

Report to: Lead Member for Adult Social Care and Health

Date of meeting: 21st September 2021

By: Director of Adult Social Care

Title: Residential and Nursing Care Contracts

Purpose: To seek Lead Member agreement to consult with independent sector care providers and amend the Terms and Conditions for the Framework Contract following the outcome of the consultation.

Lead Member is recommended to:

- 1. Agree to consult with independent sector care providers from October-December 2021 in respect of amendments to the terms and conditions for the Residential and Nursing Care Framework Contract Agreement as set out in paragraph 2.1-2.7; and**
- 2. Delegate authority to the Director of Adult Social Care to amend the terms and conditions, following consultation with care providers, and take all necessary actions to give effect to their implementation by March 2022.**

1. Background

1.1. The provision of residential and nursing care by independent sector providers is a key element of meeting vulnerable adults eligible care and support needs and fulfilling East Sussex County Council's (the Council) statutory duties under the Care Act 2014. At any one time there are, on average, 2,200 people placed in residential or nursing care supported by funding from the Council.

1.2. In financial terms, these placements make up a significant element of the Council's annual revenue budget. The table below outlines the gross annual expenditure over the last two years and forecast expenditure for 2021/22, including placements procured on behalf of, but funded, by the local NHS.

	2019/20 £'000	2020/21 £'000	2021/22 forecast £'000
Older People – Residential Care	37,550	36,709	39,466
Older People – Nursing Care	24,699	24,116	25,958
Sub-Total ESCC Funded	62,249	60,825	65,424
Older People – Discharge to Assess (NHS)	1,678	7,171 ¹	1,763
Sub-Total Older People	63,927	67,996	67,187
Working Age – Residential Care	47,927	43,485	49,365
Working Age – Nursing Care	7,126	6,358	7,329
Sub-Total ESCC Funded	55,053	49,843	56,704
Working Age – Discharge to Assess (NHS)	88	377	93

¹ This figure reflects the very high number of people discharged from hospitals into care homes during the first months of Covid

Sub- Total Working Age	55,141	50,220	56,797
Total All Adults – ESCC Funded	117,302	110,668	122,128
Total All Adults – NHS Funded	1,766	7,548	1,856
Grand Total All Adults	119,068	118,216	123,984

1.3. The service specification and contract terms and conditions for the provision of residential and nursing care give clarity to providers as to the Council's expectations in respect of a broad range of areas including quality, safety, personalisation and best practice. It is necessary to periodically refresh and update these conditions to reflect changes in regulatory requirements and legislation and new approaches to care and support.

1.4. The launch of the consultation on the Service Specification and Terms and Conditions for Older People's Residential and Nursing Care was suspended in March 2020 as it coincided with the beginning of the first Covid Lockdown. With the health and social care system returning to a new normal method of operation, it is now timely to undertake the proposed consultation and implement the agreed amendments.

2. Proposed Amendments

2.1. The following paragraphs summarise the proposed key amendments to the current terms and conditions.

2.2. There are currently several separate sets of Terms and Conditions for residential and nursing care for both working age and older adults. It is proposed to simplify and streamline these multiple documents by developing just two specifications:

- i) Adults (placed under local authority rates) primarily older people but will include some working age adults;
- ii) Specialist Adults (where fees negotiated separately) primarily, but not exclusively, people with learning disabilities.

2.3. A review of the Specification and Terms and Conditions in light of the Covid-19 pandemic will apply the lessons learnt by both commissioners and providers and ensure that the new contract is fit for purpose, should there be a further pandemic or other significant pressures on the health and social care system. This will include additional sections on infection prevention and control developed with the support of colleagues in Public Health and mandatory vaccinations.

2.4. The Terms and Conditions will be amended to include new requirements and service models arising out of this year's Health and Care Bill as follows:

- i) A separate specification for Home First Pathway 3 block purchased beds to support a "Discharge To Assess" model for people no longer requiring acute hospital care.
- ii) A requirement to regularly provide data for the NHS Capacity Tracker to understand current capacity and risk in the system (both local authority and privately funded care) and any future data capture requirements.

2.5. Changes to the way third party payments (Top-Ups) are administered is required by the Local Government and Social Care Ombudsman (LGSCO). This will mean that in the case where a client chooses accommodation which costs above the Council's agreed rates the top up amount, normally paid by a third party, will be paid to the Council rather than the provider. In turn this means the Council will pay the gross cost of the placement to the provider. Engagement with clients and providers who will be directly affected by these changes will be undertaken during October and November 2021.

2.6. There needs to be recognition that the needs of new clients can be different and more challenging than some providers may have previously experienced due to an increasing number of placements for people with multiple and complex needs. The specification will reflect this, including

providing clarity in respect of support plans that fully articulate each clients' needs and how they will be met.

2.7. A contractual clause in relation to climate reduction is being developed with a focus on Energy Efficiency Grants and Free Energy Audits available to businesses in East Sussex and signpost to resources that will support providers in reducing their carbon footprint.

3. Conclusion and reasons for recommendations

3.1. Clear, concise and current terms and conditions are a key element to a positive contractual relationship with the Councils' independent sector providers of residential and nursing care; as well as ensuring the delivery of high quality, safe and effective personalised services.

3.2. The proposed amendments to the current terms and conditions are necessary to reflect recent changes in legislation and best practice as well as incorporating the collective lessons learnt throughout the Covid-19 pandemic.

3.3. A detailed draft of the revised terms and conditions is being finalised alongside the completion of an Equality Impact Assessment with the intention of consulting with independent sector providers between October and December 2021 and implementation by March 2022.

3.4. The Lead Member is recommended to:

1) agree to consult with independent sector care providers from October-December 2021 in respect of amendments to the terms and conditions for the Residential and Nursing Care Framework Contract Agreement as set out in paragraph 2.1-2.7; and

2) Delegate authority to the Director of Adult Social Care to amend the terms and conditions, following consultation with care providers, and take all necessary actions to give effect to their implementation by March 2022.

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