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Dear Sir/Madam

**CONSULTATION ON AMENDMENT TO THE CARE HOMES
REGULATIONS 2001**

The Government intends to amend section 5 of the Care Home Regulations to reflect more clearly the wording of the National Minimum Standards relating to contracts.

A copy of the proposed amendment regulations is attached at Annex A, along with a copy of a Partial Regulatory Impact Assessment (RIA) at Annex B.

Comments on the proposed amendments should be sent by 18 July to:

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Yours faithfully

John Crook

Health and Social Care Joint Unit

DRAFT

 STATUTORY INSTRUMENTS

2002 No.

SOCIAL CARE, ENGLAND

The Care Homes (Amendment) Regulations 2002*Made* - - - - 2002*Laid before Parliament* 2002*Coming into force* - - [] 2002

The Secretary of State, in exercise of the powers conferred upon him by section 22(1) and (7)(a) and 118(5) to (7) of the Care Standards Act 2000⁽¹⁾, and all other powers enabling him in that behalf, having consulted such persons as he considers appropriate, hereby makes the following Regulations: —

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Care Homes (Amendment) Regulations 2002 and shall come into force on [] 2002.

(2) These Regulations extend to England only.

Amendment of the Care Homes Regulations 2001

2. In regulation 5 (service user's guide) of the Care Homes Regulations 2001⁽²⁾ there shall be added at the end the following paragraphs—

“(4) The registered person shall provide to each service user, by not later than the day on which he becomes a service user, a statement as to—

(a) the fees payable by or in respect of the service user for the provision to the service user of any of the following facilities and services—

(i) accommodation, including the provision of food;

(ii) nursing; and

(iii) personal care;

⁽¹⁾ 2000 C.14. The powers are exercisable by the appropriate minister, who is defined in section 121(1), in relation to England, Scotland and Northern Ireland as the Secretary of State. See section 121(1) for the definitions of “prescribed” and “regulations”.

⁽²⁾ SI 2001/3965, to which there are amendments not relevant to these Regulations.

- (b) the facilities and services for which the fees referred to in sub-paragraph (a) are payable;
 - (c) the method of payment of the fees and the person or persons by whom the fees are payable.
- (5) The registered person shall notify the service user one month in advance of—
- (a) any increase in the fees referred to in paragraph (4)(a) and payable by or in respect of the service user;
 - (b) any variation in the matters referred to in paragraph (4)(b) or (c).
- (6) Where a Health Authority⁽³⁾ is liable to make any payment to the registered person in respect of nursing provided by the care home to the service user, the registered person shall provide to the service user a statement as to such payment.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Care Homes Regulations 2001 to provide that a person registered in respect of carrying on or managing a care home must provide a service user with the following information –

a statement as to the care home’s fees for accommodation, nursing and personal care, and other information in relation to payment of the fees;

any variation in the fees or other matters referred in the statement;

a statement as to payments liable to be made by a Health Authority in respect of nursing provided to the service user by the care home.

⁽³⁾ See section 8 of the National Health Service Act 1977 (c. 49) as amended by section 1(1) of the Health Authorities Act 1995 (c.17) and paragraph 5 of Schedule 4 to the Health Act 1999 (c.8).

PARTIAL REGULATORY IMPACT ASSESSMENT

1. THE CARE HOMES (AMENDMENT) REGULATIONS 2002

2. Issue and Objective

Issue: The introduction of NHS funded nursing care has highlighted the need for an amendment to the Care Homes Regulations 2001 to ensure that service users are made aware of the fees that they are expected to pay and the source and amount of funding from external sources. This makes explicit in regulations part of standard 2 of the National Minimum Standards relating to fees.

Objective: To ensure that service users and others are clear about those parts of fees that they are expected to pay themselves and those parts that are funded from other sources.

3. (i) Options

Two options have been identified:

Option 1 – Do nothing and continue to rely on the use of standard 2 of the National Minimum Standards by the National Care Standards Commission.

Option 2 – Include the requirement set out in standard 2 of the National Minimum Standards relating to fees within the scope of the Care Home Regulations, 2001.

Option 1

The National Minimum Standards took effect from 1 April 2002 and providers are expected to be meeting minimum standard 2 relating to contracts. The National Care Standards Commission is using the standard to help to determine whether providers are complying with the regulations.

Option 2

The experience from introducing NHS funded nursing care has demonstrated that many care homes have not been open about their fee arrangements. Though the national minimum standards have just come into effect, it is clear that these providers would not have been complying with minimum standard 2 if this had been in place before 1 April. There has been confusion for service users and their families about the impact that NHS funding has on fee levels and what they are expected to pay. Including the details that are set out in the standard will make the legal requirement unambiguously clear and will ensure that consumers receive appropriate information before entering a care home.

3. (ii) Issues of Equity and Fairness

This measure should impact equally across the whole sector. Those who are currently operating within the terms of standard 2 of the national minimum standards should be able to meet the requirements of the amendment comfortably. It would be unfair on

these to see other parts of the industry to be seen to be getting away without meeting them.

The likely burden on all sectors of the industry is likely to be comparatively small.

4. (i) Identifying the Benefits

Option 1 – no additional benefits in terms of further encouraging greater transparency within the sector or providing consumers with consistent and comparable information.

Option 2 – this will ensure that all providers are providing information to consumers on a similar and consistent basis.

5. (ii) Quantifying and valuing the benefits

Option 1 – no additional benefits

Option 2 – care home fees can represent a significant annual commitment for individuals and their families (upwards of £14,000 pa). The very wide variation in way that care homes are presenting the impact on fee levels of the additional amount of public funding necessary for those who require care from a registered nurse – currently £35, £70 and £110 per week – and what individuals are expected to pay – can lead to quite large differences in the amounts that people are expected to pay, in some cases by as much as a third. The amendment to the regulations will ensure that the information that people receive before they move into a care home is consistent from provider to provider. Anyone who fails to provide this information would be in breach of the regulations.

5 (i) Business Sectors Affected

There are at present in England 23,600 care homes. 11,300 are for older people and 12,300 are for adults. In addition, there are 5,900 care homes providing nursing care provided by private or voluntary owners, (of which a large majority cater mainly for older people).

5. (ii) Compliance Costs

The costs will be no more than they are likely to be for complying with standard 2. The incorporation into the regulations means that this will be *directly* enforceable.