

**Report to:** Lead Member for Adult Social Care and Health

**Date of meeting:** 22 March 2022

**By:** Director of Adult Social Care

**Title:** Revised Contractual Terms and Conditions for the provision of Residential and Nursing Care for Older People

**Purpose:** To seek Lead Member approval to amend the contractual terms and conditions for residential and Nursing Home placements for older people, following engagement with Providers.

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The Lead Member for Adult Social Care and Health is recommended to:

1. approve the contractual changes of the terms and conditions for the provision of residential and nursing care for older people;
  2. delegate authority to the Director of Adult Social Care to take all necessary actions to give effect to the implementation of the above.
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## 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 the council's 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 County 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 (updated)
Older People – Residential Care	37,550	36,709	36,954
Older People – Nursing Care	24,699	24,116	24,938
<b>Sub-Total ESCC Funded</b>	<b>62,249</b>	<b>60,825</b>	<b>61,892</b>
Older People – Discharge to Assess (NHS)	1,678	7,171 <sup>1</sup>	6,654
<b>Sub-Total Older People</b>	<b>63,927</b>	<b>67,996</b>	<b>68,546</b>
Working Age – Residential Care	47,927	43,485	44,974
Working Age – Nursing Care	7,126	6,358	5,050
<b>Sub-Total ESCC Funded</b>	<b>55,053</b>	<b>49,843</b>	<b>50,023</b>

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

Working Age – Discharge to Assess (NHS)	88	377	350
<b>Sub- Total Working Age</b>	<b>55,141</b>	<b>50,220</b>	<b>50,373</b>
Total All Adults – ESCC Funded	117,302	110,668	111,915
Total All Adults – NHS Funded	1,766	7,548	7,005
<b>Grand Total All Adults</b>	<b>119,068</b>	<b>118,216</b>	<b>118,920</b>

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. In September 2021, Lead Member agreed to consultation with independent sector care providers in respect of amendments to the terms and conditions for Residential and Nursing Care.

1.5. Subsequently, the draft documents were discussed at the Independent Care Group meetings (ICG) in October and November 2021 with members of the Residential Care Association (RCA) and then shared with the RCA for their initial feedback. Taking account of this feedback, the documents were updated and reissued to the RCA and also to all other providers in December 2021, inviting feedback in respect of comments, concerns and suggestions.

1.6. The documents are now being finalised, taking account of this Provider feedback and preparations are underway to issue the new Terms and Conditions from April, following Lead Member agreement.

1.7. The Equalities Impact Assessment and Data Protection Impact Assessment have both been completed and agreed and are attached at Appendices 1 and 2 respectively.

## 2. Proposed Amendments

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

2.2. Following the Covid-19 pandemic additional sections on infection prevention and control have been developed with the support of colleagues in Public Health.

2.3. The Terms and Conditions have been 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.

2.4. 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 include the amount of the top up in the payment

to the provider. Engagement with clients and providers who will be directly affected by these changes was undertaken during October and November 2021.

2.5. Recognition that the needs of new clients can be different and more challenging than some providers may have previously experienced as an increasing number of people placed have multiple and complex needs. New guidance has been included to support clients living with dementia, for the provision of care to people who are dying and falls prevention.

2.6. A new clause in the Specification requires Providers to “work towards a reduction in energy bills and a cut in the carbon footprint of the business”.

2.7. The updated Specification is attached at Appendix 3.

### **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 updated documents are necessary to reflect recent changes in legislation and best practice as well as incorporating the collective lessons learnt throughout the Covid-19 pandemic.

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### **Background Documents:**

Report to the Lead Member for Adult Social Care and Health – 21 September 2021.

### **Appendices**

**Appendix 1.** Equality Impact Assessment summary

**Appendix 2.** Data Protection Impact Assessment summary

**Appendix 3.** Residential and Nursing Care Homes Specification