



FACTSHEET 2

The Care Bill – Who is entitled to public care and support?

““For far too long people's needs assessments have been driven by the service on offer or that can be provided in a particular area... such an approach fails to recognise the richness and complexity of people's lives and fails to support or promote truly person-centred care”

Care Quality Commission

This factsheet describes how the Bill provides for adults' core entitlements to public care and support.

Why do entitlements matter?

Legal entitlements or duties make clear what local authorities must do, and what people can expect, so that everyone knows where they stand. It is important that the law explains when people will be provided with care and support by the local authority. The law needs to be clear about who should receive care and support, and in what circumstances, to ensure that this happens fairly and consistently. This all impacts on people's personal experiences of care and support.

Why do we need to change the law?

At the moment, people have different entitlements for different types of care and support. These are spread across a number of Acts of Parliament, some over 60 years old. The law is confusing and complex.

As well as it being hard to understand what an adult is entitled to in particular cases, there are many anomalies that make the current entitlements inconsistent. For

example, the biggest difference is in the way that care home accommodation is treated. This has a different legal test compared to other types of care and support, and means that the entitlement is not the same.

We want to design a simpler, modern law for 21st Century care and support:

- we want to ensure that the law focuses on the needs of people. The existing law creates responsibilities to provide particular services. That leads to an approach to assessment and support planning that focuses more on organisations – the people that provide the care, not the people who receive it. We want to change this, so that the person is always at the centre.
- the existing law is multi-layered and very complicated. We want to clarify it so that people can better understand how the system works, and how decisions about them are made.
- to make the law fair and consistent, we want to remove many anomalies, which treat particular groups of people differently. We do not want people to be dealt with differently based on the type

of service they need or where they receive it.

All of this requires some significant changes to the current law.

What does the Bill do?

The Bill creates a single, consistent route to establishing an entitlement to public care and support for all adults with needs for care and support. It also creates the first ever entitlement to support for carers, on a similar basis (see also **factsheet 8**).

The Bill is also clear about the steps that must be followed to work out this entitlement, to help people understand the process. It follows the person's 'journey' in the care and support system. It begins with an assessment of their needs and a decision about whether their needs are eligible, including a financial assessment where necessary. This will determine whether people need to pay for their own care, and will enter the new capped costs payment system (see **factsheet 6**). After this process of assessment is finished, the decision can then be made about whether the adult is entitled to care and support arranged by the local authority.

The Bill sets out a new legal duty for an adult's "eligible needs" to be met by the local authority, subject to their financial circumstances. Their eligible needs are those that are determined after the assessment (see **factsheet 3**). "Meeting needs" might mean arranging a care provider on the person's behalf, or making a direct payment to the person to arrange their care themselves. It does not mean that the local authority will always fund the care and support (see **factsheet 5**).

A person will still be able to receive the same types of care and support as now. If their needs can be best met in a care home, that is what should be arranged.

The Bill says clearly that a person will be entitled to have their needs met when:

- the adult has "eligible" needs,
- the adult is "ordinarily resident" in the local authority area (which means their established home is there), and
- any one of five situations apply to them.

These are the five situations:

- there is no charge for the type of care and support they need;
- the person cannot afford to pay the full cost of their care and support;
- the person asks the local authority to meet their needs;
- the adult does not have mental capacity and has no one else to arrange care for them;
- when the cap on care costs comes into force, their care and support costs have exceeded the cap.

What and when people have to pay for their care

Some types of care and support are provided free of charge but often the local authority will charge a cost. Depending on an individual's financial resources, a local authority may ask an individual to contribute towards the costs of their care (up to and including the full amount).

In cases where the costs of care would reduce an individual's income below a set level, a local authority will pay some of the

costs to make sure that the individual is left with this minimum level of income.

This ensures people will still receive the care they need in cases where they have only modest resources.

In any other case, the adult can still ask the local authority, regardless of their finances,

to arrange their care and support for them. It ensures that people who are uncertain about the system or lack confidence to arrange their care do not go without. However, they will still need to pay for their care and support if they have adequate financial resources.

FURTHER INFORMATION

- Statutory guidance on eligibility: **Prioritising Need in the Context of Putting People First** (February 2010)
- **Discussion Document on draft national eligibility criteria (June 2013)**

Some of the key existing entitlements:

- for residential accommodation: **Section 21 NAA 1948.**
- for other types of care and support: **Section 29 NAA 1948, Section 45 HSPHA 1968, Section 2 CSDPA 1970, Schedule 20 to NHSA 2006.**