

NHS Continuing Healthcare

Principles of Consent:

There are a number of principles which underpin the NHS Continuing Healthcare process: most importantly that assessments and reviews should always focus on the individual's needs and follow a person-centred approach. The individual should be fully informed and empowered to participate actively in the assessment process and any subsequent reviews, and their views should be considered. In addition, there are a number of legal requirements when it comes to an individual's consent for parts of the NHS Continuing Healthcare process.

(National Framework 2022: Paragraph 73).

Participation of the individual in the NHS Continuing Healthcare process

The regulations place a duty on ICBs to take reasonable steps to ensure that an assessment of eligibility for NHS Continuing Healthcare is carried out for individuals for whom the ICB has responsibility where: it appears that there may be a need for such care; or where an individual who is receiving NHS Continuing Healthcare may no longer be eligible for such care. In the spirit of the person-centred approach, practitioners should make all reasonable efforts to seek the participation of the individual (or their representative) for the assessment and review process for NHS Continuing Healthcare, during each stage of the process. For a comprehensive assessment, the best evidence available at the relevant time should be considered. This should involve consideration of the individual's (or their representative's) view, and they should be empowered and assisted to participate. Throughout the process, this person-centred approach should be embedded in all decisions which relate to the individual's needs assessment, and their care planning.

An individual with the relevant capacity, who is to be assessed for NHS Continuing Healthcare, should be provided with relevant information about the process. This will enable them to make an informed decision regarding their participation in the process, including about the potential consequences of refusing to participate. To facilitate this process, it may be appropriate to discuss any concerns the individual may have and alleviate any relevant concerns. If an individual with the relevant capacity refuses to participate in the NHS Continuing Healthcare assessment process, the Multi-Disciplinary Team (MDT) may consider relevant health and care records or existing assessments to determine the best way to meet the individual's needs and whether they are eligible for NHS Continuing Healthcare. The consequences of undertaking the NHS Continuing Healthcare assessment or review as a paper-based exercise should be carefully explained to the individual, including that this may affect the quality of the assessment, for example if the health and care records to be considered by the MDT are not up-to-date or accurate. For further information, please refer to Practice Guidance note 7.

(National Framework 2022: Paragraphs 74-75).

Processing an individual's personal data

ICBs must comply with their legal obligations when handling, processing and sharing an individual's personal data. For further guidance on information sharing and NHS Continuing Healthcare, please see Practice Guidance notes 5 and 6.

It is necessary to obtain an individual's explicit consent before sharing any personal data with a third party such as a family member, friend, advocate, and/or other representative.

However, it is not necessary to seek consent from an individual in order to share their personal data where this is necessary for the purposes of their NHS Continuing Healthcare assessment (and subsequent reviews) or the provision or management of their health or social care treatment between health and social care professionals.

Nevertheless, in order to comply with the UK GDPR, it is necessary to inform the individual how and with whom their personal data will be shared as part of the assessment process or to arrange appropriate care and support.

An individual with the relevant capacity, who is to be assessed for NHS Continuing Healthcare, should be provided with relevant information about the process. This will enable them to make an informed decision regarding their consent to the sharing of their personal data with a third party such as a family member, friend, advocate, and/or other representative as part of the assessment for NHS Continuing Healthcare. To facilitate this process, it may be appropriate to discuss any concerns the individual may have and alleviate any relevant concerns, for example that an individual's personal information will only be shared with third parties as appropriate. If an individual with the relevant capacity does not consent to the sharing of their personal data with third parties other than health and social care professionals, such as family, friends, advocates, and/or other representatives, the potential consequences of the decision should be carefully explained. The involvement and contribution of family members and representatives is usually key to a person-centred NHS Continuing Healthcare assessment, meaning the quality of this assessment may be affected if information cannot be shared with these third parties.

(National Framework 2022: Paragraphs 80-84).

General Principles:

Where consent is required, consent should be:

- **Explicit.** Consent must be explicitly confirmed and usually recorded in writing, in a very clear and specific statement of consent, which is prominent and kept separate from other information.
- **Specific.** It should be made clear to the individual what they are being asked to consent to, for example to their information being obtained from and shared with any third party other than health and social care professionals (such as family, friends, advocates and/or other representatives) for a specific aspect of the eligibility consideration process or for the full process.
- **Informed.** The individual should be informed about what the NHS Continuing Healthcare eligibility assessment process involves, what information will be obtained, and who it will be shared with before the start of the process to determine eligibility for NHS Continuing Healthcare.

- **Freely given.** This means consent must be given voluntarily by an appropriately informed person who has both the capacity and authority to provide the relevant consent. It also means giving people genuine ongoing choice and control over how their personal information is shared with third parties other than health and social care professionals. In the context of NHS Continuing Healthcare this means that the individual must have the capacity to consent freely and voluntarily to any physical intervention or sharing of personal data with third parties other than health and social care professionals as part of the NHS Continuing Healthcare assessment process as set out in this Framework. The individual should have a choice about whether or not to consent, and consent must not be conditional on the individual agreeing to something that is not related to the NHS Continuing Healthcare assessment process.
- **Can be withdrawn.** The individual must be made aware that they can withdraw their consent at any time and made aware of the process for doing so. This includes withdrawing consent for any physical intervention and/or withdrawing consent to share personal data with third parties (for example family, friends, advocates and/or other representatives). An individual with the relevant capacity who is to be assessed for NHS Continuing Healthcare should be provided with relevant information about the process to make an informed decision regarding their consent to a physical intervention or sharing of personal data with third parties other than health and social care professionals as part of the assessment for NHS Continuing Healthcare. There may be additional steps that can be taken to discuss any concerns the individual may have and alleviate any relevant issues. Any potential consequences (including where this would affect the quality of the NHS Continuing Healthcare eligibility assessment) should be explained to the individual.

(National Framework 2022: Paragraph 85).

References

[National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care - July 2022 \(Revised\) \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/107222/nf2022-revised.pdf)