

Explanatory Memorandum to the revised code of practice on the exercise of social services functions in relation to charging and financial assessment under part 4 (direct payments and choice of accommodation) and part 5 (charging and financial assessment) of the Social Services and Well-being (Wales) Act 2014.

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before the National Assembly for Wales in conjunction with the above code of practice and in accordance with Standing Order 27.14.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the revised code of practice on the exercise of social services functions in relation to charging and financial assessment under part 4 and part 5 of the Social Services and Well-being (Wales) Act 2014.

Julie Morgan AM

Deputy Minister for Health and Social Services

13 February 2019

Part 1 – OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 (the “Act”) brings together local authorities’ duties and functions in relation to improving the well-being of people who need care and support, and carers who need support. The Act provides the foundation, along with regulations and codes of practice made under it, to a statutory framework for the delivery of social care in Wales to support people of all ages as part of their families and communities.

Under the Act local authorities have discretion to charge for the care and support they provide or arrange for a person, or the support they provide or arrange for a carer. They also have discretion to set a contribution or reimbursement for direct payments they provide to a person to enable them to arrange their care and support themselves. This applies to care and support in a person’s own home, within the community, or in residential care. Where an authority wishes to apply this discretion to set a charge, contribution or reimbursement, regulations made under the Act govern the arrangements applicable to this.

Regulations governing local authorities discharging their discretion to set a charge, contribution or reimbursement were made under Part 4 (meeting needs) and Part 5 (charging and financial assessment) of the Act. These came into force on 6 April 2016. A code of practice on financial assessment and charging to accompany these regulations was also made under the Act and came into effect on 6 April 2016.

To introduce a number of policy changes since the regulations came into effect, several amendments were applied through regulations which came into force on 10 April 2017 and 9 April 2018 respectively. These were necessary to update several sets of regulations made under Parts 4 and 5 of the Act. Revisions to the code of practice were also put in place to reflect the changes made by the regulations which also came into force on 10 April 2017 and on 9 April 2018 respectively.

A number of new changes are now proposed to two sets of regulations made under the Act; The Care and Support (Charging) (Wales) Regulations 2015 and the Care and Support (Financial Assessment) (Wales) Regulations 2015. These are to come into force on 8 April 2019. Most of these do not of themselves make any consequential changes to the revised code of practice. However, an amendment to be applied to the Financial Assessment Regulations does require a consequential change to the code. In addition, there is a need to amend the revised code from that date to reflect changes made by the UK Government to the Income Support (General) Regulations 1987 to introduce new compensation schemes and trusts. Lastly, there is also a need to amend the revised code to make reference to guidance relevant when placing a person in residential care after being discharged from hospital. These amendments to the revised code of practice are the subject of this Explanatory Memorandum.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

Section 146 of the Act lays down the procedure to be followed before issuing and approving this revised code of practice. This final version of the revised code of practice

will be laid before the National Assembly for 40 days after which time, if no resolutions are made, Welsh Ministers must issue it.

There are no other matters the Minister wishes to bring to the Committee's attention.

3. Legislative background

The powers enabling the making of this code are contained in Sections 145 and 146 of the Act. Section 145 of the Act permits Welsh Ministers to issue, and from time to time revise, one or more codes on the exercise of social services functions. Section 146 of the Act lays down the procedure to be followed when issuing or revising a code under section 145. It is proposed that the further revised code comes into force on 8 April 2019.

4. Purpose & intended effect of the legislation

This revised code of practice has been amended to introduce a small number of technical changes. A list is attached. These include:

- an addition to the list of forms of capital and income that should be fully disregarded when capital or income are taken into account in a financial assessment for charging for any form of social care and support. This is to add reference to an approved blood scheme or trust established to provide compensation in respect of a person having been infected from contaminated blood products. These schemes and trusts have already been added by the UK Government to the Income Support (General) Regulations 1987 and as a consequence, to the Financial Assessment Regulations made under the Social Services and Well-being (Wales) Act 2014. This is because these regulations directly read across to the Income Support Regulations.
- a further addition to the list of capital that should be fully disregarded when capital is taken into account in a financial assessment of any payment made under or by a trust established for the purpose of giving relief and assistance to disabled people whose disabilities were caused by their mother during their pregnancy taking a preparation containing the drug known as "Thalidomide", which is approved by the Secretary of State for Work and Pensions (the Thalidomide Trust);
- an addition to the part of the revised code dealing with choice of residential accommodation to ensure that part of the code is read in conjunction with the current guidance on procedures when discharging patients from hospital to a care setting;
- additions in appropriate parts of the revised code to reference the regulations coming into force in April 2019. These are "The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019" This is for completeness as the new regulations amend previous regulations referred to in the revised code of practice;

5. Consultation

No consultation has been undertaken in this instance. This is due to the technical nature of these amendments to the revised code, changes made by the UK

Government to compensation schemes, and a need to ensure the revised code accurately refers to regulations previously made.

Part 2 - REGULATORY IMPACT ASSESSMENT

The amendments to this revised code of practice are to reflect a change applied through regulations to be introduced on 9 April 2019, changes already applied by the UK Government to compensation schemes and a need to ensure the revised code includes a reference to relevant guidance and accurately refers to regulations previously made. As such the amendments do not introduce any new legal or financial requirements on the public, private or voluntary sectors, nor on care and support recipients. On this basis a detail Regulatory Impact Assessment has not been prepared.

Amendments to the Revised Code of Practice on Charging and Financial Assessment

Chapter 5 - Common issues for charging

Addition at 5.1 to reference to the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019.

Chapter 10 - Choice of accommodation

An addition to apply a new 10.1. This is to ensure this part of the code is read in conjunction with the current guidance on procedures when discharging patients from hospital to a care setting, where this occurs.

Annex A - Treatment of Capital

Addition at 1.2 and 2.22 to reference the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019.

Addition at 2.28(g) to the list of forms of capital which must be disregarded where capital is taken into account in a financial assessment for charging for any form of social care and support as:

“(xiii) An approved blood scheme, that is a scheme established or approved by the Secretary of State for Work and Pensions, or a trust established with funds provided by the Secretary of State, to provide compensation in respect of a person having been infected from contaminated blood products;

(xvi) Any payment made under or by a trust, established for the purpose of giving relief and assistance to disabled people whose disabilities were caused by their mother during their pregnancy taking a preparation containing the drug known as “Thalidomide”, which is approved by the Secretary of State for Work and Pensions (the Thalidomide Trust)”

[It should be noted that this provision has been added to the Care and Support (Financial Assessment) (Wales) Regulations 2015 at Schedule 2 paragraph 35 by the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019].

Annex B - Treatment of Income

Addition at 1.2 to reference the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019.

Addition at 2.28 to the list of forms of income which must be disregarded where capital is taken into account in a financial assessment for charging for any form of social care and support. this is to add:

“(xiv) An approved blood scheme, that is a scheme established or approved by the Secretary of State for Work and Pensions, or a trust established with funds provided by the Secretary of State, to provide compensation in respect of a person having been infected from contaminated blood products”.

Annex D - Deferred Payment Agreements

Addition at 3.2 (f) to reference the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019.