CPA Guidance

Fee Reviews On A Change Of Circumstances

The Care Provider ALLIANCE

How This Document is Formatted

The model clauses must be individualised by the provider before they are put into use as follows:

1. **Model clause**
The text to be inserted into your contract is bordered by a straight, black line. The text sitting without of that box is explanatory guidance to determine how to choose once Example clause over another or how to edit text which needs to be amended.

2. **Text which needs to be amended**
Where the provider needs to insert or amend the text, or choose from two or more options, the appropriate text is enclosed [within square brackets, and highlighted yellow]. The square brackets and highlighting should be removed before the model clause is put into use.

3. **Optional and alternative clauses**
Where a clause is optional, or where different versions of the same clause need to be selected, the clauses are titled “Example 1”, “Example “2” and so on. These are accompanied by explanatory guidance. The model clauses are applicable regardless of the example clauses you have selected.

Introduction

Residents need to understand the level of service they can expect in exchange for the price they pay. They also need to be able to predict how changes to their services may result in an increase in the price they will have to pay.

Many residents are unaware that there are different categories of care provided or varying price levels within the same care home. The Competition and Market Authority's ("CMA") is concerned that residents are kept in the dark about how their fee is calculated and are ignorant of the reasons why their fee might change. For example, the CMA is concerned that care providers are over-reliant upon 'care bands' which are either not communicated to residents or are too vague and broad in nature to provide any meaningful information about what the care services include.

At the first point of contact, you must give residents a description of the types of services they can receive at the home and an explanation of how their fees may change after they have moved in. Where you provide a fee quote after an individual assessment, you should:

- provide indicative fees for each **type of care service** you offer for example residential, nursing, specialist dementia, respite, palliative;
- provide indicative fees for each **type of room** the fees apply to for example single, shared, en-suite, luxury; and
- make clear (where appropriate) that indicative fees are quoted for **guidance only** and subject to an individual care needs assessment and the type of room and services chosen.

The following clauses and explanatory notes are based on the Competition and Market Authority's "Guidance for care homes: consumer law advice for providers". The full guidance is available here https://www.gov.uk/government/publications/care-homes-consumer-law-advice-for-providers and the relevant section is "varying your terms or your service (including changes to fees)" on **page 67** onwards.

Where the care services change, and you intend to charge an increased fee, you need to be able to show that the enhanced service required is demonstrably different from the service previously provided. You will now need to provide in detail, information which explains how the resident's needs have increased, how that changes their day-to-day care services and why the new services were not included in the original service they purchased when they moved in.

Similarly, where the residents' care needs reduce, they should receive the benefit of a reduction in their fees.

Previously:
Care home contracts were drafted very broadly so that they could be interpreted widely and adapt to many different changes in circumstances. Contracts would simply state that the fees would be 'reviewed' if there was a change in needs. There was no way for residents to predict why their fees would increase or by how much.

You should remove terms which give you a wide discretion for calculating and applying an increase. For example, you should remove terms such as:

- "Your fees will be subject to review in future and any increase will be notified to you in writing."
- "If your needs increase for any reason, we will increase our fees in proportion to reflect the change in services."

Now:
You need to provide more detailed information about how the fees are calculated (even where fees are based on an individual assessment) and clearly identify the events which trigger a review of the fees. This often means communicating more detail about the services which are included within each 'care band' or category and having a frank conversation with residents about the differences between each category of care.

Following are example clauses which are designed to help you demonstrate compliance with consumer law and the Competition and Market Authority's Guidance in relation to residential care homes.

Example 1 - Increased Fees Based On A Change In 'Care Band' Or Category Of Need

We have offered you a place at the home based on your individual health and social care needs at the time of moving in. We have assessed these needs as within the category of [Low Needs][Medium Needs][High Needs]* and further information about what this includes (as standard) can be found in [your Care Plan][our Services Description].

It is important to understand that all residents are likely to require more help and assistance day-to-day during their stay at the home. For example, you may need to move to another room or require more staff assistance to carry out tasks you were previously able to do for yourself.

Where we believe (using our professional judgement) that your needs have increased and the services you want or require mean that your original category of care is no longer suitable, we will discuss our assessment with you and explain the changes we believe are necessary. We will also confirm how this will affect your fees and any additional payments that will need to be made. Where you receive financial assistance from the Local Authority or NHS, we will also notify them as it may be appropriate for them to arrange their own assessments.

If your health improves or your social care needs decrease over time, we will similarly review whether your existing category of care is appropriate and whether, based on your increased independence, it is suitable to reduce your fees.

*You could alternatively use categories such as [residential][nursing] [specialist dementia][respite][end-of life] care although it is common for residents to have varying levels of needs and different fee rates within each of those categories. You need to discuss with your team, how assessments are carried out and how these relate to the different categories you use, along with the quotation for the fees provided before the individual moves in.

In order for **Example 1** to be effective, you need to provide detail about each category of care or 'care band'. It is important to clearly explain which services are included as standard and which would be considered an 'add-on' to that category of care. This is a service which residents will be familiar with when purchasing television packages or choosing between different rooms in a hotel but are unlikely to have considered in respect of the varying levels of assistance they will need whilst living in the home.

A well written explanation of the care bands should enable residents to carry out a self-assessment and correctly predict which category they will need to pay for when moving into the home. For example, you need to consider how you differentiate between residents who need 1:1 care, you need assistance during the night and those who are able to help themselves during mealtimes.

Example 2 - Changes Based On A Bespoke Care Package (No Care Bands Or Categories Of Care)

We have offered you a place at the home on the basis of your individual health and social care needs at the time of moving in. We have assessed these needs and designed a bespoke care package for you, the details of which can be found in your Care Plan.

It is important to understand that all residents are likely to require more help and assistance day-to-day during their stay at the home. For example, you may need to move to another room or require more staff assistance to carry out tasks you were previously able to do for yourself.

Where we believe (in our professional judgment) that your needs have increased and the services you want or require mean that we need to make material changes to your Care Plan, we will discuss our assessment with you and explain the changes we believe are necessary. We will also confirm how this will impact the fee and any additional payments that will need to be made. Where you receive financial assistance from the Local Authority or NHS, we will also notify them as it may be appropriate for them to arrange their own assessments.

If your health improves or your social care needs decrease over time, we will similarly review whether your existing category of care is appropriate and whether, based on your increased independence, it is suitable to reduce your fees.

Example 2 is heavily reliant upon you providing a clear and detailed Care Plan which explains those services which are not included as part of the resident's package of care. Whilst you will be very familiar with your own assessment processes and understand what 'low needs' means from an operational perspective versus 'high needs', residents will not be familiar with these concepts and will need guiding through how changes to their health will impact the service you provide to them (and the cost consequences of doing so). For example, you need to consider how you differentiate between residents who need 1:1 care, you need assistance during the night and those who are able to help themselves during mealtimes.

Model Clause - **Notice Periods**

We will try to give you at least [28 days][4 weeks][1 month] notice in advance of any changes to your care services and we will charge the new fees from the same date on which we make the changes to your care package.

It may be necessary to make changes more quickly to ensure your health, safety and personal well-being. If we need to make changes on shorter notice, we will charge the new fees from 7 days after the date on which we make the changes to your care package or on shorter notice (with your consent). In all circumstances we will give you as much notice as reasonably possible of the changes and the impact this has upon your fees.

If we have implemented a change on shorter notice and you do not agree to the proposed changes you can choose to leave the home immediately, without having to pay the increased fee.

It is important to give the resident as much notice as possible in advance of making the change to their care package and fees. Short notice of less than 28 days should be the exception and you should give them immediate notice of any fee increase and give the resident the opportunity to leave without penalty. In all circumstances you should give the resident at least as much notice as they are required to give you if they want to leave the home. This allows the resident to reject the proposal and leave the home before the changes take effect.

The CMA recognises that some circumstances require an immediate change as residents can deteriorate rapidly. The CMA recommends that you still try to give residents some notice before the fees change but you will need to decide 'how soon' is soon enough in the circumstance. We believe it would be reasonable change the care and fees immediately in extreme circumstances, where there is a significant, immediate and otherwise unavoidable risk to the resident's health, provided you allow the resident to leave without giving you the normal notice period to terminate.

Below are two optional clauses to use once you have decided whether you will implement a change immediately or await the outcome of an independent review, in the event that the resident disagrees with your assessment.

Example A - **Putting The Revised Fee On Hold Where The Assessment Is Disputed**

If you have any concerns with our assessment or your care needs and the proposed changes, please contact [the home manager] to discuss your concerns.

If we unable to reach an agreement on your needs, your care services and the revised fee, you are welcome to arrange an independent assessment via the Local Authority or your GP and we will maintain the original fee until the outcome of any independent review (provided it is completed within 1 month of our proposed change).

If the independent assessment confirms our findings, you will pay the revised fee which will be back-dated to the date of our original assessment. If the independent assessment rejects the findings in our assessment we will withdraw the proposed change to your care services and fee. In all circumstances where you do not agree to the proposed changes you can choose to leave the home by giving notice in the normal way.

Example B - **Implementing The Revised Fee Where The Assessment Is Disputed**

If you have any concerns with our assessment of your care needs and the proposed changes, please contact [the home manager] to discuss your concerns. We will charge the revised fee from the date we change your care package.

If we unable to reach an agreement on your needs and care package, you are welcome to arrange an independent assessment via the Local Authority or your GP. We must maintain your safety and comply with our regulatory obligations and we will not reduce your care services where we believe this will put you at a real risk of harm.

If the independent assessment rejects the findings in our assessment, your fees will revert to their previous level and we will immediately refund the fee increase, which will be back-dated to the date of any change we implemented. If the independent assessment confirms our findings, the revised fee will remain in place.
In all circumstances where you do not agree to the proposed changes you can choose to leave the home by giving notice in the normal way.

The CMA was concerned that assessments are carried out by unqualified staff and care homes would increase the fees arbitrarily to generate more income. The CMA would prefer that assessments are conducted by independent professionals (such as GPs) but we know that such reports can take months to complete and by the time they arrive they are likely to be out of date.

You can choose to:

- follow the CMA guidance absolutely and, where the resident disputes the change not implement the change until it has been verified by an independent assessor (**Example A**); or
- implement the change immediately and back-date the refund if your assessment is independently verified as erroneous (**Example B**).

Although Example B does not follow the strict wording of the CMA Guidance, it is still fair and reasonable provided you ensure that suitably trained staff carry out the assessment and that you are able to evidence the demonstrable change in need. Similarly, it is important that you are prepared to refund sums (and swiftly) if you are found to be wrong.

Whichever option you choose will need to reflect what you can administer in practice (from an accounting perspective) and whether you can afford to risk providing enhanced services for a long period of time without certainty of payment. If you choose to follow Example A, you could risk waiting months or even years for an independent assessor to agree with your findings and it may become routine for residents to challenge. Making sure the description of the care services is detailed at the outset will help to minimise the risk of challenge as circumstances change.