The Care Funding Reforms – what senior management teams need to know

1. Introduction

Residential care providers face the biggest change in how services in England are funded for a generation. The impact of the government's care funding reforms, planned changes in legislation and new statutory guidance, will all have a significant impact on all care providers.

The purpose of this note is to highlight for senior executive teams the potential impact of the changes on financial stability, forward planning and service delivery. There is embedded within this note links to four detailed guidance notes which we have produced on the various aspects of the reforms which we would encourage members to consider carefully.

2. The Reforms

The government heralded the reforms in a White Paper, a commentary on which can be found here.

The main headline was the reintroduction of the idea of the cap on care costs and the more generous upper limit under which financial support for care fees would be provided (set at £100,000 but which will have increased in line with inflation by the time the reforms are in force in October 2023). However, the government's ambitions are much wider and promises were also made with regard to:

- the expansion of the right for private-paying individuals to ask their local authority to arrange their residential care at the rates available to the local authority by the enactment of section 18(3) of the Care Act 2014, so that the right applies to residential care as it has to homecare since 2015;
- the extension of the availability of top-ups to the individual themselves, rather than being restricted to third parties only;
- the possibility of direct payments being made available for residential care; and

- a raft of detailed changes to the Care Act 2014 and the Care Act Statutory Guidance (CASS) that are required to give effect to the reforms.

The proposals also included a commitment to address the wide spread inequitable position in which private-pay residents subsidise people funded by local authorities in the same home by paying much higher fees for the same services. It is this change which will lead to the main economic change for residential care service providers.

3. Section 18(3)

The impact of the introduction of Section 18(3) is discussed in detail in our briefing, found here, which also highlights other proposed changes to the Care Act. It is a deceptively simple change but one which could have enormous impact on the rates private payer may be prepared to pay for residential care services. If even a relatively small proportion of private payers were to call upon their local authority to arrange their care and the local authority was able to place people at those rates the loss of income could be at the level of several hundred pounds per bed per week.

The potential improvement in local authority rates arsing from the Fair Cost of Care exercise (see section 5. (below)) is unlikely to compensate for such reductions in income unless the majority of beds in a home are publicly funded rather than private and benefit from significantly increased local authority fee rates.

Figures modelled by LaingBuisson on behalf of the County Councils Network in March 2022 showed reductions in income where the take-up of s.18(3) is significant at levels which would be unsustainable and lead to widespread closures of homes.

4. The Care Cap and other changes

The new care cap will be of most interest to individuals who are in need of residential care, rather than service providers. It will be necessary for providers to understand the changes especially as contractual arrangements with local authorities are likely to become more complicated as a result of the reforms. Individuals and their families may also look to providers to offer advice and support on the reforms and options available, where local authorities fail to do so.

The government issued a paper explaining the funding reforms and subsequently issued detailed Guidance on the implementation of the care cap including the draft guidance which will be added to the existing CASS guidance. The draft was the subject of a consultation which closed at the beginning of April. We have also produced a more detailed analysis of the proposed implementation of the care cap and a link to the briefing may be found here.

5. Fair Cost of Care

The approach the government has taken to address the problem of the subsidising of local authority funded residents by private-pay residents and the general long-term underfunding of care services by local authorities is to require each local authority to establish a "Fair Cost of Care" for 4 types of residential care services for older people: residential; residential enhanced care; nursing care; and nursing enhanced care.

This exercise is about to be launched in every local authority area in England and will impact on the rates paid by local authorities for the residential services they purchase, the rates by which private individuals can access care where their care is being arranged by the local authority, and also on the private-pay market generally. It will highlight the differences between local authority and private rates and focus attention on the subsidies being paid. This will affect the rates private payers will pay, even where they do not seek local authority assistance when purchasing their care.

Each local authority will also be obliged to publish a Market Sustainability Statement for its area in which it provides an analysis of the market for care services and how that analysis impacts on the Fair Cost of Care it has calculated.

We have provided a more detailed briefing on the process which can be found here.

The guidance indicates that providers and trade associations are expected to have a significant role in developing the new arrangements.

ADASS and the LGA are promoting a model for the collection of the data to be used by local authorities which should result (if it is widely adopted) in a high level of consistency in the raw data collected across the country. However, it is the analysis of that data in each area and the development of the market sustainability statement which will define the outcomes in terms of fee proposals. This exercise will be much more subjective and unless local authorities collude with each other (which would be a breach of Competition law) it is likely that significant differences in the rates proposed for the fair cost of care in different areas, will emerge.

Care England members will need to engage fully with the Fair Cost of Care exercise to ensure that information about the actual costs that they incur in providing services is included in the collation of data by their local authorities; more importantly, when each local authority is delivering its market sustainability document to the government, providers need to have as much influence as possible to ensure that the provider perspective is understood and reflected, and if it is not, to be ready to challenge local authorities' assessment of what a fair cost of care means, in the context of a long-term strategy to create a sustainable market.

6. Actions for providers

Residential Care providers will need to understand, in detail, the potential changes that will arise for their customers, whether they be local authority commissioners or individuals, and the consequences so that they can adapt their business and financial strategies accordingly.

Because the financial consequences of these reforms could be serious the financial impact will need to be modelled in each market a provider operates in. Although predicting the impact of the changes is difficult, the range of variables which can have a significant impact on costs is well known. Therefore, modelling the consequences for any particular home or any particular group of services within a particular local authority area, can be done.

The main variables to be considered (in addition to the usual capital and revenue costs and the returns on capital and operational profit required to deliver sustainable services and to reinvest) are:

- the number of former private-payers that will take up the Section 18(3) offer and secure local authority rates;
- the level of the fair cost for care set by the relevant local authority;
- the extent to which first party top-up payments will be permitted by the local authority to bridge the gap between the fair cost and actual cost;
- the rate at which a floor on fees is established in the market, beneath which providers will not be prepared to offer services.

7. Conclusions

All residential care providers will be forced to reconsider the sustainability of their business models as a result of these reforms and will face some tough choices.

Care England members who are mainly providing services to local authorities may become significantly better off. Those who are currently using the subsidised model may be squeezed as the downward pressure on private rates will not be matched by the upward pressure on local authority rates. Those providing exclusively private-pay services will need to choose how far they are prepared to chase the market for those accessing services under s.18(3) to maintain occupancy at a sustainable level.

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