NHS
Leicester, Leicestershire and Rutland

Policy for Personal Health Budgets

Reference number:	Obtain from Corporate Affairs Support Officer
Title:	Policy for Personal Health Budgets
Version number:	Version 7.6 draft 1 (July 2022)
Policy Approved by:	Quality and Safety Committee
Date of Approval:	1 September 2022
Date Issued:	1 September 2022
Review Date:	September 2025
Document Author:	Julie Croysdale Personalisation Services Senior Manager, LLR ICB
Executive Lead:	Caroline Trevithick Chief Nursing Officer/ Deputy Chief Executive, LLR ICB

Version Control

Version number	Approval / Amendments made	Date (Month Year)
Version 1, draft 2	New policy agreed at all Boards	August 2014
Version 6, draft 1	Significant amendments in light of changes in procedure	September 2017
Version 7.4	Updated policy statement in line with NHS England guidelines	November 2019
Version 7.5	Updated to new LLR CCG template	February 2022
Version 7.6	Updated to refer to LLR ICB Some minor grammatical changes but no significant changes to content	July 2022

DOCUMENT STATUS:
This is a controlled document. Whilst this document may be printed, the electronic version posted on the intranet is the controlled copy. Any printed copies of the document are not controlled.

RELATED DOCUMENTS:
This document will reference additional policies and procedures which will provide additional information

All policies can be provided in large print or Braille formats upon request. An interpreting service, including sign language, is also available.

Contents Page

Contents

Policy Statement 4
Scope of the Policy 5
Legal Compliance 5
Due Regard 6
Accountability, responsibilities and training 6
Distribution and Implementation 8
Principles of a PHB 8
Capacity and Consent 8
Who can have a Personal Health Budget? 9
Informing people about PHBs 10
Short breaks and holidays 10
Exclusions for PHBs 11
References 18
More Information 18
Appendix A: Definitions 19

Policy Statement

1. This policy sets out *principles* for the ongoing rollout of Personal Health Budgets (PHBs) by Leicester, Leicestershire and Rutland Integrated Care Board (LLR ICB). It focuses on PHBs for Continuing Healthcare in adults, as well as PHBs for children with continuing care needs as well as in the context of the SEND Reforms. These principles are to be applied by the ICB strategic partners in the Commissioning Support Unit (CSU).

2. In addition, NHS England (2019) have widened the legal right to have a PHB to include Section 117s and wheelchairs. These guiding principles will also be relevant for these services and others commissioned by the ICB, for an individual, where a PHB may prove beneficial. This is an evolving policy that will be reviewed as PHB national guidance and relevant legislation develops.

3. This policy document sets out LLR ICB's intentions to ensure that all patients meeting the criteria for a PHB have the opportunity to be offered and/or receive a PHB in line with national guidance and where possible that PHBs are considered in other cases where there is a benefit for the individual. A key aim of this policy is to ensure that a consistent and transparent approach is applied to the development and approval of all support plans and budgets.

4. LLR ICB will work in conjunction with its partner organisations to deliver an integrated PHB offer through the locality teams based within the Personalised Commissioning Team. Whilst an initial financial offer is made at the indicative budget setting stage, a fully integrated PHB is achieved through a system of support planning for patients who have chosen to develop a PHB in response to their health and social outcomes. This document operates within the wider guidance outlined by the Department of Health for co-production and patient centred commissioning and the National Framework for NHS Continuing Healthcare & NHS-Funded Nursing Care (revised July 2022). With regard to children up to the age of 18, this document relates to the National Framework for Children and Young People's Continuing Care (January 2016).

5. The LLR ICB will ensure that PHBs achieve value for money for both the patients and the ICB. This will be done though the way in which PHBs are set up, through robust care & support planning, through effective monitoring of direct payments and clearly defined outcomes being set.

6. Following assessment of needs by the CSU on behalf of the ICB, any support planning will assure LLR ICB that the patient has ownership throughout the process. The patient will lead the development of the support plan, with assistance from the CSU PHB team when, and if, required. This is determined through patient choice. If the patient is unable to prepare their own support plan, their contribution should guide the preparation of the support plan as much as possible. Support planning will allow the identification of desired health and well-being outcomes and related goals which can be referred to by the patient, family and health and social care professionals to promote improved health and wellbeing. In the case of children and young people in receipt of an Education, Health and Care (EHC) Plan under the new SEND Reforms, assessment of need and support planning will be led by the Local Authority through this process, supported by clinicians and ICB as set out in national guidance.

Scope of the Policy

7. This policy applies to those members of staff that are directly employed by the LLR ICB. For those staff covered by a letter of authority/honorary contract or work experience, the organisation's policies are also applicable whilst undertaking duties for or on behalf of the LLR ICB. Furthermore, this policy applies to all third parties and others authorised to undertake work on behalf of the LLR ICB.

8. This policy sets out the principles and guidance around the implementation of Personal Health Budgets (PHBs) by LLR ICB. It should be read in conjunction with the following ICB documents:

a. Guidance for staff for Personal Health Budgets for Leicester Leicestershire and Rutland
b. The National Health Service (Direct Payments) Regulations 2013[1]
c. Guidance on Direct Payments for Healthcare: Understanding the regulations[2]
d. Direct Payment and Third-party agreements
e. Adult's High Risk and Complex Care Panel Terms of Reference
f. Children's High Risk and Complex Care Panel Terms of Reference and Special Educational Needs and Disability, Code of Practice (DofE & DH, 2014)
g. NHSEI Guidance on the 'right to have' a Personal Health Budget in Adult NHS Continuing Healthcare and Children and Young People's Continuing Care.

Legal Compliance

9. Relevant legislation for this policy includes:

a. National Health Service (Direct Payments) Regulations 2013 as amended by the National Health Service (Direct Payments) (Amendment) Regulations 2013).
b. Human Rights Act 1998, including the Article 8 Right to respect for private and family life, and Article 14 Prohibition of discrimination
c. The Data Protection Act 2018
d. The Carers (Equal Opportunities) Act 2004 provides carers with the right to receive assessment for support and a duty on various public authorities to give due consideration to a request to provide services to carers.
e. The Mental Capacity Act 2005 ("MCA"). The Mental Capacity Act provides a framework for decision making applicable where people lack capacity to make a decision for themselves. The overriding principles of the Mental Capacity Act are set out in section 1 and include a requirement to ensure that all practicable steps are taken to seek to enable a person to make a decision for himself. Where a person is unable to make a decision, any decision made on their behalf must be made in accordance with his/her best interests and must be the least restrictive of the person's rights and freedom of action. A person is not to be treated as unable to make a decision simply because he makes an unwise decision.
f. The Equality Act 2010. The Equality Act brought together the various earlier discrimination laws under one statute. It is unlawful to act in a discriminatory manner against any "protected characteristics", including race, sex and disability.
g. The Children and Families Act 2014, which is partially in force and due to be fully in force by April 2015. This Act intends to improve services for key groups of vulnerable

---

[1] https://www.legislation.gov.uk/uksi/2013/1617/made/data.pdf
[2] www.england.nhs.uk/wp-content/uploads/2017/06/guid-dirct-paymnt.pdf

children (e.g., those in adoption and those with special educational needs and disabilities).

Due Regard

10. The LLR ICB aims to design and implement services, policies and measures that meet the diverse needs of our population and workforce, ensuring that none are placed at a disadvantage over others.

11. All policies and procedures are developed in line with the LLR ICB Equality and Diversity Policy and need to take into account the diverse needs of the community that is served. The LLR ICB will endeavour to make sure this policy supports its diverse workforce and look after the information the organisation needs to conduct its business. It will also endeavour to make sure that this information is protected on behalf of patients regardless of race, social exclusion, gender, disability, age, sexual orientation or religion/belief. Where it is identified that statements in this policy have an adverse impact for equality groups this will be raised with the Senior Information Risk Owner and the Head of Corporate Governance and solutions sought.

12. A full Due Regard and Equality Impact Assessment exercise has been undertaken by the LLR ICB in relation to PHBs.

Governance

13. The LLR ICB fully supports the principles of delivering Personal Health Budgets to those with a right to have and to consider where appropriate offering to other cohorts, following the guiding principles in this policy.

Accountability, responsibilities and training

14. Overall accountability across the organisation lies with the Chief Executive who has overall responsibility for:

- the LLR ICB discharging their duties as required by legislation in relation to PHBs.
- the LLR ICB compliance with this policy. This includes their role to ensure effective implementation of this policy.
- and that there are open channels of communication between the commissioning teams for CHC and PHB and themselves in relation to PHBs.

15. Current staff members allocated to individual roles identified below are identified in the Information Governance Framework Document in Appendix A. This document will be regularly reviewed and updated at the Personal Health Budget Group at least annually and internally within the LLR ICB/ Personalisation Team, as required.

16. The ICB Chief Nursing Officer / Deputy Chief Executive is a member of the Governing Body and has responsibility as the LLR ICB's Caldicott Guardian.

    Key areas of responsibility include:

17. The Accountable Officer takes the ultimate responsibility for this policy and must ensure that:

- they discharge their duties as required by legislation in relation to PHBs;
- the ICB complies with this policy. This includes their role to ensure effective implementation of this policy;
- and that there are open channels of communication between the commissioning teams for CHC and PHB and themselves in relation to PHBs.

18. The ICB Chief Nursing Officer / Deputy Chief Executive must ensure that:

- quality assurance of PHBs is a standing agenda item at the Personalised Commissioning Assurance Group (PCAG).
- the High Risk and Complex Care Panels work to their Terms of Reference in relation to quality and feeds back any concerns with regard to PHBs to the LLR ICB System Quality Group which reports into the LLR ICB Quality and Safety Committee.

19. The ICB Chief Finance Officer must ensure that:

- procedures for receiving financial assurance in relation to PHBs is in place and reported to the appropriate Governance Group.

20. The ICB Personalised Commissioning Team

- Ensure that Personal Health Budget projects are delivered consistently across the ICB, Local Authority and partner organisations. This includes updating the project plan and associated paperwork to ensure information is recorded and easily accessible.
- To attend, produce and present reports to Project Boards, Forums and NHSE meetings and the wider NHS as required.
- To raise the profile of the Personal Health Budget agenda in Leicester, Leicestershire and Rutland.
- To support the development of contracts that reflects the aims of the PHB Agenda.
- To assist the ICB in the interpretation of national and local policy and planning initiatives.
- To act as a point of reference for the contract management of PHB delivery vehicles.

21. Patients, representatives and/or their nominated individuals must ensure that

- They are active participants in the PHB process.
- They use their budget in the spirit of PHBs.
- They follow the legislative requirements of PHBs and follow the Direct Payment Agreement as appropriate.

22. PHB Providers

All providers of PHBs, for example the local wheelchair service provider and Leicester Partnership Trust will:

- Ensure they follow the PHB processes in line with National and Local guidance.
- Capture all relevant data to enable a response to NHS England as requested by the ICB.
- Engage with their users to improve their PHB offering, in line with National guidance.
- Will engage with the Personalised Commissioning Team to ensure compliance with the PHB standard.

Distribution and Implementation

23. A set of procedural document manuals will be made available via the LLR ICB staff intranet.

24. Information about Personal Health Budgets is available on the LLR ICB website that provides a brief introduction to information governance and summarises the key user requirements that support the LLR ICB in delivering PHBs to the people it serves.

25. Staff will be made aware of procedural document updates as they occur via team briefs, team meetings and notification via the LLR ICB staff intranet.

Principles of a PHB

26. In Leicester, Leicestershire and Rutland our underpinning principles for providing Personal Health Budgets are:

- Patients and their carers will be central to all processes;
- Services will be personalised whether the care is provided by a statutory or private provider;
- The delivery of Personal Health Budgets will be managed within the agreed budget;
- Patients have a right to request a Personal Health Budget. The ICB will try to achieve this and need to ensure it is lawful, affordable, effective and appropriate (see paragraphs 65-70);
- The budget setting process will be based on the cost of provision of traditional services to meet the health and wellbeing outcomes;
- The ICB will ensure patients are supported throughout the Personal Health Budget process. In the main, this support will be provided by Commissioning Nurses employed by the CSU.

Capacity and Consent

27. This section applies to those being considered for a PHB and those that already have one. In line with the Mental Capacity Act 2005, patients with a PHB will be empowered to make independent decisions wherever possible and where they lack capacity over certain decisions, this will be managed in line with the MCA.

28. The Mental Capacity Act 2005 (MCA) including Deprivation of Liberty Safeguards (DoLS) Policy must be followed and there are specific requirements for how direct payments are managed for those with and without capacity. See below.

a. **Direct payments for people with capacity** – where the individual receives the funding that is available to them, and they purchase the services and support they want in accordance with the agreed care plan (with or without assistance). The individual can elect to receive and manage the payment themselves or decide for it to be received and managed by a person of their choosing (a nominee). If the individual chooses a nominee, that nominee becomes responsible for managing the funds and services and accounting for expenditure.

b. **Direct payments for people who lack capacity** – where the individual lacks capacity, an agreed representative receives the funding that is available to the individual as a

direct payment. The representative is responsible for managing the funds and services and accounting for expenditure. The representative takes full legal responsibility of having a direct payment and of being an employer. They can identify someone else to support them in managing the direct payment. The representative will be required to sign the direct payment agreement. The representative must involve the individual as much as possible and act in their best interests, in accordance with the Mental Capacity Act 2005. In the case of children, a representative may be appointed to receive the direct payments on the child's behalf. The representative may be the child's parents or those with parental responsibility for that child or anyone else the ICB agree to appoint in compliance with the relevant regulations.

Who can have a Personal Health Budget?

29. Since 1 October 2014, all Eligible Persons acquired a 'right to have' a PHB including by way of a direct payment. This includes:

a. People who are eligible for NHS continuing healthcare (adults)[3];
b. Children and Young People eligible for Continuing Care[4]. In the case of children this refers to the element of their care package that would normally be provided by the NHS once they become continuing care eligible and not the element of their care package provided by social care or education;
c. Patients in receipt of Section117 aftercare;
d. Patients with a long-term wheelchair need.

30. In accordance with the overall drive towards greater patient choice and control, PHBs for patients other than those listed above can still be offered and the benefit of personalised care plans for patients with long term conditions should be borne in mind, even though the 'right to have' does not currently extend to those patients.

31. The Department of Health and Social Care and NHS England intend to extend the right to have to those in receipt of Section 117 aftercare and long-term wheelchair users and have a broader programme to extend this further in subsequent years.

32. As part of the ICB's commitment to PHBs – the ICB will consider if a PHB may be available to the following groups. The ICB will consider applications on a case-by-case basis:

a. Joint funded packages. The ICB will especially consider cases where the individual is already in receipt of a direct payment from social care or through the fairer funding charge do not qualify for social care funding but already have personal assistants/agency that they wish to continue using;
b. Children or young adults with an EHC plan who do not qualify for CCC;
c. Those who require a bespoke package of care as outlined by the Transforming Care agenda;
d. Other individuals on a case-by-case basis where the ICB considers the individual would benefit from a PHB rather than a traditionally commissioned service.

---

[3] National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care July 2022 (Revised). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1087562/National-Framework-for-NHS-Continuing-Healthcare-and-NHS-funded-Nursing-Care-July-2022-revised.pdf

[4] as defined by the National Framework for Children and Young People's Continuing Care http://www.nhs.uk/CarersDirect/guide/practicalsupport/Documents/National-framework-for-continuing-care-england.pdf

Informing people about PHBs

33. All LLR ICB policies relating to NHS Continuing Healthcare and Continuing Care continue to apply when an individual has a PHB. The Commissioning Nurse will inform those individuals of their right to have a PHB (see paragraph 6 above) at the initial assessment. This will include information about the option of a direct payment. For point of clarity, any patients who relocate into the Leicester, Leicestershire and Rutland area who are eligible for a PHB will have it discussed at review stage.

34. Health professionals will also seek to identify other patients who do not fall within the current scope of the 'right to have' a PHB but who may benefit from the provision of a PHB. PHBs are not restricted to those currently eligible and LLR ICB can seek to offer PHBs on a voluntary basis to a wider cohort beyond Continuing Healthcare (see paragraph 6 above). Where such patients are identified, the health professionals involved in their care will provide them with information about PHBs (including directing them to the ICB website) and the case will be discussed with the individual ICB as to the appropriateness of the request.

35. The Commissioning Support Nurse will offer information or signpost individuals to a suitable organisation who can provide information, advice and guidance to prospective and existing PHB recipients and their families. The services provided by these organisations will include:

a. how a PHB can be used and managed
b. guidance on producing a personalised care and support plan
c. advice and support to manage a PHB, including a direct payment
d. guidance on record keeping requirements
e. information about direct payments, including the responsibilities around financial monitoring that will need to be taken on by the recipient of the direct payments
f. procedures around payback or any surplus funds.

Short breaks and holidays

36. **Short breaks** are also referred to as respite care. This time is typically provided to support unpaid primary carers. The LA may also have some responsibility for respite care as a result of the Children's Act 2005 or the Care Act 2013.
In Continuing Healthcare and Continuing Care the short break or respite allocation is calculated using the Resource Allocation System (RAS) in FACE. The algorithm calculates the number of hours depending on the unpaid primary carer's contribution to care.
The ICB commissions short breaks services through core services and these are delivered by the local NHS community provider. The local provider has contractual arrangements with a small number of local facilities. Where short breaks are agreed, the PHB needs to ensure that the ICB is not double funding a placement.

37. **Holidays -** although there is no formal entitlement to holiday funding within a PHB, the ICB recognises that a holiday can be beneficial to health and wellbeing. The ICB acknowledges that there may be additional staffing and equipment costs to support someone away from their home in an environment which may not be suitably adapted. In some instances, two carers may be needed for safe care. In addition, people who do not normally require 24-hour care may need to take their own carers and require them to work longer hours. All of

this should be outlined in the support plan and come within the indicative budget allocation. If someone wishes to take a holiday this is allowed within a PHB but as outlined above other needs may need to be met by alternative arrangements.

38. **Flexibility -** the ICB acknowledges that there are times when flexibility for a support plan may be required, and individuals may want to accumulate their PHB to allow for flexibility of a temporary change in circumstances. Any savings made via the PHB should not reduce the ability to meet agreed outcomes or be made at the expense of health or wellbeing. If flexibility of this nature is requested by the individual, it must be agreed by the ICB and reflected in the Support Plan and the ICB must be assured that the individuals needs continue to be met.

Exclusions for PHBs

39. If an individual comes within the scope of the 'right to have' a PHB, then the expectation is that one will be provided. However, the NHS England guidance[5] states:

    - '*There may be some exceptional circumstances when a ICB considers a personal health budget to be an impracticable or inappropriate way of securing NHS care for an individual. This could be due to the specialised clinical care required or because a personal health budget would not represent value for money as any additional benefits to the individual would not outweigh the extra cost to the NHS.*'

40. The ICB will comply with NHS England guidance and where applications are declined individuals will be advised of the ICB's complaints process should they wish to use this.

41. NHS England have also provided Guidance on the circumstances an ICB may decide not to provide someone with a direct payment (Guidance on Direct Payments for Healthcare; Understanding the Regulations). The ICB may decide not to offer a direct payment if, for example, it considers:

    a. that the individual (or their representative) would not be able to manage a Direct Payment;
    b. that it is inappropriate for that individual as a result of their condition or other circumstances;
    c. that the benefit to the individual does not represent value for money for the ICB;
    d. that providing services by way of a direct payment will not provide the same or improved outcomes;
    e. that the direct payment will not be used for the agreed purposes.

42. PHBs should not generally be used to pay for care and support services being funded through NHS core commissioned services that a person will continue to access in the same way whether they have a PHB or not, for example GP services or A&E.

[5] http://www.personalhealthbudgets.england.nhs.uk/_library/Resources/Personalhealthbudgets/2014/Personal_health_budgets_right_to_have_guidance.pdf

PHBs and Individual Funding requests[6]

43. A personal health budget (PHB) is an amount of money to support the planned healthcare and wellbeing needs of an individual, which should be agreed by their clinician. PHBs, therefore, give people more independence over how money for their healthcare is spent. For more on the operation of PHBs see: www.england.nhs.uk/healthbudgets/.

44. IFRs are applications by clinicians on behalf of their patients relating to funding for treatment that is not routinely commissioned by NHS England, based on clinical exceptionality. PHBs by contrast are a different way to meet assessed needs that services are routinely commissioned to meet.

45. We would not expect the IFR process to be used to agree services agreed as part of a PHB. However, having a PHB in place for some aspects of a patient's care would not exclude the patient's clinician from making an IFR request to meet needs that are not routinely met via commissioned services.

PHBs for people in nursing or residential care home settings

46. The Government's intention is for all Eligible Persons to have the 'right to have' a PHB where they would benefit. Therefore, where Eligible Persons living in nursing or residential care may benefit from receiving care via a PHB, the option should be considered and discussed. However, the ICB need to be satisfied that the use of a PHB in such settings,

a. is cost effective;
b. is a sensible way to provide care to meet or improve the individual's agreed outcomes;
c. gives patient choice of payment method.

Options for Managing a PHB

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

48. PHBs can now be received and managed in the following ways, or a combination of them in some circumstances:

a. **Notional budget** – where an individual is informed of the amount of funding available to them and decides how the budget is used (by input into the care plan) but the ICB continues to commission services, manage contracts and make purchases etc. Notional budgets could be an option for individuals who want more choice and control over their healthcare but who do not feel able or willing to manage a budget.
b. **Third party budget** – A different organisation, legally independent of both the individual and the NHS, holds the money for the individual and arranges and pays for all of the services on behalf of the individual in accordance with the care plan.
c. **Direct payments. The ICB will comply with the National Health Service (Direct Payments) Regulations 2013 when dealing with direct payments.**

---

[6] NHS England 2017. Commissioning Policy: Individual Funding Requests

49. A patient does not have to receive their care through a PHB but can opt for a traditional package of support or mix the two approaches if this option is available.

50. Direct payments will be paid via Shared Business Service and in advance on account (payment by arrears is not allowed). This will be set up by the Personalised Commissioning Team in the CSU.

The PHB proposal and support plan

51. The support plan is the central part of the management of PHBs. A good support plan is at the heart of a PHB. Although the support plan is written by an individual with the support of the Commissioning Nurse, it is the responsibility of the ICB to ensure that an approved support plan is fit for purpose following the subsequent directions on lawfulness, affordability, effectiveness and appropriateness.

Lawful

52. The proposals must be lawful and meet all regulatory requirements where relevant. In deciding whether the support plan meets with legal requirements. It should show for example that:

    - **a.** Informed consent has been obtained;
    - **b.** Any legal responsibilities that an individual will incur under the personal health budget arrangement (e.g. employment law, health and safety, HMRC regulations and monitoring information);
    - **c.** The assessed needs and desired outcomes of the individual and that the PHB will be able to meet those needs and outcomes;
    - **d.** It is person-centred and led by the needs of the individual;
    - **e.** It is well-balanced with the highest needs receiving priority;
    - **f.** There is provision for appropriate reviews of the care plan;
    - **g.** Risks have been properly identified and discussed with the individual, their representative or nominee and properly addressed to ensure such risks are eliminated, reduced or managed. These include risks to the individual or anyone else but also risks to the service or to the ICB.
    - **h.** Demonstrate compliance with the Mental Capacity Act 2005 and that the appropriate deprivation of liberty authorisation has been applied for if relevant. If the individual has been assessed as lacking capacity, the support plan must make it clear how their wishes have been ascertained and incorporated into the support plan;
    - **i.** Where people lack capacity or are more vulnerable, procedures such as safeguarding, promoting liberty and necessary restraint procedures (if required) have been included appropriately in the care plan and any necessary legal authorisations for those procedures have been obtained;
    - **j.** Any service providers identified in the plan must meet applicable regulatory requirements. A regulated activity cannot be purchased from a service provider that is not registered with CQC;
    - **k.** The individual, their representative or nominee and, where applicable, their carers have received guidance on any health and safety issues or regulatory requirements in relation to any equipment to be used or any adaptations to their home;
    - **l.** A legally binding agreement or contract is in place;

m. Where a direct payment is used that The National Health Service (Direct Payments) Regulations 2013 are complied with.

Affordable

53. The ICB has a statutory duty to manage its finances appropriately, ensuring value for money, and to break even at the end of each financial year. The ICB have their own specific resource and allocation policies relating to CHC that will be relevant when considering a PHB budget. Resource allocation policies ensure fairness of funding between those in receipt of CHC.

54. Whilst the ICB want to maximise flexibility the ICB may decide to avoid using PHBs to commission packages of care which are being provided under existing NHS contracts as long as they are able to meet an individual's needs.

55. People with a PHB should not be unfairly advantaged when compared with those who do not have a PHB. Where the ICB already has a commissioned service under a block contract this service must be investigated first. This may mean that a direct payment may not cover all of the budget requirements, and a notional budget is also required to cover those services already commissioned under the NHS standard contract. Where the commissioned service cannot deliver the care because it is outside the scope of its specification then a direct payment could be considered. However, where there is a capacity issue within the commissioned service a PHB cannot be used to 'jump the queue'. Where capacity problems exist, they must be reported to the ICB.

In deciding whether the support plan is affordable, it must show that:

a. Where the support plan requires a budget that is lower than the indicative budget, the lower budget will be approved as the assessed needs are able to be met for this lower sum;
b. Where the support plan exceeds the indicative budget, the plan is thoroughly checked by commissioners before being sourced to ensure best value;
c. Is reflective of the policy in the ICB's Settings of Care Policy and Equity and Choice Policy ensuring that best value of public money has been achieved;
d. The use of existing universal services, community resources, informal support and assistive technology has been explored as a first line and clear rationale are given and agreed as to why these **are not** appropriate to meet the person's assessed needs;
e. All relevant sources of funding (e.g. Local Authority provision) have been identified and utilised in conjunction with the personal health budget;
f. All costs have been identified and fall within the budget allocated;
g. The support plan fully meets the assessed, eligible needs in the most cost-effective way possible;
h. Where NICE has concluded that a treatment is not cost effective, ICB should apply their existing exceptions process before agreeing to such a service. However, when NICE has not ruled on the cost effectiveness or otherwise of a specific treatment, ICB should not use this as a barrier to people purchasing the service, if it could meet the individual's health and wellbeing needs. NICE provide a lay version of their guidance that can help people make decisions about this type of healthcare.
i. All PHB final budgets must be authorised by the respective ICB prior to commencement of the PHB

Effective

56. The ICB has a statutory duty to ensure funding is used effectively and in accordance with the principle of best value. The ICB will therefore make sure that the individual's needs and desired health outcomes are taken into account and that the measures proposed in the support plan represent an effective use of the personal health budget. In particular the ICB must be satisfied that:

- **a.** The support plan has been appropriately risk assessed;
- **b.** The support plan will be effective in meeting the individual's assessed needs and holistically supporting their health and wellbeing;
- **c.** Takes account of the views and needs of carers;
- **d.** Is adaptable and flexible, so individuals can revise their plans as they learn what works best for them or as their circumstances change;
- **e.** The support plan has tangible outcomes and reviews are arranged at least annually.
- **f.** That where outcomes are not being met the review will ascertain the reason behind this and whether it is reasonable to continue with the PHB in its current format.

Appropriate

57. The support plan should not include the purchase of items or services that are excluded from personal health budget as set out in Section 7 of Guidance for Staff for PHBs

The ICB recognises that:

- **a.** Some measures that involve the ICB in an outlay of a significant short term cost can contribute to increased independence in the future and thereby reduce support needs or avoid further costs in the long term. In these circumstances the ICB will expect the Commissioning Nurses to justify how short term measures will yield longer term benefits. Where longer term benefits are not met the ICB will ensure that the support plan will be reviewed and, if necessary, the PHB will be changed.
- **b.** Prioritising prevention and early intervention promotes greater wellbeing and independence and can reduce the need for on-going support.
- **c.** Full consideration needs to be given to the different kinds of health care and support individuals will request. Some individuals will want to keep their existing support, but have it tailored better to their needs. Others will choose to spend their budget differently, on every day and community-based support not currently available from the NHS.
- **d.** Unusual requests will not be excluded without examining the proposal on a case- by- case basis as these may have significant benefits for people's health and wellbeing. These will be considered, taking into account, the health outcomes to be achieved by the proposal
- **e.** Where an individual chooses to use their PHB to pay differing amounts than that which is traditionally commissioned by a ICB that they are able to do so as long the PHB remains in budget.

Managing the risk

58. Patients should be supported to make fully informed choices about the risks they may be taking, where risks are identified, a 'risk enablement' approach will be employed to mitigate all risks. During the care planning process, the Commissioning Nurse will have a detailed discussion with the patient, representative or nominee about potential risks, and how to manage them and the consequences of them. This should be part of an ongoing dialogue between these parties on how to effectively manage risk.

59. Examples of possible risks relating to PHBs are as follows:
    a. the patient's health and wellbeing: clinical risk
    b. the patient's safety (or those around them): safeguarding risk
    c. those that are caring for the patient: employment risk
    d. the patient's budget: financial risk
    e. the patient's personal information: information governance risk
    f. the availability of PHB providers across the ICB: corporate risk

60. The care plan must contain details of the risks discussed and any proportionate means of eliminating, reducing or managing the risks agreed with the individual about managing the potential risk.

61. Where identified risk incidents occur, (e.g. safeguarding, financial abuse etc.) the local ICB reporting procedures should be followed. The Commissioning Nurse is responsible for ensuring that the individual is aware of what constitutes risk incidents; knows the correct pathways for reporting them if they arise and is furnished with the appropriate contact details.

62. The twice monthly Adults' High Risk and Complex Care Panel and the monthly Children's High Risk and Complex Care Panel report directly to the Personalised Commissioning Assurance Group (PCAG) meeting which feeds into the LLR ICB System Quality Group which in turn reports into the LLR ICB Quality and Safety Committee

63. The Terms of Reference for this group outlines its authority, what the role of the members are in relation to the sign off of budgets and plans and what the reporting expectations of this group is in relation to outcomes.

Complaint process

64. If the person is dissatisfied with the process and/or final outcome decision, they have the right to complain to the CSU or the ICB via the normal NHS Complaints procedure. This process will be completed and resubmitted to panel within 28 days for reconsideration.

Assistance to manage PHBs

65. Individuals in receipt of PHBs, and who require support, will be signposted by the CSU to a choice of support services.
66. The costs associated with utilising support services are met as part of the PHB as long as these are agreed as part of the support plan

PHB Agreement and contracts

67. When taking up a PHB, there must be a contract or agreement in place.

68. For Notional Budgets the provider will be issued with the NHS standard contract and the Support plan will become the service specification of the contract.

69. For Third Party budgets the agreement is tripartite between the ICB; the provider and the service user/budget holder. This agreement is made using an IPA agreement and NHS standard contract, as other agreements do not have measures to monitor quality of provision. The provider will be expected to furnish the PHB team with a bank form that allows for the setting-up of an account for the individual.

70. For Direct Payment budgets the patient or their representative must sign a 'PHB Direct Payment agreement', which explains the responsibilities associated with the PHB and sets out the agreement that the PHB will be spent as set out in the Support Plan. If the patient is receiving the PHB as a direct payment, the PHB agreement will confirm that the PHB will be spent in accordance with the NHS (Direct Payments) Regulations 2013.

Payments of PHBs

71. PHBs will be paid as outlined in the agreement or contract. For Direct Payments this will be made in advance. The overall budget will be split in 12 monthly parts and the individual or provider will receive a monthly payment. For Third Party or Notional Budgets these will be paid on invoice in accordance with standard NHS terms.

Reconciliation of Funds

72. The CSU will monitor the PHB spend on a regular basis throughout the year and any unspent funds which are not identified for future use; as per the support plan; will be reclaimed back in consultation with the individual or their representative.

Monitoring and review

73. An audit will be undertaken by the PHB Group on an annual basis to assess performance against this policy. The results will be fed back to the Personalised Care Assurance Group (PCAG).

74. Where necessary a remedial action plan will be instituted by the PHB Group with oversight from PCAG.

75. This policy will be reviewed and updated every three years or earlier in accordance with any of the following:

- legislative changes;
- good practice guidance;
- case law;
- significant incidents reported;
- new vulnerabilities;
- changes to organisational infrastructure.

References

1. Your guide to having a Personal Health Budget Final-Personal-Health-Budgets-October-2016-2-2.pdf (netdna-ssl.com)
2. The National Health Service (Direct Payments) Regulations 2013 The National Health Service (Direct Payments) Regulations 2013 (legislation.gov.uk)
3. Guidance on Direct Payments for Healthcare: Understanding the Regulations guid-dirct-paymnt.pdf (england.nhs.uk)
4. SEND code of practice: 0 to 25 years SEND code of practice: 0 to 25 years - GOV.UK (www.gov.uk)
5. Guidance on the legal rights to have personal health budgets and personal wheelchair budgets guidance-on-the-legal-rights-to-personal-health-budgets.pdf (england.nhs.uk)

More Information

1. The NHS England website has a section dedicated to PHBs. This has information about national policy, the implementation toolkit, stories and other resources. www.personalhealthbudgets.england.nhs.uk
2. The Peer Network, a user-led organisation for PHBs, has its own website: www.peoplehub.org.uk

Appendix A: Definitions

a. **Agreement** means the agreement between the ICB, the Individual in relation to a direct payment agreement or the individual and the Third Party to receive the Individual's Personal Health Budget Payments from the ICB.
b. **Bank Account** means the bank account held by the individual or Third Party as agreed by the Individual and approved by the ICB into which Personal Health Budget Payments are paid under the terms of this Agreement.
c. **Capacity** refers to the ability of an individual to take valid autonomous decisions. Young children may lack capacity because of their age alone; adults may lack the mental capacity to take decisions for themselves in relation to a PHB because, for example, of a cognitive deficit. Every adult must be presumed to have mental capacity in relation to a particular issue unless it is established that they lack capacity, i.e. that they are unable to:

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

   It is important to note that whether someone has capacity or not should be determined on a decision-specific basis.

d. **Commissioning Nurse** means the person nominated by the CSU to monitor and review the making of Personal Health Budget Payments.
e. **Integrated Care Board (ICB)** commissions the provision of primary care services in a specific area and will work with local authorities and other agencies that provide health and social care locally to make sure that the local community's needs are being met.
f. **Commissioning Support Unit (CSU)** supports the ICB contractually to coordinate the delivery of PHBs to those eligible for Continuing Healthcare and Continuing Care for children.
g. **DBS** means the Disclosure and Barring Service or any replacement or successor service to it.
h. **Employment Costs** means costs associated with the employment of staff by the Third Party or the Individual for the purpose of (but not limited to) wages, DBS checks, national insurance, training, payroll, insurance and emergency cover, tax and any other costs.
i. **Eligible persons** – and Right to Have - patients assessed as eligible for NHS Continuing Healthcare or Continuing Care for children and young people, have a 'Right to Have' a PHB as defined by the NHS Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules Regulations) 2013 and by guidance. The ICB will also consider on a case-by-case basis those individuals who are outlined in the ICB Local Offer who express an interest in having a PHB. From the 1st April 2019 a PHB will be the default offer for CHC funding for those living at home.
j. **Individual** means the person who will receive the care.
k. **Personal Health Budget** means the budget for provision of health care services to the Individual made by way of Personal Health Budget Payments in accordance with the agreed support plan.
l. **Personal Health Budget Payments** means the payments made to the Third party on behalf of the Individual or their Representative and paid into the Bank Account by the ICB.
m. **Representative** is a person who is appointed to manage a direct payment where an individual lacks capacity. A Representative may be:
   i. someone who holds an enduring or lasting power of attorney;
   ii. a Deputy appointed by the Court of Protection;
   iii. someone with parental responsibility for a child or someone with parental responsibility for a 16- or 17-year-old who lacks capacity; or
   iv. someone appointed by the ICB.

n. **Support Plan** means the plan the Individual or their Representative develops with appropriate personalised assistance, which describes the health and wellbeing outcomes they want to achieve and the services to be secured by means of Personal Health Budget Payments to achieve the health outcomes. This plan is agreed by the Individual or their Representative and the ICB. The support plan may also be termed care plan

o. **Support** means the arrangements made to meet the Individual's health and personal care needs as specified in the Personal Health Budget Support Plan.

p. **SEND Reforms** refers to the Special Educational Needs and Disabilities (SEND) Reforms that are due to come into force on 1st September and which are legislated under Part 3 of the Children and Families Act 2014. These reforms and the underpinning Code of Practice relate to children and young people aged 0-25 with special educational needs or disability.

q. **Education, Health and Care Plan/Process** refers to the multiagency assessment and planning process and the resultant support plan produced under the SEND Reforms.

r. **Safeguarding** is about safety and wellbeing of patients but providing additional measures for those least able to protect themselves from harm and abuse. Staff should familiarise and be aware of their responsibilities around this agenda by accessing the ICB Safeguarding Adults and Children policy.