

REPORT OF DIRECTOR OF COMMUNITY SERVICES

SOCIAL CARE & HEALTH SCRUTINY COMMITTEE 29TH FEBRUARY 2016

SOCIAL SERVICES WELL BEING (WALES) ACT 2014 POLICY AND PROCEDURE REVISIONS FOR CHARGING ADULTS FOR SERVICES

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1. Introduction and Background

- 1.1 Members will be aware that the Social Services and Well-being (Wales) Act 2014 has been passed by The National Assembly for Wales and that different parts of the Act are now coming into force. The Act provides the statutory framework to deliver the Welsh Government's commitment to focus on well-being, rights and responsibilities. Part 5 of the Act specifically relates to charging service users for the services they receive and this part, together with other parts of the Act, come into force on the 6th April 2016.
- 1.2 The existing financial assessment and charging statutory framework currently stems from separate pieces of legislation, mainly the National Assistance Act 1948 as regards charging for care home placements, and the Social Care Charges (Wales) Measure 2010 in respect of charging for non-residential care. As such the existing framework is made up of a number of separate regulations and guidance, some of which are now fragmented and out of date. The aim of the new framework is to provide across Wales a more streamlined and less inconsistent system than is currently in place.
- 1.3 The new Act is supported by a set of different Regulations and the Regulations relating to charging were only laid before the National Assembly for Wales on the 3rd November 2015. The Act and the Regulations are also supported by a Code of Practice and Local Authorities must act in accordance with the requirements contained in the Code. The Code was provided to Local Authorities at the end of November 2015 and this gives Local Authorities a very tight time scale in which to implement the legislation as from the 6th of April 2016.
- 1.4 From 6th April 2016 the existing legislation will be replaced by the Act, Regulations and a Code of Practice made under the Act, therefore, the existing regulations and guidance in relation to financial assessment and charging will also be replaced. Consequently there are areas of policy and practice which need to be reviewed to ensure compliance with the new requirements.

- 1.5 This report sets out the major areas, specifically relating to financial assessments and charging, which need to be considered at the outset and it is proposed that during the next financial year a new revised policy, bringing together elements of the existing policies currently in place together with any changes from this report, will be brought back to members for approval.
- 1.6 All of the issues contained in this report need to be considered and decisions made on how the Authority wishes to proceed. Any delay in reaching a decision in time to implement the Act will mean that the Local Authority may not be able to charge some service users from April and consequently this will result in a budget shortfall.
- 1.7 Welsh Government has confirmed that it does not intend to update the Regulations and Code until April 2017 at the earliest, so as to provide authorities with a fixed position in which to introduce the new financial assessment and charging framework. From then on it is the intention that the Regulations and Code will be reviewed annually and updated as appropriate.
- 1.8 The Local Authority needs, therefore, to ensure that the financial assessment and charging arrangements from 6th April 2016 comply with the requirements of the Act, the Regulations and the Code. The new arrangements will need to apply to all new care and support recipients from that date however, there will be transitional arrangements for existing service users to allow authorities to update their financial assessments and charges during 2016-17 as care assessments are updated in-year. Such arrangements will result in two tier charging with some service users benefiting from reduced charges before others simply because the annual review of their care needs falls earlier in the financial year. There is potential for this to be difficult to manage and therefore there are proposals below on how to proceed next year.

2. Summary of Changes within the Act

- 2.1 For the most part the framework being introduced closely follows the existing framework. In summary the changes being introduced through the new financial assessment and charging framework are:
- a single financial assessment and charging framework for both non-residential care and residential/nursing care, and for contributions or reimbursements for direct payments;
 - set information to be provided to a person before they are assessed, with that person having 15 working days to provide any information or documentation an authority requires to complete the assessment;
 - up to 6 weeks free reablement to enable a person to maintain or regain their ability to live independently at home. The intention is that it is provided on each occasion where a person requires reablement to maintain or regain their independence;
 - the extension to residential/nursing care of the requirement to provide a person with a statement of their charge as currently required in charging for non-residential care;

- the extension to residential/nursing care of the requirement to operate the review process currently as required in charging for non-residential care;
- the ability of a local authority to charge a set level of interest on the amount deferred in a deferred payment agreement if it chooses;
- short-term residents in a care home (ie those whose stay is not exceeding 8 continuous weeks) being charged as if they were still receiving non-residential care at home;
- the disregard applied to a War Disablement Pension in a financial assessment will, from 6th April 2016, be at least £25 per week when charging for residential/nursing or non-residential care, rather than £10 per week at present;
- the minimum income amount in residential/nursing care (the personal expenses allowance at present) will be, from 6th April 2016, £26.50 per week for local authority supported residents rather than £25.50 per week at present;
- a statement of a person's charge for residential/nursing care or non-residential care, or a reimbursement or contribution for direct payments, must be provided to them before a local authority can collect the charge. However, a person's liability for these charges commences on the day they first receive residential/nursing care, non-residential care or direct payments;
- Savings credit to be included in the non residential financial assessment.

2.2 In terms of the major elements of the existing framework that remain unchanged under the new framework these can be summarised as:

- the main categories of people, and the main categories of care and support, for which a charge cannot be levied are unchanged (e.g. Section 117);
- the operation of the capital limit and its level (i.e. £24k) remain unchanged for 2016/17;
- the operation of the minimum income amount (the buffer currently) and the disability related expenditure allowance in non-residential remain as now;
- the present savings disregard in a financial assessment, and its level, remains unchanged;
- the arrangements on a person's choice of accommodation, and the ability of an authority to charge an additional cost (referred to as a top up at present) for more expensive accommodation chosen, are unchanged;
- The maximum weekly charge for non residential care to remain and the amount to remain unchanged at £60 per week for 2016/17.

3. Practice and Policy revisions and changes

3.1 Charging for Placements into a Care Home

- 3.1.1 Currently the Local Authority has a duty under the National Assistance Act, 1948 to charge for placements into a care home. However, in the new Social Services and Well-being (Wales) Act 2014 the Local Authority has discretion to charge for placements into a Care home. This change aligns charging for care home placements with charging for non residential services. The Authority has always charged for placements into a care home and therefore the recommendation below maintains these arrangements.
- 3.1.2 The Local Authority has previously decided to charge for a range of non residential services, and the Local Authority now needs to consider whether to continue to charge for placements into a Care Home beyond April 2016.
- 3.1.3 The implementation of the new Act will not result in someone paying more than they would have under the National Assistance Act if charges continue. The department generates approximately £12m per annum from charging for placements into a care home and this income is a major element of funding to deliver services and any decision to reduce or cap the charge, or not to charge at all will have a significant effect on the department's budget and subsequently on the Authority's budget.

Recommendations

1. Carmarthenshire will continue to charge for placements into a care home other than for those which are excluded by the Act. Carmarthenshire will charge for all placements into a care home from the first day of placement.
2. The charge will be based on recovering the cost of the placement in full subject to the resident being financially assessed in accordance with the legislation, regulations, code and local policy to pay less than the full cost, in which case the resident will be charged their assessed charge according to their means.

3.2 Short Term Placements into a care home

- 3.2.1 Currently the legislation does not differentiate short term placements other than as an element of a temporary placement. The current legislation allows for a placement to have a flat rate charge without a financial assessment for up to 8 weeks, but the charge must be affordable by the resident. This Local Authority applies this condition for respite care placements and members approved a policy to apply a flat rate charge for the first 6 weeks (42 days) in any financial year.
- 3.2.2 The new legislation identifies a short term placement as being a stay not exceeding 8 weeks. Where a placement meets this condition, then where the Local Authority applies a charge for the placement, it must undertake a financial assessment of the person's means as though the service user were receiving non residential care. Further guidance is being issued by Welsh Government to clarify the application of a stay not exceeding 8 weeks, and it is understood that the guidance will state that the condition applies to a stay not exceeding 8 weeks on any one occasion. Service users can therefore have multiple stays which are classed as short term which cumulatively add up to more than 8 weeks.

- 3.2.3 As mentioned above, in setting a flat rate charge for respite care the Authority had to consider affordability and consequently the charges for 2015/16 were set at £112.99 for adults with a learning disability and £138.10 or £188.36 for anyone else depending on certain Department for Works and Pension benefits.
- 3.2.4 Respite care is one service that falls under this new condition and the outcome of this change is that the charge for service users accessing respite care will be capped at £60 per week with many paying far less or having a free service.
- 3.2.5 As there is now a requirement to assess someone placed as short term in a care home as though they were receiving non residential services there does not appear to be any logic to retain separate respite charges, but to replace these with the same charge as for temporary and permanent placements (i.e. the full cost of the placement). If this change were to be approved, then members need to be aware that the charge for service users who have one or two day respite placements on any one occasion will increase (because the charge per night will be higher). However, this does not necessarily mean that all those individuals will pay more for the service they receive because their charge will be determined by the financial assessment.
- 3.2.6 Some service users have patterns of respite care which, as a result of the changes in the Act and proposals within this report, may mean that they end up being asked to pay more for their respite care. There is some merit, therefore, in including some protection for these service users for a transitional period. It is therefore proposed that, where a service user has respite care, they will not be asked to pay any more for the episode of respite care only, than they would otherwise have paid before 6th April 2016. This protection/transition period will last up until the service user has a review of their care plan or until 31st March 2017 whichever is the sooner. This will allow service users time to understand the effect of the changes and to make informed decisions on future episodes of respite care. In any event no one will be asked to pay more than £60 per week with many paying much less or having a free service.

Recommendations

3. The charge per night for all short term placements (including respite care) will be based on recovering the cost of the placement in full. For placements into a Local Authority care home the charge will be the standard charge and for placements into an Independent Sector care home it will be the contracted amount. (Service users would pay a maximum charge of £60 per week with many paying far less or having the service free)
4. That the non residential assessment rules be applied to stays which are assessed at the outset as not exceeding 8 weeks on any one occasion and does not apply to temporary placements and permanent placements.
5. That short term stays that extend beyond 8 weeks on any one occasion will be charged as though the resident is temporary or permanent as appropriate from the first day of the 9th week and in line with definitions within the Act, Regulations and Code.
6. A period of transitional protection is implemented so that where a service user has respite care, he/she will not be asked to pay any more for an episode of respite care

only, than they would otherwise have paid before 6th April 2016. This protection will last up until the service user has a review of their care package or until 31st March 2017 whichever is the sooner.

3.3 Commencement of charge

- 3.3.1 Currently there are different rules as to when a charge can be applied from. In the residential/nursing care legislation the charge is applied from the first day of the service irrespective of when the financial assessment is completed. This allows time to deal with the more complex issues around property ownership and value etc. whilst not losing income from charges during this period.
- 3.3.2 Currently charging for non residential services has different rules. Firstly the service user must be given 15 days to complete the financial assessment form and supporting information and can ask for reasonable extensions. A service user cannot be charged for a service until the financial assessment has been completed and a statement of the charge issued to the service user. In the current policy Carmarthenshire will not charge for non residential services until a statement of the charge has been issued.
- 3.3.3 The new Act brings all of these requirements together to be applied to both residential/nursing care and non residential care. In future there is a requirement to issue a statement of a person's charge before the charge can be collected for all services. Although there is still a requirement to give individuals 15 days to provide financial information to undertake a financial assessment and to allow extensions, it is now possible to apply the charge from the first day of service in all cases for placements into care homes and for non residential services.

Recommendation

7. Carmarthenshire will apply its charges from the first day of service for all services with a charge. This will apply to non residential services and placements into a care home.

3.4 Additional cost for a care home placement

- 3.4.1 Currently the Authority has a duty to meet the costs of a person's assessed care in a care home. The service user, in certain circumstances, can choose a more expensive care home but the additional cost (i.e. the difference between what the Authority will pay for the placement and the amount the care home charges for the placement) of the more expensive placement has to be funded by someone other than the Council. There are rules and conditions relating to who can pay these additional costs.
- 3.4.2 The new Act maintains the ability for a service user to choose a care home, and although it appears to clarify when the service user themselves can pay the additional cost, there are still limitations for some service users. The Act also sets out how choice needs to be applied in practice, in particular, to ensure service users have a genuine choice the Authority must have more than one option available for a person to choose from within its standard rate (i.e. the published rates the Local Authority pays for a placement into a care homes of different types). If there is not more than one available choice at the Authority's standard rate then the choice will need to include more expensive homes. If the service user chooses the more expensive home then the Authority will need to fund the additional cost itself, as it has a duty to fund the assessed care and support required by the service user. This issue has both practical

as well as potential resource implications for the Authority if placement arrangements are not managed effectively. In addition, this issue may also have implications for the Authority's in-house care home provision where the current cost may inhibit choice for many potential residents.

- 3.4.3 This issue does not impact on any service user who is able to pay for the full cost of the placement (e.g. where their capital is above the threshold currently £24k) as they still have unrestricted choice. They will reimburse the Council for the full cost of the placement and will only be affected when the resident's financial assets fall below the capital thresholds as currently.
- 3.4.4 The main issue with this part of the legislation is where the choice available is between two care homes which have different rates and where the service user chooses a care home which is more expensive again. In determining the additional cost the code states that the Authority must consider what it would have paid for accommodation of the same type as that chosen at the time. It goes on to say that the Authority should not default to the cheapest rate or any other arbitrary rate when calculating the additional cost. It would seem fair therefore, as a consistent way of calculating the additional cost, to calculate the additional cost from the mid-point of the costs between the two care homes that was the basis of the choice at the time.
- 3.4.5 Members also have to consider how wide the geographical area should be to form the basis of choice for service users. There is no guidance within the Act, Regulations or Code, but where a service user needs a choice of care homes in a particular restricted geographical area then such restrictions would be included within the care and support plan as part of their care needs. If there are no restrictions within the care and support plan then choice should be applied on a county wide basis. This would mean that some service users would inevitably need to be accommodated away from their locality where placements are not available at the Authority's standard rates.

Recommendations

8. That choice of Accommodation offered to a service user is based on two care homes of the same type anywhere in the County and not restricted geographically unless there are specific geographical needs included in the Care and Support plan.
9. That where a service user, who is not assessed to pay the full cost of the placement, chooses accommodation which is more expensive than the options offered at the time of placement then the additional cost will be calculated from the mid-point of the rates charged by those two care homes offered.
10. That where a service user is able to pay for the full cost of their placement then in accordance with the legislation they can choose any care home and will be required to pay the full cost of their placement.

3.5 Charging for support in Education

- 3.5.1 The current legislation encourages Local authorities to develop charging policies which encourage training and employment and as such this Authority does not charge for support in these settings.

3.5.2 The new legislation is intended to make charging consistent, fair, and clearly understood. The code states that Local Authorities must encourage and enable those who wish to stay in or take up employment, education and training to do so. Currently the Authority charges some service users for care and support in educational settings and in order to be consistent it would be appropriate to withdraw the charge for care and support which is assessed as being needed in an educational setting.

Recommendation

11. Carmarthenshire does not charge for assessed care and support to a service user where it is provided to the service user in an educational setting and whilst attending a recognised educational course.

3.6 Transitional Arrangements

3.6.1 Welsh Government have included transitional arrangements for existing service users to allow authorities to update their financial assessments and charges during 2016-17 as care assessments are updated in-year. Such arrangements will result in two tier charging with some existing service users benefiting from reduced charges before others simply because the annual review of their care needs falls earlier in the financial year. There is potential for this to be difficult to manage and therefore it is proposed to apply the new Act to all service users, both existing and new service users from the 6th April 2016. It will take in excess of 6 months to reassess everyone and some reduction in charges will inevitably need to be back dated and will result in a refund to some service users. However, financial assessments will be prioritised to minimise this wherever possible.

Recommendation

12. That the new Act, Regulations and Code will be applied to existing service users from the 6th April 2016.

4. Existing policies

4.1 For the most part the framework being introduced closely follows the existing framework and therefore much of the existing policies are still compliant. It is therefore proposed to retain the existing policies except for those elements of the policies and practices which are changed as the result of decisions stemming from this report and those elements which are now not compliant with the new legislation.

Recommendation

13. That the existing policies are retained except for those elements of the policies and practices which are changed as the result of decisions stemming from this report and those elements which are now not compliant with the new legislation.

5. Conclusion

5.1 The new Act, Regulations and Code have to be implemented from the 6th April 2016, and this report could not be brought earlier because of the lateness of the publication by Welsh Government of the Regulations and the Code. Failure to make decisions on the issues outlined in this report by the 6th April 2016 will have budgetary implications

for the Local Authority and impact on service users. Inevitably the implementation of the new Act will have resource implications, both financial as well as administrative workloads and these will need to be addressed during the next financial year.