



# **Factsheet 37s Hospital discharge arrangements and NHS continuing health care services**

**Updated: February 2010**

## Introduction

This factsheet is for people aged 60 and over who live in **Scotland**. It provides advice and information to older people to explain what hospital discharge arrangements and continuing care services are available through the NHS in Scotland.

**Section 1** explains what NHS continuing health care is and who can receive it; **Section 2** outlines the hospital discharge arrangements; **Sections 3 and 4** explain record-keeping procedures and the Patient Appeals Process; **Section 5** explains the NHS Complaints Procedure; **Sections 6 and 7** cover the structure of the NHS, and major relevant legislation relating to it; **Section 8** gives useful contacts and information on where to go for further information.

## Across the UK

For anyone living in England, Wales or Northern Ireland, a similar Factsheet 37, Hospital discharge arrangements, is available by telephoning 0800 00 99 66 (free call) or writing to Age UK, FREEPOST (SWB 30375), Ashburton, Devon, TQ13 7ZZ.

## Other publications of interest

Age Scotland annually produces a booklet entitled, 'Hot Tips for keeping warm, healthy and safe in winter.' Please contact Age Scotland Helpline (see below) to order a free copy.

These other Age Scotland factsheets may be of use:

Factsheet 6	Finding help at home
Factsheet 10s	Local authority charging procedures for care homes (including free personal care)
Factsheet 29	Finding care home accommodation
Factsheet 34	Attendance Allowance and Disability Living Allowance
Factsheet 41s	Local authority assessments for community care services
Factsheet 42s	Disability equipment and how to get it
Factsheet 44s	NHS Services and older people

## Further Information

If you would like:

- any additional factsheets (up to a maximum of 5 will be sent free of charge);
- a full list of factsheets and/or a book catalogue;

Factsheet 37s  
Hospital discharge arrangements and NHS continuing health care services





- further information;
- to receive this information in a different format

Or, if you have questions arising from this factsheet, contact the **Age Scotland Helpline**. Age Scotland Helpline gives information to older people and those who care for or work with older people across Scotland. They can be contacted between 10am and 4pm, Monday to Friday on **0845 125 9732** (local call rates apply).

You can also contact Age Scotland Helpline by textphone on 0845 226 5851. This uses the Tynetalk system: an operator relays conversations between text and voice.

Those requiring access to an interpreter can contact Age Scotland HelplineP by calling **0845 125 9732** and simply saying the language they require e.g. Hindi then staying on the line for a few minutes; Helpline staff will do the rest.

Age Scotland provides factsheets free to older people, their families and people who work with them. If you would like to make a donation towards the work of Age Scotland, you can send a cheque or postal order (made payable to Age Scotland) to Age Scotland, Causewayside House, 160 Causewayside, Edinburgh, EH9 1PR. Find out more about Age Scotland online at [www.agescotland.org.uk](http://www.agescotland.org.uk).

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## 1 Background information

This factsheet sets out some of the information you need to know in order to find out about hospital discharge arrangements and NHS continuing health care services. It contains references, in the form of footnotes, to Government Circulars and other publications which may also be helpful for you to read. Further information listing agencies that you might want to contact is provided in section 9.

This factsheet describes:

- what continuing health care services may be available from the NHS;
- how to find out about and get services from the NHS and the local authority;
- what arrangements should be made for people being discharged from hospital, and
- how to complain if you do not receive the services you think you are entitled to.

This factsheet is based on the most recent Scottish Government guidance called NHS Continuing Health Care.<sup>1</sup>

### 1.1 What is NHS Continuing Health Care?

NHS continuing health care is a package of continuing health care provided and solely funded by the NHS. The NHS, and not the local authority or individual, pays the total cost of that care. NHS continuing health care may be for prolonged periods but not necessarily for life and entitlement should be subject to regular review. This means that although you may be eligible for NHS continuing health care when you first leave hospital, for example, your situation is likely to be reviewed regularly and if your health improves you may stop being eligible for NHS continuing health care. NHS continuing care is only provided when someone meets the criteria. If someone's care needs change because they get better the NHS will stop providing the health care that is called continuing health care.

### 1.2 Who can get NHS Continuing Health Care?

Any individual of any age, with any illness or disability, may be entitled to NHS continuing health care, as long as they are assessed as meeting the criteria. All NHS Health Boards have a general responsibility for ensuring that discrimination does not occur. It is against the law when providing NHS continuing health care to discriminate against anyone on the grounds of their gender, race, religious belief or sexual orientation<sup>2</sup>. As well as guidance for health boards the Scottish Government

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<sup>1</sup> [http://www.sehd.scot.nhs.uk/mels/CEL2008\\_06.pdf](http://www.sehd.scot.nhs.uk/mels/CEL2008_06.pdf)

<sup>2</sup> [http://www.opsi.gov.uk/acts/acts2006/ukpga\\_20060003\\_en\\_1](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060003_en_1)



has produced a policy document called Fair for All<sup>3</sup>. This explains a model for good practice in providing NHS continuing health care.

The decision to provide continuing health care is entirely dependent on whether an individual is eligible according to their assessed needs and not on the diagnosis of any particular illness. For many people this may be a difficult decision to understand if they are sure that someone is so ill that they must be entitled to continuing health care. However the assessment is based on what health care the person needs, not on what is wrong with them. You should be kept fully informed about the assessment and the decision –see section 1.4

### 1.3 When can you get NHS Continuing Health Care?

You are assessed for NHS continuing health care when it is clear that you may have ongoing health needs. You can become eligible for NHS continuing health care while you are in hospital, a hospice, a care home or in your own home. You and anyone caring for you should be given information by the local Health Board about

- the process for assessing your health needs;
- who is eligible;
- who is involved in making the decision;
- how to complain;
- where to get advocacy and mediation services.

Following any episode of acute care in hospital, or in any circumstances and location where it is considered possible that continuing health care may be required, early consideration should be given to the need to give you an assessment for eligibility for NHS continuing health care.

#### **Advocacy and mediation services**

It has been recognised by health and social care professionals that it can sometimes be very difficult to discuss your health and the services you might want when you are ill, frail or just worried about the future. Sometimes it is family members or other carers that are expected to discuss all the issues about a loved-one with staff in a hospital, care home or other setting and at a time when they are already very concerned and anxious it can be difficult to fully understand what is happening. For these reasons it can be very helpful to have someone neutral to be an advocate for you or to mediate when there are problems.

You might be concerned that there are problems of a patient not being able to take a decision because they are emotionally or mentally too frail. Sometimes special powers have to be applied for to acknowledge that someone has lost mental capacity to take decisions. If you think your relative is in this position you might find it helpful to read some of the information on the Public Guardian's website. See Further Information for contact details in section 9.

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<sup>3</sup> <http://www.scotland.gov.uk/Resource/Doc/159174/0043302.pdf>



Across Scotland there are advocacy agencies and you should be given a list of your local agencies by your NHS Health Board. If you want to check yourself what agencies exist in your area, there is a Scottish Government publication called “A Map of Independent Advocacy across Scotland”<sup>4</sup> that you can access.

#### **1.4 Government guidance on Step by Step Process for NHS Continuing Health Care assessment by the NHS Board**

The Scottish Government has produced a leaflet with the guidance on NHS continuing health care<sup>5</sup>. Individual NHS Health Boards are expected to provide information about NHS continuing health care in their own area and may use this leaflet– see section 6 on NHS structure.

**Step 1** - The NHS Health Board has to provide information about how someone can access the assessment process in the local NHS Board. It should explain clearly what the assessment process involves and how decisions are taken – see section 6.0.

**Step 2** - An initial assessment will be carried out with other relevant professionals – modelled on the Single Shared Assessment - see section 2.1

#### **Step 3 - Getting services**

Route A) Person is not eligible for NHS continuing health care but does need a mixed package of health and social care and should have a Single Shared Assessment. There should be documented details of all decision making. This information should be passed to the patient, family and any other carers. Information should also be made available about how the patient or family can appeal against the decision and make a complaint if necessary.

Route B) Person is eligible for NHS continuing health care. There should be documented details of all decision making. This information should be passed to the patient, family and any other carers. Information should also be made available about how the patient or their family or carers can appeal against the decision and make a complaint if necessary.

In some cases a patient may require a second assessment by a specialist after Step 2 because it is not clear from an initial assessment what the health care needs are.

#### **1.5 Eligibility criteria for NHS Continuing Health Care**

Eligibility criteria for continuing health care is taken directly from the Government guidance.<sup>6</sup>

The consultant (or GP in some community hospitals) will decide, in consultation with the multi-disciplinary team, whether someone:

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<sup>4</sup> <http://www.scotland.gov.uk/Publications/2004/03/19028/34016>

<sup>5</sup> <http://www.scotland.gov.uk/resource/Doc/239823/0066155.pdf>

<sup>6</sup> [http://www.sehd.scot.nhs.uk/mels/CEL2008\\_06.pdf](http://www.sehd.scot.nhs.uk/mels/CEL2008_06.pdf)



- needs inpatient care arranged and funded by the NHS;
- needs a period of rehabilitation or recovery, arranged and funded by the NHS, or
- should be discharged from inpatient care.

Continuing inpatient care should be provided where there is a need for ongoing and regular specialist clinical supervision of the patient as a result of:

- the complexity, nature or intensity of the patient's health needs, being the patient's medical, nursing and other clinical needs overall;
- the need for frequent, not easily predictable, clinical interventions;
- the need for routine use of specialist health care equipment or treatments which require the supervision of specialist NHS staff; or
- a rapidly degenerating or unstable condition requiring specialist medical or nursing supervision.

You should be aware that the emphasis in the assessment is on what has to be done for a person because of the illness or condition from which they are suffering. It is also important, in the assessment, to identify if specialist staff or equipment are required to provide the ongoing care. This does not necessarily relate to what the actual illness is. It is possible that if you have been discharged from hospital or are at home with a range of ongoing health care needs because of a serious illness that you may not be eligible for NHS continuing health care. Even if someone is eligible for NHS continuing care at a certain stage of their illness they may stop being eligible before they feel well.

Even if someone has a terminal illness and is facing a long period of medical intervention they do not necessarily fit the eligibility criteria for NHS continuing health care.

### **Palliative health care**

Palliative health care is the term used to describe the care services provided to someone with a serious life threatening condition or disease that will not improve. Scottish Government guidance expects all agencies to ensure that these services are provided as sensitively and as practicably as possible, in a timely manner. The Scottish Government has published guidance on planning for health provision when someone is terminally ill. The report is called *Living and Dying Well*.<sup>7</sup>

### **Local NHS Board Continuing Health Care Panel**

You should check if your local NHS health board has created a special panel to oversee the decisions that are taken in your area about NHS continuing health care. The Scottish Government has recommended that NHS boards should form such a panel to monitor the decisions being made by the clinicians in the area, which is

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<sup>7</sup> <http://www.scotland.gov.uk/Publications/2008/10/01091608/0>



contained within Section 56 of the Continuing Health Care guidance<sup>8</sup>. To find out your local NHS Health Board see section 6.

### 1.6 How the decision about NHS Continuing Health Care is made

The decision about NHS continuing health care is made following an assessment by a multi-disciplinary team of social and health care professional staff. An important part of the assessment is made by the consultant or GP in charge of the person who needs the care. The assessment should be 'person-centred' and 'needs-led', which means placing the individual involved at the heart of the assessment, and considering their wishes and preferences as part of the care-planning process.

An individual's condition or the need for particular health equipment would not, of itself, make them eligible for NHS continuing health care. Similarly a need for care from, or under the control of, a registered nurse and/or GP alone is not sufficient reason for receiving NHS continuing health care. The focus should be on the total needs of the person and the care required to meet those needs. Ultimately it is a professional clinical decision but the multi-disciplinary team includes professional staff who are assessing the person's social and housing needs at the same time as their health is being assessed. The model for this type of assessment is called a Single Shared Assessment – see section 2.1.

The patient, family and/or carer and any advocate involved in the assessment should be clear about the final decision on care. It is up to the social and health care professionals to make it very clear why they have made the particular decision. If they have failed to make it clear you might want to appeal against the decision. You should have written records of the assessment and the decision – For how to appeal see section 4.

The outcome of an assessment could be that:

- NHS continuing health care is provided, *or*
- the person needs a period of rehabilitation or recovery arranged and funded by the NHS, *or*
- the person should be discharged from inpatient care –see section about Discharge from hospital –section 2.

### Confidentiality

It has been recognised that although a multi-disciplinary assessment is a useful model for sharing personal information required by a number of agencies it may breach data protection legislation. NHS Scotland has produced guidance for staff on how to observe legal obligations.<sup>9</sup>

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<sup>8</sup> [http://www.sehd.scot.nhs.uk/mels/CEL2008\\_06.pdf](http://www.sehd.scot.nhs.uk/mels/CEL2008_06.pdf)

<sup>9</sup> [http://www.elib.scot.nhs.uk/SharedSpace/ig/Uploads/2008/Oct/20081002150659\\_6074NHSCode .pdf](http://www.elib.scot.nhs.uk/SharedSpace/ig/Uploads/2008/Oct/20081002150659_6074NHSCode .pdf)



If you think that patient or family confidentiality was breached within the assessment you can make a complaint - see section 5.

### 1.7 Rehabilitation and Recovery

When an older person's acute condition is stabilised but they have not regained sufficient independence to be discharged into the community, the consultant should consider a period of rehabilitation in a designated ward or nursing home. An older person should not be discharged prematurely from acute hospital care (section 118).<sup>10</sup> Rehabilitation covers a variety of health and social care services – such as

- speech therapy (for example, to help with speech or swallowing functions);
- physiotherapy (for example, to help with mobility), or
- occupational therapy (for example, to see how aids and adaptations can assist);
- community nursing (for example to dress a wound).

A period of recovery after acute hospital treatment may also be needed, to include regaining confidence about going back home. Your local NHS board's criteria should reflect the fact that older people may need to receive these services for longer than younger people, if they are to reach their full potential for recovery and to regain confidence. The criteria should take account of the risk of someone being discharged from hospital prematurely. There is Scottish Government guidance about adult rehabilitation called - *Delivery Framework for Adult Rehabilitation*<sup>11</sup>. This provides further information with specific reference to frail older people.

Some local NHS boards have established separate accommodation where people can go for further rehabilitation and recovery after their acute hospital treatment has finished. In some areas, this is in hospital wards, in others it is in short-term places in care homes or intensive support at home. The purpose of these services is to give the person more time to reach their full potential for recovery after treatment, and to ensure that the assessment of their care needs takes place at the most appropriate time.

### 1.8 Who pays for NHS continuing health care services and what is the effect on benefits and allowances if you are in hospital?

If you live in your own home, the NHS arranges and funds an appropriate care package to meet your assessed health and personal care needs. If you live in a care home, the NHS makes a contract with the home to pay fees covering your accommodation and assessed health and personal care needs.

However, if you are receiving NHS continuing health care (see section 1.5) in hospital then your state benefits, such as Attendance Allowance and Disability Living Allowance are generally suspended after 28 days in hospital. Other benefits such as

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<sup>10</sup> [http://www.sehd.scot.nhs.uk/mels/CEL2008\\_06.pdf](http://www.sehd.scot.nhs.uk/mels/CEL2008_06.pdf)

<sup>11</sup> [http://www.sehd.scot.nhs.uk/mels/HDL2007\\_13.pdf](http://www.sehd.scot.nhs.uk/mels/HDL2007_13.pdf)



Income Support, Carer's Allowance, Pension Credit, Housing Benefit and Council Tax Benefit may also be affected depending on your circumstances. Any other income which you receive, including a state retirement pension, and your capital is not affected. This is explained further in Age UK's Factsheet 34, Attendance Allowance and Disability Living Allowance.

### 1.9 What happens when someone is not eligible for NHS continuing health care

When someone is assessed as not being eligible for NHS continuing health care they may still be eligible for a range of other services. The assessment that has been undertaken should have included what needs the person has for social and ongoing health care too. This means that a package of health and social care may be provided for the person whether they are at home or in a care home. They can ask for a review of the decision or make an appeal. The NHS, the Scottish Government and the local authority share responsibility for caring for someone and providing services under specific legislation- see section 8 on Major relevant legislation for further information.

It is the responsibility of the lead person who has been identified in the local Joint Hospital Discharge Protocol to organise an assessment of your health and social care needs – see section 2.1.

#### **Appeal of decision about NHS continuing health care**

A patient, family member or their carer or an advocate is entitled to make an appeal about the decision on eligibility for NHS continuing health care if they do not agree with the outcome. This appeal should be referred to an appropriate and competent clinical professional in the first instance. See section 4 which explains the Patients' Appeals Process.

## 2 Hospital discharge arrangements

Everyone should leave hospital with an assessment of any ongoing health and social care needs. It is always the doctor in charge of your case who decides when you can leave. The decision for you to leave should be made as part of a multi-disciplinary process involving social and health care professionals, for example, a social worker if your individual needs require input from a range of services including social work. Every NHS Board and its related local authority partners should have a special arrangement in place for the discharge of patients. A framework for this was provided in Scottish Government Guidance about Joint Hospital Discharge Protocol<sup>12</sup>. In many areas it is likely that the process adopted for the assessment will be the Single Shared Assessment - see section 2.1.

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<sup>12</sup> [http://www.sehd.scot.nhs.uk/publications/CC2003\\_09.pdf](http://www.sehd.scot.nhs.uk/publications/CC2003_09.pdf)



When it has been assessed that NHS continuing health care, funded by the NHS, is not required, the consultant or community hospital GP should make an early referral to the local authority for a community care assessment if it is required. In some cases the assessment that has been undertaken for NHS continuing health care will already have involved professional staff that work in the community. When the assessment in hospital has not already included professional health or social care staff who work in the community, it is essential that the local authority receives medical information and opinion about: -

- whether the older person can live independently with adequate community based support (see Section 2.1 below);
- the person requires a period of interim care for rehabilitation and recovery (see Section 1.7);
- needs 24-hour residential or nursing care (see Section 2.4 about Choice of Accommodation).

## 2.1 The Single Shared Assessment Process

Single shared assessment (SSA) describes an assessment tool that determines a person's needs for care and health services. It is an administrative arrangement between local authorities and relevant NHS bodies (usually the local NHS Board) to ensure that information about the person who needs the services is shared between them. It means that individuals only need to provide information about their situation to one member of staff, such as a social worker or health visitor in the community or a relevant health or social care professional if the person is in hospital. This process should eliminate duplication in assessment. Staff authorised to organise the health and social care can then access this information and make plans for the discharge of the patient.

You, your family and your carer should be involved in the assessment and you should be kept fully informed of the decision about the type of care you will receive. A written care plan should be agreed so that you know what will happen after the person leaves hospital.

Any assessment should take into account the wishes of the client, of her/his family and of any carer. They should be kept fully informed and involved, be given sufficient time to make decisions, and be told how to seek a review of any decisions made. A client should also be told that s/he can ask for a reassessment of her/his needs if circumstances change in the future. There are strict rules about what information has to be recorded about a patient's discharge from hospital.<sup>13</sup>

## 2.2 Carers Assessment

When a patient is being sent home from hospital and most of their care is going to be provided by a carer, for example, a relative the person lives with, the carer is entitled to an assessment too. Under the *Community Care and Health (Scotland) Act 2002*,

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<sup>13</sup> [http://www.sehd.scot.nhs.uk/publications/CC2003\\_09.pdf](http://www.sehd.scot.nhs.uk/publications/CC2003_09.pdf)



carers have the legal right to ask the social work department for a carer's assessment, regardless of whether the cared for person is being assessed. The carer's assessment should look at their ability and willingness to continue caring. The person carrying out the assessment should not assume they want to continue providing the amount of care they do now. Local authorities have a duty to tell carers about their entitlement to assessment. If the local authority fails to tell the carer this, a complaint could be made - see Section 5.0.

### 2.3 Confidentiality within the discharge process

It has been recognised that although the Single Shared Assessment is a useful model for sharing personal information required by a number of agencies it may breach data protection legislation. NHS Scotland has produced guidance for staff on how to observe legal obligations.<sup>14</sup>

If you think that patient or family confidentiality was breached within the assessment prior to discharge you can make a complaint - see Section 5.0.

### 2.4 Choice of Accommodation after discharge

The Scottish Government report called *Better Health, Better Care* recognises that in most cases, if possible, someone coming out of hospital wants to go home. You will have been assessed for community care services if you are able to go home and you might be eligible for free personal or nursing care. For more details about Free Personal Care, Paying for Community Care Services and Self-directed Support and Direct Payments see Factsheets 24, 41 and 46.

More information about services at home is also available from Factsheet 6, *Finding help at home*, Factsheet 13s, *Older homeowners: financial help with repairs and adaptations*. Factsheet 8s, *Looking for rented housing* may also be useful.

### Complex health care needs and assessment process for discharge

Older people rarely have only one health care concern. After an acute incident that has required in-patient care, an older person may have been receiving care in a number of wards with a number of hospital consultants. Someone may even have been receiving health care from a number of hospitals. Although there is Government Guidance<sup>15</sup> about the process that should be used for discharging a patient it may be very upsetting and time-consuming for a family or partner to follow the patient from one hospital ward to another not knowing who is in charge of the patient's overall assessment.

It is open to the hospital consultant to ask for a case conference to discuss the patient's condition. As long as the patient is expected to be discharged from hospital the local authority social work department should be involved in the case to assess either social care needs at home or in a care home. You can contact the local

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<sup>14</sup> [http://www.elib.scot.nhs.uk/SharedSpace/ig/Uploads/2008/Oct/20081002150659\\_6074NHSCode.pdf](http://www.elib.scot.nhs.uk/SharedSpace/ig/Uploads/2008/Oct/20081002150659_6074NHSCode.pdf)

<sup>15</sup> [http://www.sehd.scot.nhs.uk/publications/CC2003\\_09.pdf](http://www.sehd.scot.nhs.uk/publications/CC2003_09.pdf)



authority social work department to ask for assistance, particularly if you are a relative or partner who is going to be caring for the patient when they come home. You are entitled to an assessment in your own right - see Section 2.2.

The decision about services should be given to you in writing and should set out which help (if any) will come from the local authority and which (if any) will be provided by the NHS. This is important because you may be asked to pay towards services from the local authority. Local authority staff may be reluctant to discuss care home options while you are still recovering in hospital because the patient and family may be hopeful that the person can return home. It may take a number of weeks before it is clear what services are required.

### **Disputes between the hospital and the Local Authority**

The Joint Protocol guidance should ensure that disputes are rare. However, in the unlikely event of there being a dispute there is guidance in the Framework for the Production of Joint Hospital Discharge Protocol.<sup>16</sup>

### **Moving to a care home**

When it has been decided that someone is not able enough to return home from hospital, the local authority social work department should work with hospital and community based staff, you, your family and any carer(s) to explore alternative options. The decision about choice of accommodation has to relate to the local Joint Hospital Discharge Protocol<sup>17</sup>. At a minimum the features of the protocol should be that: -

- information should be provided about available care homes in the area;
- you should be given a choice of three care homes;
- alternatives to care homes should be considered;
- information about costs, waiting times and Care Commission inspections of care homes should be provided- see Further Help for Care Commission details;
- timescale for discharge - the guideline is no longer than 6 weeks;
- options for interim arrangements if there are waiting times locally for care home places;
- explanation in the protocol about what happens if the local authority and NHS cannot agree about discharge arrangements within the allotted timescale.

You and your family can visit care homes to assess their suitability yourself. If you are planning to pay for your care (a self-funder) and are not entitled to a lot of financial help from the local authority you should still get the same help and advice as someone whose place is being paid for. If you want the patient to receive free personal and nursing care the local authority social work department has to be involved in assessing the patient's condition to guarantee payment of the care. A full

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<sup>16</sup> [http://www.sehd.scot.nhs.uk/publications/CC2003\\_09.pdf](http://www.sehd.scot.nhs.uk/publications/CC2003_09.pdf)

<sup>17</sup> [http://www.sehd.scot.nhs.uk/publications/CC2003\\_09.pdf](http://www.sehd.scot.nhs.uk/publications/CC2003_09.pdf)



explanation of the rules about Free Personal and Nursing Care is available within the legislation.<sup>18</sup>

The Scottish Care Commission Inspection Reports of care homes across Scotland are available on its website (see Further Help in Section 7). In addition to reading these reports, it may be useful to think about the features of the home that best suit the patient, for example, the physical layout. You may find it helpful to find out about the staffing in the home, for example, how many staff are available during the day and at night and what is their length of service.

When you have been assessed as not meeting the criteria for NHS continuing inpatient care, you do not have the right to occupy an NHS bed indefinitely. You do have the right to refuse to be discharged from NHS care to a care home but the local authority may not be in a position to provide all the services you would require to return home.

If a patient refuses to enter a home they cannot insist on staying in hospital. In such cases the family and any carer should be involved in trying to find a solution. If there is no family it is the responsibility of the local authority to organise appropriate care in the community. (*Section 13A of the Social Work (Scotland) Act*). A written care plan should be agreed so that you know what will happen after the patient has to leave hospital.

### **Patient does not have mental capacity to make a decision**

When the outcome of the assessment is that the person has to be discharged from hospital to a care home and they are unable to make a decision about what care home they want to go to, because they no longer have mental capacity to make the decision, legal steps will have to be taken to appoint someone to make the decision for them.

In some cases, when a patient has no relatives, it may be the local authority that has to apply to court for the special powers required to make a decision about moving the patient to a care home. This is a complicated situation and you might need specialist advice about how to proceed under the powers in the *Adults with Incapacity Act 2002*. You can get help from the Public Guardian's office and the Mental Welfare Commission- see Further Help

### **Free care on leaving hospital**

When a patient is returning home from hospital and requires some domiciliary services, in some areas these are provided free for 4 weeks. The services might include: laundry, shopping, meals on wheels and other domestic tasks. You should ask the local Social Work Department if these are free in your area.

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<sup>18</sup> <http://www.scotland.gov.uk/Resource/Doc/46905/0014172.pdf>



### 3 Record keeping

Scottish Government guidance states that:

“All stages of decision making in relation to the determination of eligibility for NHS continuing health care and hospital discharge arrangements, including the assessment eligibility decision, care planning and information on the subsequent provision and monitoring of that care should be appropriately and fully documented. Decision makers should be identified and the reasoning behind the decisions clearly explained.”<sup>19</sup>

It should also be recorded whether or not the individual was satisfied with the decision and what information they were given, including information on the appeals process. If the patient and any family and carers have not been told about the appeal process they may want to make a complaint. See Section 5.

Records about discharge arrangements, including where NHS continuing health care was not provided, should be retained for a minimum of six years.

All relevant agencies and care providers will be responsible for maintaining the relevant records. It is expected that any part of the decision making process would be recorded in:

- The patient’s clinical records;
- The Single Shared Assessment see Section 2.1;
- In the formal record of the multi disciplinary team.

### 4 Patients’ Appeals Process

Under current Scottish Government guidance ([www.sehd.scot.nhs.uk/mels/CEL2008\\_06.pdf](http://www.sehd.scot.nhs.uk/mels/CEL2008_06.pdf) - paras 122 -127) the appeal’s process is as follows. It has been reproduced here from the guidance.

#### 4.1 How to appeal

Where an individual does not agree with the decision on eligibility for NHS continuing health care, or decision to discharge, he or she (or carer or advocate) can appeal the decision by requesting a second opinion from another appropriate, competent medical professional (who would have to be a professional of the same or higher level in the same field or a closely related field).

This second opinion should ensure that: -

- An appropriate assessment has been carried out;

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<sup>19</sup> [http://www.sehd.scot.nhs.uk/mels/CEL2008\\_06.pdf](http://www.sehd.scot.nhs.uk/mels/CEL2008_06.pdf)



- Appropriate specialists with the required expertise were involved in the process;
- A proper record of the decision making process has been produced;
- An independent clinical decision is reached.

#### 4.2 When to appeal

Initially the appeal should normally be lodged when an individual expresses disagreement with the decision on eligibility for NHS continuing health care or the process undertaken in reaching a decision to discharge the person from hospital.

#### 4.3 Who to appeal to

Initially the appeal should be lodged with the professional who has made the decision. The NHS Board will then appoint another competent professional with the same level of expertise, to review the decision. Help should be provided to those who might need it in terms of deciding to appeal and preparing an appeal (see Section 1.3 on advocacy and mediation).

#### 4.4 Process of appeal

The second competent professional will review the documentation and re-assess the patient's needs to decide on whether the correct procedures have been followed and whether the outcome is the correct one. In cases where there are two contrasting opinions then a final decision should be made by an appropriate clinician who is a member of the relevant NHS Board. In most cases this will be the Medical Director or Director of Nursing

#### 4.5 Timetable for the appeal

An initial review should be completed within two weeks of the appeal being made although it is in the best interests of the patient and service providers for an agreed decision to be reached at the earliest opportunity. If after that the individual is still not happy then they can make a formal complaint – see Section 5.

## 5 NHS Complaints Procedure

### 5.1 NHS Complaints Procedure

If an individual remains unhappy about a decision about NHS continuing health care or a decision to discharge he or she can use the NHS Complaints Procedure. The Complaints Procedure is not a route for appeals (see Section 4 above) against decisions on eligibility for NHS continuing health care. However if you make a complaint about the process by which a decision about NHS continuing health care has been reached, it may mean that the decision has to be taken again.



In many cases a patient may be too vulnerable or unable to lodge a complaint themselves. These are the options in that situation: -

- You can lodge the complaint if the person who has received the NHS treatment or care is not able to make a complaint because of mental or physical incapacity. However, you have to have power to make the complaint either from a welfare power of attorney or another court order under the *Adults with Incapacity (Scotland) Act 2002*;
- You are acting as an advocate for the patient and have permission from them to make the complaint.

If the patient has died and you want to complain about how they were treated before they died you can make a complaint if you are a relative or had a relationship with the person, for example, you lived together.

In line with guidance on NHS complaints an individual must make a complaint within 6 months of the decision being given to them, or within 6 months of realising that they had a reason to complain (but no longer than 12 months after the decision).

## 5.2 How to make the complaint

You should complain first to the person who has been providing the service to discuss whether or not the matter can be resolved straight away. If you are not happy to speak directly to the person about whom you want to complain you can speak to a senior member of staff.

If you want to formalise the complaint you should make it clear in person, in writing, giving all your contact details and what you are complaining about, what happened and when.

The local Health Board should provide you with information immediately about their timescale for dealing with your complaint. They should also advise you about the independent advice and support available from the IASS service – see Section 5.3

Health Rights Information Scotland has also produced a leaflet called 'Making a Complaint about the NHS'<sup>20</sup>. You can get this from GP surgeries, hospitals or other NHS premises. You can also get it from their website or from the NHS Helpline by calling 0800 22 44 88.

If you are unhappy about the way your complaint has been handled by the NHS you may want to take your case to the Scottish Public Services Ombudsman. The Ombudsman can review how the complaint was handled - see Section 7 on Further Help.

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<sup>20</sup> <http://www.shb.scot.nhs.uk/board/documents/Complainteasyread.pdf>



### 5.3 Independent Advice and Support Service (IASS)

Citizens Advice Scotland launched a service in partnership with Local NHS Health Boards in 2007. The service is called the Independent Advice and Support Service (IASS) and is funded by Local Health Boards<sup>21</sup>. This service was introduced to replace the functions of Local Health Councils. The service can be contacted at your local Citizens Advice Bureau (CAB) and offers independent advice about health and social care services.

The service also offers help and representation with making complaints about health and social care services including Continuing NHS Care. Contact your local CAB to find out if the service is currently available in your area. You can find your local CAB by visiting Citizens Advice Scotland's website at [www.cas.org.uk](http://www.cas.org.uk) or by looking in the telephone book under "Citizens Advice Bureau".

## 6 Structure of the NHS

The National Health Service Reform (Scotland) Act 2004 introduced a number of changes to the structure of NHS Boards. The Act abolished NHS Hospital Trusts and NHS Primary Care Trusts, and required each local NHS Board to introduce Community Health Partnerships (CHPs). Local Health Care Cooperatives have become Community Health Partnerships. The Act also abolished local Health Councils.

There are now 14 NHS Boards in Scotland. Within each NHS Board area there are usually a number of Community Health Partnerships. Only 4 NHS Board areas are small enough to have one CHP. There are 40 CHPs (see contact list)<sup>22</sup>.

CHPs must work closely together with local authorities, the voluntary sector and other stakeholders and actively involve the public, patients and carers to provide services that meet the needs of the people who live in the Health Board area. The funding for CHP's is devolved from the local Health Boards. In some areas the CHP may be fully integrated with the Local Authority to bring health and social care services together. These are called Community Health and Care Partnerships (CHCP) or Community Health and Social Care Partnerships (CHSCP).

Each health board is expected to have a Joint Hospital Discharge Protocol.<sup>23</sup> You should check with your local NHS health board what the local protocol is. The content of the protocol should cover all the points in the Scottish Government model framework provided in the guidance document on this topic<sup>24</sup>. Your local health boards are listed on the internet<sup>25</sup>. When there are several Community Health Partnerships (CHP) or Community Health and Care Partnerships (CHCP) or

<sup>21</sup> [www.cas.org.uk/healthcomplaints.aspx](http://www.cas.org.uk/healthcomplaints.aspx)

<sup>22</sup> [www.sehd.scot.nhs.uk/chp/Pages/CHPcontactdetails.htm](http://www.sehd.scot.nhs.uk/chp/Pages/CHPcontactdetails.htm)

<sup>23</sup> [http://www.sehd.scot.nhs.uk/publications/CC2003\\_09.pdf](http://www.sehd.scot.nhs.uk/publications/CC2003_09.pdf)

<sup>24</sup> [www.sehd.scot.nhs.uk/publications/CC200309.pdf](http://www.sehd.scot.nhs.uk/publications/CC200309.pdf)

<sup>25</sup> [www.scotland.gov.uk/Topics/Health/NHS-Scotland/Boards](http://www.scotland.gov.uk/Topics/Health/NHS-Scotland/Boards)



Community Health and Social Care Partnerships (CHSCP) in one NHS Health Board the task of producing one Joint Hospital Discharge Protocol is inevitably much more difficult. However Scottish Government guidance is that such a protocol is required so you should ask for one from the NHS Health Board for your area.

## 7 Further information

**Alzheimer's Scotland**, 22 Drumsheugh Gardens, Edinburgh, EH3 7RN. Tel: 0131 243 1453. Freephone helpline:0808 808 3000. Email: [Alzheimer@alzscot.org](mailto:Alzheimer@alzscot.org) (for carers and people with dementia). Website; [www.alzscot.org](http://www.alzscot.org)

**British Red Cross Scotland**, 4 Nasmyth Place, Hillington, Glasgow. G52 4PR tel: 0141 891 4000.

The British Red Cross Society in Scotland has a number of local branches and there may be assistance from volunteers for coming home from hospital, transport and equipment loan. Check what s available in your area at [www.redcross.org.uk](http://www.redcross.org.uk)

**Carers Scotland**, The Cottage, 21 Pearce St, Glasgow G51 3UT, tel: 0141 445 3070, email: [info@carerscotland.org](mailto:info@carerscotland.org). Website [www.carerscotland.org](http://www.carerscotland.org)

Carers Scotland offers general help and advice for all carers, including through its free CarersLine helpline Tel. 0808 808 7777, open between Wednesday and Thursday 10am-12pm and 2pm-4pm

**Health Rights Information Scotland** (part of the Scottish Consumer Council) produces a wide range of information about patients' rights which is available for download on their website [www.hris.org.uk](http://www.hris.org.uk) Their leaflets are available from GP surgeries, hospitals or other NHS premises. You can also get them from the NHS Helpline by calling 0800 22 44 88.

**The Independent Advice and Support Service (IASS)** can be contacted at your local Citizens Advice Bureau. You can find your local CAB by visiting Citizens Advice Scotland's website at [www.cas.org.uk](http://www.cas.org.uk) or by looking in the telephone book under "Citizens Advice Bureau". This service is part of the Scottish Citizens Advice Bureau Service and is funded by Local NHS Boards. It aims to support patients, their carers and relatives in their dealings with the NHS and in other matters affecting their health.

**The Bladder and Bowel Foundation (B&BF)** The Bladder and Bowel Foundation is the UK charity for people with bladder and bowel disorders. Officially formed in June 2008 and launched on 15 September 2008, it replaces Incontact (formed in 1989) and the Continence Foundation (closed May 2008). B&BF is now the UK's largest advocacy charity providing information and support for all types of bladder and bowel related problems, including incontinence, prostate problems, constipation and Diverticular Disease, for patients, their families, carers and healthcare professionals. Nurse helpline 0845 345 0165  
Counsellor Helpline 0870 770 3246



General Enquiries - 01536 533255

Website: [www.bladderandbowelfoundation.org](http://www.bladderandbowelfoundation.org)

•Email: [info@bladderandbowelfoundation.org](mailto:info@bladderandbowelfoundation.org)

Hospice Information Service on the Help the Hospices website

Tel: 020 7520 8222. Information available on hospices/palliative care services in the UK and overseas from their website; [www.helpthehospices.org.uk/our-services/information-service/contact-us/](http://www.helpthehospices.org.uk/our-services/information-service/contact-us/)

**Scottish Patients Association**, PO Box 2817, Glasgow.G61 9AY.

Tel:0141 942 0376

Email: [contact@scotlandpatients.com](mailto:contact@scotlandpatients.com)

Website: [www.scotlandpatients.com](http://www.scotlandpatients.com)

Advice to patients and carers on patients' rights, complaints procedures and access to health services or appropriate self-help groups

**Chest, Heart and Stroke Scotland**, 65 North Castle Street, Edinburgh EH2 3LT.

Tel: 0131 225 6963. Adviceline:0845 077 6000. Website: [www.chss.org.uk](http://www.chss.org.uk) Helps stroke patients and their families with rehabilitation. Counselling and welfare services. Lists available of stroke support and rehabilitation groups.

**Scotland's Health On the Web (SHOW):** [www.show.scot.nhs.uk](http://www.show.scot.nhs.uk)

Website of the National Health Service in Scotland with links to the Scottish Government website.

**Scottish Public Services Ombudsman**

Scottish Public Services Ombudsman, 4 Melville Street, Edinburgh EH3 7NS. Tel: 0800 377 7330 (free call).

Fax: 0800 377 7331 (free call).

Email: [ask@spsso.org.uk](mailto:ask@spsso.org.uk)

Website: [www.spsso.org.uk](http://www.spsso.org.uk)

Offers members of the public an independent response to complaints about public services, including the Scottish Parliament and the Scottish Government), the health services, Registered Social Landlords and local government.

**Public Guardian's Office**

The Office of the Public Guardian,

Hadrian House, Callendar Business Park, Callendar Road, Falkirk. FK1 1XR.

Tel: 01324 678300 Fax: 01324 678301 DX 550360 FALKIRK 3

Email: [opg@scotcourts.gov.uk](mailto:opg@scotcourts.gov.uk)

Website: [www.publicguardian-scotland.gov.uk](http://www.publicguardian-scotland.gov.uk)

**Mental Welfare Commission**

Thistle House, 91 Haymarket Terrace, Edinburgh. EH12 5HE

Tel: 0131 313 8777

Telephone/Textphone-User and carer advice line: 0800 389 6809 -Textphone callers please dial 18001 before our freephone number to access RNID relay assist (See

Factsheet 37s

Hospital discharge arrangements and NHS continuing health care services



RNID Relay Assist Service for more details) Monday - Thursday 9am to 5pm; Friday 9am to 4.30pm

Fax 0131 313 8778

Email [enquiries@mwscot.org.uk](mailto:enquiries@mwscot.org.uk)

Website; [www.mwscot.org.uk](http://www.mwscot.org.uk)

### **The Care Commission**

The agency that oversees care provision in Scotland and inspects all residential establishments

Telephone: 0845 603 0890 (Lo-call rate)

Headquarters:01382 207100

Website; [www.carecommission.com](http://www.carecommission.com)

## **8 Major relevant legislation**

### **Social Work Scotland Act 1968- CH 49**

This major piece of legislation introduced a lot of the legal responsibilities on local authorities to promote the health and welfare of the local community. The primary clause is section 12:

12. -(1) It shall be the duty of every local authority to

- promote social welfare by making available advice, guidance, services and assistance on such a scale as may be appropriate for their local authorities' area, and in that behalf to make arrangements and to provide PART II
- or secure the provision of such facilities (including the provision or arranging for the provision of residential and other establishments) as they may consider suitable and adequate,
- and such assistance may be given to, or in respect of, the persons specified in the next following subsection in kind or in cash, subject to subsections (3) and (4) of this section.

You can check amendments to this legislation on [www.statutelaw.gov.uk](http://www.statutelaw.gov.uk) as it is amended

### **National Health Service (Scotland) Act 1978**

This legislation changed the legal duties of the NHS in Scotland in the following ways:

- Section 1 – the NHS is responsible for the prevention, diagnosis and treatment of illness
- Section 1A – the NHS has to promote the physical and mental health of the people of Scotland



- Section 37 – Scottish Ministers shall make arrangements for the prevention of illness, the care of persons suffering from illness or the after care of people who have been ill

### **National Health Service and Community Care Act 1990**

This UK legislation had a Scottish section that introduced the structure of the NHS Trusts in Scotland.

### **Community Care and Health (Scotland Act) 2002**

This legislation is the foundation of much of the current law relating to community care, carers' assessments, charging for care, free personal care. It amended a large number of clauses in the Social Work Scotland Act 1968.

The Act takes forward a number of the Scottish Executive's policy commitments on the care of people in Scotland. In particular, these commitments were made in:

- The Scottish Executive's Response to the Royal Commission on Long Term Care (October 2000);
- The Scottish Executive's Response to the Report of the Joint Future Group (January 2001);
- The Response by the Scottish Executive to the Health and Community Care Committee's Inquiry into the Delivery of Community Care (January 2001);
- the Executive's acceptance of the findings of the Report of the Chief Nursing Officer for Scotland's Group on Free Nursing Care (December 2000);
- the Executive's Strategy for Carers in Scotland (November 1999); and
- the Executive's decisions in response to the Report of the Scottish Carers Legislation

In summary, the Act:

- enables implementation of free nursing care (in care homes which provide nursing);
- enables implementation of free personal and other care;
- enables regulation of charging for non-residential social care;
- enables both residents and third parties to make additional payments towards care home fees so that the resident can enter more expensive accommodation than that which the local authority would normally pay for;
- enables provision of care home places in other parts of the UK;
- enables deferred payment agreements to be entered into so that residents may defer payment of all or part of their care home fees due to the local authority so that they do not need to sell their home in their lifetime;
- provides for expansion of access to direct payments for non-residential service users, giving people the ability to purchase their own services;
- provides for an extended right to assessment for informal carers, including young carers, and arrangements to ensure that carers are made aware of this right;



- enables the contribution of carers and their views, as well as the views of the cared for person, to be taken into account by local authorities before deciding on the services to be provided to the cared-for person;
- enables expansion of joint resourcing and management of services relevant to health and community care between NHS Scotland and local authorities;
- enables Ministers to require joint working where they feel services are failing;
- enables extension of the medical list system to cover all GPs working in NHS Scotland;
- provides for extension of the jurisdiction of the NHS Tribunal to enable it to disqualify from the medical list, on grounds of fraud, providers of personal medical services under pilot schemes seeking preferential consideration to return to that list;
- provides for extension of the provisions which enable the recovery from third party insurers of expenses incurred by the NHS in treating casualties of motor vehicle accidents which occur on a road to now include other public places such as a car park; and
- provides for inclusion of the Mental Welfare Commission as a member of the Clinical Negligence and Other Risks Indemnity Scheme.



