

Slide number	Transcript and approx. timing
Slide 1	<p>Hello everybody and welcome to our presentation on the updated NHS Who Pays? guidance which comes into effect on the 1st of September 2020. I'm Alastair Hill, I'm one of the small team at NHS England and Improvement which deals with the NHS Standard Contract, the CQUIN scheme and Who Pays? Guidance amongst other things.</p>
Slide 2	<p>[00:24]</p> <p>What we're going to cover in today's presentation is shown on this second slide. We're going to talk through what Who Pays? Is and why we've updated it at this time.</p> <p>We're going to give a bit of legal background to the basis on which Who Pays? is published, talk about what's the same and what's changed from the previous 2013 version of Who Pays?, then go into the some of the specific rules in Who Pays?, particularly the general rule, the GP registration rule for deciding CCG responsibilities and then some of the new rules we're adding in this update of Who Pays? in specific areas around what happens when you change your GP or address while you're in hospital, around arrangements for discharge from hospital and NHS CHC and for detention in hospital under the Mental Health Act and for Section 117 aftercare - so new rules in those areas.</p> <p>[01:23]</p> <p>Then we're going to talk about the new national dispute resolution process and cover one or two other issues briefly, such as overseas visitors' arrangements and non-contract activity.</p>
Slide 3	<p>[01:38]</p> <p>Do remember then the Who Pays? guidance is published and available at the web link shown on this slide and if you have any questions after this presentation or if you have any questions about particular scenarios that arise in the coming weeks and months, do remember that you can email us at england.responsiblecommissioner@nhs.net and we will try to help you with your queries and any disagreements.</p>
Slide 4	<p>[02:08]</p> <p>So what is Who Pays?. The key purpose of The Who Pays? Guidance is to set out rules for determining which NHS commissioner is responsible for commissioning a particular healthcare service for a particular patient in particular circumstances and paying a provider to deliver that service.</p> <p>There's been quite a few different iterations of Who Pays? over time. The Department published versions in 2003, in 2007, and then following the Health and Social Care Act in 2012, NHS England published a version in 2013. And now we have published this updated version in 2020, and as I say, the update comes into effect on the 1st of September.</p>

	<p>It's important to say a couple of things about what Who Pays? does not do, so it's not telling NHS commissioners what services they have to commission. It's not setting prices for services either - that's done through the national tariff payment system. And it's crucially, it's not telling you how to distinguish between what an NHS commissioner has to fund and what a local authority has to fund. That's not something which NHS England has the power to give advice on.</p> <p>And finally, it's not dealing with what patients can be charged for, whether that's to do with charges to patients in England, prescription charges or whatever. Or charging for overseas visitors, Who Pays? is not about that. It is about deciding which NHS commissioner, which CCG usually, is responsible for paying a provider to deliver a particular service to a particular patient.</p>
<p>Slide 5</p>	<p>[03:52]</p> <p>So why have we chosen this point to update? Who Pays?? Well, obviously you'll have spotted that this update is timed to coincide with the release of the new guidance on hospital discharge and on the resumption of CHC assessments following the first stage of the Covid pandemic. So all of those new arrangements alongside new Who Pays? coming into effect from the 1st of September 2020. But we had underlying reasons beneath that and some of those are set out here.</p> <p>So on one hand, Who Pays? as written in 2013 really didn't effectively support the discharge to assess model for continuing care, which has now become standard practice, that's one reason.</p> <p>Another is the longstanding confusion there's been in the NHS generally about responsibilities for detention under the Mental Health Act and for Section 117 aftercare. That's an issue that's been causing grief in the system for several years and we're keen to provide updated rules to try to settle that issue.</p> <p>And then it's fair to say that since Who Pays? hasn't been updated for seven years, in the meantime it's been supplemented by bits and pieces of other advice, various different addenda which are all in different places, so the net effect is that if you're a commissioner looking for the comprehensive rules, you have to look all over the place rather than in one authoritative document. So again, we've got the opportunity to change that with this single update now.</p> <p>Then there are, it's fair to say, some common scenarios that cause difficulties in interpretation that the current 2013 Who Pays? just doesn't address or maybe doesn't address very clearly. So we're trying to improve the language and clarity and comprehensiveness of the 2020 version.</p> <p>And finally dispute resolution. 2013 Who Pays? said very little about this and disputes can prove really quite difficult to resolve - quite time consuming and expensive. And so we're taking this opportunity to set out a national dispute resolution process to make sure that disputes are resolved at as little cost to the NHS as possible.</p> <p>So what we're trying to achieve through this new guidance is clearer rules with sensible incentives for CCGs which means that patient care isn't delayed because</p>

	<p>CCGs are arguing about who's to pay for it, providers get paid properly where they've provided care properly under their contracts and there are fewer disputes and lower legal costs for CCGs. That's the aim of what we're doing in this update.</p>
<p>Slide 6</p>	<p>[06:53]</p> <p>So then to say a little bit about the legal context, the legal basis on which Who Pays? is published. So, responsibility for commissioning NHS services is generally set out in legislation. The most important single piece of that legislation is the NHS commissioning board and clinical commissioning groups (responsibilities and standing rules) regulations 2012. So usually just shortened to the standing rules regulations. That's where most of the important rules and responsibility for commissioning services are set out.</p> <p>Now in this context commissioning services means, broadly, arranging for services to be provided. So the law, the legislation, is saying which CCG is responsible for commissioning a particular service in particular circumstances. However, the law also provides for us, NHS England, to publish binding rules on which CCG is to be responsible for paying for a particular service.</p> <p>The legal provision that allows NHS England, gives us the power to publish those binding rules, that's set out in Section 14Z7 of actually the NHS Act 2006 as it was amended by the 2012 Act.</p> <p>So mostly what you will find is that responsibility for commissioning on the one hand and responsibility for payment on the other for the same service will sit with the same NHS body. That will mostly be the case, but it won't always be the case and we'll go through it in the guidance - in the rest of the presentation sorry, instances where the two won't perfectly align.</p>
<p>Slide 7</p>	<p>[08:45]</p> <p>Now this distinction between responsibility for commissioning on the one hand and responsibility for payment on the other can be a complex thing. And just to try to explain that a bit more fully. So what we are doing in Who Pays? is two things.</p> <p>On the one hand, we are explaining or trying to explain what the legislation says about CCGs' responsibilities for commissioning services and how you decide which CCG is responsible. We can't change that. The law sets that out.</p> <p>On the other hand, we are also setting out these binding rules on CCGs' responsibilities for paying for services where we've decided that those are to differ from what the law says about responsibility for commissioning.</p> <p>So it's one really important thing to remember about Who Pays? - is that people may think of it and refer to it as guidance, and I will probably do that in this presentation, talk about The Who Pays? guidance, but you need to remember that it's not the sort of guidance that a CCG can simply look at and say 'OK, we've looked at that guidance and we're not going to pay any attention to it'.</p>

	<p>The legal power that NHS England has to publish Who Pays? says that where Who Pays? sets out rules on payment they are binding on CCGs, so there's no discretion there for CCGs to say 'we're not going to comply with what Who Pays? says about responsibilities for payment'.</p>
<p>Slide 8</p>	<p>[10:24]</p> <p>So to give you an example about this distinction between responsibility for commissioning and responsibility in payment, here's one taken from 2013 Who Pays? and it's about emergency care, which Who Pays? 2013 defined as emergency ambulance services on the one hand and A&E services on the other.</p> <p>So what the legislation says here is that a CCG is responsible for commissioning emergency care for everyone who's present in its area. And so for emergency ambulance services, the position in 2013 was that commissioning responsibility and payment responsibility were aligned. The CCG which had to pay for the ambulance journey was decided on the basis of the physical location of the incident where the ambulance had to go to. So the same CCG was responsible for commissioning as payment.</p> <p>But with A&E attendances the situation was different. Payment responsibility for A&E is determined on the basis of the general rule - that is GP registration. So if you have a patient who's registered with a GP in one CCG, CCG A, and that patient attended an A&E service that's based next door in CCG B, then CCG B was responsible for commissioning that service because it's responsible for everyone present in their area. But it was CCG A under 2013 Who Pays? who had responsibility for paying for the attendance on the basis of GP registration. So that's an example of where 2013 Who Pays? did distinguish between commissioning responsibility and payment responsibility. And that rule on emergency care doesn't change in 2020 Who Pays?.</p> <p>But there are some new areas in the 2020 version where we're using this power to set separate rules on payment responsibility and we'll go through those some more in some of the later slides.</p>
<p>Slide 9</p>	<p>[12:33]</p> <p>So this slide now summarises what's changed from the 2013 version of Who Pays? and what's stayed the same. And there's a one-page guide to this in appendix three of the updated Who Pays? guidance.</p> <p>So 3 bits that are broadly the same: the general rule on CCG responsibility, the GP registration rule, which we'll come onto in a moment - that's in paragraph 10, the rules affecting emergency services as I've just been talking about - that's in paragraph 17 and the rules affecting services commissioned by NHS England in paragraphs 20 to 25.</p>

	<p>Then there's a set of content where the rules haven't fundamentally changed, but we've tried to explain them more clearly, perhaps in more detail, and in some cases with quite a few more example scenarios.</p> <p>So that's true for much of continuing care or NHS CHC - that's in paragraph 14. It's true for the arrangements for children placed out of area and their transition to adulthood - that's 15 to 16. And the section on cross border responsibilities dealing with England to Wales, Scotland and Northern Ireland and vice versa. That was dotted around different bits of old Who Pays? but is now in one place in paragraph 19.</p> <p>What's new then, in updated Who Pays?? There's a new rule around what happens when your GP changes or your address changes while you're in hospital – that's paragraph 13. Some of the elements of continuing care in NHS CHC in paragraph 14 are new – we'll go through those in detail.</p> <p>The section, paragraph 18, dealing with detention and aftercare under the Mental Health Act - that's been heavily revised and the new mandatory dispute resolution process is described in paragraph 7 and then in detail in appendix one, and that's new.</p> <p>So hopefully that gives you an overview of the main 'What's the same? What's changed?' view of the new Who Pays?.</p>
<p>Slide 10</p>	<p>[14:42]</p> <p>So now I'm going to come on to talk about the detailed rules starting with this general rule for determining which CCG is responsible for commissioning a particular service. This hasn't changed, it's now set out in paragraph 10 of 2020 Who Pays?. And the fundamental rule, as before, is that where a patient is registered on the list of a GP practice, the responsible commissioner will be the CCG of which the GP practice is a member.</p> <p>If the patient is not registered with the practice, then the responsible commissioner is based on the geographic area in which the patient is usually resident. And appendix two of Who Pays? continues to set out more details on how you determine usual residence.</p> <p>And then thirdly, this is an important point not to overlook. Where you have a patient who is registered with a GP in one CCG, but then that patient then is accepted by a GP in another CCG as a temporary resident, then the patient becomes the responsibility of that second CCG. So temporary residence does change responsibility.</p> <p>So this general rule, which we sort of shorthand to the GP registration/usual residence rule, this applies everywhere except where one of the specific exceptions in Who Pays? is set out. Now those exceptions are all in section D of the document at paragraphs 12 to 19.</p>
<p>Slide 11</p>	<p>[16:26]</p>

	<p>So now I'm going to go through some of those new areas, starting with change of GP or address while you're in hospital. Now it's not usual for a patient to change GP or address while they are a hospital inpatient, but it does happen sometimes. And you can see that under the general rule, the GP registration rules say where that happens, the responsible commissioner might then change also mid hospital stay.</p> <p>Now the way 2013 Who Pays? dealt with that was to say that in such situations the two CCGs involved should share the cost of the hospital admission. That felt to us to be quite a complicated thing to administer and argue about, if you like. So we are now stating a simpler rule on payment responsibility in 2020 Who Pays?. And that is to say this - so if you have an inpatient hospital spell which is commissioned by a CCG, and it's not covered by any of the other exceptions that are set out in section D of Who Pays?, then the CCG responsible for payment is going to be determined on the basis of the general rule i.e. registered GP or failing that, usual address applied at the point of admission for that inpatient hospital spell. And that CCG is then responsible for paying for the whole of the spell, even if the patient's GP or address changes while the patient still in hospital.</p> <p>So that's a pretty clear rule in terms of staying in the same hospital with the same provider. Should be noted, if you have a patient who transfers between providers – so from one hospital run by one trust, say to a different hospital run by another trust, then at that point, responsibility at the point of transfer would be reviewed and determined anew based on registered GP at the point of admission to the new provider.</p>
<p>Slide 12</p>	<p>[18:35]</p> <p>So then to move onto the rules around NHS continuing healthcare and what we call continuing care, more broadly. And so these rules are set out in paragraph 14 and they apply to adults. The arrangements for children are in paragraph 15 and 16.</p> <p>So these rules apply to NHS CHC, as we know and love it, but they also apply to continuing care as defined more broadly in the Standing Rules Regulations. I put the definition here on the slide that means <i>care provided over an extended period of time to a person to meet physical or mental health needs which have arisen as the result of illness.</i></p> <p>So you can see that that is going beyond what would normally be considered to be NHS CHC. So these rules in paragraph 14 – yes they cover NHS CHC placements or care packages, but they also cover joint funded placements and packages, that is funded between by the NHS with the local authority, or NHS funded packages say for long term rehabilitation - that would meet the definition of continuing care given in the regulations.</p> <p>So they do cover those things, but they don't cover care packages which a local authority arranges and funds on its own, and they don't apply to NHS funded nursing care. Funded nursing care is subject to different rules set out in paragraph 11.</p>

<p>Slide 13</p>	<p>[20:14]</p> <p>So the payment rules for continuing care then. Well in general, responsibility for arranging and paying for an individual's continuing care will be determined in accordance with the general rule, so GP registration, or failing that usual address. But there are some important exceptions to that, and our aim in designing those exceptions is to try to provide sensible incentives. Fundamentally, so that a CCG cannot escape financial responsibility for a patient simply by placing him or her out of area and hoping that as a result he or she registers with a different GP and becomes the responsibility of a different CCG. So that's one of our fundamental aims in this design of Who Pays? rules for continuing care.</p> <p>And the next few starts slides are going to go through the rules on continuing care in a bit more detail. Starting with existing rules which have stayed the same from 2013 Who Pays?, then going on to two new rules we've introduced around change of GP while you're undergoing a CHC assessment in the community, and then around discharge to assess placements and finally, talking about transitional arrangements post Covid from 1 September 2020 onwards.</p>
<p>Slide 14</p>	<p>[21:39]</p> <p>So first of all then, continuing care in a person's own home. And this is a continuation of the existing rule in the legislation and in 2013 Who Pays?. Although I think it's fair to say that 2013 Who Pays? didn't describe this as clearly as it might have done, which has led to some confusion.</p> <p>So, if you're talking about a package in your own home, then the general GP registration rule is what will always apply in determining which CCG is responsible for commissioning and paying for the package. So what that means is that if you have an individual who's receiving a care package in their own home, they're registered with a GP belonging to CCG A and CCG A is funding the package all fine - the individual then decides to move to CCG B for whatever reason and registers with a new GP in CCG B. At that point of re-registration, responsibility for commissioning and payment for the package that individual needs in their own home is going to shift to CCG B.</p> <p>Now 'own home' is our shorthand there - it includes equivalents such as for instance, sheltered housing, supported living type of arrangements. The key thing is it's not a placement in a care home or in an independent hospital, because different rules apply to those things.</p>
<p>Slide 15</p>	<p>[23:15]</p> <p>So what about those placements then? Here again, we're maintaining the existing rule from 2013 Who Pays? So the CCG which has to arrange and pay for a continuing care placement in a care home or independent hospital is also determined on the basis of the general rule, GP registration, failing that, usual residence. We'll say a bit more about exactly when that's applied in the later slides.</p>

	<p>But that CCG then has to continue to pay for the placement, even if the placement is out of area and the patient re-registers with GP belonging to a different CCG.</p> <p>But it's important to remember the CCG which we will call the placing CCG in this section, the placing CCG, is only responsible for the costs of the services and accommodation included within the placement. If the patient is going to need other extra services, maybe unconnected services say, an elective care admission for a cataract operation or whatever it is, then responsibility for commissioning and paying for those services will be determined separately on the basis of the general rule applied at the time those services are actually delivered So placing CCG pays for the continuing care placement but not for other additional unconnected services.</p>
<p>Slide 16</p>	<p>[24:50]</p> <p>So then we come onto the first of our new rules, which is around what happens when you have an NHS CHC assessment being carried out out-of-hospital in a setting such as a patient's own home for instance, or in a residential home where a patient living in a setting like that has been referred for assessment for NHS CHC.</p> <p>Then, responsibility there for paying for any resulting NHS CHC placement after the assessment's being completed - If that placement is in a care home or independent hospital, then responsibility will be determined on the basis of the general rule i.e. GP registration, applied at the point at which a referral for NHS CHC assessment for the patient was first received by any CCG.</p> <p>So basically, if the patients GP changes for any reason following first receipt by a CCG of the referral, responsibility for payment is going to remain with the first CCG. So delay and obfuscation by the first CCG will not get it off the hook.</p> <p>Now the wording in the language we've used in that top bullet there, '<i>any CCG</i>' is really important. So if a local authority refers an individual for assessments say, on the 15th of October 2020 and they make the referral to CCG A thinking that CCG A is the right CCG but actually, at that point in October the individual is registered with a GP in CCG B -then responsibility for payment for any resulting placement is going to fall to CCG B. Fundamentally, the fact that the local authority has accidentally made the referral to the wrong CCG doesn't get the right CCG off the hook.</p> <p>However, of course, if what you have is that the right CCG gets the referral, it completes an assessment and finds an individual is not eligible, but then further down track, there's a subsequent re-referral and a reassessment – then the responsibility for that re-referral and reassessment will be determined anew, at the time based on registered GP at the point that second re-referral is made. So you're not on the hook forever in that situation, if you make an assessment and find the individual is not eligible.</p>
<p>Slide 17</p>	<p>[27:26]</p> <p>So then coming onto the second area of change we've made around continuing care, and this is to do with discharge to assess. Obviously the discharge to assess</p>

	<p>policy requires that patients have an assessment of their eligibility for NHS CHC outside hospital.</p> <p>So rather than discharge being delayed so that assessment can be done, discharge goes ahead and assessment is done afterwards. That can mean often, that assessments are done back in patients own homes, in which case, great. But sometimes patients may be discharged to short term residential care settings – a care home, an intermediate care facility say, so that an assessment can be carried out there. Now, Who Pays? in 2013 didn't really make proper provision for this because discharge to assess hadn't been thought of as a policy at that point. But you can see that there's a risk of a perverse Who Pays? outcome here, if what you have is a short-term residential discharge to assess placement across a CCG boundary out of area.</p> <p>In that situation, the patient would be likely to re-register with the new GP belonging to the new CCG and under 2013 Who Pays? responsibility for commissioning and payment for the assessment and the CHC Placement, if one was going to be needed, would transfer to the new CCG. So there would be a perverse incentive for CCGs to encourage discharge of patients out of area.</p> <p>So, given that discharge to assess is now firmly embedded in the new hospital discharge guidance as standard NHS policy, we've built a new rule into 2020 Who Pays? to try to make sure those sorts of perverse incentives don't operate.</p>
<p>Slide 18</p>	<p>[29:25]</p> <p>So here's the new rule around discharge to assess, and this applies to short term placements in residential care settings on discharge from hospital. So by definition, these are placements which are not NHS CHC or continuing care because they're short term.</p> <p>So where you have a patient who is discharged from NHS funded hospital care to a short term, non-hospital residential accommodation, wholly or partly funded by the NHS -could be a care home, could be intermediate care. Then the CCG which is to pay for the placement, or the NHS bit of it, will be the CCG which was responsible for paying for the hospital spell from which the patient is being discharged.</p> <p>So that links us back to the rule we described on slide 11 about paying for the hospital spell. So it's registered GP or, failing that usual address applied at the point of admission for that hospital spell. So that's the CCG which pays for the placement, the short-term placement and that CCG then retains responsibility for paying for any residential continuing care or NHS CHC placement which follows on directly from the short-term discharge to assess placement. And that will apply even where either of the placements, short-term or long-term, are arranged out of area and where the patient re-registers with the GP who belongs to a different CCG.</p> <p>So what you're going to have there is continuity. The same CCG will be responsible for paying for the hospital spell, the short-term discharge to assess placement and the long-term CHC or continuing care placement if one is needed.</p>

	<p>And we think that sets the right incentive for CCGs to provide care close to home where they can and not look to offload their problems on their neighbours by discharging out of area.</p>
<p>Slide 19</p>	<p>[31:34]</p> <p>Obviously, under the Covid arrangements that have applied up until the end of August 2020, there's been a temporary system for funding that sort of residential support, post discharge, or indeed to avoid admission to hospital and normal CHC assessment processes have been suspended.</p> <p>And then, as described in the phase three letter that came out at the back end of July and the new guidance on hospital discharge and resumption of CHC assessment, all of this changes from 1st of September 2020. And that's when the new Who Pays? rules that we've described in the preceding slide, they all come up into effect from 1 September for new assessments and placements from that date onwards.</p> <p>But obviously, under the temporary arrangements we've got a load of patients who were discharged to these sort of short-term residential care settings and who are now going to need CHC assessment proper over the coming months. And under the temporary Covid arrangements, the way that was sorted out was that additional funding for those patients was claimed by what we called here, the receiving CCG. So that was the CCG in which the relevant provider, the care home or the independent immediate care provider was based. So not to do with registered GP, just physically, where the provider is located</p> <p>So you can see that to move from the temporary Covid arrangements to something more suitable as an ongoing set of rules as we've described them here, we're going to need some transitional rules for those patients who received Covid support between March and August 2020 and are now going to be assessed for CHC. We need to be clear who's going to claim funding for those patients and pay the provider in the interim while those patients are waiting to be assessed and who's going to pay for their eventual placement, if indeed they are found eligible for an ongoing NHS funded continuing care or NHS CHC placement. And that's what we come onto on the next slide.</p>
<p>Slide 20</p>	<p>[33:46]</p> <p>So picking up who pays for the eventual placement following assessment first. The rule here is that we want to revert to the placing CCG paying. So what that means is this: for patients who are placed following discharge from hospital into short-term accommodation under the Covid arrangements, then the placing CCG will be determined based on GP registration or usual residence applied at the point of admission for the relevant hospital spell.</p> <p>So let's say you went into hospital in May 2020. You were discharged in June and you've been in temporary short-term accommodation since then awaiting CHC assessment. It'll be the GP at the point of your admission to hospital in May, which drives the CCG that is now going to be responsible for undertaking your CHC</p>

	<p>assessment and paying for your placement if that's what you turn out to need - placement in a care home or independent hospital, I should say.</p> <p>For patients placed to avoid admission to hospital during the Covid arrangements, then the placing CCG will be determined slightly differently. That will be on the basis of registered GP applied at the point at which the patient was placed into that temporary residential accommodation. So exactly the same applies if you were a patient who was the responsibility of CCG A on the basis of GP registration at the point you were put into the temporary Covid accommodation, then CCG A will still be responsible for assessing you and funding your CHC placement if that's what you need. Even if you happen to have been placed out of area and in the meantime registered with a GP belonging to another CCG.</p> <p>So those are the arrangements for eventual placements. Now in terms of who pays and who claims funding in the interim, while we're waiting for the backlog of assessments to be dealt with.</p> <p>Well, in principle, what the guidance is saying is that responsibility for payment should revert to the placing CCG as soon as possible. Now that's going to take some time to arrange. There will be cases that have gone across the boundaries and CCGs will need to talk to each other, review their cases and agree - make sure they have a clear agreement about who is going to be responsible for which. And in the meantime, the receiving CCG, the one in which the provider is based, can if necessary, continue to pay the provider and claim the national funding that goes with this as an interim measure. The key point is transfer over the responsibility as soon as possible, but make sure the provider continues to be paid and there's no interruption to the flow of funds. But we are saying as a backstop, that all transfers back to placing CCGs should be complete and any disputes should be resolved by the end of December 2020.</p>
<p>Slide 21</p>	<p>[37:00]</p> <p>So the next area to talk about is detention and aftercare under the Mental Health Act. This is an area which has caused CCGs considerable grief, particularly since 2016 when there were various legislative changes. Now since 2016, the position in the legislation on responsibility for commissioning these services has been, as we've set out on this slide, so the responsible commissioner for a patient who is detained in hospital is actually the commissioner in whose area the provider of the detention service is based. And the responsible commissioner for a patient receiving aftercare following detention is the CCG in whose area the patient was ordinarily resident immediately prior to being detained.</p> <p>So those are two quite different rules, and they don't actually add up to something which makes complete financial sense in terms of incentives. In terms of the rules for CCGs, there was an addendum published by NHS England in 2016, which aimed to clarify responsibilities on payment, but it's fair to say that quite a bit of confusion has persisted in the system since then. And so we're using 2020 Who Pays? to set out new, clearer rules using our 14Z7 legal power to say that responsibility for the payment is in this case, to be different from responsibility for commissioning.</p>

	<p>And as with continuing care, our aim here is to promote continuity of responsibility so that there isn't an incentive for CCGs to wish for patients to be placed further afield outside their local patch and that, conversely, CCGs are able to provide care closer to home and that that policy is promoted.</p>
<p>Slide 22</p>	<p>[39:18]</p> <p>So what is the position in the new rules on payment responsibility for detention and aftercare? First of all then, NHS England will obviously be responsible for payment for any period where a patient is treated by a prescribed specialised service. That's one of the services which NHS England have responsibility for.</p> <p>But in relation to CCG commissioned detention under aftercare services then, we're saying that the CCG responsible for payment will be determined on the basis of the general rule, that is, GP registration or failing that, usual residence applied at the point of the patient's initial detention in hospital under the Mental Health Act - whether that's for assessment or for treatment. And for our purposes we're going to call that CCG the originating CCG. And that originating CCG is then going to retain responsibility for payment throughout the initial detention in hospital, and that will include any period of informal admission following detention where the patient isn't detained legally any longer but remains in hospital voluntarily.</p> <p>So it covers detention, it covers informal admission following detention and then the whole period for which section 117 aftercare is provided and any subsequent repeat detentions or voluntary admissions from aftercare until such point as the patient is finally properly discharged from Section 117 aftercare or potentially dies.</p> <p>So you can see we're promoting responsibility for payment, sticking with the same CCG on the basis of who was responsible on the GP registration rule at the point at which the patient was first detained in hospital. So regardless of where you're treated or placed, where you live or which GP practice you register with, it's that CCG that was responsible for you at the outset when you were first detained that is going to be responsible for payment throughout your continuing spell, if you like, of detention, aftercare, further detention, further aftercare and so on.</p>
<p>Slide 23</p>	<p>[41:52]</p> <p>So again, here we need to set out some transition rules for how these new rules which will apply to new cases from 1 September 2020, how they apply in the transition period if you like.</p> <p>So where you have at the 1st of September, a patient who's been discharged from detention and is already receiving section 117 aftercare, funded in part or whole by a CCG, then that CCG will remain responsible for funding the aftercare and any subsequent further detentions or voluntary admissions, and further aftercare until such point as the patient is finally discharged. So that's one transitional rule, then.</p>

	<p>Then another transitional situation is where you have a patient at 1 September who is detained in hospital, funded by a CCG, then that CCG is going to be responsible for funding that detention and any aftercare which is needed following discharge and any subsequent detentions, involuntary admissions and further aftercare again, until such point as to the patient is finally discharged from aftercare.</p> <p>And then a third scenario we've made provision for in the guidance is where you have a patient who, at the 1st of September, is detained in hospital but funded by NHS England in a specialised services setting.</p> <p>So in that instance the CCG which is going to be responsible in due course for funding detention in a CCG funded hospital setting, if that's what happens, and that quite often does happen in a step down way for patients who first been detained in a specialized commissioning setting. So the CCG which is responsible for that further detention in CCG funded setting and any necessary NHS aftercare and again including further detentions, voluntary admissions, further aftercare until discharge from aftercare – that CCG is going to be determined on the basis of the general rule, that is GP registration, failing that, usual residence applied at the point of the patients initial detention in hospital under the Act. So in this case, that's going to be the CCG with whose GP the patient was registered when the patient was first detained and went into that specialised detention hospital funded by NHS England.</p> <p>So we're hoping that those transitional rules set out clear arrangements that will minimize any disagreements about responsibility for patients who are in the system already in this complicated area.</p>
<p>Slide 24</p>	<p>[44:48]</p> <p>So I'm now going to come on to talk a bit about the new dispute resolution process in 2020 Who Pays? and just to go over some key principles here. As in previous iterations, it's an essential principle of this guidance that assessment, care and treatment mustn't be refused or delayed because of uncertainty, ambiguity, argument, dispute about which CCG or which NHS commissioner is going to pay for it.</p> <p>So we're building on that to say more explicitly in 2020 Who Pays that where disagreements do arise and can't just be sorted out quickly, then the commissioners involved need to be sensible and agree two things. They need to agree that one of them will actually make arrangements for the patient to be assessed, if that's what needed, and to receive the necessary care and treatment from a provider. So the patient doesn't fall between the cracks.</p> <p>But they also need to agree, that on a 'without prejudice' basis, they will share the costs of that care and treatment equally between them, pending proper resolution of their disagreement. That way, patients' assessment, care and treatment don't get delayed and the provider gets paid promptly and the inter-NHS argument about who pays can be resolved in its own sweet time.</p>

	<p>What does new Who Pays? advise about resolving disputes then? Well, the first thing to say is our general advice is don't spend lots of public money taking external legal advice from lawyers on Who Pays? issues, rather use the advice and expertise that's available within the NHS. And if you've got two CCGs that are arguing the toss about a particular case, then seek advice jointly.</p> <p>And you can seek advice within your ICS or STP if you've got a disagreement affecting CCGs within a patch, the expectation would definitely be that those are sorted out locally. But you can also call on relevant people in NHS England/ Improvement regional teams, say leads for continuing healthcare or transforming care, for example. And you can certainly come to our national team via our email help desk for informal advice on any case.</p>
<p>Slide 25</p>	<p>[47:14]</p> <p>But if these informal or ICS level processes to resolve disputes don't work, there is now a process for mandatory and binding dispute resolution via the NHSE/I national team. Now to enter into that you have to have reached the point of having had discussion at director level between the disputing CCGs, so that it's really and truly clear that there is a dispute that can't be resolved locally here.</p>
<p>Slide 26</p>	<p>[47:44]</p> <p>So the formal dispute resolution process is described in detail in appendix one of the Who Pays? document, and it looks like this. Let's say there are two CCGs involved in a particular case. What they need to do first is get the facts straight between them and submit a joint, single, factual chronology of the case, signed off by the relevant directors to our responsible commissioner inbox. And by submitting that they're agreeing to be bound by an arbitration finding made by NHSE/I and to meet any legal costs which we reasonably incur in carrying out the arbitration.</p> <p>Now the general idea here is that there won't be any such costs. Arbitrations will be done in house by our team at no additional cost, but there may be some exceptional circumstances where we have to seek external legal input and in that instance the cost would be shared between the CCGs involved. We don't envisage that that happening often, preferably, not at all.</p> <p>So once that chronology has been checked and has been submitted and is finalised, then each CCG gets the opportunity to submit what we call a statement of case - a document setting out in its own words why they think they're not responsible for payment in this particular case, referencing the Who Pays? rules, the guidance and the particular circumstances of the case to justify their position.</p> <p>So each CCG submits the statement of case and the NHS England / Improvement national team then reviews all that evidence from the chronology and the submissions, and produces a binding arbitration report, which the parties then implement locally.</p>

	<p>And templates for the case chronology and for what a statement of case could look like and cover are in appendix four in the guidance as a separate Word document on the website.</p>
<p>Slide 27</p>	<p>[49:55]</p> <p>A point then about historic and ongoing disputes. So obviously the dispute resolution process will apply to new disputes that arise from 1 September onwards, but if you do have a genuine ongoing dispute with another CCG which you've not been able to resolve about an ongoing or previous case, you can refer it into our national process. But we would advise you really, strongly, not to use new Who Pays? as a reason to revisit or try to unpick historic or ongoing cases where there hasn't been a documented dispute with the other CCG. This isn't an excuse to go hunting for costs that you can shift on the basis that you may in the past, jointly have misinterpreted the guidance. And do look in particular at what we say in the executive summary and in the dispute process around this.</p> <p>So the executive summary emphasises the idea that commissioners just should not be revisiting funding agreements on historic cases - that's not going to help the NHS in the round at all. And then the dispute resolution process makes it clear that, where we are asked to make retrospective financial adjustments through the dispute resolution process, we will only ever do so to the beginning of the financial year in which a dispute was formally initiated. So if you've not argued about a case going back to, say, 2016 until 2019, there's no way you're going to get money back to 2016, even if you're right. So don't use this as a reason to revisit old cases, concentrate on getting the new ones right, would be our advice.</p>
<p>Slide 28</p>	<p>[51:50]</p> <p>Onto the last lap now, two or three other points just to pick up quickly about what is and isn't in the new Who Pays?. Overseas visitors - well, just to stress Who Pays? is not the source of guidance on when to charge overseas visitors for their care and treatment. Look instead at the Department's guidance. We've shown the links on the slide here. And there is guidance on financial risk sharing between CCGs and providers in an NHS England guidance document and again the link to that is on the slide here.</p>
<p>Slide 29</p>	<p>[52:28]</p> <p>Non-contract activity - activity that happens between typically a CCG in one part of the country and a provider somewhere else more distant where the activity is undertaken without a written signed contract being in place. Now 2013 Who Pays? dealt with and had a detailed section dealing with non-contract activity, normally NCA for short.</p> <p>And just to make you aware if you've not spotted this, we've moved that section into our contract technical guidance. We took the view that NCA was really more of a contractual issue than a Who Pays? one and so you can find that content updated slightly in the current version of our contract technical guidance link on the slide in Section 25.</p>

Slide 30	<p>[53:17]</p> <p>Do remember that there are some important supporting documents to Who Pays? particularly two we're flagging here - the commissioner assignment methodology, which has detailed flowcharts and practical tools for identifying the correct commissioner - link on the slide - and ditto the specialised services manual identification rules and tools available there for that particular very complex area of determination of responsibility. Do refer to those different documents and tools where you need to.</p> <p>Finally, thank you very much for your patience. Thank you for listening. I hope this has been a helpful introduction to the new Who Pays? guidance. You can look at it in full at the website on the link here on the slide and do remember that we're absolutely happy to receive queries about the new guidance or about specific scenarios via our email inbox and do get in touch with us if you have any of those sorts of queries which you want to raise. So thanks again. And goodbye for now.</p>