NHS
Warwickshire North
Clinical Commissioning Group

NHS
Coventry and Rugby
Clinical Commissioning Group

Personal Health Budget Policy

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VERSION HISTORY

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September 2014	1.0	Approved by the CCG Governing Body
January 2016	2.0	Amended to reflect evolving national guidance and development of local processes
September 2019	3.0	Updated to reflect revised national requirements and local processes in relation to CHC homecare mandate.

Contents

1. Introduction

A Personal Health Budget (PHB) is an allocation of NHS money to an individual with identified health needs (or their Representative or Nominee) to support that individual to achieve their chosen health and well-being goals as identified in the outline assessment and set out in a support plan agreed between the individual and their NHS commissioner. PHBs give individuals increased choice, flexibility and control over the healthcare and support they receive.

In November 2012 the Minister of State for Care and Support Services announced the roll out of PHBs following a three year pilot programme in the NHS which found that PHBs, when implemented well, improved the quality of life for a significant number of individuals, reduced hospital attendances and admissions, and were cost effective. The benefits were greatest for individuals in need of higher levels of care and support, regardless of their diagnosis.

In October 2014 those eligible for 100% health funded Continuing Healthcare (CHC) and children eligible for continuing care funding were given the right to have a PHB. 'Forward View into action: Planning for 2015/16' stated the expectation that to give patients more direct control, the government expects CCGs to lead a 'major expansion' in 2015/16 in the offer and delivery of PHBs, to people where the evidence indicates they could benefit. As part of this by April 2016, the expectation is that PHBs or integrated personal budgets across health and social care should be an option for people with learning difficulties in line with Sir Stephen Bubb's review. Additionally, to improve the lives of children with special educational needs, CCG's must continue to work alongside local authorities and schools on the implementation of integrated education, health and support plans and the offer of personal budgets. CCGs should engage widely and fully with their local communities and patients including their local Health Watch and include clear goals on expanding PHBs within their local joint Health & Well-being Strategy.

The Next Steps on the Five Year Forward View documentation further emphasises the expectation around growth of the PHB approach outlining a national requirement for the expansion of Personal Health Budgets (PHBs) to over 40,000 people in 2018/19 with a view to 100,000 people being in receipt of a PHB by 2021. Continued national commitment to further embedding the personalised care approach, including expanded roll out of PHBs is a key element of the NHS long term plan, published in January 2019.

A letter from NHS England to CCGs (1st May 2018) set the expectation that PHBs will become the default/standard operating model for NHS CHC home care packages from April 2019.

2. Purpose and Scope

This document sets out the policy of NHS Coventry & Rugby Clinical Commissioning Group and NHS North Warwickshire Clinical Commissioning Group ('the CCG') in respect of PHBs and integrated personal budgets and the principles by which the CCG plans to develop its PHB offer as the national roll-out evolves.

This document sets out the CCG's intentions to ensure that all patients meeting the criteria for a PHB have the opportunity to be offered and/or receive one in line with national guidance. A key aim of this policy is to ensure that a consistent and transparent approach is applied to the development and approval of local processes, procedures and services in relation to PHBs.

Please see Appendix I for the detailed operational process maps that relate to PHBs.

3. Definitions

Personal Health Budget – A personal health budget (PHB) is an amount of money, identified by the CCG as appropriate to support a person's health and well-being needs, the use of which is planned and agreed between the individual (or their representative) and their CCG. The rationale for PHBs is to enable people with long-term conditions and disabilities to have greater choice, flexibility and control over the health care and support they receive. Whilst PHBs are designed to facilitate creative support planning, some services may be excluded (these are detailed in section 4.2 of this document). A PHB can be delivered as a Notional Budget, Third Party Budget, Direct Payment or a combination of these.

NHS Continuing Healthcare – a package of care arranged and funded solely by the CCG, for a person aged 18 or over, to meet needs which have arisen as a result of disability, accident or illness.

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

Support Plan – the 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 highly personal, creative solutions. The support plan is drawn up by the PHB Case Manager in dialogue with the individual or their Representative or Nominee, family, carers and other clinicians.

PHB Case Manager – The person appointed by the CCG to work with the individual to create the support plan and identify how they the individual can best use their PHB to achieve the desired outcomes. The PHB Case Manager will monitor how successful the PHB is in achieving the desired outcomes, as set out in the support plan.

Case Manager means the CCG representative who will manage the assessment of the patient's need for care and support plan and oversee the arrangements put in place.
Brokerage support - the practical support offered by organisations to individuals wishing to receive a Direct Payment to assist them to manage their Direct Payment PHB. This support might include advice relating to payroll services, Care Quality Commission registration, Disclosure and Barring Service checks, insurance etc.

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

- understand the information relevant to the decision;
- retain that information;
- use or weigh that information as part of the decision-making process; or
- communicate their decision (whether by talking, using sign language or any other means).

Clinical Commissioning Groups – NHS bodies which have a statutory duty to commission healthcare services for their local populations. A number of their general duties bear upon the provision of PHBs, including:

- Promoting the involvement of patients, and their carers and representatives, in decisions about their healthcare;
- Acting with a view to enabling patients to make choices about aspects of health services provided to them;
- Acting with a view to securing continuous improvement in the quality of services and the outcomes achieved from the provision of services; and
- Having regard to the need to reduce inequalities in access to, and outcomes from, health services.

Close family member –is described as:

- the spouse or civil partner of the person receiving care;
- someone who lives with the person as if their spouse or civil partner;
- their parent or parent-in-law;
- their son or daughter;
- son- in- law or daughter- in- law;
- stepson or stepdaughter;
- brother or sister;
- aunt or uncle;
- grandparent;
- the spouse or civil partners of (c)- (i), or someone who lives with them as if their spouse or civil partner.

Direct Payment – one of the three ways a PHB can be held. This is an allocation of money paid to an individual (or their Representative or Nominee) for them to arrange and purchase services to meet their agreed healthcare outcomes in accordance with the support plan. Day to day management of the money and support package rests with the individual, who is responsible for ensuring that the budget is properly spent on the care agreed within the support plan. In respect of direct payments, a bank account will be held by the patient or their representative solely for the use of the direct payment, as set out in the Direct Payment Agreement. A prepaid card may be offered subject to availability in the area. In some instances the Direct Payment arrangement, though funded by the CCG, may be hosted and administered by the local authority.

Notional budget – one of the three ways a PHB can be held. This is a more traditional arrangement whereby the CCG holds the budget but enters into discussions with the individual (or their Representative) to explore ways of meeting their needs within the budget available. The CCG then commissions services directly in accordance with the agreed plan. A Notional Budget may be appropriate when an individual would like more choice and control but is unwilling or unable to manage a budget themselves, or where the individual's needs are likely to change within a short timeframe.

Third Party Budget – one of the three ways a PHB can be held. Under this arrangement the individual is allocated a budget but it is held and managed on their behalf by a third party agreed by the CCG and the individual (or their Representative). The third party enters into contracts for the provision of services to the individual. Day to day control of the money and support package rests with the third party, who is responsible for ensuring that the budget is properly spent on the care agreed within the support plan.

Representative – a person who is appointed to manage a PHB where an individual lacks capacity. A Representative may be:

- Someone who holds an enduring or lasting power of attorney;
- A Deputy appointed by the Court of Protection; or
- A family member or close friend who agrees to take on the responsibility to act as a Representative in a person's best interests, including someone with parental responsibility for someone aged 16 or over who lacks capacity.

4. Personal Health Budget Process

4.1 Capacity and Consent

In line with the Mental Capacity Act 2005, patients with a PHB will be empowered to make decisions for themselves wherever possible and where they lack capacity over certain decisions, this will be managed by a flexible approach that places the individual at the heart of the decision making process.

a) The patient is assessed for capacity.

b) Patients **must** be asked to sign a consent form to share information between relevant organisations prior to the commencement of the PHB process.

c) Where the patient does not have capacity to make a decision, professionals can work with a 'suitable person' or 'representative'. For the sake of this document they shall be referred to as the representative.

d) A representative can receive a direct payment on behalf of an individual who lacks capacity. The representative takes on the full legal responsibilities of having the direct payment and of being an employer. They can identify someone else to manage the direct payment money e.g.: a family member, friend or direct payment support service. However, the full legal responsibilities of the direct payment including being an employer remain with the representative. The representative will be required to sign the direct payment agreement.

e) The representative must be:
   i. a family member or friend involved in the person's unpaid care and support.
   ii. someone who has been given enduring power of attorney for health and welfare (prior to October 2007) or lasting power of attorney post October 2007, by the person needing services at some point before they lost mental capacity. This must be registered with the Office of the Public Guardian.
   iii. a parent or legal guardian of a child/young person deemed not to have capacity due to being a minor aged under 16 years of age
   iv. someone who has been appointed a deputy for the person needing services by the Court of Protection under section 16 of the Mental Capacity Act 2005.

f) If the representative is not a close family member, the CCG will require them to apply for an enhanced DBS check.

g) A representative should not be agreed if:

i. This person has been or is subject to any safeguarding proceedings in relation to safeguarding adults or children and the outcome of the investigation is still unknown or has been substantiated.
ii. There is a conflict of interest, where a situation has the potential to undermine the impartiality of a person because of the possibility of a clash between the person's self-interest, professional interest or public interest. For example where a person is providing support to the service user for which they will be paid but also acts or plans to act as a representative for the direct payment. In this situation, the advice would be that the person could not do both, to act in both capacities would effectively be acting as employer (representative) and employee.
iii. The CCG/ Local Authority or Police in the context of safeguarding for that individual has any other significant concerns.

h) If the representative does not meet the essential criteria then the CCG has a right to refuse a direct payment but an alternative PHB management option can be offered.

i) Either the individual or their representative can request for the PHB to be paid to a nominee or a third party organisation.

4.2 Eligibility

A PHB embodies a new approach to care which acknowledges the patient as the expert on how their condition affects them and enables them to have choice and control over their care package. A PHB should be available to anyone eligible who may benefit from this additional flexibility and control.

In all CCG areas, the Right to Have a PHB has been in place since October 2014 for:

- Patients in receipt of CHC funding living in the community
- Children with continuing care needs

At present Fast tracked patients are not yet routinely eligible for a PHB, however applications for a PHB for those on a Fast Track should be taken on a case by case basis especially if the individual was in receipt of a direct payment from social care and wants to keep the same personal assistants in place as part of their fast track.

Those individuals who are already receiving a direct payment from the local authority at the time they become CHC eligible will be able to continue to receive these payments to at least the same level as before in accordance with their assessed needs. See Appendix II for the transition process relating to individuals moving from social care direct payments or from a joint funded package/direct payment to a 100% health funded PHB due to change in eligibility.

In the case of newly eligible CHC funded patients they should be informed of their options at the first visit. The offer for the first three months of eligibility is a notional budget using a conventional care support agency. Following the three month review the option of direct payment or third party PHB will be explored.

Existing CHC patients with a homecare package in place have the "right to have" a personal health budget.

The CCG plans to expand its PHB offer, recognising the value in giving patients more choice and control over the care and support that they receive. The CCG is continuing to

develop systems and processes with the Local Authorities with a view to be able to offer joint funded CHC patients and children with continuing care needs a PHB. Patients with mental health issues or long term conditions but not in receipt of Continuing Healthcare are likely to be considered for PHBs in future years as processes are developed, national right-to-have mandates are issued and PHB expansion plans are rolled out.

A patient can also opt to take a PHB in more than one form, for example taking a proportion as a direct payment and the remainder as a notional budget.

The CCG has a duty to:

- Consider all requests for a PHB
- Arrange PHBs and direct payments for those that are eligible
- Publicise and promote PHBs
- Provide information, advice and support

4.3 Options for Delivery of PHBs

PHBs can be delivered as notional budgets, third party arrangements or direct payments. Please refer to section 3 for definitions.

4.3.1 Eligibility for a Direct Payment

The CCG is obliged to take any decision to make or to refuse a Direct Payment to, or in respect of, an individual in accordance with the National Heath Service (Direct Payments) Regulations 2013. Before deciding whether to make a Direct Payment to or in respect of an individual, the CCG may consult with the patient, their family or carers, their Representative or Nominee (if relevant), their clinicians and anyone else who may be able to provide relevant information. The CCG must be satisfied that the individual (or the Representative or Nominee) is capable of managing a Direct Payment on their own or with such support as may be available to them, and taking all reasonable steps to prevent fraudulent use of the Direct Payment. See Appendix III for those individuals who are not deemed eligible for a Direct Payment, as per national guidance.

Even if someone is not suitable to receive a Direct Payment they may still benefit from more personalised care. The CCG will, wherever possible, consider whether other forms of PHB, such as a Notional Budget or a Third Party Budget, might be suitable for their needs or other ways in which their care could be personalised.

4.4 Resource Allocation and Budget Setting

The CCG has a statutory duty to manage its finances appropriately and to break even at the end of each financial year. A Resource Allocation Procedure is designed to ensure fairness of funding between those in receipt of PHBs and those receiving NHS funding for non-PHB funded services.

PHBs are not a welfare benefit and do not represent an entitlement to a fixed amount of money. PHBs are paid to meet assessed health and care needs and, where an individual's needs change, this will be reflected in the value of the Notional Budget, Third Party Budget or Direct Payment.

Knowledge of the amount available for a PHB – the indicative budget - must be available to the individual prior to support planning.

Following support planning the final budget will be confirmed. It is therefore important to bear in mind when setting the indicative budget that the final budget must be sufficient to meet the individual's needs and fit within the CCG's Resource and Allocation Policy.

A Personal Health Budget may only be spent on services agreed between the individual and their care coordinator in the 'Personalised Support Plan' that will enable them to meet their agreed health and well-being outcomes.

One of the guiding principles for establishing a personal health budget is that the total cost of care should not exceed the cost of a traditionally commissioned care service. Guidance states that CCGs are not obligated to provide a PHB when it is not considered to represent value for money. In such circumstances the CCG reserves the right to offer a notional care package in place of a direct payment or third party payment, however if the patient is deemed to have exceptional needs that may best be met through a PHB, the case may be put forward for consideration by the CCG.

Other income sources including welfare benefits will be considered to ensure that the PHB is not duplicating alternative funding. These may include, but not be limited to:

- Checks for receipt of carers allowance
- Checks for local council funding for care packages
- Checks for health funding from other NHS organisations

• Checks with Department of Work and Pensions for any other relevant benefits that may be impacted by, or impact receipt of, a direct payment

4.5 Assessment and Support Planning

The purpose of a PHB is to allow individuals to take control of their own care needs and plan how they will be met. Therefore the starting point to a PHB is to ask the individual's view about how their condition affects their life, what is important to them (including the outcomes they wish to achieve) and how they would like their care needs/outcomes to be met.

Then the assessment of the individual's healthcare needs can commence. An approximate cash value of the PHB to which the individual is entitled should then be calculated. This 'indicative budget' is the starting point for drawing up the support plan, which sets out the health outcomes to be achieved and how these goals might best be met.

Support planning cannot commence until an Indicative budget, based upon the outcome assessment, has been set and shared with the individual requesting the PHB.

Existing CHC patients with a homecare package in place have the "right to have" a personal health budget.

The support plan is central to the management of PHBs and constitutes a contract between the CCG and the individual in receipt of the PHB. It provides assurance to the CCG that health needs will be met appropriately and within agreed risk parameters (see section 4.6 below for more regarding risk) and provides clarity for the individual in relation to how the PHB should be spent and what items are within the remit of the PHB.

When considering what should be bought with the PHB, the support planning process must consider the individual's 'community wealth' and ensure this is being utilised to its potential.

This will ensure that an over reliance on statutory funding to fulfil all life outcomes is not encouraged where those outcomes could be met from within a person's own networks and supports.

The support plan should be written by the individual requesting a PHB in their own words wherever possible. Where the individual is a child it is important the child's voice is represented as clearly and as accurately as possible and once they are old enough (dependent upon capacity), they should be supported to write the plan themselves.

Where an individual opts for a Third Party or Direct Payment PHB the support plan must include:

- Details of the individuals condition
- The impact on the individuals health condition;
- What is important to the individual?
- What are the desired outcomes – what does the individual want to change? What are their priorities?
- Training requirements;
- Contingency planning;
- Any possible risks, consequences and mitigations;
- Details on how the individual wants to hold the money
- Action plan for how different parts of the support plan will be put in place.
- How will the person know that the plan is working?
- The amount of money available under the PHB;
- What the PHB will be used to purchase;
- How the PHB will be managed;
- Who will be managing the budget;
- Who will be providing each element of the support;
- How will the plan meet the agreed outcomes and clinical needs
- Who the individual should contact to discuss any changes in their needs;
- The anticipated date of first review.

Where a patient opts for a notional PHB an outcome based notional support plan is produced based upon the outline assessment to support the personalised commissioning process of individual packages of care.

Jointly funded patients should have one joint health and social care support plan wherever possible. For eligible children and young people, this may be the Education, Health and Care Plan.

Patients in receipt of third party or direct payment PHBs should have one named primary point of contact regarding their package of care. The role of the Case Manager includes:

- managing the assessment
- agreeing the support plan with the individual
- monitoring and reviewing the direct payment and support plan
- liaising between the individual and the CCG

Prior to the support plan being submitted for approval 'unusual choices' will be discussed with the Case Manager the PHB lead and the individual so that the motivation and value is understood. The CCG should be open to considering different approaches to achieving outcomes other than those traditionally used where the person can demonstrate that the proposed use of the budget is reasonable way to achieve their health and wellbeing outcomes. Approaches should only be refused when they fall within the restrictions of the

national regulations; the risks are considered too great, where the proposed approach is not considered to meet the agreed outcome or when the proposed provision does not represent value for money for the CCG, including instances where the proposed budget is in excess of the CCG's resource and allocation policy.

If an individual chooses to use a Direct Payment Support Organisation (DPSO) the contract for the support services required will be between the individual and their chosen DPSO.

If the individual opts to have their direct payment sent to the DPSO to manage the financial aspects of a Direct Payment on their behalf as a "managed account" an agreement will be drawn up between the CCG, individual and the DPSO to provide a contractual underpinning for the exchange and management of public funds. However, the individual, their representative or nominee will remain fully responsible for the support plan and will be the legal employer of any PAs employed and will hold full responsibility for ensuring that all employers' related responsibilities and costs are met.

The CCG may also contract directly with an external provider in the instance that a patient opts to take their PHB as a Third Party arrangement. In such instances a Third Party Agreement will be drawn up between the CCG, individual and the DPSO to provide a contractual underpinning for the exchange and management of public funds and their employer status. In such instances the Third Party takes full responsibility for contracting with providers and employment of PAs.

Personal health budgets and associated support plans must align with the following principles:-

1. Upholding NHS values. The personalised approach must support the principles of the NHS as a comprehensive service, free at the point of use, as set out in the NHS Constitution and should remain consistent with existing NHS policy:
    - There should be clear accountability for the choices made
    - No-one will ever be denied essential treatment as a result of having a personal health budget
    - Having a personal health budget does not entitle someone to more or more expensive services, or to preferential access to NHS services
    - There should be good and appropriate use of NHS resources
2. They must support safeguarding and quality
3. They must support the tackling of inequalities and protecting equality
4. They must be voluntary
5. They must support the making of decisions as close to the person as possible
6. They must support partnership working

Where NICE has concluded that a treatment is not cost effective, CCGs should apply their existing exceptions process before agreeing to such a service. However, when NICE has not produced a guideline on the cost effectiveness or otherwise of a specific treatment, CCGs should not use this as a barrier to people purchasing the service, if it could meet the individual's health and wellbeing needs.

See Appendix IV for further information and requirements in relation to purchasing provider services and employing Personal Assistants using a PHB.

What can a PHB NOT be used to purchase?

PHBs facilitate the spending of money in ways and at times that are important to the individual patient, as agreed in their support plan. There are, however, some things that a PHB cannot be used for. A support plan will **not** be agreed if it contains any of the following:

- Anything that is illegal
- Alcohol
- Cigarettes/tobacco
- Debt repayment (other than a debt in respect of a service specified in the Support Plan)
- Gambling services or facilities
- Services where the costs should be met by another funding source or statutory body
- Anything that forms part of an existing commissioned contract, where providing a personal health budget would result in significant double funding
- Anything for which the person is already receiving benefits, such as mobility allowance.

The CCG will not *routinely* permit services identified in a Support Plan to be purchased from:

- an individual living in the same house as the PHB recipient;

- a family member (including but not limited to the individual's spouse, civil partner, parent, parent in law, child or grandparent) or a close friend,

Unless the CCG is satisfied that securing a service from that person is the *only* satisfactory way to meet the individual's need for that service or promote the welfare of a child with health needs.

The CCG will not permit services in a Support Plan to be secured from a nominee or representative of the individual who is receiving/managing the PHB on behalf of that individual, in line with the terms of the Direct Payment Agreement.

Approval for the support plan is by the CCG via the Personal Health Budget Individual Cases Panel (see Appendix V for Terms of Reference) with final sign-off for the budget itself being by the individual within the CCG with appropriate delegated responsibility.

4.6 Risk

Individuals should be supported to make fully informed choices about the risks they may be taking, facilitating a risk enabling rather than risk adverse approach.

a) In PHBs there is potential risk to:
   i. the patient's health and wellbeing: clinical risk
   ii. the patient's safety (or those around them): safeguarding risk
   iii. those that are caring for the patient: employment risk
   iv. the patient's budget: financial risk
   v. the patient's personal information: information governance risk
   vi. CCG corporate risk

b) The PHB Case Manager is responsible for ensuring that the individual is aware of what constitutes risk; knows the correct pathways for reporting them if they arise and is furnished with the appropriate contact details.

c) The support plan must contain acknowledge any potential or actual risks and explain the decisions made and actions taken to mitigate these risks.

d) Risk may be mitigated and minimised by the CCG through regular case management and reviews of PHB patients as set out in section 4.8 herein.

Part of the culture change surrounding PHBs is the shift in power-balance between clinicians and patients and this includes clinicians respecting an individual's expertise in their own life/condition and what is important to them, as well as their right to take calculated, mitigated and informed risks in order to live the life that they choose. Risks should be openly discussed, minimised where possible, but never "avoided at all costs" where to do so would result in limiting or restricting the right of the individual to understand and accept their own risks, if doing so gives them a more meaningful and fulfilling life.

All activity should be in line with the requirements of the CCG's Safeguarding Children and Vulnerable Adults at Risk Policy. When considering personal health budgets the CCG should keep in mind the six principles of Safeguarding Adults (DH 2011) as outlined below.

- Empowerment – Presumption of person led decisions and informed consent.
- Protection – Support and representation for those in greatest need.
- Prevention – It is better to take action before harm occurs.
- Proportionality – Proportionate and least intrusive response appropriate to the risk presented.
- Partnership – local solutions through services working with their communities. Communities have a part of play in preventing, detecting and reporting neglect and abuse.
- Accountability – accountability and transparency in delivering safeguarding.

4.7 Approvals

The CCG is responsible for approving an individual's eligibility for a PHB, the type of PHB, the support plan and the associated budget. This process will be managed through the CCG's attendance at appropriate multi-agency decision-making panels with financial approval being undertaken in accordance with the CCG's Standing Financial Instructions, Resource and Allocation Policy and Delegated Financial Limits. The contract between the PHB recipient or their representative and the CCG outlines the basis upon which the PHB is agreed and confirms the parties' agreement to fulfil their roles and responsibilities as set out in section 5 herein.

4.8 Reviewing and Monitoring PHBs

Every individual in receipt of a PHB will have their care needs and support plan reviewed regularly, as set out below, to ensure continued eligibility and that the support plan continues to meet their specific needs and identified outcomes. This review will also assure the CCG of the quality and safety of services secured by the PHB.

Reviews for individuals in receipt of PHBs will include:

- A case management review of the individual's health needs and support plan three months from inception of the PHB and at least annually thereafter;
- Where a PHB is provided for a children or young person reviews should align with the Children's Continuing Care processes;
- A review of the financial management of the PHB, including consideration of whether the budget has been used effectively, in line with the support plan and whether the

amount of the budget is sufficient to provide for the full cost of the services in the support plan.

The CCG may carry out a review before it would normally be scheduled to take place if the individual or their clinician indicates that a significant change to the individuals' needs that warrants a review before the annual anniversary. An immediate review will be undertaken of the support plan and budget allocation in cases of emergency or where it appears that there are insufficient funds to meet the outcomes identified within the support plan. Such instances should be rare; particularly if a comprehensive support planning process (including contingency planning) has taken place.

An individual may request a review of their PHB if they believe that their needs have changed and/or their PHB is insufficient to provide appropriately for those needs. Similarly, if the individual feels that the PHB is not working for them, they have the right to have their needs met through traditional means and it is the duty of the CCG to ensure systems and processes are in place to facilitate a review and the implementation of a traditional package should such a request be made.

4.9 Financial monitoring

PHB monies are public funds, which are administered on behalf of the Department of Health (DoH), therefore CCGs have a duty to ensure that the money is used appropriately, in line with support plans and in a manner which is open to scrutiny.

Financial auditing will be undertaken on a monthly basis for all PHBs delivered as a direct payment or third party arrangement; this will review all expenditure to ensure that it is in line with the agreed support plan.

The direct payments will be monitored on a transactional basis through the patient submitting bank statements and other supporting information e.g. invoices and receipts, PAYE, NI and other payroll records etc. to the PHB delivery service on a monthly basis at the pre-defined time outlined in the Direct Payment/ PHB Agreement

The CCG will ensure that the recipient is clear as to what information may be required as part of its review and that this information must be:

- Accompanied with authorisation for the CCG to take extracts or make copies ;
- Legible;
- Accompanied with an explanation of the information provided (if requested by the CCG);
- Accompanied with a statement informing the CCG where information is held which the individual has not been able to provide (if requested by the CCG).

This monitoring and review requirement as outlined applies equally to Personal Health Budgets delivered in the form of a Direct Payment and a Third Party Budget.

If the financial monitoring information requested is not provided the CCG reserves the right to withdraw the direct payment and transfer onto a managed account or notional budget.

The individual, their representative or their nominee (as applicable) should retain for audit purposes:

- Bank Statements
- Cheque and paying-in books

- Invoices and receipts
- PAYE, NI and other payroll records
- Any other information relating to the use of the direct payment.

These records must be retained for 6 years, even if the Direct Payment has stopped. For directly Provided Services/ Notional Budgets, other than care plan reviews, there are no other financial monitoring requirements.

Where concerns are raised regarding how the PHB is being spent this will be discussed with the third party or PHB recipient/ representative as appropriate.

If it is identified that the funds have not been used to secure the provision of care in line with the support plan then the CCG may, at its discretion, suspend, discontinue or reduce the direct payment, it may also transfer the direct payment to a notional payment. Before doing so the CCG will discuss the matter with the PHB recipient/ representative or third party. If there is no contact for a period of 4 weeks, then the CCG reserves the right to suspend or withdraw the payment or transfer to a notional budget.

These considerations are in addition to those set out at section [4.8] above, which requires review of an individual's Care Plan to ensure it remains appropriate to meeting the individual's needs.

4.9.1 Ceasing to make Direct Payments

In accordance with the NHS (Direct Payments) Regulations 2013, the CCG will stop making payments where the patient no longer wants them. The CCG may also stop making Direct Payments where the money is being spent inappropriately – this may include but is not limited to:

- where there has been theft;
- suspected fraudulent activity; or
- if employment related responsibilities are not being met; or
- any another offence relating to misuse of the budget;or
- if the patient's assessed needs are not being met through the services purchased by the direct payment. An assessment of the impact of terminating the direct payment will be considered and alternative options outlined.

The CCG will reclaim Third Party Budget payments where the patient's health needs have changed and they no longer need the money; where there has been theft, fraud or another offence; where the money has not been used and has accumulated; or where the money has not been used in accordance with the support plan.

Where Direct Payments or Third party budget payments are stopped or reduced, the CCG will give notice to the patient/Representative or Third Party in writing in accordance with the Direct Payment/Third Party Agreement.

Where Direct Payments or Third Party budgets are either stopped or reduced, the patient and/or their Representative may ask the CCG, in accordance with Section 4.8 of this policy document, to reconsider the decision.

4.10 Appeals

An individual (or someone on their behalf) who is unhappy with a decision made by the CCG in respect of a PHB may write to the CCG to ask them to review the process by which the decision was made. In such circumstances they should include any further information they wish the CCG to consider. Such circumstances may include, but are not limited to:

- The individual has requested a PHB but the request has been rejected;
- The individual has been offered a different type of PHB to the one they requested;
- The individual has been offered a PHB but the amount of the budget is in dispute;
- The reduction or withdrawal of direct payments or a Third Party budget.

The PHB Review Panel's role is to decide whether the CCG has properly followed its own procedures, has properly considered the evidence presented to it and has come to a reasonable decision based upon that evidence. See Appendix VI for the Panel's Terms of Reference.
The Review Panel is the final arbiter of the decision, which will be reported to the confidential section of the CCG's Governing Body. The individual or their representative will receive a letter giving details of the Panel's decision within five working days of the Review Panel meeting.
An individual case will not be reconsidered more than once in any six month period.

5. Accountability and Responsibilities

The Governing Body of Coventry Rugby and Warwickshire North CCG take the ultimate responsibility for this policy. They must ensure that:

- they discharge their duties as required by CCG standing rules in relation in PHBs;
- the CCG complies with the requirements of this policy and the related primary and associated legislation. This includes their role as the assumed Body that takes responsibility for NHS Continuing Healthcare and their role in the Appeals process detailed in 4.10 above;
- through Accountable Officers that there is effective implementation of this policy by appropriate teams;
- through Accountable Officers that there is appropriate resources (staff and finance) in place to deliver the requirements of this policy;
- through Accountable Officers that there is open channels of communication between the commissioning teams for CHC and PHB and Governing Boards in relation to PHBs.

The **Chief Finance officer with responsibility for CHC and PHBs** must ensure that procedures for receiving financial assurance in relation to PHBs are in place.

The **PHB Development Group** must ensure that:

- The CCG has developed an offer to patients ensuring choice on how their budget is spent;
- Relevant policies protocols, processes and procedures for implementing PHBs are developed and updated as national guidance and the expansion of the PHB offer occurs;
- Strategic priorities are developed in relation to PHBs, in particular to manage the development of communication, implementation, stakeholder management and monitoring of delivery plans in line with agreed objectives and to report on delays or risks;

- It provides oversight for the management of ongoing arrangements relating to PHBs and ensures organisational approval is gained where appropriate;
- It maintains awareness of any potential risks around implementing and delivering PHBs and ensures appropriate actions are taken to mitigate against such risks and that these are reported to relevant forums/boards;
- It explores and reports back to the CCG on opportunities around potential areas of integration for health and social care personal budgets, where greater alignment will lead to improved outcomes and greater resource efficiency, and developments beyond CHC for PHBs;
- It demonstrates a collaborative approach where appropriate to implementing and delivering Personal Health (and Social Care) Budgets to ensure service users receive a high quality, consistent and efficient service;
- It reviews this policy on an annual basis or where there are any changes in legislation and statutory duties for CCGs.

Staff with a responsibility for PHBs must ensure

- They adopt a culture of personalisation in their daily practice
- They promote personalisation and create environments that empower patients to take more control over their care
- Their practice reflects the requirements of this policy
- They undertake any training (Formal or informal) as required by CCG Governing Bodies in relation to PHBs
- They develop a strong network of professional relationships with both internal and external stakeholders
- That the deliverables are in line with the Strategic Priorities of the Clinical Commissioning Groups.
- That they collaborate with the CCG to support the mainstreaming of PHBs as they progress and evolve.

Patients and their nominated individuals must ensure that

- They are active participants in the PHB process;
- They use their budget in accordance with the ethos of PHBs;
- They follow the legislative requirements for PHBs and ensure the contents of the Support Plan is delivered as agreed with the CCG;
- They highlight any issues, concerns or risks to the CCG;
- All activity is in line with the local Safeguarding Children and Vulnerable Adults at Risk Policy.

6. Expansion of Personal Health Budgets

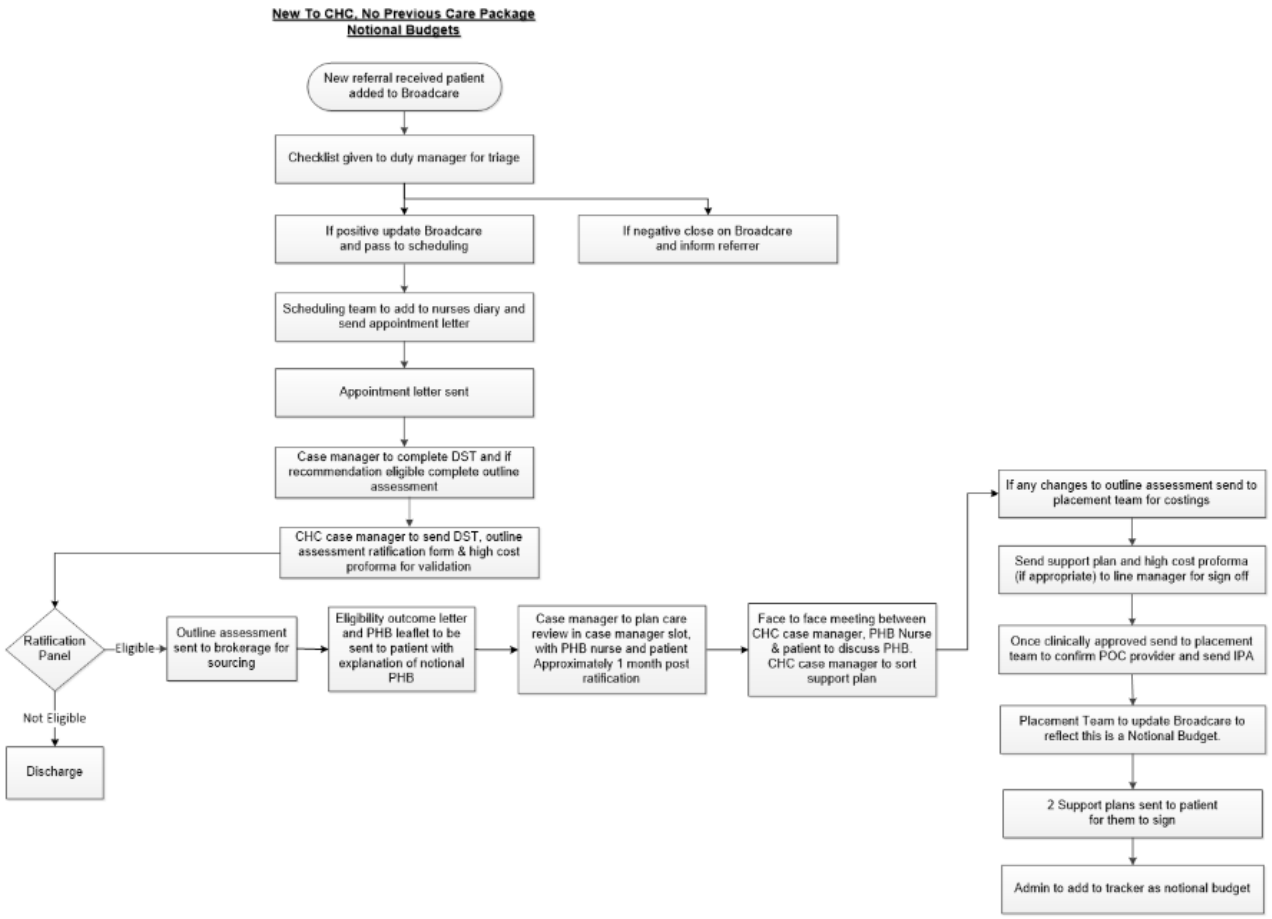
The CCG is committed to the personalisation agenda and believes in the benefits that PHBs can have, allowing individuals flexibility, choice and control over how their care fits in with their lives, to achieve the outcomes that are meaningful to the

The principles set out in this policy document will apply equally to any future expansion of the CCG's local PHB offer. As the local offer expands any additional policy content for specific PHB activity will be added as appendices.

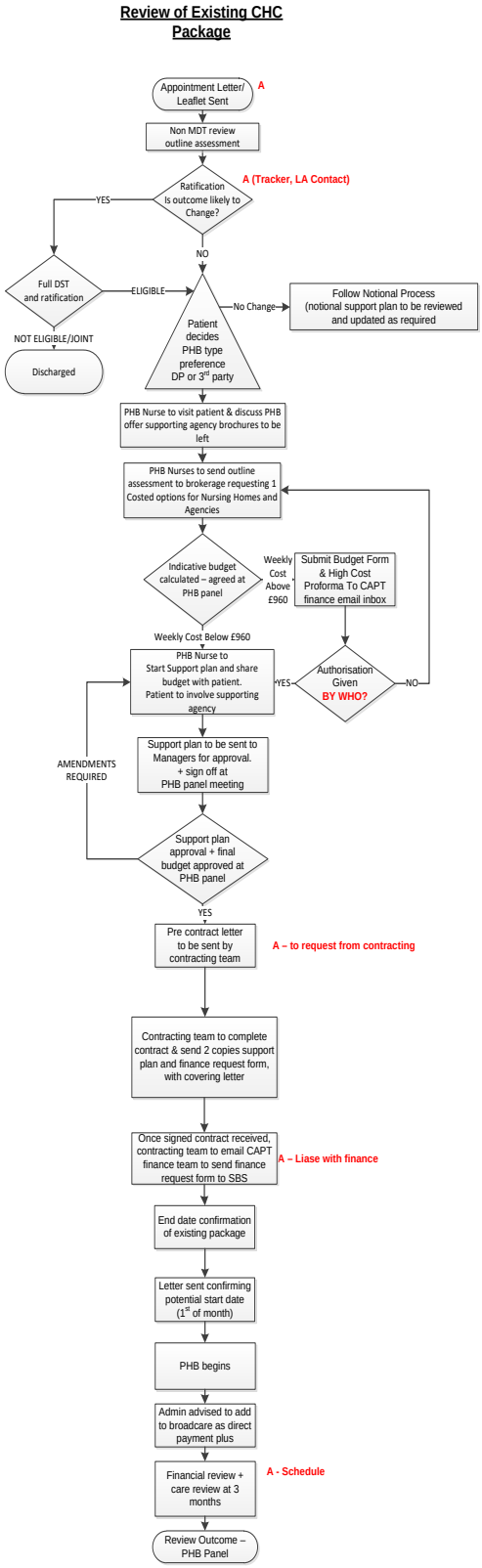
The CCG will be led by national guidance and local intelligence in respect of where to target the expansion to achieve the most impact and will engage with NHS England's development programme to ensure access to the appropriate knowledge and resources to support implementation. It is evident that successful expansion of the PHB offer is

dependent upon the correct infrastructure and processes being in place to support budget holders. The CCG will expansion that is reflective of its current commissioning commitments and that ensures that quality is maintained and impact can be measured as the PHB offer is extended.

Appendix I: Process Maps 1) CHC Personal Health Notional Budget

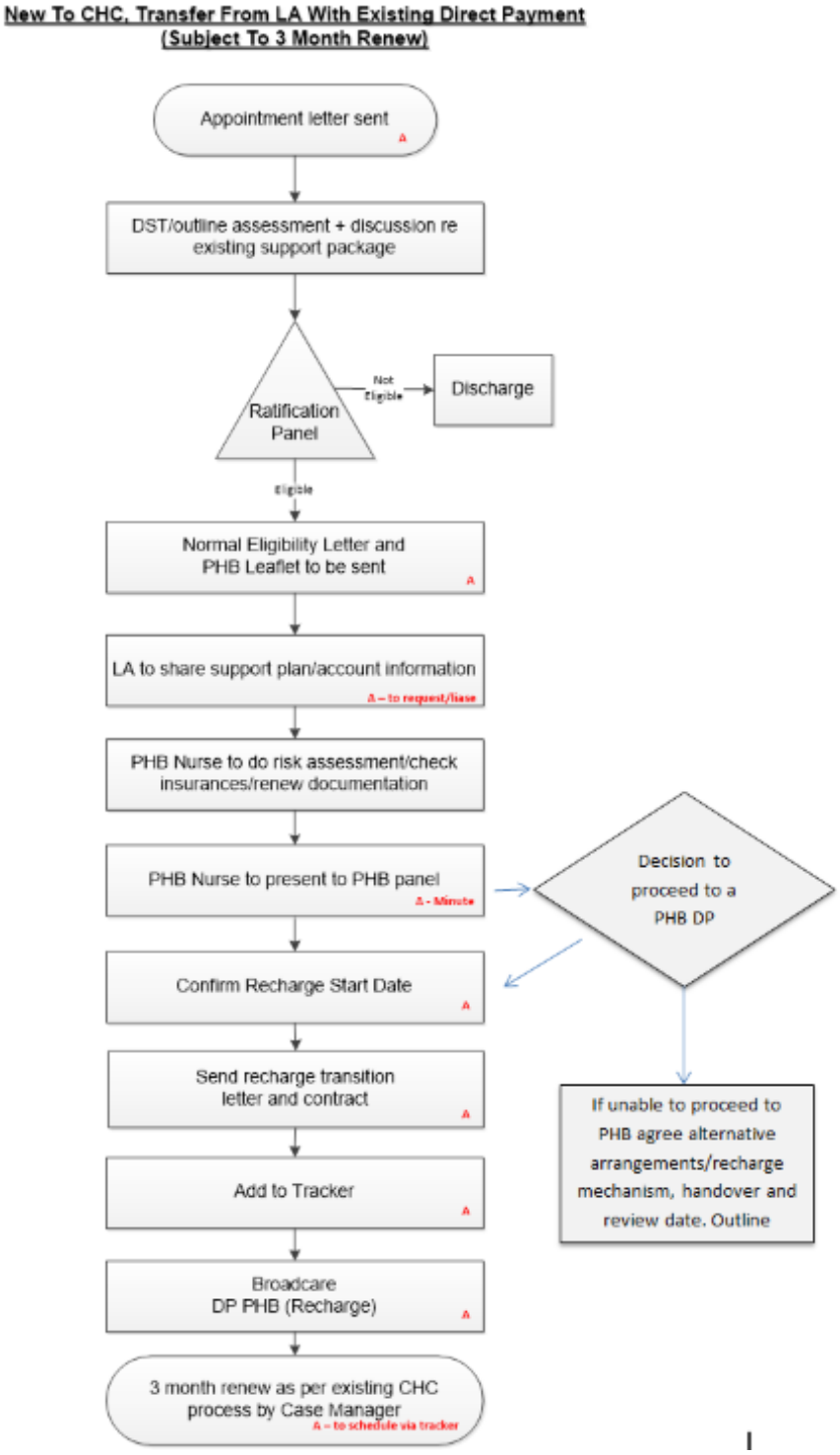


Appendix I: Process Map 2) CHC Personal Health Third Party/Direct Payment Budget



Appendix II: Local Authority Transfer Process

Local Authority to CCG transfer with existing direct payment in place



Appendix III: Individuals Not Eligible for a Direct Payment

National Direct Payment Regulations outline that the following people are *not* eligible for a Direct Payment (although a notional or third party budget may still be appropriate in the opinion of the Clinical Commissioning Group):

- A person who is subject to a drug rehabilitation requirement, as defined by section 209 of the Criminal Justice Act 2003 (drug rehabilitation requirement), imposed by a community order within the meaning of section 177 of that Act (community orders), or by a suspended sentence of imprisonment within the meaning of section 189 of that Act (suspended sentences of imprisonment);
- A person who is subject to an alcohol treatment requirement as defined by section 212 of the Criminal Justice Act 2003 (alcohol treatment requirement), imposed by a community order, within the meaning of section 177 of that Act, or by a suspended sentence of imprisonment, within the meaning of section 189 of that Act;
- A person released on licence under Part 2 of the Criminal Justice Act 1991 (early release of prisoners), Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences and recall) or Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (life sentences) subject to a non-standard licence condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour;
- An individual required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 (community rehabilitation orders) or a community punishment and rehabilitation order within the meaning of section 51 of that Act (community punishment and rehabilitation orders);
- A person subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000 (drug treatment and testing orders));
- A person subject to a youth rehabilitation order imposed in accordance with paragraph 22 (drug treatment requirement) of Schedule 1 to the Criminal Justice and Immigration Act 2008 (“the Criminal Justice Act 2008”) which requires the person to submit to treatment pursuant to a drug treatment requirement;
- An individual subject to a youth rehabilitation order imposed in accordance with paragraph 23 of Schedule 1 to the Criminal Justice Act 2008 (drug testing requirement) which includes a drug testing requirement;
- An individual subject to a youth rehabilitation order imposed in accordance with paragraph 24 of Schedule 1 to the Criminal Justice Act 2008 (intoxicating substance treatment requirement) which requires the person to submit to treatment pursuant to an intoxicating substance treatment requirement;
- A person (i) subject to a drug treatment and testing order within the meaning of section 234B of the Criminal Procedure (Scotland) Act 1995 (drug treatment and testing order) or (ii) subject to a community payback order under section 227A of that Act imposing requirements relating to drug or alcohol treatment; or
- A person released on licence under section 22 (release on licence of persons serving determinate sentences) or section 26 of the Prisons (Scotland) Act 1989 (release on licence of persons sentenced to imprisonment for life, etc.) or under section 1 (release

of short-term, long term and life prisoners) or section 1AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (release of certain sexual offenders) and subject to a condition that they submit to treatment for their drug or alcohol dependency.

Appendix IV - Purchasing Care and Support

Information relating to choosing the right provider

The flexibility of a PHB means the patient can purchase services from any suitable provider. It is the responsibility of the CCG to ensure that the patient is provided with good information during support planning and understands the risks involved with different choices.

Providers of services must:

- be registered with the Care Quality Commission (CQC) if they are carrying out any "regulated activity" (2013 Regulations 11.2.a.i);
- be appropriately trained in any healthcare tasks they are employed to undertake;
- have appropriate indemnity cover which is proportionate to the risks involved in providing the service. If the patient wishes the CCG to check this for them, we must do so;
- comply with any obligation that they have to be registered as a member of a profession regulated by a body mentioned in section 25(3) of the 2002 Act (the Professional Standards Authority for Health and Social Care). A patient can override this as long as it is clearly discussed within the risk assessment of the support plan and agreed with the CCG;
- make patients aware if they do not do DBS checks on staff.

It should be clear that the person receiving the direct payment is contracting directly with the provider or individual employee and therefore NHS procurement rules do not apply.

Information relating to employing personal assistants

A PHB can be used to employ personal assistants (PAs); this often allows for the greatest flexibility, choice and control over a care package and also comes with greater responsibilities. Where a PA is employed through a PHB, the patient (or third party organisation) becomes the employer and must comply with all the legal obligations of an employer. These include but are not limited to providing:

- A statement of employment particulars including: Providing a written contract, highlighting the number of hours, location of the work, remuneration, period of notice etc. It is a legal requirement to have a written contract of employment between you and your member of staff;
- Deducting Tax and National Insurance Contributions and paying these over to the appropriate statutory authority;
- Adhering to Statutory sick pay and Maternity Entitlements and Responsibilities, Paternity leave and pay, Adoption, Redundancy, Equal Opportunities, Unions and Health and Safety policies;

- Purchasing Employers and Public Liability Insurance, the costs of which are funded as part of the initial PHB payment.

The PHB Holder is responsible for all the employer responsibilities. Guidance can be obtained online at: www.direct.gov.uk: '*Employing a professional carer or personal assistant'* or www.hmrc.gov.uk. Employment status is not a matter of choice and depends on the arrangement and tasks being carried out. In order to safeguard patients from potential unforeseen tax liabilities, self- employed personal assistants should not be used, as they would rarely be deemed to be self- employed when the tasks are measured against Her Majesty's Revenue and Customs (HMRC) status indicator tool.

Patients will be signposted to and encouraged to seek support from local DPSOs who provide specialist advice and services relating to the employment of care and support staff. Allowance for the costs associated for this can be factored into the final PHB value and should be outlined within the support plan.

Patients are requested to:

i. carry out a DBS check on their employees (in ALL cases where the patient is a child or a child is living in the household, a DBS check will be mandatory, regardless of how long the employee has been known to the family or any prior relationship.)
ii. request two references for any potential employee.

It should be noted that employers can't force adults to work more than 48 hours a week on average (normally averaged over 17 weeks) according to the EU Working Time Directive. There are some exceptions to this which can be found at www.gov.uk.

The support plan budget breakdown should identify how the budget is broken down to ensure that costs relating to employing a PA are covered, including but not limited to National Insurance, training, insurance, emergency cover, payroll, redundancy costs, pension, statutory sick pay etc. Not all of these costs may be compulsory but it is recommended that they are clarified and written into a contract with the PAs.

All employed PAs (as a minimum) must have a written job description and contract of employment outlining their core duties and entitlements. The Direct Payment Support Organisation can provide assistance with this. Skills for Care also provide a range of toolkits to assist:
https://www.employingpersonalassistants.co.uk/downloads/toolkit/Before_your_personal_assistant_starts.pdf

Patients must have sufficient Employer's Liability Insurance.

Patients cannot employ someone who lives in the same house as them other than where it is necessary in order to satisfactorily meet their needs as set out in the support plan. Exceptions must be agreed by the CCG.

The tasks PAs are permitted to carry out must be carefully considered and risk assessed within the support planning process; there must be appropriate training and assessment of competence. How this will be done should also be detailed in the support plan. The employer is responsible for ensuring PAs are trained appropriately to carry out the tasks required and the CCG will ensure this training is suitable and available.

When a registered practitioner (e.g.: district nurse, physiotherapist etc.) trains a PA in a clinical task, the practitioner remains accountable for the decision to delegate this task to the PA but not for the standard of work that the PA carries out after training. The PA is accountable for both taking on this task and the standard to which it is carried out.[1]

In the case of children, training and delegation of healthcare tasks to social care workers, education staff and PA's/other appropriate persons, will remain the duty of the commissioned Children's Continuing Care Nursing Service.

It is important that the PAs are supported in their role and receive appropriate training and development opportunities. Unison provides a Personal Assistants Support Network which could also be utilised.

[1] Personal Health Budgets Guide; Personal Assistants – delegation, training and accountability; DoH November 2012

Appendix V: Personal Health Budgets Individual Cases Panel Terms of Reference

Introduction

Following agreement that an individual meets the eligibility criteria for a Personal Health Budget (PHB) and services, resources, interventions or purchase have been identified that constitute an appropriate support plan, cases are referred to the Coventry Rugby and Warwickshire North CCGs' Personal Health Budget Individual Cases Panel to consider requests for NHS funding.

Outside the scope of panel

The Personal Health Budget Individual Cases Panel will not have a function in relation to completing and/or altering Support Plans. Where Adult Safeguarding Procedures have been invoked, these will take precedence and the Panel will not act. The budget and adherence to resource and allocation will have already been agreed prior to the panel.

Pre-panel Procedure

The Case Manager will assess the needs of the individual and the level of risk associated with those needs and the proposed interventions. Wherever possible, risks and costs will be addressed and modified to an acceptable level through negotiation with the individual.

If PHB Support plan cannot be achieved within the agreed budget then the case should be returned to the appropriate budget approval process.

A referral to the Panel must be directed through the appropriate Case Manager, who will ensure the support plan is completed to a standard sufficient for the Panel to make a decision.

If the risk is so significant that it cannot be appropriately modified, the Personal Health Budget Individual Cases Panel retains the right to refuse to sign off the Plan and oversee the meeting of identified needs in a different way determined by the appropriate Clinical Commissioning Group.

If the plan has already been accepted and a significant issue arises a review will be held and the Plan may need to be amended by the Case Manager. The Case Manager may refer the matter to the Personal Health Budget Individual Cases Panel.

A referral should be made by submitting the completed support plan, which should be accompanied by any other relevant information including the assessment where appropriate.

The panel has two distinct functions:

- To consider risk and benefit attached to support plans proposed to underpin a PHB
- To consider, query and sign-off PHBs with appropriate support plans in accordance with agreed policies and procedures.

Aim

The Personal Health Budget Individual Cases Panel will review the support plans to ensure:-

- People in receipt of a PHB as part of a package of care have their needs met in conjunction with their preferred outcomes and that the overall package is safe and sustainable;
- Support plans are outcome focussed and maximise the impact of the individual's community wealth;
- Support Plans are in alignment with national guidelines and local policies and procedures;
- All packages of care are risk assessed appropriately to meet the needs of the individual and secure value for money in line with the CCG's resource allocation policy;
- Each individual case is presented on its own merits;
- A consistent approach is taken to considering complex risk (clinical, financial or otherwise) whilst recognising that the level of risk is not always the same for a single event and therefore the risk assessment needs to be individualised to the particular service user.

In addition the panel will ensure a balanced and consistent approach to understanding the risks and benefits of PHBs to the service user, their representatives, all stakeholder organisations including CCGs and the wider public.

Membership of the Personal Health Budget Individual Cases Panel

Membership will consist of:-

<u>The Chair:</u>

The chair will normally be Senior Business Lead from within the CAPT team. Where the chair does not hold delegated authority, the chair will be responsible to ensure CCG sign off following the meeting.

The Chair will:

- Manage the Panel meeting;
- Ensure all cases are given fair consideration and decisions are based solely on the evidence provided to the Panel;
- Ensure that the confidentiality of discussions in Panel and for making sure that all members of the Panel are aware of their responsibility in this regard;

- Facilitate the meetings in an informative, supportive and sensitive manner;
- Record actions / recommendations / decisions made by the PHB Individual Cases Panel.

Presenters

The cases will be presented by appropriate clinical nurse assessors or management.

The presenter will:

- Supply accurate and timely anonymised case information in order for the panel to make an informed decision;
- Communicate the outcome to all parties within three working days of the Panel meeting;
- Ensure that all sensitive information is communicated securely;
- Provide regular updates to the Panel regarding individual patients and their agreed outcomes to agreed timescales;
- Provide the necessary case progress information to the panel for input into the panel reports.

The Panel Administrator

The Panel administrator will normally be a member of the CAPT team who will be responsible for the administration of the PHBs.

The Panel Administrator will

- Receive all referrals to the panel;
- Arrange and cancel all panel meetings;
- Send out Panel appointments to members and attendees;
- Manage and distribute documents including minutes of the meetings to the relevant people, as agreed or directed by the Panel;
- Take and prepare the minutes of the meeting and record any required actions - ensure that everyone is aware of the required actions and where required chase due or overdue actions outside of Panel Meetings.

Clinical Managers

At least one Clinical Commissioning Manager will attend the panel. The role of the clinical manager is to:

- Provide clinical advice to the panel.
- Ensure that the care and support plans are robust.

Local Authority Staff

Local Authority representatives from both Warwickshire County Council and Coventry City Council in the case of joint funded packages (as relevant to the area of residence of the patients being presented)

Local Authority staff will:

- Represent the interests and the views of the local authority on joint patients.
- Approve the decisions of the panel on behalf of the local authority.
- Provide advice and guidance to the panel on matters pertaining to the local authority.

Finance Representatives

A finance representative will:

- Update the panel on the progress of payments
- Resolve financial queries
- Provide financial advice

Contracting Representative

The contracting representative will provide advice on providers and technical matters of the PHB and contract law.

Other Staff

Other staff may attend the panel at the agreement of the Panel Chair.
Further advisory support may be sought for specific cases from the following as appropriate:

- Case Manager as appropriate to the cases discussed;
- Any other appropriate clinicians or practitioners that are familiar with the cases being presented.

All panel members will ensure that:

- Each case undergoes robust assessment of the evidence based upon the appropriate legislation, criteria, guidance and policies;
- There is respect of both professional and case confidentiality;
- All views expressed by panel members will be given equal consideration.

Members who cannot attend should send a named representative who has the authority to act on their behalf.

Quorum

The Personal Health Budget Individual Cases Panel will be deemed quorate if the following are present:

- The Chair;

- A CCG Clinical Commissioning Manager who is separate from the chair;
- Where a joint personal budget is for consideration, it will be necessary for a representative with delegated authority from the appropriate Local Authority to be present.

Quorum ensures that the panel upholds the spirit of personalisation, choice and control. Attendance by a local authority representative where a joint personal budget is for consideration ensures that spirit of joint working and collaboration is upheld. There is a commitment to review of and learning from the cases presented.

Frequency of meetings
The CCGs' Personal Health Budget Individual Cases Panel will meet on a weekly basis.

The dates of meetings will be agreed in advance. Meetings can be cancelled by the Chair if there are no cases to present. Extra meetings can be convened at the discretion of the Chair as required.

Format of meetings
The Personal Health Budget Individual Cases Panel will deal with both new referrals and reviews of existing referrals. The Panel will agree and record actions, recommendations and the review date for each case.

It is essential that the process is well documented, with outcomes and actions demonstrably followed up. The Case Manager and associated clinicians where appropriate will present the case to the Personal Health Budget Individual Cases Panel.

Any other issues unrelated to the plan in question or the risks identified will be referred to the appropriate forum for separate discussion and resolution. After each discussion, the Chair will summarise actions for the purpose of the minutes. A review date will be set, if applicable.

Where a support plan is not agreed the panel will advise the presenter to undertake further work with the patient and/or their representative, to limit the risks highlighted and/or ensure the outcomes associated with the PHB are clarified in the support plan.

The panel will capture all risks and actions put in place to mitigate to an acceptable level[1]; including but not limited to:

- Any sanctions that may be in place for any of the care providers such as non-compliance with CQC standards;
- Suspensions or cautions in place for agencies or care homes;
- Undertaking Disclosure and Barring Services checks where relevant and whether that has highlighted any issues;
- Any employment issues;
- Where a patient lacks capacity, that safeguards are in place to protect them;
- The level of funding agreed for the PHB and the associated provision set out in the support plan will meet all requirements to meet the patient's assessed needs;
- It determines the appropriateness of the PHB offer and will suggest advice and guidance on complex or high risk aspects of a case;
- In relation to any outcome, the risk to independence or safety is balanced against the risk of not supporting an individual's choices or accepting the risks that go with this independence;
- The lead commissioner for the appropriate CCG will sign off the final request for funding for a PHB in line with local policies and procedures.

Challenges

Any challenge against any decision of the Personal Health Budget Individual Cases Panel should be directed to the responsible Clinical Commissioning Group through the locally agreed Appeals Panel process.

Governance

The Personal Health Budget Individual Cases Panel is directly accountable to the two CCGs through their individual governance routes. The panel will report any issues and will contribute data regarding the volume of PHB activity to the PHB Development Group chaired by the Director of Nursing and Clinical Transformation.

Quarterly reporting will be prepared for Finance and Performance Committee/Clinical Quality and Governance Committee providing an overview of

[1] It is expected that, in the main, any risks will have previously been identified by the Case Manager in their risk assessment, undertaken as part of the overall assessment process, and addressed with the service user directly. Not all risks will, therefore, be brought to Panel. However, where residual risks exist, for which a resolution cannot be found with the service user, a referral to the Panel should be made. Additional risks arising after implementation of the Plan may also be presented to the Panel, once the appropriate referral has been made by the Case Manager or Reviewing Officer.

PHB activity, in line with the quarterly reporting activity submitted to NHSE, outlining progress against local trajectories.

Reporting and review arrangements

The Personal Health Budget Individual Cases Panel will hold records of the following:

- The cases put before the panel;
- The PHBs agreed;
- The PHB requests rejected and reasons for this;
- The PHBs returned for further review;
- Issues or risks, including details of any residual risks the Panel were unable to resolve;
- Cases where the service user or their representative has requested a service that is out of the ordinary and this is seen as an unmitigated risk;
- All cases where family living in the same household, or a close family member, or a family friend of the client request a direct payment in order to pay them for providing care;
- Any legal or regulatory issues that have come to light during Panel meetings.

Where any of the following are suspected the relevant CCG will be notified immediately following the meeting by the Chair:

- Safeguarding concern;
- Suspected fraud;
- Availability of services or facilities;
- Endangerment of third parties;
- Political or reputational risk for the CCGs.

Monitoring and Reviewing the Effectiveness of the Personal Health Budget Individual Cases Panel

These Terms of Reference will be reviewed after six months and then yearly thereafter. They will also be reviewed if there are any material changes in procedures or the law. Minutes will be available for audit purposes.

Guidance for PHB Individual Cases Panel Members

Risk is part of everyday life and is inherent in everything we do. Often it is the element that allows us to grow and learn and it is against this backdrop that this guidance has been developed. Each area of Healthcare has different issues with regard to consent, capacity, service delivery and area of risks.
A good approach to choice and risk recognises the following:

- People have the right to live their lives to the full, as long as that does not stop others from doing the same.

- What must be considered are the consequences of an action and the likelihood of any significant harm. It should be possible for a person to have a Support Plan which enables them to manage identified risks and to live their life in the ways which best suit them.
- Multi-disciplinary working is very effective in ensuring that a person is supported in a seamless way and is satisfying to the practitioners involved. However, dilemmas arise when practitioners of different disciplines cannot agree about what arrangements should best be supported. In this case the commissioning CCG will make a decision separately.
- Ultimately, clinical commissioning groups have a responsibility not to agree to support a care plan if there are serious concerns that it will not safely meet an individual's needs or that it may place an individual in a dangerous situation.
- Even when good approaches are used and the correct processes followed, the reality is that, if something goes wrong, an organisation's accountability can be questioned. It is therefore vital to keep accurate records of discussions that take place about areas of choice. These are also valuable in giving a structure to the discussion about choices and their consequences.
- Uncertainty about legal rights and responsibilities can inhibit good approaches to supporting choice and managing risks. There may be a need to seek legal advice if there is any doubt in an individual case.
- The needs and wishes of carers should be acknowledged at all times and, in dealing with any conflict of wishes, we should aim to support all involved. However the CCG's overarching responsibility is the service user.
- A major inhibiting factor in achieving good outcomes for people in relation to choice and control is operating within a regime where there exists a fear of putting the organisation at risk, financially; in terms of public relations, reputation or in breach of the law. It is the role of the Personal Health Budget Individual Cases Panel to develop robust review and challenge of support plans in order to give assurances to the respective organisations.

The leadership role is critical in promoting health and well-being focused on positive outcomes for people who choose to have a personal health budget.

Appendix VI: Personal Health Budgets Review Panel Terms of Reference

An individual (or someone on their behalf) who is unhappy with a decision made by the CCG in respect of a PHB may write to the CCG to ask them to review the process by which the decision was made. In such circumstances they should include any further information they wish the CCG to consider. Such circumstances may include, but are not limited to:

- The individual has requested a Personal Health Budget but the request has been rejected;
- The individual has been offered a different type of Personal Health Budget to the one they requested;
- The individual has been offered a Personal Health Budget but the amount of the budget is in dispute;
- The reduction or withdrawal of direct payments or a Third Party budget.

Purpose
The PHB Review Panel's role is to decide whether the CCG has properly followed its own procedures, has properly considered the evidence presented to it and has come to a reasonable decision based upon that evidence.

Review Panel Membership
The Review Panel membership will comprise the CCG Chair, the Accountable Officer and a Clinical member.

All three members must be present for the Panel to be quorate and should not include any officer or clinician previously involved in considering the individual's case. The Review Panel may, however, request the attendance of a CCG officer who was involved in the original decision making so that they may answer any specific questions about the case.

Patients and clinicians will not be invited to attend the Review Panel meeting which will be held only as required. Assigned case managers may support patients to provide additional information for consideration by the Review Panel. Requests by patients to attend the Review Panel will be considered on a case by case basis.

The Review Panel is the final arbiter of the decision, which will be reported to the confidential section of the CCG's Governing Body. The individual or their representative will receive a letter giving details of the Panel's decision within five working days of the Review Panel meeting.

An individual case will not be reconsidered more than once in any six month period.

Process
The appeal must be made within 4 weeks of receiving the CCG's response to the PHB request, as follows:

- Appeals should be made by email or letter direct to the CCG;

- On receipt of an appeal, the CCG will respond within 5 working days confirming that a meeting will be convened;
- The meeting should take place within 20 working days of the appeal being received;
- The response of the panel will be confirmed to the service user in a letter within 5 working days of the meeting.

In the event of any timescales being exceeded, it is the responsibility of the CCG to keep the service user informed of reasons and progress.

The CCG will make no changes to the financial management of an existing PHB arrangement until the Appeal Panel's decision has been made i.e. the status quo is maintained. If the appeal is upheld, the CCG's PHB Leads will agree the timescale for action with the appellant.

Monitoring and evaluation
A Record will be kept of appeals received, upheld, and not upheld including all panel decisions and the rationale. Decisions made by this ad hoc panel will be reported to the confidential section of the CCG's Governing Body and will also be reported by the PHB Development Group to Clinical Quality and Governance Committee.

Quorum
The meeting will require a minimum of 3 persons as described in section 3 – Review panel membership

Frequency
The meetings will be held as and when required.

Review
The Terms of Reference will be reviewed on a yearly basis.

Appendix VI: Quality Impact Assessment

Title of scheme:	Personal Health Budget Policy
CCGs covered by the scheme: (only one QIA is required for each scheme even in multiple CCGs are involved)	WNCCG CRCCG
Lead CCG: (the CCG that will coordinate the completion of the QIA in consultation with involved CCGs)	CRCCG
Project Lead for scheme:	Michelle Cresswell
Senior Responsible Officer:	Jamie Soden
Brief description of scheme:	This Policy for Personal Health Budgets (PHB) supports the implementation of PHBs across CRCCG and WNCCG. A personal health budget is an amount of money to support a person's identified health and wellbeing needs, planned and agreed between the person and their local NHS team. PHBs are one of the tangible ways the NHS can become significantly better at involving people and empowering them to make decisions about their own care and treatment. A PHB is not about new money, but about using resources differently.
Intended Quality Improvement Outcome/s:	Giving people a greater sense of control and empowerment; Facilitating a supported, in-depth care planning process; Enabling people to secure services and support in a more innovative and flexible way to meet their specific care needs.
Methods to be used to monitor quality impact:	Support plan review outcomes Patient feedback

	P/N or N/A	Risk Score (if N)	**Comments** (include reason for identifying impact as positive, negative or neutral)	**Risk > 8 Stage 2 assessment required) Y/N If Y**
Duty of Quality Could the proposal impact positively or negatively on any of the following: a) Compliance with NHS Constitution right to: - Quality of Care and Environment - Nationally approved treatments/ drugs - Respect, consent and confidentiality - Informed choice and involvement - Complain and redress b) Partnerships c) Safeguarding children or adults	P		PHB policy is in line with the NHS constitution's principles and values. The focus on individual/personal outcomes ensures that the patient remains at the centre of all service planning and delivery, promoting choice, control and involvement.	N/A as positive
NHS Outcomes Framework Could the proposal impact positively or negatively on the delivery of the five domains:				
1. Preventing people from dying prematurely	P		Personalised care promotes the health and well-being of patients and will contribute towards preventing premature death	N/A as positive
2. Enhancing quality of life	P		Giving patients increased choice, control and flexibility of service provision has potential to enhance their individual quality of life.	N/A as positive
3. Helping people recover from episodes of ill health or following injury	P		Personalised care promotes the health and well-being of patients and may support patient recovery.	N/A as positive
4. Ensuring people have a positive experience of care	P		PHBs (via direct payment or third party) enable patients to self-direct their care, taking an active role in identifying and sourcing the services they require to achieve their outcomes.	N/A as positive
5. Treating and caring for people in a safe environment and protecting them from avoidable harm	P		Detailed support planning is conducted jointly between the NHS representative and the patient, identifying and mitigating identified risks.	N/A as positive

Access Could the proposal impact positively or negatively on any of the following: a) Patient Choice b) Access c) Integration	P		Patient choice is a key element of PHBs. The potential flexibility associated with PHB expenditure allows for increased access to a range of service provision. Jointly funded packages are eligible for PHB and offer further opportunity for integration.	N/A as positive

Name of person completing assessment: Michelle Cresswell (Clinical Transformation Lead)
30th July 2019

Reviewed by: Michelle Gorrell

Position: Deputy Director of Nursing & Clinical Transformation

Date of review: 31/7/19

Signature:

Proposed frequency of review: Six monthly

Signed off by: Jamie Soden

Position: Director of Nursing & Clinical Transformation

Date of review: 31/7/19

Signature:

Requires review at Clinical Quality and Governance Committee: N

Date considered at Clinical Quality and Governance Committee:

Logged on spreadsheet: Y/N

Appendix VIII: Equality Impact Assessment

Directorate	Nursing and Quality	Team	Nursing and Transformation	Name of lead person	Michelle Cresswell (Clinical Transformation Lead)

Piece of work being assessed	Personal Health Budget Policy
Aims of this piece of work	This Policy for Personal Health Budgets (PHB) supports the implementation of PHBs across CRCCG and WNCCG. A personal health budget is an amount of money to support a person's identified health and wellbeing needs, planned and agreed between the person and their local NHS team. PHBs are one of the tangible ways the NHS can become significantly better at involving people and empowering them to make decisions about their own care and treatment. A PHB is not about new money, but about using resources differently.

Date of EIA	July 30th 2019	Other partners/stakeholders involved	

Who will be affected by this piece of work?	Patients, their families and their carers. People who are assessed as or are already eligible for NHS Continuing Health Care (CHC) (including fast track cases) and families of children eligible for Continuing Care (CC) have had a "right to have" a personal health budget. Personal health budgets are not restricted to people in receipt of NHS CHC or CC and so a CCG can offer services via a personal health budget if appropriate. CCGs are expected to develop and expand their personal health budgets offer in order to deliver personalised care operating model outlined in the NHS long term plan. CCG staff who work within these service areas need to understand PHBs, and the process of implement and then managing the PHBs.

Equality Act 2010 Protected Characteristics	Baseline data and research on the population that this piece of work will affect. What is available? E.g. population data, service user data. What does it show? Are there any gaps? Use both quantitative data and qualitative data where possible. **Include consultation with service users wherever possible**	Is there likely to be a differential impact? Yes, no, unknown
Gender	It is not anticipated that the benefits derived from this policy will differ based on gender.	No
Race	A PHB can enable a person to direct and manage their own individual care and support arrangements that are reflective of their heritage and preferences. PHBs have been shown to be an effective mechanism for patients to access culturally sensitive service provision[2]. The focus on person centred support planning should reduce inequalities for individuals within this protected characteristic group.	No
Disability	People with disabilities or long term conditions are the target group for PHB. The evidence from the pilot sites demonstrates that there are benefits for all client groups[3]. Mental Capacity should not be a determinant of whether a person can benefit from having a PHB[4]; as such the option to have a representative or third party to manage the PHB on the individual's behalf is available. The policy positively impacts on the needs of patients with disability and other complex health needs by enabling personalised care and support planning. Support planning is focussed on the individual, holistic needs of the person, ensuring that	No
Religion/ belief	It is not anticipated that the benefits derived from this policy will differ based on religion/belief.	No

[2] https://www.pssru.ac.uk/pub/5331.pdf
[3] https://www.peoplehub.org.uk/debs-blog-about-her-experience-of-shared-decision-making/

[4] Mental Capacity Act 2005

	PHBs facilitate patients to access care and support based on person-centred plans which will allow a recipient to organise care that is appropriate to their cultural beliefs and associated customs.	
Sexual orientation	It is not anticipated that the benefits derived from this policy will differ based on sexual orientation. Positively, PHBs will enable patients to choose services and support that they feel is supportive, safe and appropriate for their holistic needs.	No
Age	It is anticipated that PHBs will benefit people of all ages. The PHB offer positively impacts on the needs of older, frail, vulnerable patients, enabling them to develop personalised care in a timely manner and supporting their access to care and support in line with their identified needs. If an individual is interested in taking a direct payment to purchase the support and care that they require but feels unable to manage the financial aspects of this, a managed account option is available whereby a third party manages the financial transactions. PHBs also positively impact on the needs of children with complex health issues and / or special educational needs[5]. Parents can manage a PHB on behalf of their child, thus the age of the child will not impact their ability to access a PHB. The wishes of the child will be included as part of the Support Planning / Outcomes work.	No
Social deprivation	It is not anticipated that the benefits derived from this policy will differ based on social deprivation. The introduction of PHBs is an opportunity to improve outcomes for people who may have been socially excluded or have experienced a range of social inequalities, as they are enabled access to more flexible care	No

[5] https://www.thinklocalactpersonal.org.uk/Latest/Personal-Health-Budgets-for-children-and-young-people-with-complex-needs-/

	and support provision that meets their individual needs. The planning around individual budget expenditure will ensure that any staff employed by a PHB holder are paid at least the minimum wage.	
Carers	PHBs positively impact on carers by enabling them to be more closely involved in the planning and purchase of care and support to meet the needs of the patient. There is also the opportunity for carers to be involved throughout the process of developing a care and support plan, natural support is reflected within the support planning process. Respite care may be included as part of the PHB. Evidence from pilot CCG sites suggests that carers providing support to a person with a PHB reported better quality of life and perceived health[6]. Where PHBs have been used to improve the life of the person being cared for, they can in turn improve the quality of life for the carer.	No
Human rights	PHBs are likely to improve equality of access and enhance human rights for people who receive them. In giving people more control over how their health funding is spent, their human rights, in particular their quality of life, the right to a family life and the right to participate in public life will be enhanced. The person-centred care planning approach puts the needs of the person first, involving them in decisions about their care and subsequent support.	No

[6] http://www.in-control.org.uk/media/168340/poet%20health%20report%20oct%202014.pdf