Changes to care fee funding rules – what we know so far

On 7 September 2021, the Government set out its [revised plan for the reform of Adult Social Care in England] which is due to take effect from October 2023. This includes a lifetime cap on the amount anyone in England will need to spend on their personal care, alongside a more generous means-test for Local Authority financial support. On the surface this reform appears to offer welcome assistance but, as ever, the devil is in the detail.

Under the existing rules, there is no cap on the amount that you may need to pay in relation to your personal care costs and if you have more the £23,250 of qualifying capital then you will be a "self-funder" and not eligible to any financial assistance from your Local Authority. When your capital is between £14,250 and £23,250 you will be treated as having assumed or "tariff" income. For every £250 (or part of £250) you have above £14,250 you will be treated as if you have an extra £1 of income per week.

If you are eligible for funding support, you will be expected to use the majority of your income (less a Personal Expenses Allowance of £24.90 per week) to meet the care fees and the Local Authority will make a contribution to cover any shortfall between your income (including any tariff income) and the fees. If the Local Authority considers that the fees of your chosen care provider are more than are strictly required to meet your care needs then they may limit their contributions, which tends to necessitate 'top ups' from third parties (usually family members).

The key changes we know of so far include:

- The introduction of an £86,000 lifetime cap on contributions to personal care.
- An increase in the upper capital limit to £100,000 and in the lower capital limit to £20,000.

- A commitment to unfreeze the Personal Expenses Allowance for care home residents, so that from April 2022 this will rise in line with inflation.

When assessing the likely impact of the lifetime cap, it is crucial to understand what will actually be covered. Costs incurred prior to October 2023 will not count towards the cap. Daily Living Costs (DLCs) are also excluded. These include so called “hotel costs” including accommodation, food and leisure. Therefore, only a small proportion of an average monthly care home invoice will actually go towards the calculation meaning that you will need to be in care for a long time to reach the cap. In practice, the cap is only likely to assist those who require long term care as opposed to those who may need care in the final few years of their lives. Once the cap is reached, you will still need to fund the DLCs until you reach the £100,000 capital limit.

Under the new capital limits, the difference between the upper and lower limits of £80,000 means that tariff income will become more important. For example, when capital assets are just below £100,000 you will be assumed to have tariff income of around £320 per week that you must pay towards your fees, on top of your actual income, which will mean that capital will continue to deplete.

The proposed changes mean that the care fee funding rules will soon apply to anyone who has a care need as opposed to only those with limited capital assets. Anyone paying for care will need to inform the Local Authority to ensure that contributions to their care costs are counting towards their lifetime cap. There will also be more people who require advice on how the funding rules apply to them as their available capital approaches the new upper limit.

We will review the additional guidance on the changes due to be released in April 2022 and provide a further update at that time.

Stephen Horscroft

Partner