
Decision maker:	Cabinet member health and wellbeing
Decision date:	27 March 2017
Title of report:	Care Home fee uplift
Report by:	Senior commissioning officer

Classification

Open

Key decision

This is a key decision.

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function to which the decision relates.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Wards affected

Countywide

Purpose

To approve a three year fee uplift settlement for care home placements from 1 April 2017 to 31 March 2020.

Recommendation(s)

THAT:

THAT:

- (a) a three year settlement model is agreed for 3 April 2017 until 31 March 2020, as detailed in the table below;
- (b) all care home spot purchase placements and block contracts (excluding block contracts subject to different contractual arrangements and those on the old 'usual nursing rate') are uplifted; and

Residential % uplift		Nursing % uplift		
<i>* compound impact</i>	Efficiency %	% Increase	Efficiency %	% Increase
2017/18	2.0%	1.89%	2.0%	1.40%
2018/19	1.5%	2.77%	1.5%	2.87%
2019/20	1.0%	3.14%	1.0%	3.02%
		7.80%*		7.29%*

- (c) delegated authority be given to the director for adults and wellbeing to amend the increase if national pressures trigger a review.

Alternative options

1. The council does not pay any increase to care home providers. This is not recommended as the council is required to consider an annual increase as provided for in the contract, whilst also taking into consideration the wider economic climate. Analysis shows there have been a number of increases in the cost of operating care homes. The recommendation represents a balance between recognising the cost pressures facing care home providers and the decreasing funding available to the council.
2. Continue to negotiate the fee increase on an annual basis. This is not recommended as the council needs to plan and consider the costs pressures up to 2020 taking into account its legal duties and responsibilities. The three year proposal will offer providers some certainty on the cost of placements and allow for effective business planning in a timely manner.

Reasons for recommendations

3. The proposed recommendations will ensure that the council is able to fulfil its role in shaping and supporting the market place as identified under the Care Act 2014 in order to support the wider care market in delivering a range of sustainable, high quality services to meet the demands of the community now and in the future.

Key considerations

4. From April 2017, the national living wage (NLW) for workers aged 25 and above will increase to £7.50 per hour. This increase will place additional financial pressure on the care home market where it is already a difficult market to recruit and retain staff, in particular nursing staff. Although most staff are already paid above the NLW, the need to ensure that the sector is able to attract workers means that there will still be a cost pressure and therefore the council needs to consider how it responds to these pressures.
5. As required under the terms of the contract with providers, the council has reviewed the rates paid to providers, having regard to the consumer prices index and other relevant information. The NLW rate from April 2017 has also been taken into consideration, assumptions have been made for NLW for 2018 and 2019.
6. The Care Act (2014) and the supporting Care and Support Statutory Guidance (March 2016) sets out the market shaping duties for local councils. The guidance states that: "When commissioning services, local authorities should assure themselves and have evidence that contract terms, conditions and fee levels for care and support services are appropriate to provide the delivery of the agreed packages of care with agreed quality of care".
7. Cabinet considered fee rates on 12 June 2014 and paid due regard to the "actual cost of care" in an "open book exercise." The work collated from a number of providers to input into a cost model, this is considered to be a reasonable basis for subsequent uplifts.
8. The recommended fee increase will apply to all spot purchase placements for residential and nursing placements, as well as some block contracts where contractual arrangements do not dictate otherwise. The fee increase takes account of the increase in the national living wage for over 25 year olds from 2017 to 2020 and builds on the inflationary uplift of 1% applied in April 2016.
9. The statutory guidance also stresses that councils must not undertake any actions which may threaten the sustainability of the market as a whole, including setting fee levels below an amount that is sustainable for providers in the long-term. It also emphasises the need for council commissioners to have regard to the cost effectiveness and value for money in publically funded services. The council is able to make placements at the current rates ensuring choice is available to people.
10. Taking into consideration the factors set out above, it is considered that there should be a fee increase on the 'usual rate' for residential and nursing placements for older persons, those with learning disabilities and mental health placements, based on these factors and the affordability for the council.
11. The council has responsibility for the overall market and therefore needs to take regard of self-funders in the market, who represent in the region of 55%, and in most cases pay a higher amount compared to council social care clients.

12. It is proposed to apply an efficiency adjustment across the three year settlement, the rate of which will reduce over the three year period.
13. The proposed three year model settlement is within the affordability of the council and supports the medium term strategy. The following have been modelled:
- The CPI (consumer pricing index) baseline was taken in December 2016 at 1.6%. The actual rate in December of each year will be taken for subsequent uplifts.
 - The council has taken into account the comments from the market on other pay inflation and the impact on differentials. It has therefore changed from a proposed 1% uplift in each year and instead applied an uplift equivalent to 33% of the relevant annual NLW increase. This gives uplifts detailed in the table below:

Year	NLW % increase	Adjusted other pay to 33% NLW
2017/18	4.17%	1.38%
2018/19	6.67%	2.20%
2019/20	6.25%	2.06%

Community impact

14. The recommendations support two of the four priorities of the corporate plan to:

Enable residents to live safe, healthy and independent lives. Although people maybe in a care home, they still need to have their outcomes met, living in a safe environment.

Secure better services, quality of life and value for money. The increase in the rates will help support providers to meet the challenges faced with increasing costs.

15. The recommendations in this report will seek to help support, sustain and develop the county's care home market both now and in the future.

Equality duty

- 16 The council is committed to equality and diversity using the Public Sector Equality Duty (Equality Act 2010) to eliminate unlawful discrimination, advance equality of opportunity and foster good relations.
- 17 It is not envisaged that the recommendations in this report will negatively disadvantage the following nine groups with protected characteristics: age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Financial implications

18. While the table below sets out current assumptions for uplifts in each of the next three years, the actual figures for 2018/19 and 2019/20 will be calculated on the following basis:

- The CPI figure will be taken from December's figure each year
- The actual uplift for national living wage will be modelled each year
- Other pay costs will be uplifted by 33% of that year's NLW percentage increase

19. The council's intention is that this model should apply, regardless of changes in the actual figures, subject to the overall annual uplift not varying by more than 1% from the forecasts in the table below.

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<i>* compound impact</i>	Efficiency %	% Increase	Efficiency %	% Increase
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20. These uplifts give the following cash changes to the standard weekly fee. Payments made by the NHS, to cover the cost of Free Nursing Care (FNC), which is currently set at £156.25 per week, are in addition to the rates set out in the table:

Standard fees / Annual uplift				
	Residential	Uplift	Nursing (excluding free nursing care - FNC)	Uplift
2016/17	£462.06		£528.54	
2017/18	£470.79	£8.73	£535.93	£7.39
2018/19	£483.84	£13.05	£551.34	£15.41
2019/20	£499.03	£15.19	£567.97	£16.63

Legal implications

21. Under section 1 Care Act (2014), the council has a general duty in exercising its functions in relation to an individual's care and support, to promote that individual's wellbeing. The council discharges its duty in relating to an individual's care and support by entering into contractual arrangements with the providers of residential care homes.
22. The Care Act also places a number of new duties on the council. These duties include market shaping and to promote the efficient and effective operation of the market for adult care and support as a whole. The council must understand local markets and develop knowledge of current and future needs for care and support services. This, in essence, means that the council will need to be aware of its responsibility to meet the needs of all people in Herefordshire, whether they are publically funded or people with their own means to fund care (self-funders).
23. The legal duty to pay due regard to the "actual cost of care" is set out in "Building Capacity and Partnership in Care" (2001). This duty requires the council to set rates that reflect the legitimate current and future costs.
24. The Care Act and the supporting Care and Support Statutory Guidance (March 2016) sets out the market shaping duties for local councils and states that:
"When commissioning services, local authorities should assure themselves and have evidence that contract terms, conditions and fee levels for care and support services are appropriate to provide the delivery of the agreed packages of care with agreed quality of care".
25. The council must ensure that the person has a genuine choice and must ensure that at least one option is available and affordable within a person's personal budget. However, a person must also be able to choose alternative options, including a more expensive setting if they so wish, where a third party or in certain rare circumstances (subject to meeting a strict criteria) the resident is willing and able to pay the additional top up themselves. However, any additional payment must always be optional and never as a result of commissioning failures leading to a lack of choice. Detailed guidance is set out in annex A: choice of accommodation and additional payments, which can be found in the statutory guidance.
26. Given the council's statutory duties and also the contractual agreement to review annual increases, if the council was to fail to act, it would leave itself open to legal challenge, potentially via a Judicial Review or other legal means, and could face heavy criticism which would damage its ongoing working relationship with providers.

Risk management

27. A key risk for the council if the recommendations are not agreed will be that any potential efficiency will not be delivered if a consistent and fair fee structure is not put in place.
28. If the fee increase is not agreed, the providers will not accept referrals from the council's adult social care and will focus on the private self funding market, this will

put additional pressure on our systems and increase hospital discharge delays.

29. If the council does not agree to increase fees, Herefordshire may see increased provider failure which will lose bed capacity in the county.
30. The recommendations will reduce the financial risk to the council and budgets will be planned in advance rather than the uncertainty around annual negotiations.

Consultees

31. The care home association and care homes have been consulted on the proposal, this is detailed in appendix 1.

Appendices

Appendix 1: Care home provider consultation responses, together with the response to the issues raised by consultees.

Background papers

- None identified.