POLICY NOTE

THE COMMUNITY CARE (PERSONAL CARE AND NURSING CARE) (SCOTLAND) AMENDMENT REGULATIONS 2022

SSI 2022/83

The above instrument will be made in exercise of the powers conferred by section 1(2)(a), 2 and 23(4) of the Community Care and Health (Scotland) Act 2002 ("the 2002 Act"). The instrument is subject to affirmative procedure. If approved by the Scottish Parliament, it will come into force on 1 April 2022.

Purpose of the instrument.

To increase the value of payments for free personal care and nursing care by 10%.

Policy Objectives

The background is that section 1(1) of the 2002 Act provides that a local authority are not to charge for social care provided by them (or the provision of which is secured by them) if that social care is personal care as defined in paragraph 20 of schedule 12 of the Public Services Reform (Scotland) Act 2010; personal support as so defined; care mentioned in schedule 1 of the 2002 Act or nursing care. That requirement may be qualified by regulations. Section 2 gives the Scottish Ministers the power to make regulations to determine what is to be regarded as accommodation provided by local authorities under social work and mental health legislation. This power has been exercised with the effect that persons provided with accommodation by a local authority under the Social Work (Scotland) Act 1968 or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 are not charged in respect of personal and nursing care up to set figures. From 1 April 2019 the rules in relation to free personal care apply to all eligible adults regardless of age and there is no age limit in relation to free nursing care.

Payments for personal and nursing care to self-funders in care homes remained static at £145 per week for personal care and £65 per week for nursing care between 2002 and 2007. The Concordat had specifically included the commitment to increase the payments in line with inflation in 2008-09, 2009-10 and 2010-11, and following agreement with COSLA a further inflationary increase was included as a specific commitment in the settlement agreement for 2011-12 and the increase applied from April 2011.

From 2011/12 to 2015/16 the payment rates were increased in line with inflation using the GDP Deflator. The following year 2016/17 was static due to forecasts of inflation rates being too high and Ministers agreed to keep to this rate for the year of 2017/18. For the years 2018/19 to 2020/21 Ministers approved payment rates to be increased once again in line with inflation using the GDP Deflator.

Emerging evidence in recent years shows that the cost of providing personal and nursing care has increased significantly and the payment made to providers by Local Authorities for self-funding residents has not kept pace with this. To help redress this, an above inflationary increase of 7.5%

was made in the weekly payment rates for personal and nursing care for 2021/22. Again to help redress this an above inflation of 10% has again been made for 2022/23.

It has been estimated that this above inflation increase will cost local authorities around £14.8 million. This will be funded by Scottish Government via the local government settlement.

Consultation

Annual rises in these rates are routine. Prior to bringing these Regulations forward, the Cabinet Secretary for Health and Social Care and COSLA have been consulted.

Impact Assessments

No Business and Regulatory Impact Assessment is required because the present instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector compared with 2021/22.

Financial Effects

A Business and Regulatory Impact Assessment has not been prepared as these changes have no impact on the costs of business. These are routine annual increases, considered as part of the Budget process. Local Government will receive additional funds from the Scottish Government to cover the increased costs.

Scottish Government
Mental Health and Social Care Directorate
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