



SCOTTISH EXECUTIVE

Health Department Directorate of Service Policy and Planning

Local Authority Chief Executives
Directors of Social Work
Directors of Finance

Relevant Voluntary and Professional Organisations

Miss Thea Teale
Head of Community Care Division 1
St Andrew's House
Regent Road
Edinburgh EH1 3DG

Telephone: 0131-244 3506
Fax: 0131-244 3502
Peter.Stapleton@scotland.gsi.gov.uk
<http://www.scotland.gov.uk>

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CCD 7/2002

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Dear Colleague

Community Care Circular CCD 6/2002 – Topping up of Care Home Fees **Community Care Circular CCD 7/2002 – Deferred Payment of Care Home Fees**

Further to circular CCD 2/2002, which set out the commencement arrangements for the Community Care and Health (Scotland) Act 2002, I enclose circulars CCD 6/2002 and CCD 7/2002 which explain the new arrangements for topping up and deferred payment of care home fees from 1 July 2002.

CCD 6/2002 sets out the new rules to apply, under section 4 of the Act, to topping up of fees for care home places which are supported by local authorities but are more expensive than the local authority would normally expect to pay.

CCD 7/2002 explains deferred payment agreements under section 6 of the Act, which will allow residents to defer payment of part of their contribution to care home fees to avoid the need to sell their homes.

We appreciate the impact of these changes for local authorities coming alongside free personal and nursing care. However, authorities should make every effort to prepare their staff and their systems for entering into deferred payment agreements as soon as is practicable after 1 July.

We will soon be updating the Charging for Residential Accommodation Guide to reflect all the changes from 1 July. For any queries on these issues, please contact Peter Stapleton using the contact details above.

Yours sincerely

Thea S. Teale

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Community Care Circular CCD 6/2002 – Topping up of Care Home Fees

Implementation Guidance

Introduction

1. This guidance is issued under section 26 of the Community Care and Health (Scotland) Act 2002. It explains the new rules to apply from 1 July 2002, for topping up of fees for care home places that are more expensive than the local authority would normally expect to pay. The main principles are set out in [section 4 of the Act](#), its [Explanatory Notes](#) and the [Community Care \(Additional Payments\) \(Scotland\) Regulations 2002 \(S.S.I. 2002/265\)](#).

2. The new rules allow for fees of someone supported by a local authority in a care home to be topped up by the resident or a third party such as a relative or friend. It removes doubt about the legal position of new topping up arrangements and gives greater choice to those with resources to choose a more expensive care home place than their local authority would normally expect to pay for someone with their needs.

3. This issue is particularly important because of other changes (nursing and personal care payments; deferred payment agreements; and the 12 week disregard of home value from the financial assessment) which mean that more people with significant income or capital will be eligible for local authority supported care home places.

Date of Introduction

4. The new topping up rules take effect from 1 July 2002, to coincide with the introduction of free nursing and personal care and deferred payment agreements. Both of these changes will increase the number of people whose care is arranged by local authorities who have access to resources, over and above the level protected by the residential care means test, which they may wish to use to choose a more expensive care home place. The new rules only apply to topping up arrangements entered into from 1 July.

Local Authority Responsibilities

5. The costs of care a person is assessed as needing should be fully covered by the fees paid by the local authority. A topping up arrangement should only arise where a person chooses a more expensive care home place than the authority would usually expect to pay for someone with that person's needs.

6. Local authorities should be prepared to arrange and support more expensive care home places than they would usually expect to, provided a resident or a third party is able and willing to pay the difference, subject to the conditions below.

7. Top-ups should only be allowed where a resident explicitly wants to choose a care home place which:

- (a) would not be available under the authority's arrangements for client choice; and

(b) where that preferred place is more expensive than the authority would usually expect to pay for someone with that person's care needs.

8. As noted above, an authority would need to be able to demonstrate that its "usual contracting arrangements" are sufficient to allow it to provide residents with the level of service they are assessed as needing if the possibility of resident and third party contributions did not exist. Authorities may not establish "usual contracting arrangements" which mean that residents or third parties routinely have to contribute towards services that the resident is assessed as needing.

9. Local authorities should not seek resident or third party contributions in cases where the authority itself decides to support a place in more expensive accommodation. For example, where there is at the time in question no suitable accommodation available at the price the authority would normally expect to pay.

10. The National Review Group on Care Home Fees' recommended level of fees for care homes will be implemented in full in April 2003. During this interim period, existing top up agreements may continue, and any new topping up arrangements from 1 July 2002 should be considered on a case by case basis.

11. Local authority decisions about care provision should continue to be on the basis of care needs. A person seeking a more expensive care home place under a topping up arrangement should have the same priority as a person with the same care needs seeking a place at the authority's usual cost.

Eligibility

12. Topping up arrangements, whether the payment is to be made by the person requiring care or by a third party, are restricted to people who:

a) have been assessed as needing a care home place;

b) have undergone a financial assessment;

c) are eligible for local authority support with arranging and funding a care home place, including those people who are only eligible for assistance with personal or nursing care payments but have chosen to have their whole care package arranged by the local authority; and

d) after evaluating the options with the local authority, have requested a care home place which:

i) is suitable in relation to the individual's assessed needs;

ii) is more expensive than the authority would normally expect to pay for someone with the individual's assessed needs;

iii) will be available; and

- iv) the person in charge of the accommodation is willing to provide the place on the authority's usual terms and conditions (other than on price).

Top-Ups by the Resident

13. Top-ups by residents from their own resources will be restricted to people who:
- a) are benefiting from the disregard of the value of their home from the financial assessment for the first 12 weeks of their permanent residential care;
 - b) are funding part of their contribution to care home fees through a deferred payment agreement; or
 - c) are better off as a consequence of payments for free nursing care or free personal care (and have chosen to have their care arranged by the local authority).
14. To ensure that people are not impoverished and to avoid topping up arrangements that can not be sustained, residents will only be able to use certain resources for topping up. The personal expenses allowance will therefore not be available for topping up. A resident may only top-up from the following resources:
- a) Earnings disregarded under the residential care financial assessment (schedule 2 of the National Assistance (Assessment of Resources) Regulations 1992).
 - b) Income disregarded under the residential care financial assessment (schedule 3 of the 1992 Regulations).
 - c) Capital disregarded under the residential care financial assessment (schedule 4 of the 1992 Regulations) but excluding the disregards relating to the resident's former home (paragraphs 1, 1A, 2, 3, 7, or 18 of schedule 4).
 - d) For people benefiting from the twelve week property disregard (under paragraph 1A of schedule 4 of the 1992 Regulations), capital over the lower capital limit (currently £11,500) but only for the duration of that disregard.
 - e) For people with a deferred payment agreement, capital from the value of their home:
 - where total capital is over the upper capital limit (currently £18,500); and
 - which the local authority decides to allow as additional payments as part of the deferred payment agreement. (The top-up amount is added to the resident's deferred contributions, and is eventually repaid when the home is sold).
 - f) For people who are better off as a result of personal or nursing care payments who do not have a deferred payment agreement:
 - capital over the upper capital limit (currently £18,500) and

- the difference between the amount they have to contribute to their accommodation and the amount they would have contributed had they not been eligible for such payments.

Third Party Top-Ups

15. Top ups can be made by a third party such as a relative or a friend, including a “liable relative” who is contributing to the care of the resident. There are no restrictions in the regulations on the resources that a third party may use for topping up.

Sustainability of Arrangement

16. A new topping-up arrangement can only be established if, in the opinion of the local authority, the resident and/or third party is able and willing to pay the difference between the authority’s normal cost and the accommodation’s actual fees for the duration of the resident’s time in care. This restriction is important in reducing the chances of a person eventually having to move because the payments can no longer be met. It applies to all new arrangements, whether the top up is to be paid to the local authority or direct to the care home. No such decision is required for existing topping up arrangements.

17. In coming to such an opinion, local authorities will have to consider the health and age of the resident as well as the expected size of the top up payments.

18. The financial circumstances of the person making the payments will also be relevant but the authority will not generally have this information on third parties. In such circumstances, authorities should consider seeking a written undertaking that the third party does expect to be able to sustain the payments.

19. When the third party is a ‘liable relative’ who is assessed as needing to contribute to the resident’s care, the local authority will need to exercise particular caution in deciding whether to approve the topping up arrangement. In coming to its decision, it will need to consider not only the sustainability of the arrangement but also its effect on the finances of the liable relative in addition to the payments he or she is already required to make.

Top up Payments to the Local Authority or Direct to the Care Home

20. The local authority has discretion to either collect top up payments and contract with the care home for the full amount or to leave the resident and/or third party to make the top up payments direct to the care home. This discretion reflects existing variations in practice between local authorities in administration and contracting arrangements for top up payments.

Responsibilities of Residents and Third Parties

21. Residents and third parties should understand the basis on which topping up arrangements are made when deciding whether to choose a more expensive care home place. It should be made clear to them and the care home provider from the outset that:

- a) Failure to keep up top-up payments may mean that the resident has to move to a less expensive care home place. (In the case of top-ups being paid under a deferred

payment agreement, the authority should first satisfy itself that the top-up payments are viable and should be recoverable when the home is sold).

b) Any increase in the resident's income will not necessarily help to meet top-up payments as their income will be subject to financial assessment for contribution to their fees in the normal way.

c) The authority may reserve the right to terminate its contract if the care home provider fails to honour its contractual obligations.

22. Authorities may wish to consider making a legal agreement with the resident and/or third party to this effect.

Varying the Topping up Arrangement

23. The topping up arrangements may be updated from time to time to reflect changes in the 'extras' funded through the top up and/or any associated cost variations.

Social Work (Scotland) Act 1968 (Choice of Accommodation) Directions 1993

24. The Community Care (Additional Payments) (Scotland) Regulations 2002 and this guidance supplement the right of choice available under the 1993 Directions and supersede them to reflect this where there is any contradiction. The 1993 Directions will be amended to reflect this.