



Personal Care at Home Bill

A briefing from our Health and Social Care team - February 2010

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At present local authorities providing certain social care services can recover such charges as they consider reasonable in respect of those services, by virtue of section 17 of the Health and Social Services and Social Security Adjustments Act 1983. Those services include personal care.

The Secretary of State can make regulations requiring certain social care services to be provided by local authorities free of charge (section 15 of the Community Care (Delayed Discharges etc) Act 2003 ("the 2003 Act")). However, regulations cannot require services to be provided free for a period longer than six weeks. These services include personal care provided to a person at home.

The Personal Care at Home Bill ("the Bill") will enable regulations to be made requiring personal care to be provided free to persons in their own homes for an indefinite period. It does this by amending the regulation-making power in the 2003 Act to restrict the six-week limitation period to personal care provided to people living in certain types of accommodation.

Care Services Minister, Phil Hope, said that ["this Bill will provide support and financial relief to 400,000 older people with the greatest care needs, including those people with conditions like Parkinson's, dementia and motor neurone disease."](#)

Progress of the Bill

The Bill was presented to Parliament on 25 November 2009. This is known as First Reading and there was no debate on the Bill at this stage. The Bill had its Second Reading debate on 14 December 2009 and was committed to a Committee on 12 January 2010. The Bill has now passed to the House of Lords.

Commentary on the Bill

The Bill removes the six week restriction on the free provision of personal care, except in so far as this relates to the provision of personal care to someone living in accommodation that an establishment provides together with personal care. This would cover, for example, care homes but not sheltered accommodation or extra care housing. Extra care housing is an arrangement whereby a person is provided with community care services in specialist accommodation designed for the needs of older people, which may often be found or arranged for them by the care provider. The accommodation and care provided in such accommodation are not provided together but under separate arrangements made by the individual.

The Bill also provides that the six week limitation does not apply to the provision of personal care under an adult placement scheme. An adult placement scheme involves placing an adult in need (such as a disabled person) with a carer who might share their home with the person. It is similar to fostering and the purpose is to enable the person in need to live as independently as possible.

The Bill provides that the regulations under section 15 can, in particular, impose on a local authority functions relating to eligibility for the free provision of personal care. The functions which could be imposed might, for example, include the setting of criteria for the free provision and the determination of eligibility by reference to those criteria and any criteria that the Secretary of State sets.

Clause 1 (4) inserts a new subsection (4C) into the 2003 Act. The new provision will ensure that a local authority has the power to make a person's eligibility for free personal care conditional on the person undergoing a process designed to maximise the person's ability to live independently. This could include a short period of intensive and focused support to maximise the person's independent living skills. The effect of new subsection (4D) is that a person is to be regarded for the purposes of section 15 as living at home if the place where the person lives is not

accommodation provided under Part 3 of the 1948 Act or accommodation of the kind described in the amended subsection (4) (b) (a care home for example). New subsection (4E) provides that section 21(5) of the National Assistance Act 1948 applies for the purposes of section 15 of the 2003 Act. As a result, references in section 15 to the provision of accommodation will include the provision of personal care.

Territorial Application: Wales

The 2003 Act has not been commenced in Wales. However, the Bill has the effect of broadening the regulation-making powers of Welsh Ministers under the 2003 Act. This is because under section 16 of the 2003 Act, the Welsh Ministers have the same powers to make regulations as the Secretary of State does under section 15. As the Bill is making provision for a matter within the competence of the National Assembly for Wales, a Legislative Consent Motion is expected to be sought in the Assembly.

Consideration of the European Convention on Human Rights (ECHR)

ECHR issues arise to the extent that a person living in accommodation that an establishment provides together with personal care might allege that they are being discriminated against in the protection of their rights under Article 14 ECHR (freedom from discrimination in the protection of Convention rights) read with Article 1 of Protocol 1 ECHR (right to peaceful enjoyment of possessions). This would be in so far as that person would have to pay for any personal care that they receive, whereas if they were living at home, they might be entitled to free personal care. However, the Department's view is that the different treatment of people living at home is not discriminatory. The explanation provided is that this is because the policy underlying the different treatment pursues a legitimate aim in a proportionate way.

The key aim of the policy behind the Bill is to enable, support and encourage more people to avoid or delay entering residential accommodation. Recent advances in technology designed to support people in their own homes (such as "telecare" or "telehealth") mean that it is now possible for people to remain at home safely and for longer than previously when often the only option was to go into residential or nursing home care. Average stays in care homes are short, and remaining at home can improve not only the quality of a person's life, but also give them more choice over the setting in which they die. It is considered proportionate as they are aimed at those people in highest need – the group of people who are most at risk of having to enter residential accommodation. Moreover, it was noted in the case of *R (RJM) v Secretary of State for Work and Pensions* [2008] that social policy is an area where a wide measure of appreciation is accorded to the State by the European Court of Human Rights. It is therefore

considered that any interference with individuals' Article 14 rights is justified.

Department of Health consultation

The Department of Health is currently running a consultation on the proposals for regulations and guidance made under the Bill. It is the intention that from 1 October 2010, Councils will have to provide free personal care to those who meet the specified criteria. The consultation document, which contains the proposed regulations and guidance, is available at:

www.dh.gov.uk/en/Consultations/Liveconsultations/DH_109139

More information

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