parent or guardian with parental responsibility will be consulted, to establish whether the person could manage a direct payment.
- Before deciding whether to make a direct payment to a representative, the ICB may consult the patient, any person who may be involved in providing care to

the patient, any deputy appointed by the Court of Protection in respect of the patient and any donee of a lasting power of attorney in respect of the patient who lack authority to make decisions on behalf of the patient in relation to matters about which direct payments may be made.

h. The ICB may request relevant information when considering whether to make a direct payment

The ICB may ask the individual or their representative for information about:

- The PHB recipients' overall health.
- The details of their condition for which they would receive direct payments.
- Any bank, building society or other account into which direct payments would be paid.
- Anything else which appears relevant.

i. Notice to Agencies

When a decision is made by a patient to employ their own staff, the patient may need to give notice to a care agency if they have been using one prior to this. Each agency requires different notice periods and part of creating the support plan will be to liaise with the care agency regarding the required notice period.

j. Nominees for people with capacity

If a person aged 16 or over who is receiving care has capacity, but does not wish to receive payments themselves, they may nominate someone else to receive payments on their behalf.

A representative (for a person aged 16 or over who does not have capacity or for a child) may also choose to nominate someone to hold and manage the direct payment.

The ICB must be satisfied that a person agreeing to act as a nominee understands what is involved, and has provided their informed consent, before going ahead and accepting direct payments on someone else's behalf.

Before the nominee receives the direct payment, the ICB must consent to the nomination. In reaching their decision the ICB may:

- Consult with relevant people.

- Require a patient with the necessary capacity or competence to provide information relating to their state of health or any health condition they have which is included in the services for which direct payments are being considered.
- Require the nominee to provide information such as the account number for the direct payment to be made.
- where the nominee is an individual (as opposed to a body corporate or an unincorporated body of persons), the ICB requires the nominee to apply for an enhanced Disclosure and Barring Service (DBS) check, unless the nominee is an individual living in the same household as the patient, a family member or a friend involved in the provision of the patient's care.
- An organisation may agree to act as a nominee. Where this is the case, the organisation must identify the individual who will, on their behalf, have day to day responsibility for the management of the direct payments. This may incur a fee that comes outside of the PHB.
- The ICB must notify any person identified as a nominee where it has been decided not to make a direct payment to them.

k. Representatives/Authorised Person

If a person is assessed as not having capacity to receive a direct payment, they may not receive direct payments personally and the ICB will establish whether someone could act as that person's representative.

A representative is someone who agrees to act on behalf of someone who is otherwise eligible to receive direct payments but cannot do so because they do not have the capacity to consent to receiving one, or because they are a child. Representatives are responsible for consenting to a direct payment and fulfilling the responsibilities of the person receiving the care. They are not the same as the holders of a nominated budget.

Before someone can be a representative, they must give consent to managing the direct payment. The ICB will ensure that the person is fully informed and provided with sufficient advice and support when making their decision. The ICB will consider whether the person is competent and able to manage direct payments, on their own or with whatever help is available to them.

A representative may identify a nominee to receive and manage direct payments on his or her behalf, subject to the nominee's agreement and the approval of the ICB.

A representative can be:

- A deputy appointed by the Court of Protection to make decisions relevant to healthcare and direct payments.
- A donee of a lasting power of attorney with the power to make relevant decisions.
- A person vested with an enduring power of attorney with the power to make the relevant decisions.
- The person with parental responsibility if the patient is a child.
- The person with parental responsibility if the patient is over 16 and lacks capacity.
- Someone appointed by the ICB to receive and manage direct payments for a person, (other than a child), who lacks capacity.

In most cases, the ICB will obtain the evidence to show that the representative fulfils one of these roles e.g., a copy of the registered power of attorney or a copy of the Court of Protection order appointing the person.

I. The role of the representative

A representative is responsible for managing direct payments on behalf of the person receiving care. They or their nominee must.

- Act on behalf of the person e.g. to help develop care plans and hold the direct payments.
- Act in the best interest of the person when securing the provision of services.
- Be the principal person for all contracts and agreements e.g. as an employee.
- Use the direct payments in line with the agreed care and support plan.

If a representative believes that the person for whom they are acting has regained capacity the ICB should be notified as soon as possible.

m. Deciding whether to make a direct payment to a representative

The ICB will act in the best interests of the person receiving care, when deciding whether to make direct payments to representatives. The ICB will consider:

- Whether the person receiving care had, when they had capacity, expressed a wish to receive direct payments.
- Whether the person's beliefs or values would have influenced them to have consented or not consented to receiving a direct payment.
- Any other factors that the person would be likely to take into account when deciding whether to consent or not to receive direct payments.
- As far possible, the person's past and current wishes and feelings.

n. When a child reaches the age of 16

When a child reaches 16 years of age, the ICB will continue to make direct payments to the representative or nominee in accordance with the care plan, providing the child who has reached 16 and the representative (and where applicable the nominee), consent. If the child does not consent the ICB will stop paying the direct payment. In either case The ICB will review the making of direct payments.

In cases where children become adults the transition of an existing PHB (including the transition from Continuing Care to CHC) will be reviewed in a timely manner.

o. Using Direct Payments to employ staff or buy services

When using a direct payment to buy services as agreed in the care and support plan, the person receiving the direct payment purchases those services themselves, including contracting directly with the provider or employing people directly and so normal NHS procurement processes do not apply.

When people wish to use their direct payment to employ staff to provide them with care and support, the ICB will support them to do this whenever possible, while ensuring that there is appropriate practical support.

For some people who receive direct payments, it may be their first experience of being an employer, and it will be vital that there is good support available to them. The support will include provision for payroll, training, sickness cover or other

employment related services.

Where direct payments are being used to employ one or more people, the person receiving care, the representative or the nominee will be made aware of their legal responsibilities as employers. The ICB will ensure that individuals are fully aware of their responsibilities regarding any potential risks and will be supported to manage them.

There are costs associated with employing a member of staff directly, such as national insurance, training, insurance costs and emergency cover. When setting the budget and agreeing the care plan, the ICB will ensure the full cost of employing someone is included. An individual in receipt of a PHB will not be expected to bear any of these costs themselves.

p. Paying family carers

A direct payment can be used to pay an individual living in the same household, a close family member or a friend, in exceptional circumstances but only if the ICB is satisfied that to secure a service from that person is necessary, to satisfactorily meet the person's care need; or to promote the welfare of a child for whom direct payments are being made. The ICB will make these judgements on a case-by-case basis.

q. Safeguarding and employment

When deciding whether or not to employ someone, people should follow best practice in relation to safeguarding, vetting and barring, including satisfying themselves of a person's identity, their qualifications and profession.

The ICB has ensured that there is readily available advice and accessible services in relation to the provision of DBS checks for individual employers.

r. Financial Reviews/Audits for Direct Payments

Direct Payment financial audits will be undertaken 3 monthly unless decided otherwise.

The financial review will include:

- Identifying whether the person, (or their representative or nominee), has used the direct payment appropriately and has fulfilled their obligations, including (where relevant) their obligations as an employer regarding employment tax

and National insurance.

- Reviewing receipts, bank statements and other information relating to the use of direct payments.
- Considering evidence whether direct payments have been effectively managed including evidence of which services have been commissioned.

s. Following a Financial Review

The ICB may:

- Require that a person, representative or nominee provides additional information.
- Take any other action which the ICB considers appropriate including referral to the ICB's Anti-Fraud/Audit team. This will be to ensure the safe and effective running of the direct payment, or to protect public money if there is a risk of abuse.
- Reclaim any unspent contingency funds that has built up in the account.

t. Repayment of a direct payment

In some circumstances, the ICB may ask for all or part of the direct payment to be repaid. The decision to seek repayment and the amount of money to be reclaimed is at the discretion of the ICB.

Direct Payments could be reclaimed by the ICB if:

- The money has been used to purchase a service that was not agreed in the care plan.
- Theft, fraud, or other offences have occurred.
- The person receiving the care has died, leaving part of the direct payment unspent.
- The care plan has changed substantially, resulting in surplus funds.
- The individual's circumstances have changed substantially, such as an admission to hospital, resulting in the individual not using the direct payment to purchase their care.

- A significant proportion of the direct payment has not been used to purchase the services specified in the care plan, resulting in money being accumulated.

The ICB is aware that errors can occur. The power to reclaim direct payments will not be used to penalise people for making mistakes or if the individual has been a victim of fraud.

If the ICB has decided to seek repayment of a direct payment, they must give the relevant person reasonable notice in writing stating:

- The reason for their decision to stop direct payments.
- The amount that needs to be repaid.
- The time in which the money needs to be repaid.
- The name of the person responsible for making the payment.

Appendix 2

Process for Community Referral (Standard CHC)

This process only applies where individuals are referred to continuing healthcare from community.

