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Reference Documents and Links	**Title**	**Link (if applicable)**	
		Coughlan & Ors, R (on the application of) v North & East Devon Health Authority [1999] EWCA Civ 1871 (16 July 1999)	
		National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care - July 2022 (Revised) - corrected May 2023	
V0.1	Draft Guidance for Strategy and Business Planning - 11/07/24	Jacquie Bickers	
V0.2	Updated in line with feedback	Jacquie Bickers	
V0.3	Disputes section added	Jacquie Bickers	
V0.4	Amendment to section 7	Jane Walker	
V0.5	Disputes section amended	Jacquie Bickers/Charlotte Wilkinson	
V0.6	Guidance appendices added referencing SE ADASS framework	Jacquie Bickers	

Contents

1. Introduction

The aim of this guidance is to give staff working in Adult Social Care an understanding of the legal limits to which Portsmouth City Council (the Council) is allowed to meet health needs as part of a charged-for package of care under the Care Act 2014.

The Care Act 2014 sets out duties on local authorities to assess and support adults to meet needs that would have a significant impact on the person's well-being if they remained unmet. Section 18 of the Care Act creates a duty on local authorities to meet eligible care and support needs for adults who are ordinarily resident in their area. Whether an individual's needs are eligible is determined by reference to national eligibility criteria.

The criteria sets out that an individual has eligible needs under the Care Act 2014, where these needs arise from (or relate to) a physical or mental impairment or illness which results in them being unable to achieve two or more of the following outcomes which is, or is likely to have, a significant impact on their wellbeing:

- managing and maintaining nutrition;
- maintaining personal hygiene;
- managing toilet needs;
- being appropriately clothed;
- being able to make use of the home safely;
- maintaining a habitable home environment;
- developing and maintaining family or other personal relationships;
- accessing and engaging in work, training, education or volunteering;
- making use of necessary facilities or services in the local community, including public transport and recreational facilities or services; and
- carrying out any caring responsibilities the adult has for a child.

While undertaking a Care Act assessment if the Council identifies needs which might be met by other agencies (e.g., Housing or the NHS) it should make the necessary referral to the relevant organisation.

Equally, where a person may be eligible for [1]NHS Continuing Healthcare, the practitioner must refer the individual to the relevant Integrated Care Board (ICB) - Continuing Health Care (CHC) team in Portsmouth. The team then has a duty to take reasonable steps to ensure an assessment of eligibility is carried out where it appears there may be a need for such care.

The boundaries of adult social care prohibit the Council from meeting "health needs" as part of a charged-for package of social care under the Care Act unless certain conditions apply.

2. Legal limits of social care

The limit on social care pre-existed the Care Act 2014 and was considered and clarified in 1999 by the Court of Appeal in the [2]Coughlan judgment. The Coughlan case was instrumental in clarifying the legal distinction between healthcare and social care needs and providing a clear boundary line as to which body has responsibility for providing and funding the individual's care.

It is the principles from this judgment that inform section 22 of the Care Act 2014 to place a limit on the care and support that can lawfully be provided to individuals by local authorities. That limit is set out in section 22(1) and is as follows:

'A local authority may not meet needs under sections 18 to 20 (Duty /power to provide care and

[1] National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care - July 2022 (Revised) - corrected May 2023 (publishing.service.gov.uk)
[2] Coughlan & Ors, R (on the application of) v North & East Devon Health Authority [1999] EWCA Civ 1871 (16 July 1999) (bailii.org)

support for adults /carers) by providing or arranging for the provision of a service or facility that is required to be provided under the National Health Service Act 2006 unless

a. doing so would be merely ***incidental*** or ***ancillary*** to doing something else to meet needs under those sections, and
b. the service or facility in question would be of a nature that the local authority could be expected to provide.'

Section 22(3) of the Care Act 2014 provides a further limit of the care and support that can be provided by a local authority. This section prohibits local authorities from providing or arranging for the provision of, nursing care by a registered nurse.

3. Incidental and Ancillary

Care Act 2014, S22 Explanatory Notes subsection (1): provides that a local authority may provide

> **'some healthcare services in certain circumstances, that is, where the service provided is minor and accompanies some other care and support service which the local authority is permitted to provide and is of a nature that a local authority would be expected to provide.'**

This reflects what has become known as the 'quantity and quality test,' arising out of the case of R v North and East Devon Health Authority ex parte Coughlan [2001] QB 213 ("Coughlan").

This means that local authorities are not permitted to meet health needs as part of a support package under the Care Act unless meeting the identified health need is incidental/ancillary:

i. connected with meeting an eligible social care need, and
ii. a minor part of what is going on (and) "of a nature" where the risks involved
iii. are appropriately delegated by NHS staff
AND
iv. can be safely met by the local authority (and)
v. it is appropriate to charge the individual for meeting the health need.

For the exception to apply, both parts of section 22(1) must be satisfied. Namely, that the health need identified is incidental or ancillary to an identified eligible social care need AND that the nature of that health need is appropriate for the local authority to take on in terms of both managing the risk and charging the individual for doing so.

Local authorities need to be alert to "picking up" health needs by default or for expediency. If a District Nurse cannot or does not need to do it, or a carer/family member can do it, this does not make the health care task the responsibility of social care.

4. What is a health need vs social care need?

Whilst there is no legal definition of a healthcare need (in the context of NHS continuing healthcare), in general terms it can be said that such a need is one related to the treatment, control or prevention of a disease, illness, injury or disability, and the care or aftercare of a person with these needs (whether or not the tasks involved have to be carried out by a health professional).

Equally, there is no formal definition of social care needs but they are related to the type of welfare services that local authorities have a duty or power to provide. These include but are not limited to: social work services; information and advice; maintaining independence, social interaction, enabling the individual to play a fuller part in society, protecting them in vulnerable situations and in some circumstances accessing a care home or other supported accommodation - specifically Care Act duties and powers.

5. What happens when a health need is identified?

In order to follow this guidance, health and social care practitioners must be able to identify whether a particular identified need reflects a health or social care need. The outcome of which, has significant

implications for the Council in terms of costs i.e. funding care that it should not be, and for the person being financially assessed to pay for care that should be free at the point of delivery.

Other considerations that must be taken into account are the management of professional accountability and risk. A consistent approach to all residents in Portsmouth is vital to ensure that decisions are lawful, safe and achieve best outcomes for our residents.

There are different points at which queries around the meeting of health needs may arise. These include:

a. The Care Act assessment;
b. Care planning stage;
c. Reviews;
d. When there is a change in need(s);
e. During assessment for NHS Continuing Healthcare.

Where a health need is identified, the Council must consider whether section 22 permits the meeting of this need.

In many cases this will be a straightforward decision. For example, the administration of medication is always a health need. However, the Council can support with the administration of medication e.g. prompting, where it is a part of a visit (incidental) because the person is already being supported with social care needs, such as personal care.

A “medication only” visit under the Care Act should never be agreed on the basis that if the Council were to provide medication only support, this would likely result in a person being unlawfully charged for health care (The Care and Support (Charging and Assessment of Resources) Regulations 2014).

6. Determining Ancillary and Incidental

The key question to ask about meeting the health need is 'would it be incidental or ancillary to the meeting of a social care need or needs?':

a. Is meeting the health need a minor part of what is going on? (incidental) This will be a question of fact and degree in many cases, but if what is required is primarily to meet health needs (either alone or as part of a package of care), then it will be unlawful for the Council to meet these needs as part of a Care Act package.

b. Would meeting a health need of the type and nature be something the Council could be expected to provide as part of a means-tested package of social care? This is about whether it is appropriate in principle to meet a health need of this particular nature, bearing in mind the Council is providing a charged-for package of social care.

c. A care worker from a domiciliary care service commissioned by the Council may carry out delegated healthcare activity from a regulated healthcare professional as a relatively minor part of the person’s broader package of care. However the delegated healthcare activity cannot be the only or main part of the care and support delivered.

d. What is the overall level of risk (before and after control measures and considering likelihood – including proximity and unpredictability)?

e. Can the level of risk be sufficiently mitigated?

f. Can this need only be met by a health professional? If the answer is yes, it will not be lawful for the Council to meet this health need as part of a Care Act package.

g. OR Is it possible and practicable to train others to meet this need safely? If the answer is yes:

- Is there anyone prepared to meet the need? (agency, personal assistant, family carer/member)
- What level of training is required to safely meet this need?
- Can this training be provided?

h. The regulated healthcare professional is the delegator who will remain accountable for the overall management of the person's delegated healthcare maintaining openness, transparency and candour. They are accountable for their decision to delegate and undertake appropriate actions to ensure safe delegation. Where care has been delegated, the delegator may be asked to explain their decision.

i. What level of health oversight and monitoring is appropriate taking into account the risks involved? It is important to consider whether the need is currently being met legally, safely and appropriately.

The following questions will assist in this:

- Who is currently meeting the need?
- Which health professionals are currently involved or have been involved?
- Any risk assessments? Are they up to date and comprehensive?
- Are carers adequately trained?
- Is there appropriate health oversight and monitoring?
- Is reporting/feedback required? If so, what level?
- Do carers know who to contact if needs change or something goes wrong?
- Are health professionals involved in regular reviews?

Is it in principle acceptable for the Council to meet the health need taking into account all of the above? If the answer is YES, the Council may meet the health need as part of a Care Act care package and the care being provided should be recorded in the support plan.

If the answer is NO, the Council is not permitted to meet this health need and the matter must be referred to the ICB.

7. Delegated care tasks

While section 22 of the Care Act gives local authorities permission to meet certain health needs as part of an adult social care package of care when it is in the best interests of the person. There are limits to the nature of healthcare activities that a local authority can choose to accept, given there is no duty on the local authority to meet health needs, even where section 22 permits this.

Any decision made by the Council to agree to the delegation of health care tasks requires that there be robust arrangements in place before delegation can happen safely and appropriately. The social care provider is responsible for the acceptance of the delegated healthcare activities by their workers and must have the necessary governance arrangements, insurance, policies and regulatory requirements in place.

Social care providers and care workers, have a responsibility to decline delegated health tasks if they feel the activity cannot be delivered and managed safely without the appropriate level of training, support, supervision and competence or if a situation changes which makes it unsafe. Equally, the person with care and support needs and the family carer/unpaid carer has the right to decline or withdraw their consent at any stage.

While this list is not exhaustive, the tasks below are the responsibility of health who are accountable for ensuring the task is met safely, legally and appropriately:

- Diabetes care — administer Insulin and other injections
- PEG interventions and risk feeding
- Care calls solely for the administration (not prompting) of medication
- Manual evacuation, enemas, complex continence management
- Insertion and care of catheters/bladder washouts
- Rectal / vaginal insertion / suppositories
- Syringe pump medication

- Tracheotomy care, suctioning, care and support with ventilator
- Transdermal medication
- Care of central venous lines including site care and flushing of dormant lumens
- Complex wound management including treatment for pressure sores
- Administration of BIPAP/CPAP/NIPPY
- Completion of complex physiotherapy.
- Percussion to reduce fluid in chest
- Management of seizures requiring nurse or skilled intervention/PRN medication
- Giving rescue medication
- The provision of NHS services such as patient transport
- Care of Semi-conscious patients
- Pain control / Controlled drugs
- Stoma care

To be clear, any delegated healthcare activity from a regulated healthcare professional that is being considered as incidental and ancillary to the person's care package, must be a relatively minor part of the person's broader package of care and not the only or main part of the care and support delivered. This means that the delegated healthcare activity may not take the service beyond its competence.

Where health care tasks (that do not meet the criteria for continuing health care funding, see section 8) but go beyond what the Council would provide are delegated to a care provider, these cases should be considered for health and social care joint funding. In such circumstances, the health and social care practitioner should follow the local processes that have been agreed and formalised by the Council and the ICB.

Further advice can be found in 'Delegated healthcare activities Guiding principles for health and social care in England' Skills for Care Delegated healthcare activities guiding principles November 2024

8. Primary healthcare need and continuing health care

Some individuals' nursing or healthcare needs are such that the Council is not permitted to meet their ongoing care and support needs, and instead they become the full responsibility of the NHS. These are individuals who have been assessed as having a 'primary health need' through the processes set out in the National Framework NHS Continuing Healthcare and NHS funded Nursing Care July 2022 (Revised) and who are eligible for NHS Continuing Healthcare. The limits of local authority provision and the concept of 'primary health need' arise from the interaction between duties and limitations placed on local authorities under the Care Act 2014 and the duties placed on ICBs and NHS England under the NHS Act.

The key test is the four characteristics of need; namely nature, intensity, complexity and unpredictability. Any one or a combination of these characteristics being present will determine whether an individual has a primary health care need or not.

8.1 Nature

This characteristic looks at the individual's needs, and the care interventions required to meet those needs. The National Framework for continuing healthcare funding provides a number of questions that can be useful in determining whether an individual's needs constitute the required *nature* characteristic to be considered primary health needs. Examples include;

- What is the impact of the need on overall health and wellbeing?
- What are the types of interventions that are required to meet the need?
- Is the individual's condition deteriorating or improving?
- What would happen if those needs were not met in a timely way?

8.2 Intensity

The characteristic of intensity looks at the quantity, severity and continuity of needs. The areas for consideration in this domain include;

- How severe is this need?
- How often is each intervention required?
- How long is each intervention required?
- How many carers are required at any one time to meet the needs?

There is an argument that there is an *intensity* of need where there are numerous interventions required over and above what might ordinarily be expected. Equally, where these care interventions are requiring the involvement of a greater level of staff and for a longer period than, again, this might ordinarily be the norm.

8.3 Complexity

This characteristic looks at the level of skill and knowledge required to meet the individual's needs as well as the interaction between two or more domains.

Points to consider include, as highlighted by the National Framework;

- How difficult is it to manage the needs?
- Are the needs interrelated?
- How much skill is required to address the needs?
- How problematic is it to alleviate the needs and symptoms?

Points to consider, therefore, by way of a working example, would be is there an interaction between a number of domains? Somebody who has marked cognitive impairment may therefore not be able to assess even basic risks.

Where the person is at risk of aspiration due to dysphagia, there is an argument for an increased risk in this area and increased complexity of the management of their nutritional needs if they are unable to follow instructions and assess the risks of not following instructions that could lead to them choking. Equally, somebody who is unable to assess risk and who presents with extreme, challenging, aggressive behaviour is not aware of the consequences of their actions and the risks that they pose to themselves and others.

8.4 Unpredictability

This characteristic considers the degree at which needs fluctuate and create challenges in managing the needs.

Points to consider as highlighted by the National Framework include;

- Does the level of need often change?
- Is the condition unstable?
- What happens if the need is not addressed when it arises?
- What level of monitoring or review is required?

A domain in which *unpredictability* often arises can relate to behaviour. Somebody who presents with unpredictable behaviour can be more difficult to manage if and where there are no triggers to their behaviour occurring. They can require a far greater degree of supervision and interaction from staff if they pose a risk to themselves or others without warning.

In summary, the concept of a primary health need is crucial to the determination as to whether somebody has an entitlement to continuing healthcare funding.

9. The Care and Support Plan

The Council has a statutory duty to complete a care and support plan whenever it provides any services under the Care Act, even if:

a. The plan also includes services being met by others, such as the ICB; and
b. Another organisation is also completing a similar plan (for example a health plan).

The care and support plan should record all of the services proposed, for example;

a. Adult care and support services; and
b. Any dedicated health services; and
c. Informal support and services (for example carers and community support).

10. Monitoring and Review of Joint Packages of Care

This section of the procedure should be used as a supplement to (and not a replacement of) Care Act review duties.

10.1 Monitoring services

Appropriate and proportionate monitoring arrangements should be agreed with the person, any carer and the lead health professional whenever:

a. The person's needs are likely to change;
b. The person's situation is likely to become unstable;
c. The person's circumstances are anticipated to change;
d. The level of risk to the person is not well managed.

Arrangements should include:

a. Who will monitor what;
b. How information will be recorded and shared; and
c. How monitoring arrangements will be reviewed.

10.2 Review

The timing of a review

The Council is required to review the person's Care and Support Plan in line with the Care Act 2014 (6-8 weeks after the plan begins then no less than annually after this).

The ICB normally hold an initial review of the plan within 3 months and then every 12 months after that.

Wherever possible a health plan review and a care and support plan review should be scheduled for the same time to avoid duplication for the person and make the most effective use of available organisational resources in the ICB and the Local Authority.

11. Dispute Process

The Council can only raise an inter-agency dispute once the ICB has decided on eligibility for NHS continuing healthcare. If the health and social care practitioner is of the view, after completing the Decision Support Tool (DST), that the needs of the person are over and above that which the Council can meet, it is the responsibility of the health and social care practitioner to complete a matrix from the DST domains. This will identify the funding responsibility to the Council and to the ICB

Equally, the individual and/or their representative has the right to request an independent review from NHS England (pending abolition of the quango) if they disagree with the CHC outcome decision. The ICB should notify the individual and/or their representative of this right when sending the final decision letter.

During the management of an inter-agency dispute, any existing care arrangements will remain in place until such time that the inter-agency dispute is resolved. If there is an urgent need for adjustment of the care arrangements, this will need to be agreed by the ICB and the Council and commissioned by the relevant authority.

The expectation is that the Council and the ICB will seek to operate through consensus and resolve issues locally. Dispute resolution should follow the principles laid out in the National Framework to develop a genuine culture of partnership working in relation to NHS CHC.

APPENDIX 1 – Identifying Health Needs Guidance approved by SE Region ADASS

1. Some health needs may be directly associated with achieving daily living activities, whilst others are less obviously connected.

2. **Section 1** of this appendix deals with recognising health needs that are closely connected with specific social care eligibility outcomes. **Section 2** deals with health needs that may not be directly connected to the achievement of a specific outcome but could impact on some or all of them.

SECTION 1: Eligible Outcomes

Criteria	Description	Elevated risks giving rise to health needs include	Health professionals	Risk assessment tools
MANAGING & MAINTAINING NUTRITION	This is about the daily activities of eating and drinking. The activity of eating involves food being placed inside the mouth, chewed and swallowed and will constitute social care where no elevated risks are present.	• Managing the risks of malnutrition and dehydration • Managing risks relating to airways during eating and drinking where a person has difficulty swallowing • Managing clinically assisted nutrition and hydration (CANH), such as a PEG, even when it is non-problematic • Managing other clinical interventions • Management of eating disorders • Management of food allergies and intolerances	• SALT • GP/district nurse • Hospital • Dietician • Nutritionist	Malnutrition universal screening tool (MUST)
MAINTAINING PERSONAL HYGIENE	This is about the activity of washing and grooming, including laundry.	**Preventative interventions due to an elevated risk of skin breakdown (Waterlow score of 10+) including:** • Repositioning (and equipment used for that purpose) • Monitoring skin that is at risk • Preventative application of creams **Treatment, care and aftercare where breach of skin integrity has occurred, including:** • Monitoring and dressing any wound (graded 1 to 4) whether or not it is responding to treatment	• Tissue viability nurse • GP/district nurse • Hospital	Waterlow Tool (assessment/ prevention/ treatment)

		Management of skin conditions		
MANAGING TOILET NEEDS	This is about the adult's ability to access and use the toilet (a receptacle for the hygienic disposal of human waste).	• Management of clinical incontinence • Clinical interventions • Ongoing management of clinical disposal of waste following clinical intervention (for example, stoma, catheter) • The management of associated elevated risks (e.g. to skin integrity) • Use of medication • Monitoring output, for example, to manage the risks of constipation • Management and prevention of UTIs • Bladder washouts • Irrigation • Manual evacuation • Management of constipation and other bowel problems	• Continence nurse • GP/district nurse • LD Nurse • Hospital	Bristol stool chart
BEING APPROPRIATELY CLOTHED	This is about the adult's ability to dress themselves appropriately (e.g. weather)	• Support required to manage a person's behaviour if they do not want to be appropriately clothed • Support required to manage risks related to damage or removal of clothing		
BEING ABLE TO MAKE USE OF THE HOME SAFELY	This is about the adult's ability to move around the home safely.	• Falls risk prevention (where support required to manage risk of injury) • Risks on transfers physical harm loss of muscle tone pain on movement - spasms or contractures	• Occupational Therapy • Physiotherapy • GP/ District nurse • Hospital	Falls Risk Assessment Tools (FRAT)
MAINTAINING A HABITABLE HOME ENVIRONMENT	This is about whether the home is clean and maintained with use of essential amenities	• Risks of infection • Where additional cleaning required due to illness • Risks related to damage to the home caused by a person's behaviours of concern	• GP/ District nurse • Hospital • Clinical Psychologist or other specialist clinician	
DEVELOPING & MAINTAINING FAMILY OR OTHER	This is about avoiding isolation and loneliness	• Management of risks related to a person's behaviours of concern		

PERSONAL RELATIONSHIPS				
ACCESSING & ENGAGING IN WORK, TRAINING, EDUCATION OR VOLUNTEERING	This is about the adult's ability to contribute to society and apply themselves to the stated activity	• Management of risks related to a person's behaviours of concern		
MAKING USE OF NECESSARY FACILITIES OR SERVICES IN THE LOCAL COMMUNITY	This is about the adult's ability to get around in the community safely and use facilities such as public transport, shops or recreational facilities.	• Management of risks related to a person's behaviours of concern • NB: Transport to health appointments should be arranged by health if the individual cannot use public or their own transport.		
There may well be relevant health needs connected with difficulties achieving the above outcomes. These are likely to be reflected in the non-physical domains, such as psychological needs including prevention of deterioration of mental health.				

SECTION 2 – Other health needs that might need to be considered

There are also a number of health needs that are not necessarily associated with any specific outcome. These include the following areas:

a) <u>Prevention, treatment and symptom control (drugs, medication and pain management)</u>
Prevention of illness, treatment and symptom control are the core business of the NHS, under sections 1 and 3 of the Health Act. They form no part of the eligibility criteria and do not reflect social care needs.

All of the following reflect health needs:

- Support (prompting/supervision) with routine medication that manages symptoms effectively with no side-effects
- Administration of medication required by
  - Registered nurse
  - Carer or care worker (whether specifically trained for the task or not)
- Problematic and non-problematic PRN regimes
  - Include standby time for administering medication if not already present to meet social care needs
- Individuals who are compliant or non-compliant with regime
- Pain management
- Symptom control and monitoring (e.g. blood testing, observation)

Any support in this category provided by the local authority under the Care Act must be under the permissions given by section 22.

Consideration must always be given as to whether section 22 permits the local authority to meet these health needs as part of a charged-for Care Act package of care, and whether it is otherwise

appropriate to do so.

b) Management of the airways/breathing difficulties

Managing and maintaining the airways will always reflect an elevated risk that is health in nature due to the immediacy and severity of the consequences of an obstruction.

Any preventative action, monitoring, management, control and treatment of any breathing problems will reflect a health need. This will include physiotherapy delegated treatment, such as chest massage and the need to reposition a person to maintain airways and effective breathing.

Care Act support may be relevant in terms of achieving the identified eligibility outcomes.

c) Altered States of Consciousness

The risks presented in this category are outside the realm of social care due to the elevated risks flowing from loss of consciousness, including risks to the airways and injury.

d) Managing the risk of injury (for example, through Challenging Behaviour or Falls.)

This includes prevention of an imminent risk of injury as well as responding to any incidents where the risk is ongoing.

- Use of restraint, whether physical or chemical will always reflect a health need. Proportionate response required to an immediate risk of injury.
- Standby time. (This is relevant in considering whether meeting the health need is incidental or ancillary to social care.)

e) Behaviour Domain

The assessment of needs of an individual with serious behavioural issues should include specific consideration of the risk(s) to themselves, others or property with particular attention to aggression, self-harm and self-neglect and any other behaviour(s), irrespective of their living environment.

When approaching the behaviour domain, it is helpful to consider:

- An immediate risk of physical harm (injury) is a health need as it represents an elevated risk that does not come within social care outcomes
- An immediate risk of self-harm (injury) is a health need as it represents an elevated risk that does not come within social care outcomes
- The risk of self-neglect could be health or social care depending on the circumstances
- When assessing the severity and frequency/unpredictability level of risk, the National Framework approach to well-managed needs must be followed, namely that the level of risk created by the need must be considered as if the support provided were not available ie. the “unmanaged risk”
- Risk = risk to self, others or property
- If retreat and return is required, the person should not be described as “compliant with care”.

APPENDIX 2 – Pathway for considering applicability of section 22 when health needs have been identified

This pathway applies whenever a health need has been identified (using appendix 1) and therefore section 22 requires consideration as set out in paragraphs 6 above.

STEP 1 involves consideration of Section 22(1)(a) "incidental/ancillary"
STEP 2 involves consideration of Section 22(1)(b) "nature"
The key questions (in bold) in steps 1 and 2 must both be answered in the affirmative for the local authority to be legally permitted to meet this health need.

STEP 1: MERELY INCIDENTAL OR ANCILLARY

Key question: Would meeting the health need be merely incidental or ancillary to the meeting of a social care need or needs?
This is primarily a quantitative analysis that focuses on the level of support that is required to meet the health need/s.

*The **first** aspect of this question is:*	*The **second** aspect of this question is:*	*Other elements to consider:*
Would meeting this health need be in connection with meeting an eligible social care need? (ancillary) If meeting the health need is not connected with any social care, then the local authority will not be permitted to meet this health need. An example of when this may be permitted is helping someone clean themselves due to incontinence, at the same time as helping them have a wash.	*Is meeting the health need a minor part of what is going on? (incidental)* This will be a question of fact and degree in many cases, but if the majority of what is required at any given visit reflects meeting health needs (either alone or in combination), then it will be unlawful for the local authority to meet these needs as part of a Care Act package. An example of this might be giving simple medication from a pre-prepared dosette box, while supporting someone to eat or prepare a meal.	The more significant the health risks, the less likely they will be incidental or ancillary.

STEP 2: NATURE

Key Question: Would meeting a health need of this nature be something that a local authority could be
expected to provide as part of a means-tested package of social care?
This is about whether it is appropriate [acceptable/expected/safe/proper] in principle for the local authority to meet a health need of this particular nature, bearing in mind the local authority is providing a charged-for package of social care.
Relevant questions include:
• What is the overall level of risk (before and after control measures and considering likelihood – including
proximity and unpredictability)?
• Can the level of risk be sufficiently mitigated?

Mitigation of Risk
What risks are involved?
Use national or local risk assessment tools to identify any elevated risks. The following questions should be asked:

Can this need only be met by a health professional?	***OR***	*Is it possible and practicable to train others to meet this need safely?*

If the answer is yes, it will not be lawful for the local authority to meet this health need as part of a Care Act package.		If the answer is yes, go on to consider the following: • Is there anyone prepared to meet the need? (agency, PA, family member) • What level of training is required to safely meet this need? • Can this be provided? • What level of health oversight and monitoring is appropriate taking into account the risks involved?

It is important to consider whether the need is currently being met legally, safely and appropriately. The following questions will assist in this:

- Who is currently meeting the need?
- Which health professionals are currently involved or have been involved?
- Any risk assessments? Are they up to date and comprehensive?
- Are carers adequately trained?
- Is there currently appropriate health oversight and monitoring?
- Is reporting/feedback required? If so, what level?
- Do carers know who to contact if needs change or something goes wrong?
- Are health professionals involved in regular reviews?

Is it in principle acceptable for the local authority to meet the health need considering the above matters?

If the answer is **yes**, the local authority may meet the health need as part of a Care Act package. Record the reasons for the decision in the [care plan] and inform the individual that health needs will be met as part of the Care Act package.	If the answer is **no**, the local authority is not permitted to meet this health need, and the matter must be referred to local health services as set out in Appendix 3.