



**Coventry and
Warwickshire**
Integrated Care Board

NHS Continuing Healthcare Appeals Policy

Reference Number:	This will be applied to all new ICB-wide PPSs by the Governance and Corporate Affairs Team and will be retained throughout its life span.
Version:	Version 1.0
Name of responsible Committee and date approved or recommended to Integrated Care Board Board:	Audit Committee
Date approved by the Integrated Care Board (if applicable):	1 July 2022
Next Review Date:	1 April 2024
Expiry Date:	1 July 2024
Name of author and title:	
Name of reviewer and title:	
Department:	Corporate Office

VERSION HISTORY

Date	Version	Changes made to previous version	Consulting and Endorsing Stakeholders, Committees / Meetings / Forums etc.

Contents

1. Introduction	3
2. Purpose and Scope	3
3. Definitions	4
4. Appeals Process	5
4.1 Initial Steps	5
4.2 Continuation of NHS Funding	5
4.3 Requirements for Appeal to Proceed	5
4.4 Requests for Review of Care Needs	6
4.5 Stages of Appeal Process	7
4.6 Role of the Local Review Panel	7
4.7 Local Review Panel Procedure	8
4.8 Record of Local Review Panel	8
4.9 Requests to NHS England to Consider Review	9
4.10 Appeal to the Parliamentary Health Service Ombudsman	9
5 Third Party Information	10
Appendix I - Terms of reference for Local Review Panel	
Appendix II – Operational Process	
Appendix III – Equality Impact Assessment	

1. Introduction

The Department of Health established a National Framework for NHS Continuing Healthcare (CHC) and NHS Funded Nursing Care (FNC) in October 2007. The framework set out a common process to be adopted by the NHS and Local Authorities when considering whether a patient had a primary health need and therefore was eligible for fully funded NHS CHC. The framework has been subject to review on three occasions, with the most recent revised National Framework for NHS CHC and supporting tools being introduced with effect from October 2018.

Eligibility for NHS CHC is not dependent on a particular disease, diagnosis, or condition, nor does it depend on who provides the care or where the person lives. It can be provided in a care home, a care home with nursing or in the person's own home.

NHS Continuing Healthcare is fully funded by the NHS and is not subject to any financial assessment. On this basis, eligibility is determined by whether or not a person has a **primary health need** as opposed to needs which a local authority could be expected to provide, such as a requirement for assistance with activities of living, or the need for a safe environment. Because a person's care needs include the need for nursing care does not automatically make them eligible for full NHS funding; this is often only one element of a person's care package and the multi-disciplinary team needs to look at the full picture of the person's needs in order to determine whether they have a primary health need.

The primary health need is assessed by looking at all a person's care needs in detail and relating them to four key characteristics: Nature, Complexity, Intensity and Unpredictability.

2. Purpose and Scope

This document sets out the policy of NHS Coventry and Warwickshire Clinical Commissioning Group ('the CCG') in respect of Appeals against Continuing Healthcare Eligibility decisions.

This document sets out the CCG's intentions to ensure that all patients and or their representatives are aware of the appeals policy and processes. 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 Appeals.

Please see Appendix I for the detailed operational process maps that relate to the CHC Appeals Process.

3. Definitions

Appeal – a challenge, brought by the individual or their representative, against an NHS Continuing Healthcare eligibility decision, ratified by the CCG further to a multidisciplinary assessment.

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.

Primary Health Need – where the main aspects or majority part of the care an individual requires is focused on addressing and/or preventing health needs

Nature - the characteristics and type of needs, including the overall effect on the person and the quality of interventions needed to manage these needs

Complexity - how needs interact, to increase the skill needed to monitor symptoms, treat the condition(s) or manage the person's care

Intensity - The quantity and severity of the person's needs and support, including the need for sustained or ongoing intervention

Unpredictability - The extent to which needs fluctuate – which may include an unstable or rapidly deteriorating condition – creating challenges in meeting those needs

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. Usually, this is arranged for an individual who is not eligible for CHC funding.

CHC Nurse Assessor - the CCG representative who will manage the assessment of eligibility for Continuing Healthcare and oversee the arrangements put in place.

CHC Case Manager - the CCG representative who will manage the assessment of the patient's need for care and oversee the arrangements put in place.

Local Review Panel - the review panel who agree individual cases and case management. See Appendix for Terms of Reference.

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.

Representative – a person who is appointed to represent 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. Appeals Process

4.1 Initial Steps - To commence the appeal process, the individual or their representative must write to Coventry & Warwickshire Clinical Commissioning Group (CCG) informing them that they wish to appeal the eligibility decision following completion of a Decision Support Tool (DST).

Time limits for appeals against assessment outcomes will follow the guidelines issued by The Department of Health in March 2012. This guidance set out that an appeal should be submitted within 6 months from the date of written notification, sent by the CCG, informing the individual that they are not eligible or are no-longer eligible for NHS Continuing Healthcare.

4.2 Continuation of NHS Funding - When an individual is assessed as not eligible for NHS CHC by the CCG this decision is effective as soon as

it is made and remains effective until such time as the CCG revises its decision. The CCG has no obligation to fund ongoing care pending the outcome of an appeal.

Where an individual who has previously been eligible for NHS CHC is assessed as no longer eligible, funding will continue for a period of 28 days from the date that this decision is confirmed in writing by the CCG.

4.3 Requirements for Appeal to Proceed - Before proceeding with the appeals process, the CCG will ensure that the following key elements of the original assessment process have been complied with:

- i) There must have been a full assessment using the National Framework for NHS Continuing Healthcare
- ii) The DST must have been completed by a trained CHC Assessor, with involvement of other multidisciplinary team members (as defined in the CCG CHC Policy)
- iii) The eligibility decision must have been confirmed in writing, by the CCG, to the individual or their representative
- iv) The appellant must provide consent for the process, and (as specified on the consent form) proof of their legal authority to act in the matter. If represented by a third party, such as a solicitor, proof that this third party has been authorised to act must also be provided. In the absence of legal authority, the CCG will conduct an enquiry with the Office of the Public Guardian to confirm that there is no current individual registered with legal authority.
- v) In the absence of legal authority, a Best Interest discussion will be held to determine if it is in the individual's best interest to proceed with an appeal.

Where failures in key elements of the assessment process are identified, the Appeals Nurse may make a recommendation to the CCG that the assessment be repeated, to ensure that due process has been followed.

The CCG will not determine eligibility for CHC on the grounds of a failure of process. Eligibility can only be decided on the basis of whether an individual has a primary health need.

4.4 Requests for Review of Care Needs - The CCG may need to make a distinction between requests for review of care needs and requests to appeal against a decision that an individual is ineligible. Where this distinction is unclear there should be a discussion with the individual or their representative to agree the course of action to be followed. The agreed course of action must be confirmed in writing.

When an individual's care needs have not been reviewed for some time, have not previously been assessed, or have changed substantively since previously assessed, the CCG may consider completing a current assessment using a DST to establish a baseline. In doing so, the CCG seeks to avoid funding delays for those who would potentially be eligible based on an up-to-date assessment, rather than delay until a more protracted review can take place for retrospective periods of care.

When a current assessment is to be completed, any request for a review of care needs will not be registered as an appeal until the outcome of the assessment is communicated in writing and this is then followed by a written request to appeal against the eligibility decision.

4.5 Stages of Appeal Process

Stage 1 – An informal meeting will be held, between the individual/their representatives and an Appeals Nurse, to discuss the concerns which have prompted the appeal. If the individual - or the Appeals Nurse - is not satisfied that concerns have been addressed through this discussion, appeal will progress to Stage 2. A summary and outcome of this stage will be provided in writing to the appellant within 5 working days of the meeting.

Stage 2 - The Appeals Team will seek to obtain and review all documentary evidence relating to the individual's needs at the time of their CHC assessment. Evidence of needs will be compiled in a Needs Portrayal Document, which the individual or their representative will be invited to comment upon. Following this, an eligibility recommendation will be made, which will require ratification by the CCG.

Stage 3 – If the individual or their representative disagrees with the eligibility decision, they can – setting out the reasons for disagreement – ask for a Local Review Panel to reconsider the CCG eligibility decision. It is expected that the conclusions of the Local Review Panel will represent the final position of the CCG.

Stage 4 – Once the conclusions of the Local Review Panel have been communicated, if the individual or their representative remain dissatisfied, they can ask NHS England to consider reviewing the CCG’s decision. The CCG will respond to related requests from NHS England to facilitate this, but communication between the appellant and NHS England should occur independently of the CCG.

4.6 Role of the Local Review Panel

The role of the Local Review Panel is to ensure that:

- the assessment process has been followed
- the assessment is an accurate reflection of the individual's care needs
- these have been properly applied to the eligibility criteria set out in the National Framework for NHS CHC

The Local Review Panel will not be able to:

- consider challenges to, and or make rulings against, the lawfulness of the National Framework for NHS CHC or NHS FNC (applicable to claim periods after 1 October 2007) - these would need to be sent to the Department of Health who would respond within their complaint’s procedures
- answer complaints regarding decisions made by the Local Authority, such as policies for means testing, quality of information about care homes, or policies regarding the sale of assets to fund care - these should be sent to the relevant Local Authority who will respond within their complaints procedures
- answer complaints about the length of time taken to process the claim for NHS CHC – such concerns should be addressed through the CCG’s complaints procedures
- answer complaints about the type and location of any offer of NHS Funded Continuing Care services - these should be addressed through the CCG’s complaints procedures.

4.7 Local Review Panel Procedure

It is expected that the local appeal panel will follow a set format:

The appellant(s) will be invited into the meeting and introduced to all those in attendance. The panel will consist of:

- The Panel Chair (usually an Independent person not employed by the CCG)
- A representative from the relevant Local Authority
- Health professional(s) from the CCG, who have not had prior involvement in the case

Non-panel members in attendance would usually include the Appeal Nurse who has completed review of evidence in the case, a Senior CCG representative and an administrator who would be present for the purpose of taking minutes

The chair will outline the remit of the panel and explain what the panel considers when making its recommendation to the CCG

The Chair will invite the appellant to set out the reason that they are appealing the outcome of the continuing healthcare assessment and to make any opening remarks they feel are appropriate.

The Chair will ask the appellant to give their view on the individual's health needs, using the Appeal Decision Support Tool as a basis and considering each domain in turn.

The Chair may invite the CCG (usually the Appeal Nurse) to give a brief overview of the case, including a summary of the individual's care needs, from the Needs Portrayal.

The Chair and panel members may then choose to gather further detail from both the appellant and the CCG representatives so that they have clarification on any points that may be of concern to them.

The appellant may ask questions at any time to clarify their understanding of any point which has been made.

On conclusion of this process, the open session of the Local Review Panel will be complete.

The Chair and panel members only will remain for the closed session of the Local Review Panel. The Chair will oversee the deliberations of the panel members, who will arrive at an eligibility recommendation. It is expected that the CCG will accept this recommendation in all but exceptional circumstances.

4.8 Record of Local Review Panel – The notes of the Local Review Panel will be produced in the form of a report which summarises the important factors which have informed the decision. This will include a summary of discussion, including the contributions of the appellant, and the conclusion reached on each care domain by the appellant.

The notes will record the way in which the panel considered each of the four key factors which help determine a primary health need (i.e., nature, intensity, complexity, and unpredictability).

Within 8 weeks of the panel date, once agreed as an accurate reflection of the meeting by all panel members, the report will be forwarded to the appellant along with formal notification of the outcome.

4.9 Requests to NHS England to Consider Review - Procedures are in place so that individuals or their nominated representatives can challenge a CCG's decision about their eligibility for NHS CHC. The CCG will advise individuals of their right to appeal to NHS England in the letter that accompanies the Local Review Panel report. The individual or their nominated representative can request NHS England consider convening an Independent Review Panel (IRP) if they remain dissatisfied with the outcome of the local process. NHS England will then decide if the request is appropriate.

Following an IRP, unless there are exceptional circumstances, the CCG will comply with the outcome and recommendations of the IRP.

4.10 Appeal to the Parliamentary and Health Service Ombudsman (PHSO)

If the individual or their representative is dissatisfied with the conclusion of the appeal process at any stage, or how this process has been managed, they have the right to appeal to the PHSO.

The PHSO cannot make a decision on CHC eligibility but can examine the process by which decisions have been reached by the CCG and/or NHS England and may make recommendations to either body.

The CCG will respond to all requests for information by the PHSO, to ensure transparency and facilitate any investigation undertaken by the PHSO.

5 Third Party Information – In responding to an appeal, the CCG will need to access all relevant documentation relating to the case under review and this may include information provided by third parties. CCGs have to comply with all the

legal rules that govern when patient information can be shared. Where third party information is obtained, the CCG cannot share this documentation as it is not the data controller for these records. This can include care home records, GP notes and records from the Local Authority (social services).

As part of the appeal process, the individual or their representative may wish to request copies of records held by third parties. The CCG is unable to comment on policies of third-party organisations in this regard, but it should be noted that such requests are likely to be considered with reference to the capacity of the individual and/or the legal authority of their representative to access information.

APPENDIX 1 – LOCAL REVIEW PANEL – TERMS OF REFERENCE

Introduction

The individual or their representative has the right to make a case for eligibility to a Local Review Panel. In preparation for this, the Appeals Team will seek to obtain and review all documentary evidence relating to the individual's needs at the time of their CHC assessment, and the individual or their representative will be invited to comment upon the content of that review prior to the panel.

Outside the scope of panel

The Local Review Panel will not be able to consider the following points

- Consider challenges to, or make rulings against, the lawfulness of the National Framework for NHS CHC or NHS FNC (applicable to claim periods after 1 October 2007) - these would need to be sent to the Department of Health who would respond within their complaint's procedures.
- Deal with complaints regarding decisions made by the local authority/ social services departments, e.g., policies for means testing; policies regarding the sale of assets in order to fund care - these should be sent to the relevant local authority who will respond within their complaints procedures.
- Deal with complaints about the length of time taken to process your claim for NHS CHC - these will be dealt with within the NHS complaints procedures.
- Deal with complaints about the type and location of any offer of NHS Funded Continuing Care services - these should be sent to the CCG Complaints Team who will respond within the NHS complaints procedures.

Pre-panel Procedure

Before proceeding with the appeals process, the CCG will ensure that the following key elements of the original assessment process have been complied with:

1. There must have been a full assessment using The National Framework Decision Support Tool (DST)
 2. The DST must have been completed by a trained CHC Assessor with involvement of other professionals from health and social care
 3. The decision on eligibility must have been confirmed in writing, by the CCG, to the individual or their representative
-

4. The DST must have evidence of either patient/family representation or patient advocacy services to ensure the patient and family views are captured.
5. The person(s) wishing to pursue an appeal must provide consent for the process, and (as specified on the consent form) proof of their legal authority to act in the matter. If represented by a third party, such as a solicitor, proof that this third party has been authorised to act must also be providedⁱ.

Role of the Local Review Panel

The role of the Local Review Panel is to ensure

- the assessment process has been followed
- the assessment is an accurate reflection of the individual's care needs
- these have been properly applied to the eligibility criteria set out in the National Framework for NHS Continuing Healthcare (2018). This should include the guidance of establishing a Primary Health (Point 54 -66, Page 19 – 22)

Membership of the Local Resolution Panel

Membership will consist of: -

Panel Members:

- The Panel Chair (usually an Independent person not employed by the CCG)
- A representative from the relevant Local Authority
- Health professional(s) from the CCG, who have not had prior involvement in the case.

Non-Panel Members, who attend and contribute but are not decision makers.

- Appeal Nurse Assessor presenting Case
 - Family Representation, this can be in the form of an advocate if required.
 - CCG Representative
 - Appeal Administrator
-

Roles and Responsibilities of Panel Members

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.

Quorum

The Local Review Panel will be deemed quorate if the following are present:

- The Chair
- Health professional(s) from the CCG, who have not had prior involvement in the case
- Family/Legal Representation
- CCG Representative
- Appeal Administrator

Local Authority will be given one month's notice to attend the panel, however, should they not attend CCG Local Review Panel, the CCG will review the case and in exceptional cases to avoid further delay or undue distress the CCG may proceed without the Local Authority presence

Frequency of meetings

The Local Review Panel will aim to be held monthly, however frequency of meetings may vary depending on the number of requests the CCG receive for Local Review Panels.

Challenges

Procedures are in place so that individuals or their nominated representatives can challenge a CCG's decision about their eligibility for NHS CHC. The CCG will advise individuals of their right to appeal to NHS England in the letter that accompanies the Local Review Panel report. The individual or their nominated representative can request NHS England consider convening an Independent Review Panel (IRP) if they remain dissatisfied with the outcome of the local process. NHS England will then decide if the request is appropriate.

Following an IRP, unless there are exceptional circumstances, the CCG will comply with the outcome and recommendations of the IRP.

Reporting Arrangements

The Local Review Panel will report directly into the Clinical Quality and Governance Committee and Finance and Performance Committee and will provide quarterly updates within the CHC update report regarding issues relating to clinical and financial risk and impact.

Decision Making

The panel does not have any delegated decision-making authority regarding financial decisions. If a recommendation made by the Local Review Panel leads to a decision with a Financial impact, this is then processed through the authorised delegated limit of staff members present at the Local Review Panel, as per the CCG's Standard Financial Instructions - Scheme of Delegation.

Conflict of Interests

Members will be required to declare any conflicts of interest at the start of each meeting and will absent themselves from any discussions or decisions that relate to any such conflict of interest.

Secretariat

Information will be collated on to a ZIP folder, which will be circulated to panel members two weeks prior to the meeting.

Notes of discussions from Local Review Panel meetings will be recorded and circulated to all members to confirm accuracy. The notes will be stored in the administrator's secure files.

The outcome letter and copy of minutes of discussions will be stored in the individual patient file on Broadcare, together with the update from panel, to ensure a record of the recommendation and any agreed recommendations.

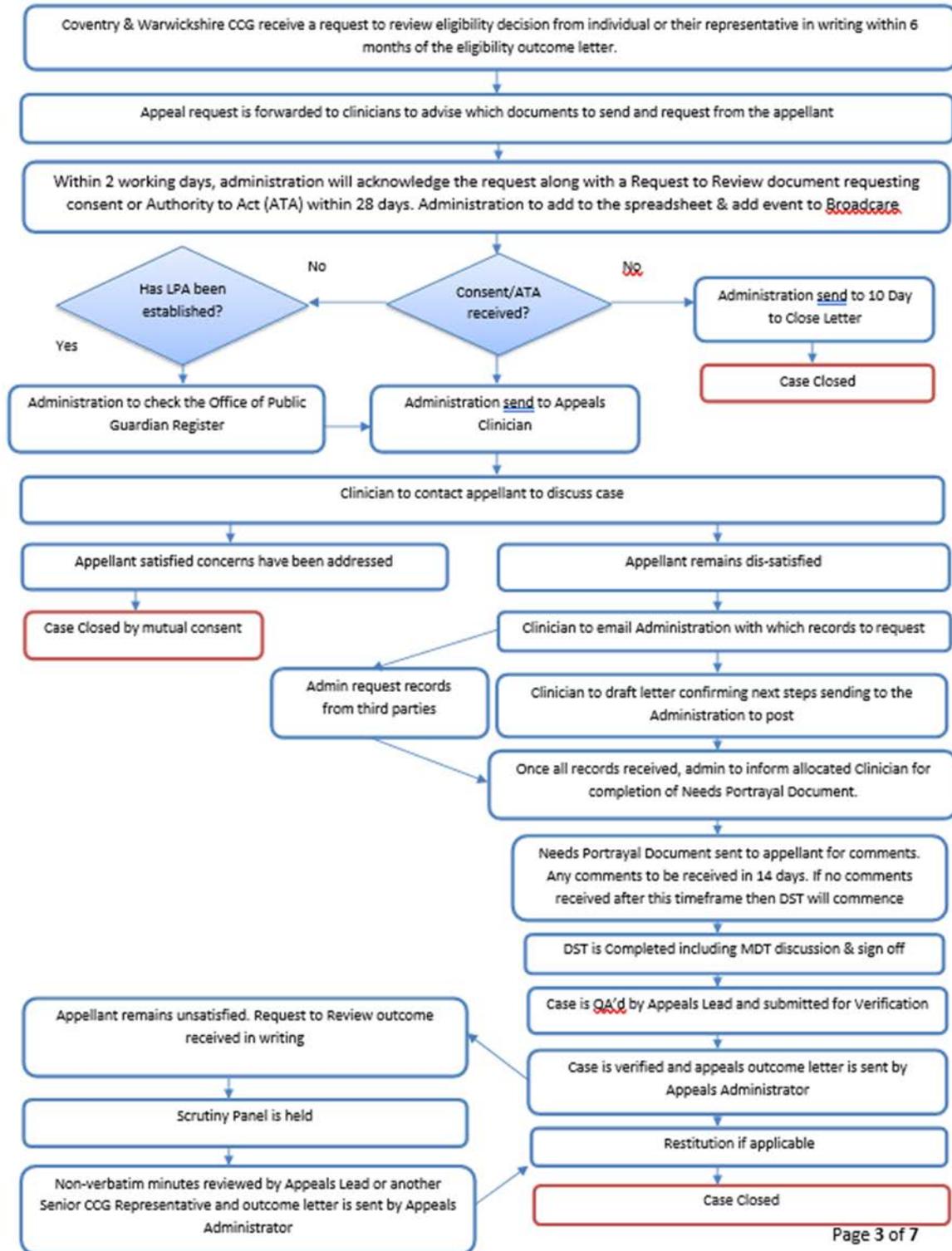
Review

The terms of reference will be updated annually (March 2023).

Appendix II – Process Flowchart

4. Flowchart of Process

SW



Appendix III – Quality Impact Assessment

Title of scheme:	NHS Continuing Healthcare Appeals Policy
CCG covered by the scheme: (only one QIA is required for each scheme even if multiple CCGs are involved)	Coventry and Warwickshire CCG
Lead CCG:	Coventry and Warwickshire
Project Leads for scheme:	Fiona Rickards and Tracey Rabin
Senior Responsible Officer:	Jo Galloway
Brief description of scheme:	<p>This document sets out the policy of NHS Coventry and Warwickshire Clinical Commissioning Group ('the CCG') in respect of Appeals against Continuing Healthcare Eligibility decisions.</p> <p>This document sets out the CCG's intentions to ensure that all patients and or their representatives are aware of the appeals policy and processes. 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 Appeals.</p>
Intended Quality Improvement Outcome/s:	Aims to ensure that the CCG apply a consistent and transparent approach to managing appeals requests. The policy also provides all patients and or their representatives a policy once an appeal is received by the CCG
Methods to be used to monitor quality impact:	Feedback from NHSE with any recommendations following review of CCG Cases have been presented at NHSE IRP Panel.

	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 complete stage 2 proforma)
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	NA		NA	N/A
NHS Outcomes Framework Could the proposal impact positively or negatively on the delivery of the five domains:				
1. Preventing people from dying prematurely	NA		NA	N/A
2. Enhancing quality of life	NA		NA	N/A
3. Helping people recover from episodes of ill health or following injury	NA		NA	N/A
4. Ensuring people have a positive experience of care	NA		NA	N/A

5. Treating and caring for people in a safe environment and protecting them from avoidable harm	NA		NA.	N/A
Access Could the proposal impact positively or negatively on any of the following: a) Patient Choice b) Access c) Integration	NA		NA.	N/A

Reviewed by:

Position:

Signature:

Date of review:

Proposed frequency of review

Signed off by:

Position: Signature:

Date of review:

Requires review at Clinical Quality and Governance Committee:

Date considered at Clinical Quality and Governance Committee:

Logged on spreadsheet: Y/N
