

Local Authority Circular

LAC(98)19 Community Care (Residential Accommodation) Act 1998

July 1998

Department of Health

.....
This circular is issued under section 7(1) of the Local Authority Social Services Act 1970.

1 The purpose of this circular is to advise you about this Act and provide further guidance on the provision of residential care. The Act was given Royal Assent from 11 June 1998 and will come into force from 11 August 1998.

2 The Act clarifies the law relating to the amount of a person's capital which a local authority should take into account when determining whether the person should be provided with residential accommodation under section 21 of the National Assistance Act 1948.

3 The effect of the Act is that a local authority, when determining whether care and attention are 'otherwise available' to a person under the terms of section 21, must disregard the person's capital up to the limit prescribed in the regulations made under section 22 of the National Assistance Act 1948. The prescribed limit is currently £16,000. The Act is also relevant to those who are self-funding in a care or nursing home (see paragraph 10).

I AMENDMENT REGULATIONS

4 The National Assistance (Assessment of Resources) Regulations have been amended to align with the new provisions of the Act. A copy of the amendment regulations, which also come into force in 11 August, is enclosed with this letter. They amend the existing regulations so that the definition of 'resident' includes a person for whom it is proposed to provide accommodation under Part III of the National Assistance Act 1948, as well as a person for whom accommodation is provided. They also make consequential amendments.

5 The amending regulations will therefore enable authorities to apply the assessment of resources regulations in respect of a person who is a 'prospective resident', so that where an authority is determining whether care and attention are otherwise available to a person, any capital or other resources they have can be taken into account before the person is actually placed in residential accommodation.

II CHARGES FOR RESIDENTIAL ACCOMMODATION

Action

6 Local authorities should substitute the CRAG pages in Annex 1 for the pages already in the CRAG, and should initial and date the Records of Amendments sheet at the back of the CRAG to indicate that this has been done. Local authorities should also add the National Assistance (Assessment of Resources)(Amendment) Regulations 1998 (attached to this circular) to the National Assistance (Assessment of Resources) Regulations 1992 for ease of reference. Further guidance is to be added to the CRAG in addition which are sections 1.004, 1.005 and 1.007A.

III CAPITAL LIMITS AND ASSESSMENT OF NEED

7 During the second reading of the Bill in the House of Lords on 30 April 1998

- A concerns were raised about a number of issues involving the provision of residential accommodation, the capital limits and assessment of need.

8 Local authorities are under a legal duty under the NHS and Community Care Act 1990 to assess the care needs of anyone who, in the authority's view, may be in need of community care services. It is the Department's view that the law does not allow authorities to refuse to undertake an assessment of care needs for anyone on the grounds of the person's financial resources, eg because they have capital in excess of the capital limit for residential accommodation. Even if someone may be able to pay the full cost of any services, or make their own arrangements independently (but see paras 9 and 10), they should be advised about what type of care they require, and informed about what services are available.

9 The legislation regarding Part III residential accommodation provides for authorities to assess under section 21 of the National Assistance Act 1948 whether anyone requiring residential care services is 'in need of care and attention which is not otherwise available to them'. Once the LA has completed a financial assessment of a resident's resources and their capital is above £16,000, this means that the resident has to pay the full charge, and may be in a position to make their own arrangements. However, that does not exempt Social Services Department from its duty to make arrangements for those people who are themselves unable to make care arrangements and have no-one to make arrangements for them. Under the NHS and Community Care Act 1990 local authorities are required to provide information to the public. The Department's 1991 publication of Practice Guidance and Care Assessment identified that published information as the first stage of the care management process.

10 It is the Department's view that having capital in excess of the upper limit of £16,000 does not in itself constitute adequate access to alternative care and attention. Local authorities will wish to consider the position of those who have capital in excess of the upper limit of £16,000 and must satisfy themselves that the individual is able to make their own arrangements, or has others who are willing and able to make arrangements for them, for appropriate care. Where there is a suitable advocate or representative (in most cases a close relative) it is the Department's view that local authorities should provide guidance and advice on the availability and appropriate level of services to meet the individual's needs. Where there is no identifiable advocate or representative to act on the individual's behalf it must be the responsibility of the LA to make the arrangements and to contract for the person's care.

11 Once a LA has determined that care and attention are not otherwise available and that they will make arrangements for residential accommodation, they should do so without undue delay. Where it is foreseen that there will be a delay the authority should ensure that suitable arrangements are in place to meet the needs of the individual and of their carer if appropriate. Similarly, where a self-funder in a care/nursing home has capital that has reduced to the £16,000 upper capital limit it is the Department's view as soon as reasonably practicable, the local authority should undertake an assessment and, if necessary, step in to take over arrangements so as to ensure the resident is not forced to use up capital below £16,000. Reference was made to this in the 1996 circular (LAC(96)91) in paragraphs 3 and 4 which give guidance on forecasting the point at which a resident's capital reaches £16,000.

12 Concern was also expressed about the position of people that had been

placed by local authorities who subsequently became self-funding, eg through the sale of property. It is the Department's view that if an authority is to end a contract and make the person 'self-funding' they should satisfy themselves that the person is able to manage their own affairs or has someone who can take over the arrangements on their behalf. Where the person is unable to manage their own affairs or has no one to act on their behalf it would be for the authority to continue to manage the contract and the person should remain a Part III placement. If the person is capable or has someone to act on their behalf for them, then if the authority decides to terminate its involvement, they must inform the resident or representative in writing, explaining why. A person placed in a residential care home directly managed by a local authority cannot become a self-funder by entering into a private contract with the care home manager, as in an independent sector home. They remain under contract under the National Assistance Act 1948 as a full-payer.

A
B
C
D