



**ANNUAL REPORT ON NHS FUNDED CONTINUING CARE
IN NHS SOUTH WEST FOR 2007/08**

30 May 2008

SOUTH WEST STRATEGIC HEALTH AUTHORITY

Annual Report on NHS Funded Continuing Care In NHS South West for 2007/08

Paper for the South West Strategic Health Authority Board on 26 June 2008	
Author	Ross Weatherburn, Head of Continuing Care and Legal Duties
Director	Andrew Millward, Director of Communications and Corporate Services
Main aim	To report on action regarding NHS Funded Continuing Care 2007/08
Outcome of equality impact assessment process	No impact assessment needed
Actions taken and planned as a result of the equality impact assessment, with details of action plan with timescales/review dates as applicable	See above
Groups/individuals consulted with as part of the impact assessment	See above
Link to strategic objectives and priorities	Meeting national targets
Risk Register	Not included
Risks identified if not on risk register	Failure to meet national targets
Current controls to reduce risk	Weekly/monthly monitoring; networks with Primary Care Trusts; Health Service Ombudsman and Healthcare Commission reports
Options/recommendations	To receive the Annual Report
Resources implications	Maintenance of adequate team
Details of residual risk following recommendations	All targets were met
Any legal implications or links to legislation	Potential legal challenge/Judicial Review
Freedom of information including restrictions	Annual Report not restricted but information based on reviews of individual cases with case files
Public involvement history	None by the South West Strategic Health Authority in 2007/08
Previous considerations	Annual Report 24 May 2007

PREFACE

The Annual Report on NHS Funded Continuing Care in NHS South West for the period 1 April 2007 to 31 March 2008 sets out the following:

- **a summary of the management of old and new retrospective claims, and current claims for NHS Funded Continuing Care;**
- **the arrangements for implementing the new National Framework for NHS Funded Continuing Care in NHS South West.**

**SIR IAN CARRUTHERS OBE
CHIEF EXECUTIVE
30 May 2008**

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NHS SOUTH WEST FOR 2007/08

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SECTION 1

INTRODUCTION

This section outlines the requirements and process for managing NHS Funded Continuing Care claims.

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1. INTRODUCTION

- 1.1 A procedure has been in operation since April 1996 to review decisions on eligibility for NHS Funded Continuing Care. Implementation of the procedure followed the issue of national guidance on NHS responsibilities for meeting Continuing Health Care needs, which included arrangements for a review process.
- 1.2 The Department of Health issued updated guidance in June 2001 through HSC 2001/15: LAC (2001) 18 Continuing Care: NHS and Local Councils' responsibilities, requiring Health Authorities to revise their review procedures from 1 October 2001 to reflect the:
- introduction of free nursing care;
 - proposed single assessment process for older people;
 - extension of the procedure to cover all NHS elements of continuing health and social care;
 - implications of the judgement in the case of "North and East Devon Health Authority ex parte Pamela Coughlan".
- 1.3 Each of the predecessor Strategic Health Authorities carried out a review of procedures and agreed a Policy and Eligibility Criteria for NHS Funded Continuing Care, which set out the unified criteria for the health community in the area.
- 1.4 The Department of Health issued further guidance through The Continuing Care (National Health Service Responsibilities) Directions 2004; superseding Health Service Circular/Local Authority Circular HSC 2001/15: LAC (2001) 18: Continuing Care: NHS and Local Councils' Responsibilities and the review procedures of each of the previous Strategic Health Authorities Policy and Eligibility Criteria for NHS Funded Continuing Care were reviewed accordingly.
- 1.5 On 3 March 2006, national guidance was published entitled NHS Continuing Healthcare: Action following the Grogan Judgement. This required that Strategic Health Authorities should ensure that following legal advice their local eligibility criteria and processes were compliant with the Grogan Judgement. Primary Care Trusts were required to ensure that all individuals in receipt of high-band Registered Nursing Care Contribution were reviewed for potential eligibility for NHS Funded Continuing Care. Each of the previous Strategic Health Authorities met these requirements and published further local guidance.

- 1.6 On 17 October 2006, the Continuing Care (National Health Service Responsibilities) Directions were published, along with guidance entitled Transitional Arrangements following NHS Reorganisation and Pending National Framework Implementation. This confirmed that a new national framework for assessing eligibility for the NHS would be introduced in autumn 2007, to replace the existing local policies and procedures with one national framework. The Directions and guidance enabled the new Strategic Health Authorities to decide whether to adopt one new set of policies and procedures for their area, or to continue to operate the procedures inherited from their predecessor Authorities. The South West Strategic Health Authority continued to operate the procedures already in existence in Avon, Gloucestershire and Wiltshire, Dorset and Somerset, and the South West Peninsula areas – a similar decision to that made by most other Strategic Health Authorities. The Review Panels established by the predecessor Strategic Health Authorities continued to operate in the South West Strategic Health Authority.
- 1.7 On 14 March 2007, national guidance on NHS Continuing Healthcare: Continuing Care Redress was published. This responded to a report from the Parliamentary and Health Service Ombudsman on Retrospective Continuing Care Funding and Redress, published on 13 March 2007. It advised Primary Care Trusts to ensure that appropriate financial redress is paid to complainants who have successfully appealed against a first decision that they or their relative were not entitled to NHS Funded Continuing Care. Where a Strategic Health Authority Review Panel reverses an earlier decision, for example, the Primary Care Trust should refund appropriate fees, interest, and possibly make an ex-gratia payment where there has been poor process. This guidance was brought to the attention of Primary Care Trusts for appropriate action.
- 1.8 On 1 October 2007, the Department of Health launched the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care, after a lengthy formal consultation period. This Framework was supported by national Decision-Making Tools and a standard process of assessment of the needs of individuals, and by a national training programme. It was successfully implemented in NHS South West.
- 1.9 In order to draw the process of reviewing retrospective claims for NHS Funded Continuing Care to a close, the NHS Chief Executive asked Strategic Health Authorities to publicise the fact that any retrospective claims from 1996 to 2004 that had not yet been made should be made by 30 November 2007. It was required that all retrospective claims be completed by 31 March 2008.
- 1.10 This paper sets out progress in dealing with old and new retrospective claims, current claims (Section 2), as well as the way forward for dealing with NHS Funded Continuing Health Care (Section 3).

Conclusion

- 1.11 Good progress has been made by the South West Strategic Health Authority in dealing with 87 old retrospective claims, 520 new retrospective claims, and 33 current claims for NHS Funded Continuing Care.
- 1.12 Action and progress has also been made in ensuring the future management of NHS Funded Continuing Care is done in an efficient way to ensure claimants hear about outcomes in an effective manner.

SECTION 2

MANAGING OLD AND NEW RETROSPECTIVE CLAIMS, AND CURRENT CLAIMS FOR NHS FUNDED CONTINUING CARE

This section outlines NHS Funded Continuing Care claims reviewed by the South West Strategic Health Authority.

2. MANAGING OLD AND NEW RETROSPECTIVE CLAIMS FOR NHS FUNDED CONTINUING CARE

2.1 During 2007/08, two types of retrospective claims for NHS Funded Continuing Care were received:

- claims that had been through all local processes and referred to the Ombudsman (old claims);
- new claims arising from the publicity generated by the NHS South West in response to the request made by the NHS Chief Executive.

Managing Old Retrospective Claims

2.2 The Ombudsman found shortcomings in the management of old claims by the former Strategic Health Authorities, and referred them back to the South West Strategic Health Authority. In February 2007 it was agreed that 87 such claims would be reviewed, within a process agreed with the Ombudsman and managed by a Taskforce established to undertake this activity. The Taskforce was replaced by an in-house team in December 2007. Table 1 sets out the outcome of the review of claims returned by the Ombudsman by Primary Care Trust.

Table 1: Outcome of Review of Claims Returned by Ombudsman

PRIMARY CARE TRUST	CLAIMS OUTCOME			TOTAL
	Full Award	Partial Award	No Award	
Bath and North East Somerset	1	-	1	2
Bournemouth and Poole Teaching	4	3	1	8
Bristol Teaching	1	1	2	4
Cornwall and Isles of Scilly	3	1	6	10
Devon	11	6	10	27
Dorset	4	1	2	7
Gloucestershire	2	3	2	7
North Somerset	1	-	2	3
Plymouth Teaching	2	-	1	3
Somerset	2	3	2	7
South Gloucestershire	2	-	-	2
Swindon	-	-	2	2
Torbay	1	-	1	2
Wiltshire	3	-	-	3
TOTAL	37	18	32	87

- 2.3 The 32 people who made an unsuccessful claim had the right to appeal again to the Ombudsman of which 19 people did so. The Ombudsman has considered 11 of these claims and supported the decision of the South West Strategic Health Authority in ten of them. A further review will be held of the one remaining claim.

Managing New Retrospective Claims

- 2.4 On 3 July 2007, the Department of Health issued guidance about bringing the assessment of claims for retrospective NHS Funded Continuing Care for 1996 to 2004 to a close. Strategic Health Authorities were asked to ensure, in partnership with their Primary Care Trusts, that everyone understood that they had until 30 November 2007 to submit a new retrospective claim to their Primary Care Trust, if they had not already done so. The NHS Chief Executive confirmed his undertakings given to the Parliamentary and Health Service Ombudsman that all retrospective claims would be completed by 31 March 2008.
- 2.5 Using a process and template provided by the South West Strategic Health Authority, each Primary Care Trust launched a publicity campaign. As a result of the publicity a total of 520 contacts were recorded by Primary Care Trusts. Table 2a and Table 2b sets out the details.
- 2.6 In order to meet the deadline of reviewing claims by 31 March 2008, it was agreed that:
- each Primary Care Trust would undertake a first sift of their claims to ensure as many as possible were dealt with quickly. As a result 308 claims required full reviews;
 - the most effective and efficient process of review and appeal compatible with best practice would be instituted;
 - top priority would be given to those claims by devoting nurse assessor and clinical advisor resources to them.
- 2.7 The Department of Health required each Strategic Health Authority to submit a weekly return detailing progress and action. The South West Strategic Health Authority was able to report progress in keeping with a broad plan agreed with each Primary Care Trust, and successfully met the deadline of 31 March 2008.
- 2.8 Detailed information about the outcome of the review of these claims has not been collected, although Primary Care Trusts report that over half the claims have been successful. 33 of the claimants appealed to the South West Strategic Health Authority. Five were subsequently withdrawn and Independent Review Panels were held during the latter part of March 2008 for the remainder. Nine of these claimants were successful.
- 2.9 If an individual is dissatisfied with the outcome of a review they can complain to the Health Service Ombudsman. The Ombudsman has not as yet contacted the South West Strategic Health Authority for the file on any claim.

2.10 The South West Strategic Health Authority had the largest number of claims registered (520) and was one of only two to meet the deadline of 31 March 2008. This was a significant achievement for the Authority and the 14 Primary Care Trusts in NHS South West.

Table 2a: New Retrospective Claims for NHS Funded Continuing Care: Enquiries

Primary Care Trust	Total Enquiries by November 30 2007	Claims needing full review
Bath and North East Somerset	32	22
Bournemouth and Poole Teaching	31	6
Bristol Teaching	25	13
Cornwall and Isles of Scilly	32	22
Devon	90	57
Dorset	49	21
Gloucestershire	33	30
North Somerset	29	15
Plymouth Teaching	31	20
Somerset	47	40
South Gloucestershire	27	19
Swindon	21	16
Torbay	40	10
Wiltshire	33	17
TOTAL	520	308

Table 2b: New Retrospective Claims for NHS Funded Continuing Care: Outcome

Primary Care Trust	Appeals to the South West Strategic Health Authority	Outcome Not Funded	Outcome Funded
Bath and North East Somerset	3	2	1
Bournemouth and Poole Teaching	0	0	0
Bristol Teaching	2	2	0
Cornwall and Isles of Scilly	2	1	1
Devon	2	1	1
Dorset	2	1	1
Gloucestershire	3	1	2
North Somerset	2	2	0
Plymouth Teaching	0	0	0
Somerset	3	3	0
South Gloucestershire	2	1	1
Swindon	0	0	0
Torbay	3	3	0
Wiltshire	4	2	2
TOTAL	28	19	9

Managing Current Claims for NHS Funded Continuing Care

- 2.11 National guidance required that the eligibility criteria for NHS Funded Continuing Care developed by each Strategic Health Authority should be used to assess all claims arising from 30 April 2004.
- 2.12 When the new Strategic Health Authorities were created on 1 July 2006, the South West Strategic Health Authority took the option of continuing to use the eligibility criteria of the three former Strategic Health Authorities, as enabled by national guidance issued in October 2006. As with retrospective claims, there was provision to ask the Strategic Health Authority for an Independent Review. After this stage, claimants still dissatisfied had the right of appeal to the Healthcare Commission.
- 2.13 The new National Framework for Continuing Healthcare launched with effect from 1 October 2007. This gave the cut-off point for consideration of claims using the Strategic Health Authority eligibility criteria and processes of review.
- 2.14 Table 3 sets out the number of claims where individuals requested a review by the South West Strategic Health Authority, with the outcome, and the number of claims remaining.
- 2.15 Some unsuccessful claimants have subsequently asked the Healthcare Commission to investigate. Five claims have been investigated and completed by the Healthcare Commission. In one claim the complaint has been upheld and a full review arranged. In four claims there are recommendations to the Strategic Health Authority about provision of information and improved explanations to the appellant. These recommendations are being implemented. A sixth claim is currently being investigated.

Table 3: Appeals to the South West Strategic Health Authority arising from 2004 to 2007

Primary Care Trust	Claim Outcome			Pending Claims	Total
	Full Award	Partial Award	No Award		
Bath and North East Somerset	-	-	-	-	-
Bournemouth and Poole Teaching	2	-	-	1	3
Bristol Teaching	-	-	5	-	5
Cornwall and Isles of Scilly	-	-	-	-	-
Devon	1	1	-	-	2
Dorset	3	-	5	-	8
Gloucestershire	1	-	2	-	3
North Somerset	-	-	-	-	-
Plymouth Teaching	-	-	-	-	-
Somerset	5	3	1	-	9

Primary Care Trust	Case Outcome			Pending Claims	Total
	Full Award	Partial Award	No Award		
South Gloucestershire	-	-	-	-	-
Swindon	-	-	-	-	-
Torbay	-	-	-	-	-
Wiltshire	2	-	1	-	3
TOTAL	14	4	14	1	33

SECTION 3

IMPLEMENTING THE NATIONAL FRAMEWORK FOR NHS CONTINUING HEALTHCARE IN NHS SOUTH WEST

This section describes implementation of the National Framework for NHS Funded Continuing Healthcare which came into force on 1 October 2007.

3. IMPLEMENTING THE NATIONAL FRAMEWORK FOR NHS CONTINUING HEALTHCARE IN NHS SOUTH WEST

National Policy

- 3.1 On 26 June 2007, following an extensive public consultation, the Department of Health published the National Framework for Continuing Healthcare, which became operational on 1 October 2007. It replaced all previous arrangements for considering whether or not individuals were eligible for NHS Funded Continuing Care, and was to be applied to all claims arising from 1 October 2007. It was supported by a National Decision Support Tool and resource packs about processes to be followed.
- 3.2 Primary Care Trusts retain the prime decision-making role, although Strategic Health Authorities also have responsibilities including maintaining an Independent Review Panel capability, should individuals be dissatisfied with the outcome of the decisions of the Primary Care Trust. A significant difference from previous arrangements is that the Independent Review Panel makes its recommendations directly to the Primary Care Trust, which is normally expected to accept these recommendations.
- 3.3 The key responsibility of the Independent Review Panel is to assess whether the Primary Care Trust has correctly applied the new national framework and has followed the processes set out in the national guidance. The Independent Review Panel will normally either support the decisions of the Primary Care Trust, or recommend the Primary Care Trust to fully review the case because of shortcomings in the decision making.

Action in NHS South West

- 3.4 The NHS Chief Executive wrote to Strategic Health Authority Chief Executives on 27 November 2007, setting out the following four initial issues to be addressed:
- clearing of all outstanding retrospective claims by 31 March 2008;
 - local leadership by the Strategic Health Authority:
 - * the South West Strategic Health Authority supported the creation of two Primary Care Trust-led networks, at operational and Executive Director level. These networks meet regularly to guide and oversee local implementation of the National Framework, to ensure consistency of approach and sharing of best practice. These networks have also ensured training programmes have been held, which also involved members of the South West Strategic Health Authority Independent Review Panel;
 - * the South West Strategic Health Authority is represented at these networks, and also at the Strategic Health Authority Leads Group that meets with Department of Health representatives;

- Strategic Health Authority performance management:
 - * an information monitoring form has been agreed with all 14 Primary Care Trusts, enabling monitoring of claims and outcomes. The South West Strategic Health Authority has access to this information, and any issues arising will be raised through the network of Executive Directors. The Strategic Health Authority also uses the findings of the Independent Review Panels to assess the consistency of decisions by Primary Care Trusts;
- Co-operation and Partnership with Local Authority partners:
 - * Local Authority representatives are participating with each Primary Care Trust in their local area to ensure proper implementation of the National Framework.

Arrangements for the Strategic Health Authority Independent Review Panel

- 3.5 As at 31 March 2008, no appeals for funding for NHS Funded Continuing Healthcare provided since 1 October 2007 had been referred to the Independent Review Panel. However, in preparation for this work, Independent Review Panel Lay Chairs and medical advisors have been identified and are ready to operate. Representatives from Primary Care Trusts and Local Authorities, who are ready to act as independent experts on Independent Review Panels, have also been identified.