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| MEETING: | CABINET - HEALTH AND WELLBEING |
| MEETING DATE: | 20 JUNE 2013 |
| TITLE OF REPORT: | OPEN BOOK REVIEW |
| REPORT BY: | ASSISTANT DIRECTOR PEOPLE'S SERVICES |

1. Classification

Open

2. 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

3. Wards Affected

County-wide

4. Purpose

To propose changes to the weekly fees paid in relation to nursing and residential care homes for older people for 2013/14. The report also indicates how fees will change for the next three years prior to a further review of costs. The date for the next full review will be 2016/17.

5. Recommendation(s)

THAT:

- a) the Open Book Review approach that has been used be noted;**
- b) the proposed Maximum Usual Price (MUP) for older people's residential and nursing care purchased by the council be approved, and an annual indexing process implemented, with a further review scheduled for 2017; and**
- c) the implementation of this MUP, effective from January 1st 2014, be progressed including the introduction of a new outcome based contract and framework approach through a formal procurement exercise.**

6. Alternative Options

- 6.1 There are no Alternative Options. Not establishing an MUP and establishing a quality outcome based specification would not enable the council to be financially sustainable and discharge its responsibility for the quality of social care providers.

7. Reasons for Recommendations

- 7.1 The Council must stay within its available resources but has a duty of care to older people who are placed in care homes to ensure they are properly cared for.
- 7.2 The benchmark review has identified weekly fees paid for nursing and residential care homes are far higher than that of its neighbours, West Midland authorities and comparator authorities. Action is required to ensure payments made to nursing and residential care home providers are fair and provide the requisite quality to clients placed in their care. Implementation of an MUP and a new contract, will contribute to improved market management and consistency of quality and fairness in price. The three year model, reviewed annually, will enable the market to plan their budget effectively and also provide stability to the self-funded market.

8. Key Considerations

- 8.1 Herefordshire Council commissioned an open book review of nursing and residential care for older people in July 2012. Most Councils set an MUP because they need to be fair and transparent but also secure quality in the market. There are forty five (45) residential and nursing care homes in Herefordshire which care only for older people and those older people with dementia. All were invited to take part in the review. Three (3) of the care homes take block contract people only and did not take part in the exercise. Forty two (42) care homes were contacted and asked to become involved in the open book review. Twenty two (22) supplied returns representing 53% of the market. Care homes in Herefordshire have a maximum number of beds available of 1,449. Beds are commissioned by Herefordshire Council, the CCG and self funders.

An open book review is based on the principles of fairness and transparency, enabling a balanced approach to commissioning services of an acceptable quality that represent value for money, within a climate of increasing demand for services and significant financial constraints and cost pressures for both commissioners and providers. The Council appointed 2 independent leads – an accountant and a social care specialist – to complete the review. The Laing & Buisson (L&B) model was used as a reference point but the independent experts developed their own model which was based on actual expenditure reported by care home owners. This is in line with other authorities who have also used bespoke models to review costs of care. The terms of reference for the review are available as a background paper.

Residential homes provide a living arrangement in which people with special needs, especially older people with disabilities, reside in a facility that provides help with everyday tasks such as bathing, dressing, and taking medication. Nursing homes provide skilled 24-hour medical care to individuals who are unable to manage daily living activities due to debilitating health conditions or old age.

The Department of Health have recently published the findings of a Government report which says there is an intention to review the financial affairs of care homes more robustly to ensure a 'Southern Cross' incident does not occur again. The self funding market is important for the sustainability of care homes, however self funders should not pay additional sums to support those older people who have been placed in care homes by the Council.

- 8.2 To establish a Maximum Usual Price, the key issues taken into consideration included:
- Actual costs – Providers completed questionnaires and most supplied copies of their income and expenditure accounts which could be used for comparison purposes.

- Benchmarking – A benchmarking review of comparator, West Midland and neighbouring authorities. This review identified significant differences between fees paid in Herefordshire compared to all comparator groups.
- Quality - How fee levels align to delivery against quality standards and whether fees should be a standard or banded budget. In 2010 a banded budget was initiated based on two quality scores.
- Inflation – Inflation has been considered so this exercise does not have to be completed for a further 3 years.
- Enhanced payments for dementia - National research identifies that costs within nursing homes do not vary for residents with dementia, but do vary because of the impact on staffing levels within residential homes.
- Top-ups – Ensuring care homes do not charge top ups for services already purchased. This is subject to another piece of work being carried out.
- The 2010 uplift which saw nursing care homes receive a 35% uplift and residential care homes receive a 19% uplift in fees paid by the Council.

9. Community Impact

9.1 The attached proposals will have an impact on some of the services the Council provides. The Council remains committed to ensuring public services are prioritised to meet the needs of the most vulnerable.

10. Equality and Human Rights

10.1 The proposal to move to an outcome-based contract and framework, which will have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act.
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- will support the council in meeting its duties to ensure quality of care for older people.

11. Financial Implications

11.1 In 2010 the Council raised fees for nursing care homes by up to 35% and for residential care homes by up to 19% so long as care homes achieved a 2 star quality status. Since 2010 increases in rates has been minimal. The effect of the significant rise in 2010 has put additional financial pressure on the Council budget. Thought has to be given to all elements of costs and fees before a recommendation is made.

11.2 Cost of care

Costs were obtained from providers by way of completing a questionnaire. The costs were reviewed against income and expenditure sheets where supplied to ensure reasonableness in the figures presented.

The base rate highlights staff, revenue expenditure and corporate overheads. Only the cost of capital and profit is not included in the baseline. Profit of 5% and a return on capital of 2.5% has been added to the base rate to ensure owners receive a profit on their costs and a return on the capital they have invested. The results are shown in Table 1.

Table 1

Further information on the subject of this report is available from Jo Davidson, Director For Peoples Services on 01432 260039 and/or Helen Coombes, Assistant Director on 01432 261743

| | Residential care (weekly) | Nursing care (weekly) |
|------------------------------------|------------------------------|--------------------------|
| Hereford cost model (base rate) | £380 | £579 |
| Profit @ 5% | £19 | £29 |
| Return on capital @ 2.5% | £35 | £37 |
| Less FNC & Incontinence | | (£113) |
| Cost of care | £434 | £532 |
| Current Fees | £468 | £572 |
| Variance / Saving | £34 | £40 |
| % Saving / Increase | 7% | 7% |

*Profit is based on market rates. Return on capital is based on the best available bank rate

Return on capital is calculated on the value of the land and accommodation used for providing care.

The cost of care is lower than currently paid by Herefordshire.

A benchmark comparison was undertaken as part of the review to ensure the Council pay a fair and equitable amount in comparison to other authorities.

Fees

- 11.3 Fees paid by Herefordshire were also reviewed against the fees of neighbouring, West Midland and comparator authorities.

Table 2

| | Residential care (older people) | Residential care (dementia) | Nursing care (older people) | Nursing care (dementia) |
|---------------------------|------------------------------------|--------------------------------|--------------------------------|----------------------------|
| Average of 15 authorities | £401 | £434 | £429 | £447 |
| Current Fees | £407 | £468 | £572 | £572 |
| Variance | £6 | £34 | £153 | £125 |

Benchmarking has highlighted a significant discrepancy between what is paid across a number of comparator authorities and that which is paid in Herefordshire.

The increase agreed to in 2010 offered enhancements based on quality, there is no evidence to support greater quality and the star ratings used in 2010 are no longer in existence as the CQC has changed its approach. The 2010 model refers to quality scores of one and two, with those achieving a two star rating receiving the higher rates as shown above. Some thought was given to using the 2010 figures which asked for one star rating only but this was discounted as no evidence could be found to support the workings for the 2010 values.

Herefordshire pay far more for nursing care than any other authority approached, however the open book exercise has identified the true cost of care in Herefordshire. Profit of 5% and a return on money invested in land and buildings of 2.5% have been added to the cost of all other costs incurred by care homes. Using the rates highlighted by the open book review provides the following savings:

Table 3

| | Residential care (weekly) | Nursing care (weekly) |
|-------------------|------------------------------|---------------------------|
| Cost Model | £434 | £532 |
| Budgeted Weeks | 7,246 | 5,809 |
| Cost | £3,145k | £3,090k |
| Budget | £3,391k | £3,311k |
| Variance | £246k | £221k |

Using cost model rates will result in an annual saving of £467k.

Indexation

- 11.4 Once the OBR has been implemented the Council will have to develop a process that is completed annually to ensure fee levels are acceptable in every year. An approach to indexing going forward will be agreed following an assessment of the most appropriate indicator with the finance department and prior to any framework procurement.

Benchmarking will take place annually and the findings of that benchmarking will be reviewed by the finance department and any possible uplifts notified to providers in March of every year.

Procurement

- 11.5 The procurement approach is expected to start in 2013 and individual suppliers of care will be approached to sign up to the new approach.

12. Legal Implications

- 12.1 Two important recent judicial reviews which relate to pricing in this area have recently taken place. A hearing between Forest Care Home Ltd, Mavalon Ltd, Woodhill Care Ltd and Pembrokeshire County Council in December 2010 found as follows:

The learned judge stated that when exercising its discretion in a manner which is adverse to an interested party – e.g. in this context, a provider or resident – the Council's own financial position is not necessarily determinative. The Council is bound to take into account and balance all relevant factors; and in particular it is

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bound to balance such matters as the quality of the service it provides and the need to maintain stability in the care services sector on the one hand, against the resources with which it has to provide that service on the other. The interests and rights of residents are of particular weight in that balance. (para 143)

12.2 The second was in Sefton in November 2011 which found as follows:

Sefton Council in Merseyside was acting illegally by imposing a freeze over a two-year period. The basis for the decision was Judge Philip Raynor's judgment that "inadequate government funding" was not an excuse for the Council failing to consult with local care home operators about the fees it was prepared to pay. He also criticised the Council for failing to "properly assess the risks of its decision to care home residents, contrary to its duties under common law".

12.3 Legal views have been expressed that the decision is very significant and will require a change of approach by local authorities which have a statutory duty to ensure there is adequate provision for the care of elderly and vulnerable people in the community. Based on this ruling, it may now be unlawful to contract out services to operators, based on arbitrary funding agreements, without showing due regard to the actual cost of care and the impact that changes in provision could have on the individuals concerned.

12.4 There is a risk that the Council's pricing policy may result in a number of providers seeking voluntary contributions, which service providers, clients, families and carers refer to as 'Top-ups', from . Whilst there is room for third party top-up's to allow choice for individuals there is strict legal guidance under the 'Choice Directive' about this mechanism not being used to subsidise any perceived deficit in core care costs.

12.5 The law in this area is however clear- once the cost of a Council placement has been agreed then the care home has no legal basis to charge the resident an additional amount. They are entitled to seek a voluntary contribution from the resident, the family or the wider community but the resident's placement at the home cannot be dependent on a family / resident's voluntary contribution ('top-up') and the Council will make this clear to service providers whenever this issue arises.

13. Risk Management

13.1 In addition to the financial and market pressures, two legal judgments set out above have been given careful consideration.

13.2 The Open Book Review has concluded a detailed pricing review of the underlying cost structures of twenty two providers and of the current rates that are funded by the Council. Details of the Independent Social Worker and Accountant Report are available as a background paper. This has been used to determine the pricing and procurement approach which will secure placements to meet the current and future demand within a contractually compliant framework and underpin robust quality assurance.

13.3 The procurement approach will be set out shortly and may mean future placements will be agreed with a potentially reduced number of providers, reducing some choice and exposing a number of providers to increased risk (financial viability). However this must be weighed against the risks of the current fee structure which is out of line with the fee structure used in other authorities, and is financially unsustainable.

13.4 The decision to use the rates offered by providers rather than go with benchmarked rates shows Herefordshire's commitment to quality care and providers receiving a fair fee. Neighbours, West Midland authorities and comparator authorities pay less than Herefordshire and this mitigates the risk of challenge.

14. Consultees

14.1 Providers of Care Homes.

15. Appendices

15.1 None.

16. Background Papers

16.1 Terms of Reference for the Open Book Review

16.2 Independent Social Worker and Accountant Report