

Third-party top-ups v cross-subsidy: the care fees adviser's perspective

NHFA Care Fees Advice provides advice and information to all, regardless of means; consequently, approximately 70 per cent of callers to the advice line are state-funded and 30 per cent self-paying care-home residents.

Third-party top-ups

Third-party top-ups appear to be regarded in the care-home sector as the norm and in recent years have become far more widespread and common as local authorities continue to peg their standard rates at levels that are not commercially viable. Third-party top-ups obviously only affect those requiring state funding; but these may also be people who were previously paying privately until their capital diminished to the means-test limit. Much of the confusion and many of the issues we have to deal with surrounding third-party top-ups arise because care managers do not explain clearly what they are. For example:

- They are only payable when more expensive “preferred accommodation” is chosen.
- That there is no “fait accompli” i.e. that a third-party top-up should not be requested if alternative care at the local authority standard rate is not available.
- Care managers and care-homes do not always make clear that although the contract is with the local authority, they still require a top-up payment.
- A reason why this payment cannot be taken from the resident's disregarded capital is not explained.
- Exceptions to the above rule i.e. during the 12-week/deferred loan period are not explained. The constant threat to relatives that a resident will be moved to cheaper accommodation by the local authority even when they have self-funded initially.
- The above occurs even where other residents are being local authority funded without top-up agreements meaning the person having been penalised through cross-subsidy is again penalised for previously being a self-paying resident.
- The issue arises as to who is ultimately responsible for and in control of the level of the third-party top-up if the local authority is using a four way contract imposing the negotiation of the top-up on the third party.

The whole issue of top-ups places relatives in a very precarious situation. Many are themselves retired and can ill afford them but, on the other hand, they want care that is appropriate to their relative's needs, including their emotional needs, which could be about location. Whilst it is reasonable for local authorities to put ceilings on the rate they pay for care, we are finding that is commonplace that care for these rates is not readily obtainable and families are being put under enormous pressure to make top-ups. This clearly contravenes guidance, which states that local authorities should not set an arbitrary rate for care if care cannot be purchased in their locality for that rate.

Recent calls to the NHFA help line

It appears that local authorities automatically demand a top-up before even trying to renegotiate contracts with homes:

- Caller's Aunt, aged 93, had been self-funding in residential care 2 years 9 months. Capital reduced to £21K and local authority funding sought. Assessment indicated there would be a 3^d party top-up required of £44 per week. (There was no explanation of why Aunt's

disregarded capital could not be used.) Caller was himself a pensioner and unable to meet this payment from his limited resources but did not want his Aunt moved which was the alternative.

- Caller's Mother, aged 89, sold her property and self-funded in care-home for 4 years. Capital reduced to £21,000 and local authority funding sought. Told there was a £25 per month top-up required this was then increased to £99 pcm and then to the current £150 pcm. Caller is having difficulty in keeping up such payments and faces threat of Mother being moved to cheaper accommodation.
- Caller only informed that a top-up would be required in telephone call from social worker 7.00 pm previous evening to Mother being discharged to care-home. Feeling that they could not let Mother remain in hospital or disappoint her they felt pressured to agree to top-up because they were told that, unless they agreed, Mother could remain in hospital indefinitely until a place at the local authority rate became available.
- Client called worried about third-party contract. Council has a contract that is four-way between local authority/resident/third party and care provider. Caller is prepared to sign only if all negotiations are conducted through the local authority in order to offer her some protection on future top-up increases however, the local authority refuses to be responsible.

How this affects financial advice

NHFA experience is that care-homes are becoming less willing to reduce their rates when someone who has been self-funding then requires care at the local authority rate. NHFA care fee funding reports examine people's eligibility to state funding, assess income and capital and affordability of chosen care over periods of three and five years assuming a 5 per cent annual increase in fees. Consequently, such a report will identify if capital is going to diminish to the level requiring local authority funding in the future: in which case, the issue can be addressed right at the outset with the care-home and the local authority and a course of action agreed. This sometimes fails if the care-home changes ownership.

Cross-subsidies

Once self-paying clients become aware that they are paying a far higher fee than those receiving the identical care funded by the local authority there is an incredible amount of resentment both towards the care-home for adopting this practice and the local authority for causing the problem by not paying an adequate amount. Most clients resent having a two-tier charging system and often do not come to the realisation until it becomes a real issue at the end of the 12 week property disregard period or sometimes the loan period that follows. Up until this time, many don't realise there is a difference. Similarly, when faced with the traumatic time of placing a relative in a care-home, often on discharge from hospital, they do not question how much the fees are likely to be. Once they do, they realise that they just have to accept it, or else the alternative is to move their relative, which usually is the more difficult, if not impossible option for all concerned. The majority are distinctly unhappy about paying a cross-subsidy. Their comments are usually along the lines of 'Why should my (relative) subsidise those who don't pay for themselves and in turn help out the Government (i.e. Social services).

How this affects financial advice

The main challenge for the Care Fees Adviser is to provide the care-home resident and their family with the peace of mind that the cost of their chosen care can be met for the duration of need and where possible to preserve capital for the inheritance many older people wish to

leave. NHFA has been providing this advice since 1991; however, over recent years it has become increasingly difficult to meet this challenge because of the unpredictable nature of care-home fee increases. Fee increases have been attributed to the higher costs of regulation and overheads etc. but underlying this are the increases necessitated by having to cross-subsidise local authority funded care-home residents. Across the UK, fee increases reported by NHFA advisers have ranged from 5 per cent to 21 per cent per annum.

Financial Product and Advice Case Study

One of the financial products specially designed to meet care-home costs are 'Immediate Need Care Fee Payment Plans'. In return for a lump sum, perhaps part of the proceeds of a former home, they undertake to deliver a regular monthly income covering the shortfall between the care-home resident's income and the fees at the outset of care being required. There is the option to receive payments increasing at 5 per cent compound per annum but the difficulty arises when fee increases, as they often do, substantially exceed this. In planning for fee increases we do retain a contingency fund to meet any surplus over and above the 5 per cent but setting the level of this becomes increasingly difficult. In some circumstances where the fee increases have been so significant it has been worth considering the purchase of a 'top-up' plan.

NHFA has designed a fee increase limitation agreement or a fee enhancement agreement whereby the care-home signs up to agreeing not to increase its fees by more than 5 per cent per annum. This works well in conjunction with care fee payment plans but, again, in recent years care-homes have been reluctant to enter into such agreements.

In other circumstances as a client's health deteriorates, clients are advised of the possibility of a higher RNCC or NHS continuing care funding to combat the shortfall. However, often with the RNCC any increase is absorbed by the care-home and not taken off the cost.

Recommendations

The funding of care-home places was transferred to local authorities in April 1993. In announcing the funding levels the then Secretary of State, Virginia Bottomley, said

"The Government is fully committed to ensuring diversity and choice in community care provision" – "For this reason, we have decided to issue a binding direction on local authorities which will enshrine the right of individuals to choose the location and character of their residential or nursing home" – "Choice is common sense and an individual right. The elderly and handicapped must not be denied their right to choose how they wish to be cared for at perhaps the most vulnerable stage of their lives."

Passing the responsibility of funding care-homes to local authorities was a response to an obvious need to control spending where it may have been deemed unnecessary or able to be met from the equity in a person's property; however, evidence to date has clearly shown us it has not worked.

Neither 'third-party top-ups' nor 'cross-subsidies' are of help to anyone other than local authorities. Care-home residents and their families are put in very difficult financial situations and many care-home proprietors are unhappy about being forced to make these charges. There

have been a number of 'Fair Rate for Care' campaigns, none of which has been successful. The solution lies with central government which needs to address the issue. There is an obvious need to increase the funding to local authorities, ring-fenced for purpose with strict guidance on what is a fair rate to pay. To be rid of both third-party top-ups and cross-subsidies, local authorities need to pay a commercial rate for a care-home place. This could be determined by CSCI or equivalent, taking into account regional variations of costs and capital requirements. It should not be the current self-funding rate but lower, because as local authorities pay more private payers should pay less – perhaps meeting in the middle.

Alternatively, in order to facilitate choice, the funding for care-homes could be passed back to central government leaving local authorities with just the responsibility of assessing need. Once a need is identified, the service user applies direct to the DWP for the funding. This solution

- removes the financial burden from local authorities;
- places the purchasing power with the users of care-homes;
- removes the disparity between the funding different local authorities receive compared with the variable demand for care services from area to area;
- removes the disparity between how much each authority will pay for accommodation;
- promotes the freedom of choice of accommodation; and
- facilitates a level playing field between public, private and voluntary sector accommodation.

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