

TOP UP PAYMENTS IN CARE HOMES (WITH AND WITHOUT NURSING)

This factsheet has been written in response to a number of queries raised by care home providers regarding the top up arrangements in Birmingham.

The Council's aim is not to prevent top ups from being put in place, but rather to ensure that agreement is reached beforehand. This will ensure that mechanisms are in place to protect service users and their families, whilst allowing choice and flexibility where this is requested to secure additional services. It also allows the Council to fulfil its obligations and to ensure a transparent approach.

What do we mean by a top up payment?

A 'top up' is an agreement between a care provider and a service user (or their representative). Top ups will only be used when the service user or their representative requests; additional services; an upgrade in accommodation; and/or chooses a more expensive accommodation than the Council can identify.

Providers will be required to justify any top up arrangements and demonstrate that it is not being used to meet the costs of a service user's eligible care and support needs.

Where the service user chooses an alternative provider which is more expensive, the City Council may agree an individual agreement under its contract, which is subject to a top up being entered into by a third party (family or representative of the service user). In this case, the third party will be responsible for paying the difference between the City Council's identified rate and the rate of the provider selected by the service user and/or their representatives.

Additional services

The approach to the issue of top ups is the subject of ongoing national debate. Both care providers and local authorities have a range of approaches to this issue. Some providers have offered discretionary add-on service options which

the City Council would not fund within a package of care. This is because the City Council does not believe that the add-ons are necessary and don't meet the eligibility criteria for care and support. However, some services users might wish to purchase these additional services themselves.

The City Council is not responsible for payments for service users or their representatives who wish to; take up additional services; upgrade the facilities in which they are cared for; or choose a more expensive accommodation than the Council can identify.

What will the City Council pay for?

It is not possible to define in generalised terms what elements or particular services the Council will fund and which it will not. Flexible provision is required to meet assessed care and support needs and these will be different for each individual service user. Each service users' case will require careful consideration by professional social workers regarding what constitutes services to meet care and support needs, as opposed to services to meet personal lifestyle choices. The estimated costs of meeting these needs will be included in the service users Personal Budget.

The City Council is required to ensure that all service users are charged fairly for the service. In order to comply with this requirement, any changes to the service delivered must be notified to the Council.

What can care providers do?

By agreeing to the Terms and Conditions of the City Council's Flexible Contracting Arrangement and submitting an 'offer' to meet a service users' needs via the micro-procurement process, providers are agreeing to the City Council's conditions relating to top ups.

Agreeing a top up

- Top ups will only be used when the service user or their representative requests; additional services; an upgrade in accommodation; and/or chooses a more expensive accommodation than the Council can identify.

- Wherever possible, an estimate of any additional costs shall be provided to the service user or their representative by the provider, before any commitment to the additional service is made.
- Care providers must have discussed, and if agreed, have a written and signed agreement that details services to meet personal lifestyle choices.
- Any proposed increase to a top up agreement should be reviewed between the provider and the third party with a view to establishing whether the proposed increase is affordable to the contributor(s). The provider should, during the review, outline the associated costs which require them to request an increase in third party contribution.
- The provider must ensure that they have a policy in place that clearly states how a 'top up' arrangement will meet best practice guidance from the outset.
- Top ups cannot be introduced part way through a placement.

Paying for a top up

- The service user shall not be charged for any service that can be provided free of charge by the NHS.
- The third party shall be solely responsible for any agreed third party top up payment.
- Third party top up / third party funding arrangements cannot be charged for Care and Support (Supported Living).
- Top ups will only be paid by the third party funder for the service user's actual period of residence in the care home.
- If a third party funder defaults on a payment agreement for more than four weeks with the provider, the provider must immediately notify the City Council. In such cases, the Provider and Council will use their best efforts to reach agreement as to the pursuit of the debt and/or other actions to take.

Examples of additional services

Additional services are defined as those which the service user would like to receive in addition to the social care arranged by the City Council. Services which a service user might want and which can be included within a top up could include the following (this is not an exhaustive list and these must not form part of the eligible care and support needs):

- additional trips/transport away from the normal care home
- fitness facilities
- payment for a room with a private garden area
- payment for a larger than standard room
- payment for a room with balcony
- a private kitchen area
- beauty treatments and hairdressing services
- additional therapy treatments over and above that which the NHS normally provides to meet clinically defined needs.
- Additional entertainment services and equipment that are not part of the care needs including cable TV, internet etc

The future of top ups

The Government are currently working with local authorities and representatives of service users to seek to understand the extent of top ups and additional charges in care homes; how guidance might be strengthened to ensure that the position on top-ups is clarified; and any impact this may have on local authorities. This review is due to be completed this October 2018 and this may require further changes to policy and City Council contracts.

Further guidance

- The Competition and Market's Authority (CMA) has published draft advice relating to charges for service users in care homes. The draft

advice sets out what the CMA considers care homes should do to comply with consumer law, including:

- what upfront information they need to provide to prospective residents and their representatives to help them make informed choices
- what they need to do to ensure that their contract terms and the way they treat residents and their representatives are fair
- their obligation to provide services to residents with reasonable care and skill
- what they need to do to ensure that their complaint-handling policies and procedures are easy to find, easy to use, and fair.

The draft advice is available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/712782/Care_homes_guidance.pdf

You should consider this guidance in setting your policies in relation to additional charges/top ups.