



SCOTTISH EXECUTIVE

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Directors of Social Work
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Directors of Housing

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Dear Colleague

Community Care Circular: CCD 2/2002 Community Care and Health (Scotland) Act 2002

As you may be aware, this Act will provide the legislative backing for a number of major improvements in care services, including fairer charging; greater choice; better support for carers; more effective joint working and more consistent GP quality and discipline regimes.

This circular summarises the provisions of the Act and explains how they will be brought into force. The Act is published by HMSO, and explanatory notes are soon to be published. Both will be available on the HMSO website: www.scotland-legislation.hmso.gov.uk

For further queries on the Act, please contact Peter Stapleton using the contact details above

Yours faithfully

Thea S. Teale

MISS T S TEALE

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Part 1 – Community Care

Care Charging/Free Personal and Nursing Care

Sections 1 and 2 and schedule 1 of the Act, together with regulations, will implement the Executive's policy on free personal and nursing care from 1 July 2002, and specify the types of care included. Detailed guidance on implementation has been issued in draft form and a final version will soon be available.

Section 1 also provides powers to regulate care at home. The Executive wants to see greater consistency across Scotland in charging for non-residential community care, but does not intend to use this power in the short term. The work of the Confederation of Scottish Local Authorities in this area is currently being evaluated.

Section 3 of the Act amends Section 12 of the Social Work (Scotland) Act 1968 to allow regulations to dictate how a person's resources should affect their eligibility for local authority supported residential care. Regulations will be made to ensure that, from 1 July 2002, people who are eligible for free nursing and personal care or deferred payment agreements (section 6 of the Act) will not be prevented from accessing them because of their resources.

Topping-up Care Home Fees

Section 4 allows regulations to be made allowing top-up payments to be made for residential care supported by a local authority which is more expensive than the authority would normally expect to pay. Regulations will be made to bring this into effect from 1 July 2002, to coincide with the implementation of free nursing and personal care.

Cross Border Placements

Section 5 will enable local authorities in Scotland to arrange and pay for care home places in England, Wales, Northern Ireland, Isle of Man and the Channel Islands. This will clarify the legal basis for existing arrangements and remove administrative barriers which currently make such arrangements cumbersome. The date for bringing section 5 into force will be set later, with a view to co-ordinating with the introduction of similar changes under England and Wales legislation.

Deferred Payments

Section 6 will make it possible for people in residential care to defer part of their care home fee payments to the local authority. Regulations will be made to allow local authorities to make deferred payment agreements from 1 July 2002, where they pay the part of the resident's contribution to their care home fees which the resident would otherwise have paid from the value of his or her home. The deferred fees will be secured against the home.

Direct Payments

Section 7 of the Act will make it a duty for all local authorities to offer eligible people the option of receiving direct payments to arrange services for themselves. The Act will also make it possible for local authorities to sell their services to direct payments recipients. A representative, such as an attorney or guardian, will be able to set up, alter and receive direct payments on behalf of the service user and parents will be able to use direct payments to purchase the services their children need. Where payments are made on a gross basis local authorities will have a mechanism to recover the amount a person is assessed as able to contribute. These provisions will be commenced on 1 June 2003. A further provision to extend the scope of direct payments, beyond disabled people, to all community care client groups will take effect from 1 April 2004.

Carers

Sections 8 to 12 are a group of provisions concerning carers which will take effect from 1 September 2002.

Section 8 requires local authorities, when making an assessment of needs of an adult under the Social Work (Scotland) Act 1968, to take into account any care being provided by a carer, and to consult the person in need and the carer before deciding what services to provide. Section 10 has the same effect as Section 8, in relation to local authority assessments of children in need under the Children (Scotland) Act 1995.

Section 9 amends the Social Work (Scotland) Act 1968 to enable carers of adults to ask local authorities for an assessment of their ability to care, regardless of whether an assessment is carried out of the needs of the cared for person. Previously, carers could only request such an assessment if the person they cared for was also being assessed. Local authorities will have a duty to carry out an assessment where they consider the carer is providing a substantial amount of care on a regular basis. Section 9 also requires local authorities to inform carers they are aware of that they may be entitled to an assessment. Section 11 has the same effect as Section 9, in relation to assessments of carers of disabled children under the Children Act 1995.

Section 12 enables Scottish Ministers to require Health Boards to prepare and submit to them “carer information strategies”. These strategies will set out how Health Boards will inform carers they are aware of that they may be entitled to an assessment under the Social Work (Scotland) Act 1968 of their ability to care.

Part 2 – Joint Working etc.

Sections 13 to 17 of the Act are to extend joint working arrangements between local authorities and NHS bodies. The Executive will be consulting on regulations to bring these provisions into effect from 1 November 2002, so that arrangements may be made under them for the financial year 2003/4. Sections 13 and 14 enable payments to be made by one body to another in certain circumstances and in relation to prescribed functions. Section 15 allows the delegation of prescribed functions between local authorities and NHS bodies and the making of payments and establishment of pooled budgets in connection with the delegation. Section 16 provides protection for the terms and conditions of staff transferred in circumstances covered by regulations made under section 15. Section 17 enables Scottish Ministers to give directions to local authorities and NHS bodies requiring certain joint working arrangements to be entered into.

Part 3 – Health

Health Boards’ Lists and the NHS Tribunal

Sections 18 and 19 (and the associated parts of schedule 2) deal with Health Boards’ Lists and the NHS Tribunal. The dates for bringing them into force have not yet been set.

Most GPs operate as GP principals who contract directly with NHSScotland to provide general medical services (GMS). GP principals must be on the medical list before they can practice. To get on the list, they must satisfy rules on suitability to be a GP, including having appropriate experience. Once on the list, they are covered by statutory discipline arrangements. Section 18 allows regulations to be made to extend the medical list system to cover all GPs working in NHSScotland, i.e. also to include non-principal GMS GPs and GPs performing personal medical services. Once section 18 is in force, a GP will not be able to practise in NHSScotland unless his or her name is on a list maintained by an Island Health Board or Primary Care NHS Trust. The Executive will be consulting on regulations to take forward these changes.

Under provisions of the Health Act 1999, which have yet to be commenced, cases coming before the NHS Tribunal may be judged on grounds of fraud as well as on grounds of prejudice to service efficiency. Section 19 rectifies an omission to the Tribunal regime, to ensure that those practitioners who have ceased to perform pilot personal medical services (PMS) and wish to return to the medical list on preferential terms may be referred to the Tribunal for disqualification on the grounds of fraud in addition to prejudice to service efficiency.

Miscellaneous

Section 20 makes amendments to the Road Traffic Act 1988 and to the Road Traffic (NHS Charges) Act 1999 to make reference to “other public places”. The changes will enable the NHS to recover the costs incurred from the treatment of road traffic casualties from accidents that happen in public places (i.e. car parks) as well as on the open road.

Section 21 will amend section 85B(2) of the National Health Service (Scotland) Act 1978 to add the Mental Welfare Commission for Scotland to the list of bodies covered by Clinical Negligence and Other Risks Indemnity Scheme.

Sections 20 and 21 will come into force from 13 May 2002.