

## PROFESSIONAL NEWSLETTER – ISSUE 6

### NHS CONTINUING CARE 'DON'T LET YOUR CLIENTS DOWN'

NHS Continuing Healthcare is not a new phenomenon.

Indeed case law relating to the issue of who should pay for someone's care needs goes back to 1990's. The cases of R v North & East Devon Health Authority ex parte Coughlan (1999) and R v Bexley NHS Trust ex parte Grogan (2006) shaped the Continuing Healthcare landscape and in response to the many complaints being made to the Health Service Ombudsman regarding the apparent 'postcode' lottery of who did and didn't qualify for such funding, the new National Framework was implemented on 1 October 2007 which set a national eligibility criteria for all Primary Care Trusts and Hospital Trusts to follow.

The National Framework document sets out the processes for establishing eligibility for Continuing Healthcare and should be read in conjunction with the support tools that assist with the decision making. These include the Checklist, Decision Support Tool and the Fast Track (used when the patient is considered to have a rapidly deteriorating condition which may be entering a terminal phase). All of these documents were updated in July 2009 and they can be downloaded from the Department of Health website at: - [www.dh.gov.uk](http://www.dh.gov.uk)

Although the National Framework sets out to make the assessment process more person centred and transparent, experience has shown that the whole process is still unduly complicated with different Primary Care Trusts using their own definitions of eligibility within the tools that are used Nationally to assess eligibility and therefore it is arguable that the 'postcode lottery' still exists.

Opportunities for assessing as to whether someone may qualify for Continuing Healthcare are often missed for example when a patient is placed in a care home setting having been discharged from hospital. A Social Worker may be appointed and an appropriate placement found, but if the patient has assets in excess of the capital threshold, social services will deem them as privately funding and will then close their files. No further assessments are therefore carried out until the residents assets fall under the capital threshold.

This should not happen as under s.47 of the National Health Service and Community Care Act 1990, the Local Authority should, through Social Services, continue to monitor a person who has been brought to their attention as being in need and the person should therefore be visited on at least a yearly basis and a care needs assessment carried out. At each assessment there would then be an opportunity to review the needs of that person and to refer them over to the local Primary Care Trust if a healthcare need is identified so that a full healthcare needs assessment can be carried out.

There are also missed opportunities upon discharge from hospital into a care home or back to the patient's home. This was illustrated in our most recent dealings with a Hospital Trust in the South East.

The son of Mrs A was in a state of distress as his mother had been admitted to hospital in September 2009 having suffered a fall at home. The son and his family had tried in vain to keep

mother in her own home despite being 85 years old with a number of existing health conditions which included Parkinson's disease, dementia, double-incontinence, osteoporosis and an over-active thyroid.

After being admitted to hospital, it was also discovered that Mrs A had a lump in her right breast and it was thought by her Consultant that this was likely to be breast cancer. A biopsy was carried out on the lump and the family were awaiting the results. Mrs A's Consultant at the hospital suggested that she would not be able to return home again as she would require '24 hour care' and Mrs A agreed that this was the case as Mrs A was now completely unable to sit up or move in bed, could only drink with a straw and eat soft food if a spoon was put in her hand.

After having been in hospital for some 9 weeks and having been reassured by his mother's Consultant that his mother was not going to be discharged for some time yet, one of the staff nurses asked the son if the family had now made plans for mother to go into a care home. The staff nurse indicated that if mother had sufficient capital (capital threshold for April 2009 to April 2010 - £23,000), that she would have to pay for the full cost of her care.

No information about the discharge process or NHS Continuing Healthcare was given to the family. It was clear that the Hospital Trust was looking to discharge Mrs A without waiting for the results of the biopsy and without having carried out a full healthcare needs assessment, sometimes referred to as a Single Assessment Process or SAP1.

The son was advised to contact the Hospital ward immediately and inform the staff nurse that he would not be agreeing to his mother being discharged until a full healthcare needs assessment was completed and the results of the biopsy were seen by the Consultant as a full picture of his mother's healthcare needs would be needed in order for an appropriate package of care to be put in place. After all, if no one had any idea what the full extent of mother's needs were, how could these needs be met?

A full health needs assessment was subsequently carried out prior to discharge and Mrs A's primary care need was found to be 'healthcare'. The full cost of her care, including her accommodation fees were subsequently met by the NHS.

There are literally thousands of cases where NHS Continuing Healthcare would have been awarded if only it had been considered in the first instance. Anyone can ask for a Healthcare needs assessment so that their individual needs can be considered for NHS Continuing Healthcare.

If you have a client who you think should have been awarded NHS Continuing Care and would benefit from some expert advice, please contact your local Symponia member, Stephen C S Wilkinson, Charles Wilkinson Financial Planning Ltd, 118 Fishergate, York YO10 4BB Tel 01904 631839/656104 email [cwfpltd@msn.com](mailto:cwfpltd@msn.com).

## Symponia

*Stephen Wilkinson is your local Symponia member - Symponia is a national professional body for financial advisers with expertise in elder client issues, including investments, care fees planning, equity release and mitigating inheritance tax.*

Information provided by  
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