Torbay and Southern Devon Health and Care NHS Trust Policy on Top-up Payments to Care Homes

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Partners in Care

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Amendment History

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1 Introductory statement

1.1 Torbay & Southern Devon Health & Care NHS Trust (the Trust) is an integrated health and adult social care organisation who provide community health services in Torbay and Southern Devon and in Torbay provide and commission adult social care services for the Local Authority. In addition on behalf of the Clinical Commissioning Group (CCG) the Trust manages NHS Continuing Healthcare. As such the Trust is responsible for providing NHS Continuing Healthcare, Social Care and NHS-Funded Nursing Care.

1.2 The Trust is committed to securing high quality care to individuals whilst maintaining its overriding objective of securing best value. Among other things, this means working with a clear and fair pricing structure between providers, commissioners and residents.

1.3 The Trust and Providers alike must work within the legal framework and current guidance in relation to the provision and funding of care. The Trust must commission and provide care in a manner that reflects the choice and preferences of individuals and complies with the legal framework whilst balancing the need for the Trust to commission care that is safe and effective and makes best use of the resources available to it.

1.4 The Trust seeks through this Policy to provide clarity to individuals, their friends and relatives and our staff, as well as providers, as to the circumstances in which additional or 'top up' payments can be made to providers, so as to allow in the permitted circumstances residents some greater freedom in choosing the care home in which they wish to live.

2 NHS Continuing Healthcare (CHC)

2.1 NHS Continuing Healthcare describes a package of care arranged and funded solely by the NHS. A person may be eligible where, on consideration of the totality of an individual's needs, that individual's primary need is a health need.

2.2 It is not lawful for an individual to "top up" NHS care. This means that if the care home fees are greater than the Trust is willing, on consideration of the individual's circumstances, to pay for that package of care, the individual or a third party cannot pay the excess.

2.3 The statutory requirement is for the Trust to provide or commission and pay for those services that are required in order to meet the assessed needs of the individual.

2.4 A Provider may only agree with an individual in receipt of CHC to provide additional services where those services are genuinely services that are not required to meet the individual's assessed need. These must be optional non-essential services additional to those which would normally be provided under contract with the Trust. Examples may include a private television or a visit by the individual's personal hairdresser or therapy services above and

2.5 beyond those assessed as necessary within the client's care plan. More information is included in the Trusts Policy on Choice Costs and Risks.[1]

2.6 The Trust will not become involved in any aspect of choosing, arranging or monitoring such additional services. Any such additional services payments must be made directly by the individual (or 3rd party) to the Provider, and do not form part of any contract between the Trust and the Provider.

2.7 However before the additional services are provided, the Provider is required to notify the Trust of the additional services that are proposed. This is to ensure;

(i) The Trust can satisfy themselves that the services are genuinely services that are not required to meet the individual's assessed need, and
(ii) To enable the Trust to advise the Provider, the individual and their family that should they be unable to meet the costs of the additional services in the future, that these will not be provided under CHC unless at that time they form part of the individual's assessed needs.

3 Social Care Funding (SCF)

3.1 Social Care Funding covers the assessed social care need of an individual and is paid on a means tested basis.

3.2 The Trust endorses the Local Authority Circular LAC (2004) 20[2] and Charging for Residential Accommodation Guide (CRAG)[3], and is committed to applying the principals contained therein when considering the issue of top-ups payments. Top-up payments will not be permitted in relation to SCF otherwise than in accordance with this Policy and the statutory guidance.

3.3 The Trust is not generally required to pay more than it would usually expect to pay having regard to the assessed social care needs (the "usual cost"). Where an individual has specifically requested a more expensive care package than that which the Trust offers them; or where an individual chooses to receive services that are in addition to those required to meet the assessed social care need (and such services are not covered by FNC or other NHS funding) then there are only certain circumstances in which the Trust can permit the top up and therefore agree to the placement.

Individuals

3.4 Individual residents may only 'top up' fees from their own resources if:

(a) They are subject to the 12 week property disregard and have enough disregarded capital; or

[1] Torbay Care Trust Policy on Choice Cost and Risk which is available from the following link address: http://www.torbaycaretrust.**nhs**.uk/publications/TSDHC/Continuing%20Healthcare%20-%20Choice%20Costs%20and%20Risks.pdf

[2] Available online from the Department of Health Website from the following link address: http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Localauthoritysocialservicesletters/DH_4091152

[3] Department of Health – Charging for Residential Accommodation Guide (CRAG) June 2013

(b) They have agreed a deferred payments agreement **and** they have sufficient specified resources from which to fund the top-up.

3.5 In order to safeguard Individuals and the Trust from entering into top-up arrangements that are likely to fail, the individual must reasonably be expected to be able to make the top-up payments for the duration of the arrangements. In advance of agreeing a top-up the Trust will therefore need to be satisfied that the individual will have the resources to continue to make the required top-up payments.

3.6 in order to be so satisfied the Trust will require the Individual to sign a declaration stating that they are able to meet the costs of the additional payments for the duration of their care, that they understand the quantum of this commitment on an annual basis and the potential consequences should their payments cease for whatever reason, and agree to the same.

3.7 Individuals will need to be aware that if they are unable to continue to pay the top-up in the longer term, then they are likely to lose the additional services, and for some this may mean that they have to move to different accommodation unless it is shown that their assessed needs can only be met in the current accommodation.

4 Third Parties

4.1 Third parties may 'top-up' fees of residents. A third party could be a family member, friend or other person.

4.2 In order to safeguard residents and the Trust from entering into top-up arrangements that are likely to fail, the third party must reasonably be expected to be able to make the top-up payments for the duration of the arrangements. In advance of agreeing a top-up the Trust will therefore need to be satisfied that the third party will have the resources to continue to make the required top-up payments.

4.3 In order to be so satisfied the Trust will require the third party to sign a declaration stating that they are able to meet the costs of the additional payments for the duration of the client's care, that they understand the quantum of this commitment on an annual basis and the potential consequences should their payments cease for whatever reason, and agree to the same.

4.4 Third parties and residents will need to be aware that if the third party is unable to continue to pay the top-up in the longer term, then the resident is likely to lose the additional services, and for some this may mean that they have to move to different accommodation, unless it is shown that their assessed needs can only be met in the current accommodation.

4.5 In circumstances where the Trust is satisfied upon the declaration by the third party that the third party can make the top up payments for the duration of the arrangements the Trust will contract with the care home provider for the full cost of the accommodation, including the top up. However the Trust will not

become involved in any aspect of choosing, arranging, agreeing the price of, or monitoring such additional services.

4.6 Before the arrangements commence, the Trust will require the third party to have signed the 'Third Party Top-Up Agreement,".

4.7 The third party can, by agreement with all parties, pay the top up direct to the Care Home provider on behalf of the resident or by exception it can be paid to the Trust. In either case, it is a requirement of the 'Third Party Top-Up Agreement" that payments are made in advance at the beginning of each month. Where payments are made direct to the Care Home Provider by the Third Party, Providers are required to advise the Trust within 7 days of the payment becoming due if it is not paid. In the event that payments are made directly to the Provider and in the event that payments stop, if the Provider does not notify the Trust within 7 days of the payment becoming due, the Trust will not be liable for any outstanding or accumulating fees in respect of the 'top ups."

4.8 In circumstances where the Trust believes that the third party no longer has the means by which to continue to make the top up payment, the Trust will arrange for an updated assessment of the residents needs to be undertaken, and will make any necessary arrangements for their future care provision.

5 NHS - Funded Nursing Care (FNC)

5.1 FNC is single nationally imposed price for the registered nursing care for an individual who has been assessed by the Care Trust as eligible to receive FNC.

5.2 April 2014 is £110.89 per week. Those eligible for high band funding (left over from the old system) will receive £152.61 per week. The applicable rates are revised annually by the Department of Health.

5.3 Individuals eligible for FNC may also be in receipt of SCF or may be privately funding the social care element.

5.4 A Provider cannot require an individual to pay additional amounts to cover the assessed level of registered nursing care where it considers that provision is above that covered by the FNC contribution. However the receipt of FNC in respect of an individual does not prohibit top ups in respect of SCF in accordance with Section 3 above.

5.5 If there are other additional health needs, for example physiotherapy, then these will be funded by the NHS outside of the FNC payment and as part of their statutory obligation to provide health care generally.