

Social Care Easements under the Coronavirus Act

This update draws together elements of the Coronavirus Act relating to the Care Act 2014, the associated guidance, the recent Action Plan for Adult social care, and guidance on direct payments to provide an outline of the approach being adopted in relation to adult social care, including amendments to legal duties, operational decisions as to reducing service levels, and funding.

27 April 2020

Please note: the information contained in our legal updates are correct as of the original date of publication

Introduction

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Outline

It is helpful to start by considering how the provisions fit together.

Section 15 and schedule 12 of the Coronavirus Act 2020 have the effect of reducing the duties on Local Authorities in relation to provision of care. They relax requirements in relation to charging and provide for assessments to be undertaken at a later stage. These provisions were brought into effect by the Coronavirus Act (commencement No 2) Regulations from 31 March 2020. In effect this creates the flexibility required to permit the guidance which followed the Act.

The Care Act Easements: Guidance for Local Authorities sets out how Local Authorities are to operate within these easements. It sets out the circumstances in which reduced service levels can be provided, and the steps to be taken in order to make a decision to reduce service.

The guidance is supported by the ethical framework for adult social care, which sets out the principles on which care should be delivered.

The Action plan for Adult Social Care supports the above guidance, and sets out steps intended to support it. The guidance for people receiving direct payments addresses some of the challenges for those using personal budgets in ensuring continuity of care, and sets out steps for local authorities and CCGs to support those people.

The Coronavirus Act

Section 15 and Schedule 12 of the Coronavirus Act came into effect from 31 March and will remain in force while the Act does, or until withdrawn by further regulations.

The Act, as it relates to social care, is particularly aimed at addressing the twin challenges of:

- increased need for care, particularly among vulnerable groups, through infection, indirect effects on health provision and self isolation
- a depleted social care workforce, due to illness, self isolation and personal caring responsibilities.

Among measures brought into achieve this, Schedule 12 has the effect of freeing local authorities of certain of their duties, including those relating to:

- assessments of adults in need of care and support, and children expected to have such needs on attaining 18, or carers of such adults or children, including eligibility assessments

- the duty under section 18 of the Care Act to meet needs for care and support satisfying the eligibility criteria, unless it is necessary to meet those needs to avoid a breach of the adult's human rights
- care plans under sections 24, 25 and 27 of the Care Act
- notification and assessment duties when a person moves between local authority areas

The Care Acts Easements Guidance for Local Authorities

Decision to operate within the easements

The Coronavirus Act provides for guidance on how local authorities are to exercise functions under the Care Act, and local authorities are obliged to comply with such guidance. The power was exercised in order to publish the "Care Act easements: guidance for local authorities".

The guidance sets out an expectation that local authorities should do everything they can to continue meeting their duties as they were prior to the Coronavirus Act. A local authority should only decide to depart from this when it is no longer reasonably practicable to do so without a risk that acute needs will not be met and potential risk to life, due to depletion of the workforce or increased demand on social care. Any departure should be proportionate to the circumstances in the local authority.

Annex A to the guidance includes a decision making table intended to support consideration of use of the easements, and Annex C includes information in relation to prioritisation.

A decision to reduce provision in this way should be made by the Director of Adult Services with or on the recommendation of the Principal Social worker, following involvement and briefing of their lead member and discussion with the relevant CCG. The decision should be recorded and submitted to a dedicated DHSC email address.;

Need and eligibility

The March Hospital Discharge Service requirements anticipated use of the power under s19 (3) of the Care Act as a mechanism to meet urgent needs, without assessment.

The guidance in relation to the easements envisages that in other circumstances, any reduction in use of assessments will be determined by the resourcing position of the Local Authority, so that the Authority will determine the extent to which usual assessment requirements will be relaxed. Options such as third party assessment, self assessment and remote assessments are suggested. However, the guidance makes it clear that some form of assessment, which is to be recorded, should take place. Principal social workers are charged with ensuring proportionate recording is maintained.

At the least authorities will need to maintain an approach to assessments which permits compliance with the duty to ensure needs are met to the extent necessary to protect an individual's human rights.

Service users should be informed about the prospect of future assessment or reassessment and the possibility that this may result in a change in the services being provided.

Following the end of the period for which the provisions are in force, it is anticipated that local authorities who have used the easement to reduce assessments will complete assessments within a reasonable period, and the Coronavirus Act makes it clear that what is reasonable must be considered in light of the duration and impact of the Covid 19 measures.

Financial Assessment and Charging

Section 14 of the Care Act sets out broad charging powers, which are further defined by regulations and guidance. Section 17 requires financial assessments to be undertaken before charging.

The Coronavirus Act permits a local authority to decide not to undertake a financial assessment before beginning to meet needs during the 'emergency period', but instead to undertake the assessment at a later date, and then retrospectively charging for meeting the needs during the emergency period.

The guidance makes it clear that in order to retrospectively charge, people must be informed at the time the services are carried out that this may happen. Where possible, information to help people understand the type and range of cost which may be involved. Light touch

financial assessments remain available and are identified in the guidance as a potential alternative means of simplifying the assessment process.

Existing exclusions from charging are not affected by these measures, including intermediate care and any part of a service which the NHS is under a duty to provide.

In relation to carers, the guidance on the Easements reiterates the existing guideline that Local Authorities are not required to charge carers for support and that it may be a false economy to do so. It identifies the particular importance of carers in responding to Covid 19, and the need to ensure their wellbeing and ability to care are not adversely affected by charging decisions.

Action Plan for Adult Social Care

The action plan addresses a range of measures to support social care during Covid 19. Here we focus on elements which relate to the Care Act Easements.

The Action plan indicates many individuals who have suffered from Covid 19 will require specialist NHS rehabilitation, and anticipates the Nightingale Hospitals will be able to provide capacity for this. This may reduce pressures on social care.

This is also expected to increase the proportion of people who are discharged to social care with Covid free status though some in this group may still require care and, if discharged within 14 days of infection, isolation.

For those discharged to care with Covid positive status, local arrangements are to be put in place in accordance with the discharge guidance, and will be supported by funding already made available.

Guidance for people receiving direct payments

The majority of the guidance is directed at those people who secure care services via a direct payments arrangement, but it also sets out expectations of Local Authorities and CCGs intended to ensure needs continue to be met, in accordance with the guidance on the easements, or where relevant the reduced duty under the Coronavirus Act.

Requirements set out in the guidance include identifying, mapping and contacting direct payment users, and considering how they can be supported by community services, primary care and the voluntary sector.

The guidance also identifies the need for resilience in payment processes to ensure essential payments can be made. Contingency planning is recommended in case emergency support is needed in support of care package issues.

Both the guidance and the action plan recognise that it may be necessary to take a more flexible approach to use of perianal budgets, to ensure continued support.

Maintaining effective care, and supporting people with needs

The Act, guidance and action plan together with a range of other guidance are part of an evolving strategy to meet peoples needs through the social care crisis, to support and protect workers delivering services, and to plan for a return to more normal operations in the future. Emphasis is rightly placed on the need for local and regional arrangements to reflect demand, capacity and other factors which mean one size does not fit all.

Interpretation and application of the guidance has prompted a range of questions, a number of which have informed this update, and as the situation and guidance develops we expect more to emerge.

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