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Dear Colleague

[Free Personal and Nursing Care – Consolidated Guidance](#)

This circular consolidates guidance circulars [CCD4/2002](#) – Implementation of Free Personal and Nursing Care Guidance and [CCD5/2002](#) – Free Personal and Nursing Care Route 2 Contract Guidance, issued to local authorities, the NHS and other service providers on 12 April and 30 May 2002 respectively.

We hope this will ease reference and intend to further review the consolidated guidance later this year when monitoring of the first year of free personal and nursing care has been completed.

It has come to our attention that a few queries have been raised in respect of the route 2 model contract and that some local authorities and providers are encountering difficulties in reaching agreement in respect of some of the clauses within that contract.

The main point of contention appears to be clause 14.4 which states "The Council will continue to pay the Contract Price for a period of fourteen days from the commencement of the Resident's absence from the Home." The view of the Scottish Executive is that, although not specifically provided for in primary legislation or regulations, it would be open to the provider to have a clause within their contract with the resident which indicates that where a resident is temporarily absent from the Home the resident will become responsible, from day fifteen of that absence, for the full cost of their care.

Other clauses causing concern are 17.1, 22.1 and 25 which cover user agreements, variations and the entire contract respectively. The concern appears to be that these clauses encroach on the providers' ability to review their fees. As these clauses only apply to the free personal and nursing care element of the care package they do not mean that the provider cannot charge more for extra services. Clause 22.1 specifically only regulates how a change to the contract is made, not what the effect of the change is. In respect of clauses 17.1 and 25, in the case of conflict, the model contract should prevail.

It is a matter for the local authority and the provider to reach a mutually acceptable contract. The Scottish Executive cannot intervene in that process. In that connection, local authorities will wish to consider taking appropriate internal legal advice in relation to any areas of particular concern.

However, where a contract cannot be agreed, for reasons unrelated to the quality of personal care being provided and where a resident has applied and is eligible for free personal/nursing care, local authorities may find it difficult to resist claims for payment by the care provider. It is for the individual local authority to decide how best to comply with the regulations and guidance.

While not provided for in primary legislation or regulations, on the basis of the previously issued circular CCD5/2002 "Free Personal and Nursing Care Route 2 Contract Guidance" and the current consolidated guidance, the local authority is not obliged to pay this element where a temporary absence from the care home exceeds fourteen days. The local authority (and preferably also the provider) should make this position clear to individual recipients of care at the outset.

All enquiries relating to this circular should be addressed to Anne Hampson at the above address. Further copies are available by telephoning George Whitton on 0131 244 5403 or by email to: George.Whitton@scotland.gsi.co.uk

The circular is also available at <http://www.show.scot.nhs.uk/sehd/ccd.asp> and on the Free Personal Care website www.scotland.gov.uk/health/freepersonalcare

Yours sincerely

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