By email

Dear

I am writing to you with regard to the Local Authority’s fees for care at home and in care homes for 2016/17.

Care Forum Wales represents over 480 social care providers in Wales. As you are considering your budget for 2016/17 we are writing setting out the pressures and costs on the care sector for you to consider in your fee setting process.

We would remind you of the framework in which you make these decisions:

* The Fulfilled Lives, Supportive Communities Commissioning Framework and Guidance <http://wales.gov.uk/topics/health/publications/socialcare/circular/commissioningguidance/?lang=en>. We would particularly draw your attention to Standard 10: “Commissioners have understood the costs of directly provided and contracted social care services and have acted in a way to promote service sustainability.”
* The Guidance also requires in standard 4 the importance of working in partnership with others including providers: “Commissioning plans have been developed with partners and have involved all key stakeholders including users, carers, citizens and service providers in the statutory, private and third sector.”
* The Memorandum of Understanding *Securing Stronger Partnerships in Care* <http://www.wlga.gov.uk/english/health-social-services-publications/securing-strong-partnerships-in-care/> also says: “Rational fee-setting is vital to the sustainability and quality of care provision, and to the capacity of the Council to meet its full range of responsibilities and a wide range of needs, as well as to fix an acceptable level of Council Tax. It is essential that the specific issue of fee-setting is on the agenda for those regular local discussions between Council commissioners and independent providers of social care.

These legal requirements apply to fee setting across social care including domiciliary care and all care home placements.

I particularly wish to draw your attention to the following issues when considering the fees for 2016/17.

**Staffing Costs**

The most significant cost pressure on providers is the increase in staffing costs, which forms two thirds of overall costs, the highest cost being the National Living Wage that providers will be required to pay from April 2016 at a rate of £7.20 per hour. This poses an additional pressure for providers in terms of maintaining wage differentials for senior carers and other groups of staff. You will be aware that ADSS Cymru and members of the National Provider Forum including CFW have written jointly to the First Minister expressing concern about the impact of the National Living Wage (NLW) on the viability of an already fragile sector.

For care homes we calculate that the cost of NLW represents a weekly increase of £27.93 per resident over 2015 fees. For the domiciliary care sector the percentage increase is more like 15.25% on their base cost. The expectation of the Low Pay Commission is that providers will also pay travel time which we estimate would represent an additional 25.2% to base cost.

Sleep overs also remain a concern for a number of members in some localities. We hear that some Local Authorities are still paying a fixed shift rate which does not match even the National Minimum Wage despite the tilt of case law in recent years. There is significant risk to providers of being taken to employment tribunal and being financially ruined, but few providers are financially able to make the jump from a fixed shift rate to full hourly rates without assurance that commissioners will follow in step

All providers now have to take into account auto-enrolment of pensions in staffing costs. Indications so far (primarily from supermarkets) are that only a very small proportion of even low paid staff are opting out and therefore this will be an increased burden on employers of around 1% on staff costs.

These staffing costs are the single largest component of care provider costs and the changes outlined above are a significant extra pressure on providers whose margins are already extremely tight. Quite apart from these added pressures having an effect on financial viability, they also affect the ability to recruit and retain staff, which can in turn affect the quality of care and the ongoing viability of the provision. Further pressures on staffing have arisen due to the introduction of new systems by HMRC which mean weekly reporting of earnings and therefore an increasing reluctance of staff to vary hours and cover for each other as they may lose benefits.

**Carer Hours**

We are seeing an increase in dependency in care home residents and therefore a need for more carer hours. This is not surprising as authorities are increasingly seeking to keep people at home as long as possible and therefore those that are admitted to care homes are significantly more dependent each year. This is backed up by CSSIW as we are frequently finding that inspectors are querying staffing levels as potentially inadequate when they are already above the ratio paid for by authorities.

Meanwhile, the domiciliary care sector has been under pressure to reduce the use of zero hours’ contracts and to move away from 15 minutes. It needs to be recognised that these are often the result of the way care is commissioned.

**Inflation**

With regard to inflation, Care Forum Wales has always asserted that RPI provides a better measure than CPI for the care sector, as 55% of the basket of goods used to calculate CPI are not purchased by the sector e.g. clothes, alcohol and spirit, sports and leisure activities and entertainment.

**Care Home Specific Costs**

New regulations on sprinklers in new build properties have come into effect. The cost of installing sprinklers is likely to be at least £3000 for each premise and potentially more as Dŵr Cymru tell us that across Wales water pressure is likely to be non-compliant 47% of the time and pumps may be needed as well. As care home provision is refreshed in your area the cost of buildings will increase in line with this measure.

We would also like to see consideration given for higher repairs and maintenance costs for EMH homes. Because of the nature of the client base we believe that unless high repairs and maintenance costs are paid it may be difficult to attract new entrants into this sector of the market. Whatever CSSIW decides on in the future regarding registration categories for EMH we believe there is an increased cost, both in terms of staffing and also repairs and maintenance costs for EMH residents, which needs to be included in fee calculations.

Many care providers are finding it costly to renew insurance and indications from a leading broker are that the market of insurers covering the sector halved in 2014-15. This is leading to a standard 30-40% increase in premiums with each applicant and their CSSIW report being examined with a fine toothed comb. The highest increase we have heard of is 1200%.

Our members are under increasing financial pressure from lenders, some of whom require a home to be profitable at 85% occupancy.

Food quality within care homes has also been raised as an issue – both in terms of schemes such as those by the Soil Association, to improve provenance of food, but also worthwhile initiatives to reduce food supplements which while with merit transfer costs from the NHS to the provider.

**Funded Nursing Care**

I would also ask you to clarify how the Local Authority intends to fund the gap in Funded Nursing Care following the recent judgment in the judicial review appeal (*Forge Care Homes*). While we appreciate this judgment may be further appealed, providers are currently waiting for fee judgements dating back to the 2014/15 financial year to be resolved and the law as it stands is that decided by the Court of Appeal. You will also recall that Paragraph 37 of the *NAFWC 25/2004 NHS Funded Nursing Care in Care Homes - Guidance 2004* deals with the determination of the total amount to be paid for NHS Funded Nursing Care it clearly identifies that there should be no gap between local authority and NHS provision.

*“37. Providers, local authorities and Local Health Boards will need to agree a total funding package that takes into account the NHS contribution. When making arrangements for residential care for an individual under the National Assistance Act 1948, local authorities are responsible for the remaining costs of accommodation and personal care. There should be no gap between local authority and NHS provision.”*

The Court of Appeal ruled that FNC does not extend to non-nursing tasks, excluding stand-by time, carried out by a nurse, such as delivering personal care (where unconnected with nursing care).  Nurses' time spent on these non-nursing tasks will, for the first time, now have to be taken into account by Local Authorities when setting fees (or paid by self-funders if no Local Authority is involved). These costs are a real paragraph ‘37 gap’ that has been in existence for many years and must now be filled.

Laing & Buisson calculated in 2013, working for the Health Boards, that the non-nursing time was costing providers around £21.64 per resident per week.  Since then, many nursing homes in Wales have had to increase what they pay nurses above and beyond normal wage inflation, because of the national shortage of nurses, and so these costs in 2014, 2015 and 2016 are likely to have been even higher than in 2013. You will be aware of the significant issues of nurse shortages and escalating agency costs. The courts’ judgments make clear that nursing home providers have for many years themselves borne a significant part of the costs of employing nurses to deliver 24/7 care. This is not sustainable as is borne out by a number of recent closures of nursing homes, whilst a number are also de-registering to residential care homes.

In short the care home sector is ripe for another Southern Cross type failure. At the same time, our colleagues in UKHCA estimate that 11% of domiciliary care providers will cease trading across England in Wales in the next 12 months. We recognise, of course, that this is a difficult time for local authority budgets, but the costs highlighted above cannot be absorbed by providers indefinitely. Anything other than an increase to meet an increase in costs will hurt the vulnerable people we care for. Any failure in the care sector will have a major knock on effect on health services and on support packages for carers. Everyone wants to see a sustainable care sector and your commissioning plan no doubt requires one. Indeed, we need to be looking beyond transactional based commissioning to an outcomes focussed approach in accordance with the Social Services and Wellbeing (Wales) Act 2014. As you will be aware the majority of care organisations in Wales are SMEs and major employers of the local population and we hope your Commissioning Strategy will also take into account the effect on the Welsh pound and economic development within your area of how you commission your care provision.

I look forward to hearing from you further on these matters at the earliest opportunity.

Yours sincerely



Melanie Minty

Policy Advisor

cc