

Guidance on the legal rights to have personal health budgets and personal wheelchair budgets

Version 2, 15 November 2022

Updates to the previous version of this guidance (version 1, published December 2019) are highlighted in yellow.

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Who this guidance is for:

This guidance will help **integrated care boards (ICBs)** and other commissioners of adult and children's health and care services to understand the right to have a personal health budget (PHB) for:

- adult NHS continuing healthcare (NHS CHC)
- after-care services under section 117 of the Mental Health Act (1983)
- **people in receipt of NHS wheelchairs**
- children and young people's continuing care.

It will also be of interest to:

- people providing support to commissioners
- people providing health and care services
- voluntary sector groups and user-led organisations who have an interest in PHBs
- patients and carers.

Advice and support

For further support from NHS England, organisations can sign up to the [Personalised Care Collaborative Network](#) on the Future NHS Collaboration Platform, or visit the [NHS England personal health budget webpages](#) for more information.

Extensive support is also available from NHS England's Personal Health Budgets team. Enquiries should be sent to england.personalhealthbudgets@nhs.net.

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1. Introduction

The aim of this guidance document is to assist integrated care boards (ICBs) and other relevant bodies who commission NHS services and support to meet their duty to ensure eligible groups of people benefit from the legal right to have a PHB.

This includes people eligible for NHS continuing healthcare (NHS CHC), children and young people's continuing care, people eligible for after-care services under section 117 of the Mental Health Act (herein referred to as 'section 117 after-care'), and people in receipt of NHS wheelchairs (who have the right to a personal wheelchair budget).

People eligible for NHS CHC and children and young people's continuing care have had a legal right to a PHB since 1 October 2014, as announced by the Government in October 2013 and provided for in the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 3) Regulations 2014.

Following a consultation in 2018, the right to have was extended to people eligible for section 117 after-care in mental health and wheelchair services. A PHB for a wheelchair is called a personal wheelchair budget. This extension came into force on 2 December 2019. This document updates and supersedes previous guidance on the right to have a PHB. The [Responsibilities and Standing Rules](#) have also been updated to reflect the addition of these two groups.

Ensuring more people can benefit from personalised care is one of the key aims of the [NHS Long Term Plan](#) and this includes the ambition to increase the uptake of PHBs to 200,000 people by 2023/24 which is outlined further in [Universal Personalised Care](#).

It is advised that commissioners read this guidance alongside broader legislation and guidance as set out in appendices A and B.

Commissioners should also consider making appropriate links to other relevant policies, for example:

- Education, health and care (EHC) plans for children and young people who are eligible due to special educational needs and/or other support needs from September 2014.
- The requirement to develop joint arrangements for commissioning services to improve outcomes for people aged 0-25 years with special educational needs and disabilities, including agreeing the provision of a personal budget and identifying locally the links between the special educational needs offer and PHBs.

1.1 Equality

The NHS Long Term Plan states that:

“we will accelerate the roll out of Personal Health Budgets to give people greater choice and control over how care is planned and delivered. Up to 200,000 people will benefit from a PHB by 2023/24.”

The legal right to have a PHB, and the extension of this right in 2019, supports ICBs to deliver on this aim, enabling people experiencing some of the most significant long-term health conditions to exercise greater choice and control and to enhance independent living in the community.

Since 2019 this legal right to a PHB encompasses adults eligible for NHS CHC, children and young people’s continuing care, people eligible for after-care services under section 117 of the Mental Health Act, and people in receipt of NHS wheelchairs.

By extending the legal right and by providing these guidance documents the aim is to increase the numbers of PHB holders, many of whom will have had limited opportunities to exercise choice and control over their health and wellbeing prior to this right.

An [Equality Impact Assessment](#) has been completed for the extension of the right to have a PHB.

Equality and diversity are at the heart of NHS England's values. Throughout the development of the policies and processes cited in this document, due regard has been given to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it.

2. Background

PHBs were piloted across England between 2009 and 2012. One of the central findings of the [pilot's evaluation](#) was that PHBs led to an improved quality of life and a reduction in the use of unplanned hospital care. Benefits were particularly evident for people with high levels of need.

Since October 2014, people eligible for NHS CHC and children and young people's continuing care have had the right to have a PHB. The right to have a PHB was extended to people eligible for section 117 after-care in mental health and people eligible for wheelchair services in December 2019.

[The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) 2012 \(as amended\)](#) and the [National Health Service \(Direct Payments\) Regulations 2013](#) set out ICBs' legal duties relating to PHBs for NHS CHC, children and young people's continuing care, section 117 after-care and wheelchairs.

These include duties to publicise and promote the availability of PHBs, to provide information, advice and support and to ensure they have the systems and processes in place to be able to make this provision.

3. What are PHBs?

A PHB uses NHS funding to create an individually agreed personalised care and support plan that offers people of all ages greater choice and flexibility over how their assessed health and wellbeing needs are met.

The personalised care and support planning conversation identifies the care, support and services the PHB will be spent on. This can include a range of things to give people access to care, support and services that are holistic, innovative and build on their strengths.

PHBs are flexible. They can be used to meet a variety of needs, including:

- for ongoing care and support to meet people's assessed health and wellbeing needs, eg NHS CHC, children and young people's continuing care, after-care services under section 117 of the Mental Health Act
- for one-off budgets to support people to achieve specific goals or outcomes enabling supported self-management, eg hospital discharge, mental health recovery
- to support children and young people with education, health and care plans aligned to expectations in the SEND Code of Practice.

And they can be:

- pooled to support several individuals to come together to achieve a common health and wellbeing goal, eg a group health weight management programme for people with a learning disability and/or autism
- integrated with social care and/or education personal budgets
- used to target and address wider system priorities such as identified health inequalities.

The use of PHBs is one way of providing more personalised care and means tailoring services and support for people to enable them to have choice, control and flexibility over their care. Personal wheelchair budgets are another form of PHB.

There are six key features of a PHB that ensure people experience the best outcomes possible. A person should:

- be central in developing their personalised care and support plan and agree who is involved
- be able to agree the health and wellbeing outcomes (and learning outcomes for children and young people with education, health and care plans) they want to achieve, in dialogue with relevant health, education and social care professionals
- know upfront an indication of how much money they have available for healthcare and support (there may be flexibility when an indicative budget is discussed as part of a one-off budget)
- have enough money in the budget to meet the health and wellbeing needs and outcomes agreed in the personalised care and support plan
- have the option to manage the money as a direct payment, a notional budget, a third-party budget or a mix of these approaches
- be able to use the money to meet their outcomes in ways and at times that make sense to them, as agreed in their personalised care and support plan.

Evidence shows that better outcomes are achieved where:

- there is clear information about PHBs, tailored to people's needs
- there is access to independent advice from brokers, voluntary organisations, direct payment support services and peer networks
- people know how much money they have to spend on their care before care planning and are given control of their budget
- people are given a high degree of flexibility and choice to spend their budget on services that make sense to them, which may include services not traditionally provided by the NHS
- personalised care and support plans cover all areas of the person's life, including their aspirations, wishes and needs and adopt a positive approach to managing risk.

3.1 Personalised care and support planning

Personalised care and support planning is at the heart of making PHBs work well. As a result of discussions between the person, their representative, or, in the case of children, their families or carers and the local NHS team, personalised care and

support plans should clearly set out the health and wellbeing needs that the PHB is to address, the intended outcomes, the amount of money in the budget and how this is going to be used to meet the person's assessed needs and agreed outcomes.

These may relate to both health and wellbeing outcomes. Personalised care and support plans prioritise the person's strengths and skills, their personal social context, what is important to them in terms of how they want to live and be supported, as well as what is important in relation to identified health and wellbeing needs.

This contrasts with traditional care plans, which typically focus solely on a person's clinical care and treatment needs. ICBs have broad powers to meet people's health and wellbeing needs, and a good personalised care and support planning discussion and plan should adopt a holistic approach.

Some people, such as children and young people, will require support and services from social care and/or with educational needs. Some in this group may be eligible for and have in place an education, health and care (EHC) plan.

For those who do not already have a joint plan in place (which could include health, social care and educational needs), ICBs will need to consider working in partnership locally with social care and education colleagues to develop a streamlined, holistic personalised care and support planning process. This will also apply to people eligible for section 117 after-care, where "mental health services must be jointly provided or commissioned by local authorities and CCGs" ([Mental Health Act Code of Practice 2015](#), Chapter 33).

3.2 Managing a PHB

What are the options for managing a PHB in NHS CHC, children and young people's continuing care and section 117 after-care?

People can have a PHB in one or any combination of the following three ways:

- A notional budget
 - where the commissioner (for example the ICB) holds the budget and utilises it to secure services based on the outcome of discussions with

the person, their representative, or, in the case of children, their families or carers

- A third-party budget
 - where an organisation independent of the person and the NHS commissioner manages the budget on the person's behalf and arranges support by purchasing services in line with the agreed personalised care and support plan
- A direct payment
 - where money is transferred to the person, their representative or nominee, or, in the case of children, their families or carers, who contracts for the necessary services.

ICBs should ensure all three options are available to enable people to make a choice about the level of control they feel comfortable with.

The most appropriate way to manage a PHB should be discussed and agreed with the person and/or their representative as part of the personalised care and support planning process.

What are the options for managing a personal wheelchair budget?

A personal wheelchair budget can be managed in the following ways:

- Notional personal wheelchair budget
 - This is where the person chooses to use their personal wheelchair budget within NHS commissioned services and the service purchases and provides the chair. This also offers the option for contributions to the personal wheelchair budget to enhance the wheelchair people can access.

This contribution may come from an integrated package with other agencies such as education, social care, a voluntary or charity organisation, or through self-pay. This would have previously been known as a partnership voucher.
- Third party personal wheelchair budget
 - This is where the person chooses to use their personal wheelchair budget outside of NHS commissioned services. An independent provider

receives the personal budget by invoicing the NHS. This may also be contributed to as above. This would have been known previously as an independent voucher.

- Traditional third-party PHB
 - This is where an organisation, legally independent of both the NHS and the person, holds the money and manages the budget. This could include provision of a wheelchair as part of a wider package of support.
- Direct payment
 - This is where the budget holder holds the money in a bank account or an equivalent account and takes responsibility for arranging the care and support and supply of any equipment in line with the agreed personalised care and support plan.

Direct payments are not currently routinely available as an option for managing a standalone personal wheelchair budget. NHS England and the Department of Health and Social Care are currently reviewing existing regulations to establish whether additional contributions are permissible under the National Health Service (Direct Payments) Regulations 2013 (as amended).

Therefore where a direct payment is requested it would either need to meet the whole cost of the wheelchair (which may be appropriate as part of an NHS CHC package) or be part of an integrated package of care and clearly able to demonstrate the health and wellbeing outcome which required a contribution via a separately commissioned service.

3.3 Reviewing a PHB

It is essential to check at appropriate intervals how the PHB is working and whether the personalised care and support plan is achieving the agreed outcomes. It is also important that PHB holders know who to contact to discuss changes to their PHB should their needs change. Reviews should be ongoing and embedded in best practice and local processes around delivering care, if there is an ongoing package of care. Reviews that focus on outcomes can be the most effective way of identifying what works well and what does not work well for the person.

Depending on what is agreed at the review, changes can be made to the resources, support or conditions described in the **personalised** care and **support** plan. Reviews

are a crucial part of PHBs and support safeguarding, so they need to be carried out effectively. The primary aim of the review is to strengthen the person's ability to achieve the outcomes they want in a timely fashion.

Where direct payments are provided, all personalised care and support plans must be formally reviewed as a minimum within three months of the person first receiving the direct payment. Following this, reviews should be held at appropriate intervals, but must occur at least annually. These reviews should include an appropriate level of financial review to give ICBs confidence that the budgets are being used as agreed and that the level of the budget remains appropriate to meet the person's assessed health and wellbeing needs.

Where a one-off budget is provided, for example, for the purchase of an item of equipment, then ongoing or annual reviews may not be appropriate. ICBs must still review any provision to ensure any equipment or treatment is appropriate and outcomes are being met but the timings of these reviews will be on a case by case basis.

4. Who has the right to have a PHB?

4.1 NHS CHC and children and young people's continuing care

People who are assessed as or are already eligible for NHS CHC (including fast track cases) as defined by the [National Framework for Continuing Healthcare and NHS-funded Nursing Care November 2012 \(revised\)](#) and families of children and young people eligible for continuing care as defined by the [National Framework for Children and Young People's Continuing Care](#), have had a right to have a PHB since October 2014.

In the case of children and young people, this refers to the element of their care package that would normally be provided by the NHS once they become eligible for continuing care, and not the elements of their package provided by social care or education.

People and their representatives already in receipt of NHS CHC or continuing care for children **and young people** may take up their right for a PHB when their package is reviewed or when a new assessment is needed, and ICBs must give due consideration to any request made. People and families assessed as eligible for NHS CHC or continuing care for children **and young people** from October 2014 should be informed of their right to have NHS care delivered in this way.

4.2 After-care services under section 117 of the Mental Health Act

The [Explanatory Memorandum to section 117 of the Mental Health Act 1983](#) defines eligibility for section 117 after-care as:

“The provision or arrangement of help and support for people who have been detained in hospital under sections 3, 37, 45A, 47 or 48 of the Mental Health Act 1983, when they leave hospital. Section 117 after-care services include healthcare, social care and employment services, supported accommodation, and services to meet people's social, cultural and spiritual needs – as long as the needs arise from or are related to the person's mental condition and helps reduce the risk of their mental condition getting worse. It also applies to people if they have been discharged onto a

community treatment order (CTO), granted leave of absence under section 17 leave and are section 117, or are a restricted patient on a conditional discharge.”

Chapter 33 of [The Mental Health Code of Practice 2015](#) states that ‘planning of after-care needs to start as soon as the patient is admitted to hospital’. Therefore, a PHB can be considered:

- whenever planning is taking place for section 117 mental health after-care needs during an admission to hospital
- at any assessment held to review the person’s section 117 after-care package of support in the community, which may be managed by either the local authority or the NHS. This will include Care and Treatment Reviews (CTR) for adults, or Care Education and Treatment Reviews (CETR) for children, who have a learning disability and/or autistic people who are section 117 eligible.

4.3 Personal wheelchair budgets

People who are referred **to** and meet the eligibility criteria of their local NHS wheelchair service and people who are already registered with the wheelchair service, will be eligible for a personal wheelchair budget when they require a new wheelchair or specialist buggy, either through a change in clinical needs or in the condition of the current chair.

‘Wheelchair services’ means services which are arranged and funded by a relevant body for a person with a medically recognised long-term disability who for their health and wellbeing requires a wheelchair or specialist buggy to carry out normal day-to-day activities.

For this guidance, long-term broadly means six months or more. However, individual eligibility for local wheelchair services may be flexible and if a person presents with a significant unmet postural and mobility need under the six-month period, ICBs may use their discretion to provide a personal wheelchair budget if it is clinically appropriate and the person meets their local eligibility criteria for the provision of a wheelchair and / or a specialist buggy.

4.4 Considerations for section 117 after-care and people with no recourse to public funds

No recourse to public funds (NRPF) is a condition imposed on someone who ‘is subject to immigration control’ as defined by the Immigration and Asylum Act 1999 and which prohibits their access to various forms of financial support including most benefits, tax credits or housing assistance paid by the State.

Such persons will also qualify as a person unlawfully in the United Kingdom under paragraph 7 Schedule 3 of the Nationality, Immigration and Asylum Act 2002 and who therefore will not be eligible for support under a range of statutory provisions. However, this list of state support excluded by NRPF status does not include provision made under section 117 of the Mental Health Act 1983.

The [guidance](#) from the NRPF network confirms that:

“After-care services must be provided free of charge and are not subject to any immigration exclusions, so nationality and immigration status are not factors that affect whether a person can receive after-care under section 117”

and:

“The Department of Health’s Code of Practice: Mental Health Act 1983 must be followed for people with NRPF.”

Care provided while a detained inpatient under the Mental Health Act is excluded from the general provisions for NHS charging for overseas visitors, and the section 117 after-care which this activates is also treated as being available not only without charging or means-testing, but regardless of being NRPF ([Regulation 18 of The National Health Service \(Charges to Overseas Visitors\) Regulations 2015](#))).

However, once that person’s entitlement to section 117 support ends, or if that patient requires healthcare beyond the section 117 after-care package, then the patient may be subject to charging for NHS care, under those Regulations.

Even for a person who is NRPF, the local authority has a duty to assess their care needs and consider whether there must be some support offered to avoid a violation of their human rights.

4.5 Considerations for people with fluctuating conditions

Some people may have fluctuating conditions which means they may, at times, not be eligible for NHS CHC, continuing care for children **and young people**, section 117 after-care or need a wheelchair. However, they may continue to have their identified health needs met by a PHB. The only difference is that they cease to have the right to have a PHB. PHBs are not restricted to people in these four identified groups, thus an ICB can continue to offer services via a PHB on a voluntary basis.

ICBs should work with their local authority colleagues to ensure all PHB recipients can continue to access health, social care and education that is personalised for their needs, regardless of their eligibility for NHS CHC, continuing care for children **and young people**, section 117 after-care or a wheelchair.

The duty to provide section 117 after-care services exists until both the ICB and local authority are satisfied the person no longer requires that support. These services can be reinstated if it becomes obvious that they have been withdrawn prematurely (such as when a person's mental health begins to deteriorate).

Reinstating section 117 after-care is not dependent on a person being readmitted to hospital on a section in these circumstances. As long as a person is eligible for section 117 after-care they will have the right to have a PHB and a PHB should be considered as an option for people with fluctuating mental health conditions.

4.6 Considerations for children and young people in transition

Children and young people eligible for continuing care who have a PHB and who transition to adult services should be supported to continue to access their assessed health care needs via a PHB, whether they are found to be eligible for adult NHS CHC or not.

Although these young people may cease to have a right to have a PHB, ICBs can choose to continue to offer services via a PHB on a voluntary basis. Therefore, transitioning from child to adult services should not be the sole reason for stopping a PHB.

Section 117 after-care applies across all ages. Therefore, young people transitioning into adult services will continue to have the right to a PHB for their after-care.

Wheelchair services are traditionally commissioned as an all age service, therefore there is no transition into adult wheelchair services. Personal wheelchair budgets support wheelchair assessment and provision to be considered as part of wider transition planning.

This is underpinned by the expectations of [The Special Educational Needs and Disability Code of Practice](#) in which joint commissioning is a 'must do', to support joint working across education, health and care for joint outcomes. Transition should be planned and agreed with the young person and their family or carers in good time to avoid any disruption or delay to implementing a package of care. Chapter 8 of the Code provides further useful information relating to transition and planning for adulthood.

5. What can a PHB be used for?

PHBs are not appropriate for all types of healthcare. There are particular exclusions for their use where the PHB is received as a direct payment and a full list can be found in the [National Health Service \(Direct Payments\) Regulations 2013 Part 2 Regulation 8](#). Although the regulations refer specifically to direct payments, for consistency and good practice the exclusions should be applied to all types of PHBs.

5.1 Elements of care to be included in a PHB

ICBs need to be open and transparent with people about what elements of their care can be included in a PHB and how this budget has been calculated.

In principle, the amount of money that would have normally been spent on NHS services as part of a person's NHS CHC, continuing care for children **and young people**, section 117 after-care package or a wheelchair could be available to use as a PHB. This enables greater choice and flexibility over the services received which is key to ensuring improved outcomes.

For people eligible for section 117 after-care, only the elements of their care that are meeting needs arising from their mental disorder, which are preventing deterioration, can be included.

If a person also has physical health needs, such as arthritis, they could still have a PHB for these elements of their care, but they could not be funded from the resources agreed for their mental health after-care. However, there is nothing to stop an ICB from agreeing and organising a PHB that covers their whole needs with funding agreed from appropriate budgets from across the NHS.

For personal wheelchair budgets the amount in the budget should be based upon what it would cost the NHS to meet the person's assessed postural and mobility needs via the wheelchair service currently commissioned by their ICB. The introduction of personal wheelchair budgets builds upon the existing [regulatory framework](#) which enables people to contribute to the cost of a wheelchair.

For people who have additional health and social care needs, the personal wheelchair budget can be pooled with funding from other statutory services (if this

is agreed as meeting the person's assessed needs by all services and is cost effective). With personal wheelchair budgets, people can also choose to access non-statutory funding that may be available via voluntary, charitable organisations both nationally and locally.

In all cases ICBs should include as much of the budget as possible into a person's PHB and where this is not possible, work with them, their representatives, family and carers to tailor the wider support provided for their assessed needs and ensure existing services meet their needs in a personalised way, including where and when they access those services.

Any agreed budget must be sufficient to ensure the person's assessed needs and agreed health and wellbeing outcomes can be realistically met. An exception to this is the provision of wheelchairs. For personal wheelchair budgets holders, this right to have does not affect the existing ability to add to the cost of the wheelchair of their choice.

For personal wheelchair budgets, manual, powered chairs and specialist buggies are included. ICBs need to consider repair and maintenance and how this will either be supported by existing services or made available as part of a personal wheelchair budget.

ICBs also need to consider specialist seating and pressure-relieving equipment as it remains a statutory duty to provide these, either as part of a personal wheelchair budget or via existing commissioned services. Decisions on how these are provided will need to be made locally on a case by case basis, based on clinical assessments.

6. Preparing to provide PHBs and personal wheelchair budgets

ICBs must publicise and promote the availability of PHBs and personal wheelchair budgets, and provide information, advice and support to those eligible, their representatives, families and carers, to help them decide if a budget is right for them. This information should be readily available. For example, information could be provided within the letter confirming eligibility for NHS CHC or children and young people's continuing care, or during a review of an existing package of care.

ICBs also need to ensure that information, advice and support on PHBs is available for people with a learning disability or autistic people who are eligible and have a Care and Treatment Review (CTR) or Care Education and Treatment Review (CETR). It is therefore recommended that the processes for getting a PHB should be aligned and linked with local CTR and CETR processes.

ICBs should ensure that all people who become section 117 eligible are advised of their rights under section 117, including the right to have a PHB.

ICBs should ensure that they have the necessary processes, support and information in place so all options for receiving and managing the money can be made available to people.

ICBs need to take into consideration how services for children and young people in particular are planned and commissioned, to ensure the best outcomes can be achieved. Packages of care for children and young people are very rarely fully funded by the NHS, therefore, joint working across health, social care and education is key to ensuring choice, control and flexibility of provision.

Chapter 33 of the [Mental Health Act Code of Practice 2015](#) states that section 117 after-care services must be jointly provided or commissioned by local authorities and ICBs, therefore joint working across health, social care (and education for children and young people eligible for section 117 after-care) is also required to ensure choice, control and flexibility of provision.

6.1 Information, advice and support

The [evaluation](#) of the PHB pilot programme clearly demonstrated that having the right information and support is key to a person being able to achieve good outcomes with a PHB. After agreeing that a person can access services via a PHB, ICBs must make arrangements to provide the person, their representative, family or carer with information, advice and other support.

For some children and young people, available support will be outlined in the 'local offer' prepared by education, health and care. [The Special Educational Needs and Disability Code of Practice](#) guidance document provides further details about the 'local offer'.

Support can be provided either directly by the NHS or by another organisation working in partnership with the ICB. ICBs may also provide access to independent advice, direct payment support organisations, and peer support. ICBs are encouraged to work with local authorities where these services may already be in place.

The ICB should ensure that the person receives adequate information and support at every stage of the process, including:

- a) during personalised care and support planning discussions
- b) during the discussion about whether to receive the PHB via direct payment
- c) during discussions on managing and accounting for the money correctly.

7. When should PHBs including personal wheelchair budgets be provided?

7.1 Deciding whether to provide a PHB and reviewing that decision

If a person comes within the scope of the right to have a PHB, as outlined in section 4, then the expectation is that one will be provided. There may be some exceptional circumstances when a ICB considers a PHB to be an impracticable or inappropriate way of securing NHS care for a person.

This could be due to the specialised clinical care required or because a PHB would not represent value for money, as any additional benefits to the person would not outweigh the extra cost to the NHS. However, evidence from the pilot and learning from ICBs that are already offering PHBs to these groups suggests that there will be few cases where a PHB cannot be provided.

Any decision not to provide a PHB should always be made on an individual, case by case basis. Assumptions should not be made due to the existence of a particular condition, or that whole groups of people will or will not be capable of managing a PHB.

If a person and/or their representative, who comes within the scope of a right to have, requests a PHB and is turned down, the ICB must set out in writing the reasons why the request has been refused. Once this information has been received, the person and/or their representative may request that the ICB reconsiders its decision.

They may also provide additional information to the ICB that may be relevant to the decision. The ICB must reconsider its decision upon such a request being made. Any reconsideration should take place in a timely manner. Therefore, ICBs must ensure they have the processes in place to respond to such requests within appropriate timescales.

A suggested good practice timeframe for when a person requests reconsideration of a decision not to provide a PHB would be:

- Acknowledge receipt of the request in writing within 10 working days. This acknowledgement should include details of how the review will be conducted and timeframes for when it should be completed
- Any final decision should be sent in writing within 28 working days of acknowledgement of the original request. There may be instances where a complex situation requires a longer timeframe for reconsideration and response. In these instances, people should be kept informed of progress.

Once this review is complete, ICBs should inform the person and/or their representative of its decision in writing, setting out the reasons for its decision. If a person and/or their representative is not satisfied they can pursue the matter via the local NHS complaints processes.

Even if the person is turned down for a PHB, the ICB should make every effort to work in partnership with the person and/or their representative to ensure their preferences for care and support are considered and taken into account. ICBs should ensure people have a personalised care **and support** plan that clearly sets out their needs and wishes.

7.2 Deciding not to provide a direct payment

There may be times when the ICB decides that the use of a direct payment would not be appropriate. In these instances, the person and/or their representative may request a review and the same process outlined in section 3.3 should be followed.

However, it should be emphasised that if it is considered impracticable or inappropriate to provide a direct payment, the person may still benefit from a PHB delivered in another form such as a notional budget or a third-party budget. The ICB should in any case consider how else a person's care and support could be personalised.

As set out at section 3.2, direct payments are currently not routinely available as an option for managing a standalone personal wheelchair budget.

7.3 Deciding not to agree some elements of the personalised care and support plan

The purpose of PHBs is to give people greater choice and control over how their **assessed** health and wellbeing needs are met. ICBs should be open to considering different approaches to achieving outcomes other than those traditionally used. ICBs should consider any request where the person or their representative can demonstrate that the proposed use of a budget is a reasonable way to achieve their health and wellbeing outcomes.

The balance between risks and benefits will be different for each person and should consider their circumstances and their health condition. ICBs should ensure that they do not impose blanket prohibitions and are sufficiently flexible to tailor their risk management processes to the needs of each person.

There may be occasions when an ICB agrees to some elements of the care being requested, but not others. For example, this may be the case where an ICB assesses that a person would be at significant risk if he or she replaced certain health services or treatments with alternative approaches. When refusing an element of a personalised care and support plan the ICB must give reasons why this decision has been made and ensure it reconsiders this decision if requested to do so, following the procedure set out above.

If part of a personalised care and support plan is refused, the ICB should make every effort to work in partnership with the person, their representative, family and carers to ensure their preferences are considered.

7.4 Deciding to delay the start of a PHB

There may be times when it is appropriate to delay the start of a PHB, for example, if a person's circumstances make it difficult to plan ongoing care at that point in time. In such instances the ICB must make clear the reasons for this delay and review its decision at appropriate intervals, so the PHB can be put in place as soon as practicably possible.

8. Provision of PHBs in other settings

8.1 PHBs in nursing and residential care

The Government's intention is for all people receiving NHS CHC, continuing care for children and young people, section 117 after-care and a wheelchair to have a PHB where they would benefit.

The [National Health Service \(Direct Payments\) Regulations 2013](#) and [The National Health Service Commissioning Board and Clinical Commissioning Groups \(Responsibilities and Standing Rules\) 2012 \(as amended\)](#) do not explicitly limit this to people living in their own homes.

Some people assessed as eligible for NHS CHC, children and young people's continuing care, section 117 after-care and funding for a wheelchair may live in nursing or residential care home settings and may also benefit from receiving care via a PHB.

Where a request for a direct payment for healthcare is made for a person living in a nursing or residential care setting, the ICB must be certain that providing care in this way adds value to the person's overall care. Generally, direct payments should not be used to pay for care and support services being commissioned by the NHS that a person will continue to access in the same way whether they have a PHB or not.

In such instances, where no additional choice or flexibility has been achieved by giving someone a PHB, then allocating a direct payment only adds an additional financial step and layer of bureaucracy into the commissioning of the care.

ICBs need to be clear that the use of a direct payment in such settings is cost effective and is a sensible way to provide care to meet or improve the person's agreed outcomes.

The use of direct payments within nursing or residential care settings was not tested as part of the PHB pilot and the benefits of providing care in this way are not known.

8.2 Personal wheelchair budgets in nursing and residential care

Any commission for nursing or residential care settings will generally include an expectation that they can meet the needs of their residents and this may include provision of equipment, including basic wheelchairs that are for general use of residents eg for social outings or portering. Therefore, these wheelchairs are not bespoke to an individual and would not be provided by an NHS wheelchair service and are not covered by the right to have.

However, people who reside in nursing and residential homes should not be unfairly disadvantaged. Therefore, for those people who do require the permanent use of a bespoke wheelchair to support independent mobility, decisions to offer personal wheelchair budgets should be made on a case-by-case basis.

8.3 Section 117 after-care PHBs and the prison population

It would not currently be practical to provide a PHB for someone who is in prison or immigration removal custody, due to the security restrictions of the secure estate. Further work is required to explore the potential for this to form part of successful re-integration into the community and provide continuity of mental health support received while in detention.

However, ICBs should ensure that people who are entitled to section 117 after-care with an offending history or who have been released from prison are not excluded from having a PHB if it is identified that this could meet their health and wellbeing outcomes in the community. NHS England will support areas to consider this and the practical implications, alongside ongoing work to explore the interactions with the health and justice system.

Appendix A: Links to useful documents

- NHS Long Term Plan <https://www.longtermplan.nhs.uk/publication/nhs-long-term-plan/>
- NHS England: Universal Personalised Care: Implementing the Comprehensive Model <https://www.england.nhs.uk/publication/universal-personalised-care-implementing-the-comprehensive-model/>
- Guidance on Direct Payments for Healthcare: Understanding the Regulations <https://www.england.nhs.uk/publication/guidance-on-direct-payments-for-healthcare-understanding-the-regulations/>
- Personal Health Budgets Evaluation <https://www.phbe.org.uk/>
- The Mental Health Act Code of Practice 2015 <https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983>
- National Framework for Children and Young People's Continuing Care <https://www.gov.uk/government/publications/children-and-young-peoples-continuing-care-national-framework>
- NICE Guidance Transition from Children's to Adult's Services for Young People Using Health or Social Care Services <https://www.nice.org.uk/guidance/ng43>
- National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care <https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care>
- Special Educational Needs and Disability Code of Practice: 0-25 years <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>
- 0-25 SEND Code of Practice: A Guide for Health Professionals 2016 <https://www.gov.uk/government/publications/send-guide-for-health-professionals>
- Who pays? Determining which NHS Commissioner is responsible for commissioning healthcare services and making payments to providers 2022 <https://www.england.nhs.uk/who-pays/>
- NHS England Standard Contract Guide <https://www.england.nhs.uk/nhs-standard-contract/19-20/>
- Transforming Participation in Health and Care <https://www.england.nhs.uk/publication/patient-and-public-participation-in-commissioning-health-and-care-statutory-guidance-for-ccgs-and-nhs-england/>

Appendix B: Legislation and statutory instruments

- The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 2) Regulations 2019: <https://www.legislation.gov.uk/uksi/2019/1432/contents/made>
- The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No.3) Regulations 2014: <http://www.legislation.gov.uk/uksi/2014/1611/contents/made>
- Part 6A: PHBs. The National Health Service and Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013: <http://www.legislation.gov.uk/uksi/2013/2891/contents/made>
- The National Health Service (Direct Payment) Regulations 2013: <http://www.legislation.gov.uk/uksi/2013/1617/contents/made>
- The National Health Service (Direct Payments) (Amendment) Regulations 2013: <http://www.legislation.gov.uk/uksi/2013/2354/contents/made>
- The National Health Service and Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012: <http://www.legislation.gov.uk/uksi/2012/2996/contents/made>
- Standing Rules Regulations Part 6: NHS Continuing Healthcare and NHS funded Nursing Care of The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012: <http://www.legislation.gov.uk/uksi/2012/2996/part/6/made>
- Special Educational Needs and Disability Regulations 2014 <http://www.legislation.gov.uk/uksi/2014/1530/made>
- Special Educational Needs (Personal Budgets) Regulations 2014 <http://www.legislation.gov.uk/ukdsi/2014/9780111114056>
- Mental Health Act 2007 <https://www.legislation.gov.uk/ukpga/2007/12/contents>
- Children and Families Act 2014 <http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>
- Care Act 2014 <https://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>

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