



Who Cares Who Pays?

Funding Long-Term Care
and related Legal Issues

***Wace Morgan Solicitors
21 St Mary's Street
Shrewsbury
SY1 1ED
01743 280 100***

What happens if you go into a care home? Who pays?

(1) NHS CONTINUING HEALTHCARE

The cost of care if you have a **PRIMARY HEALTH NEED** should be **FREE of charge** and the **responsibility of the NHS**. In many cases this should be considered **FIRST** and you should ask to have advice about it to ensure that all relevant assessments have taken place (please see our additional handout – ‘*Who should fund long term nursing care? Should it be the NHS? A guide to NHS Continuing Healthcare Funding*’).

(2) OTHER ‘FREE’ CARE AVAILABLE

Intermediate care: If your admission to a care home has been arranged as part of a package of “intermediate care” where you are having short-term therapy or treatment, either following a period in hospital, or to avoid you having to go into hospital, it should be free. Such care is time limited, and not normally longer than six weeks. (*please note the additional information at the end of this leaflet concerning the changes made to hospital discharge following the introduction of the Coronavirus Act 2020*)

Mental Health “aftercare” services: If you have previously been detained in hospital under **Section 3 Mental Health Act 1983** (this would be for treatment) your ongoing community care, specifically relating to such mental health needs, should be provided free under Section 117 of the Act.

Help for War Pensioners: The Veterans Agency, formerly the War Pensions Agency, can pay towards the cost of a care home providing nursing for War Pensions in very specific circumstances. This is for people with a Higher Rate of War Pension.

(3) LOCAL AUTHORITY FUNDED SOCIAL CARE

If your capital is below £23,250 (in England) or **£50,000** (residential in Wales) / **£24,000** (care at home in Wales) and you have eligible care and support needs, you will receive help from your Local

Authority/Social Services. This can include the NHS funded nursing care contribution if you are a patient in a nursing home and have been found ineligible for NHS continuing healthcare funding.

Local Authorities often only pay up to a “standard” amount and as a result there can be a shortfall which families or other third parties are asked to pay. **This should be resisted whilst legal advice is taken.** Please see our additional handout: “***Should You Pay a Third Party Top Up?***”

Much of your income (including £1.00 per week “tariff” income, for every £250 between £14,250 to £23,250 (only in England)) will go towards your care costs and will be invoiced for by the Local Authority. Certain income is disregarded, including 50% of your occupational or personal pension providing you pass 50% of this to your spouse or civil partner if they are not living in the same home.

You must be left with £24.90pw (England) / £29.50 (Wales) for personal expenses from your income. Please also note that in Wales (only) the maximum contribution you will be required to make towards a care package in your own home is £100pw.

When the Local Authority carries out its means test the value of your **property (your main/only home)** **will be disregarded** if:

- Your placement is temporary;
- You leave, living in the house, a partner, former partner or civil partner (except an estranged or divorced partner, former partner or civil partner unless a lone parent);
- A specific relative of yours or a family member (from a specified list) who is:
 - Aged 60 or over,
 - Under 16 and a child whom you are liable to maintain, or
 - Incapacitated (someone in receipt of incapacity benefits or has needs which would qualify for such benefits)

The Local Authority has a discretion to disregard the value of the property if a third party continues to live there. It may be reasonable, for example, to disregard a dwelling’s value where it is the sole residence of someone who has given up their own home in order to care for the resident.

Even if the above disregards do not apply to you, the value of your main or only home should be disregarded for the first 12 weeks following a 'permanent' admission to a care home. Thereafter, local authorities must offer 'deferred payments' to those who have eligible needs to have their care provided in a care home and have insufficient financially assessable resources to fund their care other than their main or only home.

What about co-owned property? Perhaps you own a property with your son or daughter. In certain circumstances the value of your share may be nil because no one will be prepared to purchase your share on the open market, given its obvious restrictions. Legal advice should be obtained and your position put forward clearly to the local authority.

Other assets which should be disregarded in the Council's financial assessment include:

- Capital of £14,250 or less (England) £50,000 / £24,000 (Wales)
- Personal possessions, unless purchased with intention of reducing one's capital in the assessment.
- Capital value of a life interest in land or trust fund.
- The surrender value of any life insurance policy.
- Interest in a personal injury trust.

'Deliberate deprivation' - If you give away assets or otherwise dispose of them in order to put yourself in a more favourable position to obtain Local Authority funded assistance with your care home fees, the Local Authority can assess you as if you still have such assets and (following implementation of Care Act 2014) also can seek to request the recipient of the gift to pay their relative's care fees and, as such, debt recovery action may be pursued. Please note there is no time limit for Local Authorities to investigate the possibility of a person having deliberately deprived themselves.

(4) SELF-FUNDED CARE

If you have care and support needs, which are ancillary and incidental to your need for accommodation of the kind which Social Services are required to provide and, as such, you do not qualify for NHS

continuing healthcare funding, **AND** your available capital is **over £23,250** (England) or **£50,000 / £24,000** (Wales) you will need to fund all your care costs yourself.

You will however have help towards this from:

- **Attendance Allowance/Disability Living Allowance/Personal Independence Payments**
– Higher rate £89.15pw / Lower rate £59.70pw (additional mobility components for DLA & PIP: £62.25pw / £23.60pw).
- **NHS Funded Nursing Care Contribution** – England £183.92pw (those already in receipt of higher band: £253.02pw) / Wales £179.97pw.

CHANGES TO HEALTH & SOCIAL CARE IN LIGHT OF COVID 19

SOCIAL CARE:

Emergency legislation, in the form of the Coronavirus Act 2020, and subsequent 'Care Act Easements' Guidance (issued by the Secretary of State for Health & Social Care) were published at the end of March 2020, in order to deal with situations arising from the global pandemic.

As a result of the above, Local Authorities are permitted to lawfully prioritise whose needs, and what type of needs, it will meet, rather than being required to meet **all** eligible assessed need. There will be no duty to carry out assessments of individuals' needs nor to review care plans.

There is only a **duty** to provide services to disabled adults, if the failure to do so would be a breach of the European Convention on Human Rights (ECHR).

However, in order to establish whether there could be a potential breach, it is expected that any Local Authority permitted to utilise the easements will still be required to undertake some form of assessment – it remains a public law duty to make 'reasonable enquiries'. The Guidance also requires Local Authorities to "clearly record" such enquiries.

Please note that Social Services should only take a decision to begin exercising the Care Act easements, "when the workforce is significantly depleted, or demand on social care increased, to an extent that it is no longer reasonably practicable for it to comply with its Care Act duties and where to continue to try to do so is likely to result in urgent or acute needs not being met, potentially risking life."

DISCHARGE FROM HOSPITAL:

Also at the end of March, and as part of the emergency provisions, the Department for Health & Social Care brought into effect updated Discharge Service Requirements. This has recently (21 August 2020) been replaced with the NHS publication of: "Hospital Discharge Service: Policy and Operating Model", effective from 1 September 2020.

This new Policy places a mandatory requirement on health and social services to adopt the 'Discharge to Assess' model, which means that many individuals with complex needs should receive a short-term package of care and support at NO cost to them.

The objective of course being to ensure that NHS hospitals continue to have capacity to support patients with acute healthcare needs, by minimising bed-blocking. It requires health and social services to work together to arrange safe and prompt discharge of patients who no longer require a hospital bed.

If a patient requires a period of support at home to recover or rehabilitation/ongoing 24-hour nursing care in a bed-based setting, the cost of their care and support should be fully-funded for up to six weeks, regardless of where they receive that care.

During these six weeks, relevant eligibility assessments should take place and if this has not been concluded during that period, fully-funded support should be extended to allow more time for these assessments to be undertaken.

NHS CONTINUING HEALTHCARE:

The duty of CCGs to assess individuals for CHC eligibility was suspended in March by the Coronavirus Act 2020, however there is now a reintroduction of NHS CHC, following the DH&SC's Guidance on 1 September.

This acknowledges that, in the absence of proper assessments taking place relating to a person's long term needs, it is reasonable to expect the statutory bodies to continue to fully fund their care.

Whilst the above provides some reassurance, given the crisis we are facing, the reality remains that many individuals will still be faced with many complex funding issues relating to their ongoing care, following the outcome of the assessment and decision-making process.

**For more information or to arrange an appointment please contact our
Elderly Client & Care Funding Team on 01743 280 100.**