

Primary Health Need

The concept of a 'Primary Health Need' is central to eligibility for NHS Continuing Healthcare. It is not straightforward to explain, and local systems should ensure that they follow the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care (revised July 2022), rather than provide local interpretations of this concept.

The National Framework 2022 explains it as follows:

In order to determine whether an individual has a primary health need, a detailed assessment and decision-making process must be followed, as set out in this National Framework. Where an individual has a primary health need and is therefore eligible for NHS Continuing Healthcare, the NHS is responsible for commissioning a care package that meets the individual's assessed health and associated social care needs. (National Framework 2022, Paragraph 5)

This National Framework is underpinned by the National Health Service Commissioning Board and Clinical Groups (Responsibilities and Standing Rules) Regulations 2012, issued under the National Health Service Act 2006. These regulations, referred to henceforth as the Standing Rules, require Integrated Care Boards (ICBs) to have regard to the National Framework. (National Framework 2022, Paragraph 6)

<https://www.legislation.gov.uk/ukxi/2012/2996/part/6/made>

To assist in determining which health services it is appropriate for the NHS to provide under the NHS Act, and to distinguish between those and the services that local authorities may provide under the Care Act 2014, the Secretary of State has developed the concept of a 'primary health need'. Where a person has been assessed to have a primary health need, they are eligible for NHS Continuing Healthcare and the NHS will be responsible for providing for all of that individual's assessed health and associated social care needs, including accommodation, if that is part of the overall need. Determining whether an individual has a primary health need involves looking at the totality of the relevant needs. In order to determine whether an individual has a primary health need, an assessment of eligibility process must be undertaken by a multidisciplinary team (MDT) (refer to paragraphs 139-143) which must use the national Decision Support Tool (DST) (refer to paragraphs 151-161). (National Framework 2022, Paragraph 55)

An individual has a primary health need if, having taken account of all their needs (following completion of the Decision Support Tool), it can be said that the main aspects or majority part of the care they require is focused on addressing and/or preventing health needs. Having a primary health need is not about the reason why an individual requires care or support, nor is it based on their diagnosis; it is about the level and type of their overall actual day-to-day care needs taken in their totality. (National Framework 2022, Paragraph 56)

Each individual case must be considered on its own facts in accordance with the principles outlined in this National Framework. (National Framework 2022, Paragraph 57)

There should be no gap in the provision of care. People should not find themselves in a situation where neither the NHS nor the relevant local authority (subject to the person's means and the person having needs that fall within the eligibility criteria for care and support) will fund care, either separately or together. (National Framework 2022, Paragraph 58)

Therefore, the 'primary health need' test should be applied, so that a decision of ineligibility for NHS Continuing Healthcare is only possible where, taken as a whole, the nursing or other health services required by the individual:

- a) are no more than incidental or ancillary to the provision of accommodation which local authority social services are, or would be but for a person's means, under a duty to provide; and*
 - b) are not of a nature beyond which a local authority whose primary responsibility it is to provide social services could be expected to provide.*
- (National Framework 2022, Paragraph 59)**

In applying the primary health need test as set out above ICBs should take into account that section 22(1) of the Care Act 2014, in setting out the limits of Local Authority responsibilities, applies the 'incidental and ancillary' test in all situations, including where care is being provided in the person's own home. As there should be no gap in the provision of care, ICBs should consider this test when determining eligibility. Eligibility is the same for all individuals, whether their needs are being met in their own home or in care home accommodation. Certain characteristics of need – and their impact on the care required to manage them – may help determine whether the 'quality' or 'quantity' of care required is more than the limits of a local authority's responsibilities, as set out in section 22(1) of the Care Act 2014: (National Framework 2022, Paragraph 60)

Nature:

This describes the characteristics of an individual's needs (which can include physical health, mental health, or psychological needs) and the type of those needs. This also describes the overall effect of those needs on the individual, including the type ('quality') of interventions required to manage them.

Intensity:

This relates both to the extent ('quantity') and severity ('degree') of the needs and to the support required to meet them, including the need for sustained/ongoing care ('continuity').

Complexity:

This is concerned with how the needs present and interact to increase the skill required to monitor the symptoms, treat the condition(s) and/or manage the care. This may arise with a single condition, or it could include the presence of multiple conditions or the interaction between two or more conditions. It may also include situations where an individual's response to their own condition has an impact on their overall needs, such as where a physical health need results in the individual developing a mental health need.

Unpredictability:

This describes the degree to which needs fluctuate and thereby create challenges in managing them. It also relates to the level of risk to the person's health if adequate and timely care is not provided. An individual with an unpredictable healthcare need is likely to have either a fluctuating, unstable or rapidly deteriorating condition.

(National Framework 2022, Paragraph 60)

Each of these characteristics may, alone or in combination, demonstrate a primary health need, because of the quality and/or quantity of care that is required to meet the individual's needs. The totality of the overall needs and the effects of the interaction of needs should be carefully considered when completing the DST (refer to paragraphs 151-161) **(National Framework 2022, Paragraph 61)**

It may be helpful for practitioners to think about these characteristics in terms of the sorts of questions that each generates. Examples of the type of question that might be relevant are given in Practice Guidance note 3 in this National Framework. Answering such questions may help practitioners describe and understand how each characteristic relates to the needs of the individual in question. **(National Framework 2022, Paragraph 62)**

Eligibility for NHS Continuing Healthcare is a decision to be taken by the relevant ICB, based on an individual's assessed needs. The diagnosis of a particular disease or condition is not in itself a determinant of eligibility for NHS Continuing Healthcare. **(National Framework 2022, Paragraph 63)**

NHS Continuing Healthcare may be provided in any setting (including, but not limited to, a care home, hospice, or the person's own home). Eligibility for NHS Continuing Healthcare is, therefore, not determined or influenced either by the setting where the care is provided or by the characteristics of the person who delivers the care. The decision-making rationale should not marginalise a need just because it is successfully managed: well-managed needs are still needs (refer to paragraphs 162-166). Only where the successful management of a healthcare need has permanently reduced or removed an ongoing need, such that the active management of this need is reduced or no longer required, will this have a bearing on NHS Continuing Healthcare eligibility. **(National Framework 2022, Paragraph 64)**

Financial issues should not be considered as part of the decision on an individual's eligibility for NHS Continuing Healthcare. **(National Framework 2022, Paragraph 65)**

In summary, the reasons given for a decision on eligibility should not be based on:

- *the individual's diagnosis;*
- *the setting of care;*
- *the ability of the care provider to manage care;*
- *the use (or not) of NHS-employed staff to provide care;*
- *the need for/presence of 'specialist staff' in care delivery;*
- *the fact that a need is well-managed;*
- *the existence of other NHS-funded care; or*
- *any other input-related (rather than needs-related) rationale.*

(National Framework 2022, Paragraph 66)

Eligibility for NHS Continuing Healthcare is not indefinite, as needs could change. This should be made clear to the individual and/or their representatives. (National Framework 2022, Paragraph 67)

Practice Guidance 3: When identifying a primary health need, how should the four key characteristics be approached?

3.1 Four characteristics of need – namely ‘nature’, ‘intensity’, ‘complexity’ and ‘unpredictability’ – ‘may help determine whether the ‘quality’ or ‘quantity’ of care required is beyond the limit of a local authority’s responsibilities, as outlined in the Coughlan case (a summary of the case can be found at Annex B). It is important to remember that each of these characteristics may, alone or in combination, demonstrate a primary health need, because of the quality and/or quantity of care that is required to meet the individual’s needs.

3.2 It may be helpful for MDTs to think about these characteristics in terms of the sorts of questions that each generates. By the MDT answering these questions they can develop a good understanding of the characteristic in question. following questions are not an exhaustive list and are not intended to be applied prescriptively.

3.3 ‘Nature’ is about the characteristics of both the individual’s needs, and the interventions required to meet those needs.

Questions that may help to consider this include:

- *How does the individual or the practitioner describe the needs (rather than the medical condition leading to them)? What adjectives do they use?*
- *What is the impact of the need on overall health and well-being?*
- *What types of interventions are required to meet the need?*
- *Is there particular knowledge/skill/training required to anticipate and address the need? Could anyone do it without specific training?*
- *Is the individual’s condition deteriorating/improving?*
- *What would happen if these needs were not met in a timely way?*

3.4 ‘Intensity’ is about the quantity, severity and continuity of needs. Questions that may help to consider this include:

- *How severe is this need?*
- *How often is each intervention required?*
- *For how long is each intervention required?*
- *How many carers/care workers are required at any one time to meet the needs?*
- *Does the care relate to needs over several domains?*

3.5 ‘Complexity’ is about the level of skill/knowledge required to address an individual need or the range of needs and the interface between two or more needs.

Questions that may help to consider this include:

- *How difficult is it to manage the need(s)?*
- *How problematic is it to alleviate the needs and symptoms?*
- *Are the needs interrelated?*
- *Do they impact on each other to make the needs even more difficult to address?*
- *How much knowledge is required to address the need(s)?*

- *How much skill is required to address the need(s)?*
- *How does the individual's response to their condition make it more difficult to provide appropriate support?*

3.6 'Unpredictability' *is about the degree to which needs fluctuate and thereby create challenges in managing them. It should be noted that the identification of unpredictable needs does not, of itself, make the needs 'predictable' (i.e. 'predictably unpredictable') and they should therefore be considered as part of this key indicator. Questions that may help to consider this include:*

- *Is the individual or those who support him/her able to anticipate when the need(s) might arise?*
- *Does the level of need often change? Does the level of support often have to change at short notice?*
- *Is the condition unstable?*
- *What happens if the need isn't addressed when it arises? How significant are the consequences?*
- *To what extent is professional knowledge/skill required to respond spontaneously and appropriately?*
- *What level of monitoring/review is required?*

References

[National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care - July 2022 \(Revised\) \(publishing.service.gov.uk\)](#)