

Guidance to HSS Boards and Trusts on the abolition of Preserved Rights and the transfer of cases to HPSS care management arrangements.

Summary

1. This circular contains guidance for Health and Social Services Boards and Trusts on the preserved rights transfer. From 8 April 2002, Boards, through their respective Health and Social Services Trusts will have responsibility for making residential accommodation arrangements for people who were in independent sector residential care and nursing homes on 31 March 1993 and who are entitled to income support at preserved rights rates. This guidance supersedes that set out in Circular HPSS (R)3 5/93 which was issued in May 1993.

Background

2. Before April 1993, people who needed public funding towards the cost of an independent sector residential care or nursing home place received it in the form of a special higher level of income support. From 1 April 1993, the system of funding for people entering such homes changed. Since then, Boards have been responsible for assessing the care needs of individuals and for arranging and, subject to means, funding care to meet those needs.
3. Boards were not given care arrangement or funding responsibility for people who were already living in an independent sector care home on 31 March 1993. Article 36A of the Health and Personal Social Services (Northern Ireland) Order 1972, with only limited exceptions, prohibits Boards from making arrangements for people resident in such homes on 31 March 1993. Instead, the residents concerned were given

“preserved rights” to the higher rate of income support with which to fund their own care.

4. The Royal Commission Report on the Long Term Care of the Elderly recommended that the Government consider whether ‘preserved rights’ payments in social security should be brought within the post 1993 system of community care funding. In May 2000, a consultation on possible changes was carried out here and in Great Britain, and, in February 2001, during a debate on the Royal Commission recommendations the Minister for Health, Social Services and Public Safety announced that legislation would be brought forward to end the preserved rights scheme and transfer care assessment, arrangement and funding responsibility for residents with preserved rights to the Health and Social Services Boards. Legislation to effect these changes has been brought forward in England, Wales and Scotland.
5. Ending the present preserved rights arrangements will give the residents concerned the protection of Health and Social Services Boards contract and care management arrangements for the first time. In addition, the abolition of preserved rights will promote independence, as there may be some people with preserved rights who do not need to be in residential care. Their needs may be more appropriately met in supported accommodation. The transfer of responsibility for the persons concerned to local Trusts will give such people the opportunity to leave their care home if that is what they want to do.

Legislative Arrangements

6. The Personal Social Services (Preserved Rights) Act (Northern Ireland) 2002 and the Personal Social Services (Preserved Rights) Regulations (Northern Ireland) 2002 provide the statutory basis for the transfer of responsibility for the residents to the Trusts. The legislation repeals Article 36A of the Health and Personal Social Services (Northern

Ireland) Order 1972 and in doing so, it gives Boards the power to make residential and nursing accommodation arrangements for people who were in independent sector care homes on 31 March 1993 and who were receiving preserved rights rates of income support. The legislation also provides for the abolition of preserved rights rates of income support.

7. The legislation requires Boards to secure community care services for people who have had preserved rights. This includes residential accommodation, where appropriate. Boards, through their Trusts, will therefore be required to assess the care needs of the residents concerned. The legislation places an obligation on Boards to actively identify people with preserved rights and to carry out appropriate care assessments. Identifying these individuals is being done in conjunction with the Social Security Agency as the legislation allows the Social Security Agency to share relevant information with the Boards and Trusts.
8. While it is intended that Boards will formally assume responsibility for residents with preserved rights from Monday, 8 April 2002, where possible, preparatory work such as care assessments and financial assessments should be undertaken before then in order to ensure a smooth and prompt move to the new arrangements.
9. People with preserved rights will have their benefit assessments recalculated from Monday, 8 April 2002 on the basis of normal income support allowances and premiums. They will not be entitled to the Income Support Residential Allowance, payment of which will begin to be phased out from the same date for all other new care managed cases. Any Attendance Allowance (or the care component of Disability Living Allowance) to which a person with preserved rights is entitled will

stop being paid after a further four weeks. This is because a person whose care home place is funded by a Trust cannot receive either benefit after they have been in a residential care or nursing home for over 28 days. Because people move from preserved rights to normal benefit rules, those getting Attendance Allowance or the Care Component of Disability Living Allowance may be entitled to the severe disability premium for four weeks from 8 April 2002.

Allocation of Responsibility to Individual Trusts

10. The Trust to which responsibility for such a person will be allocated will generally be that in which the person's care home is located, except as follows. Boards/Trusts may already be providing financial support to some preserved rights residents under the Residential Accommodation (Other Premises, Ordinary Residence and Exemptions) Regulations (Northern Ireland) 1993. Where a Board/Trust has already accepted responsibility for providing such support, they will retain that responsibility, even if the care home is located in another Board/Trust area.

Information to be provided by the Social Security Agency

11. The legislation allows the Social Security Agency to pass to the Boards a list of the preserved rights cases for which they will become responsible. In advance of this, anonymised information has also been shared with the Boards to help inform their knowledge of the scale of the transfer in their respective areas and enable them to put in place some of the necessary preparatory arrangements. Boards will receive from the Social Security Agency details of relevant changes of circumstances for individual residents occurring between November 2001 and 8 April 2002. Boards/ Trusts should maintain close links with

their local Social Security Office during this time in order to ensure that they receive information about all the residents who may be eligible for their help.

12. On 24 January 2002, the Social Security Agency sent a letter to all of their customers who were receiving income support at preserved rights rates (or to the people acting on their behalf) to give them advance notice of the proposed changes to the preserved rights arrangements. They also issued a written notification of the benefit entitlement at this stage. Before 8 April 2002, the income support and other benefit entitlement of all preserved rights cases will have been reassessed and notification of their entitlements payable from 8 April 2002 will have been issued. The residents concerned have been advised to retain these written notifications because they may help local Trusts to assess the contribution which the individual needs to make towards the cost of their care.

Action to be taken by Health and Social Services Boards/Trusts

Assessment of Care

13. A care management assessment should be carried out for each of the preserved rights residents. Trusts may already be providing support to some of their preserved rights residents and may therefore be familiar with their circumstances, but this will not be the situation in the majority of cases. The assessment should therefore entail whatever is appropriate in the individual circumstances, taking full account of the individual's views and wishes, and exploring both health and social care needs as necessary.

14. It is expected that, for a majority of preserved rights residents, the assessment process will lead to the continuation of current arrangements. Examples of situations where the arrangements might change are:
- where the resident wants to move out of residential care (for example, to sheltered accommodation);
 - where the resident's care needs have increased to a level beyond what the home can provide; or
 - where the home closes.
15. A resident should not normally have to leave their existing care home if the home is acting reasonably in its contractual demands, is able to meet the resident's care needs and the resident wishes to stay there. Trusts also need to take into account the effect on the individual of a move from his/her existing home (in which he/she may have been continuously resident for over nine years, and in some cases for much longer). Some residents will be concerned that the assessment process will result in their having to leave their current care home. It is essential that the person conducting the care assessment is sensitive to such a concern.
16. If, however, the assessment indicates that the resident may be inappropriately placed in relation to their care needs the outcome must be considered in consultation with the resident, their family, advocates and the homeowner. Trust staff should explore the capacity of the home to continue to meet the individual's needs within reasonable contractual parameters and the capacity to provide an appropriate level of care. In some cases it may be appropriate to negotiate arrangements which are specific to a particular placement in order to minimise disruption and distress. In other cases where a resident wishes to and is capable of benefiting from alternative arrangements Trust staff must work with all relevant interested parties to facilitate this.
17. Residents should be required to move from their existing care home against their wishes only in exceptional circumstances. Where a move

is deemed necessary, the Trust must be confident that they have fully discussed all the options with the resident and their family. In addition, the Trust may need to consider using advocacy services and offering the individual, their family and friends the opportunity to use the local complaints procedure before placing the individual elsewhere.

18. Where a Trust considers that a move out of residential or nursing care might be beneficial, they should bear in mind that many people in residential accommodation may not be familiar with the alternative choices that are available to them. This is likely to be particularly true of residents with preserved rights who will have been resident in such accommodation for at least 9 years. They may need help in obtaining information and support if they are to explore these choices in a meaningful way. Trusts must pay particular regard to a resident's own wishes about where he/she wants to live.
19. Trusts should enable preserved rights residents who wish and are able to do so to make use of an alternative form of care provision, e.g. supported living arrangements. Other options, such as Direct Payments should also be considered. The Department has published 'A Guide to Receiving Direct Payments' which provides advice and information to help people to understand the opportunities, and to support them in managing direct payments.

Purchasing and Contracting

20. The intention behind the change in policy is to bring preserved rights residents into the same care management and funding arrangements as other care managed individuals. Therefore, in the majority of circumstances, the rates that the Boards/Trusts should expect to pay for individuals who currently have preserved rights should reflect the

rates that they would normally expect to pay for clients assessed needs under current care management arrangements.

21. In judging whether a care home owner is adopting a reasonable approach to contract negotiations, Trusts should not automatically consider an alternative placement simply because the fee level at the time of the change is more than the Board's normal contract rate for the level of care provided.

Financial Assessment

22. Trusts also need to undertake financial assessments of those residents for whom they will become responsible, using the information supplied by the individual and in accordance with the Health and Personal Social Services (Assessment of Resources) Regulations (Northern Ireland) 1993.
23. The Charging for Residential Accommodation Guide (CRAG) states that Trust supported residents will normally pay their assessed charge direct to the Trust. However, as reflected in CRAG, where the resident, proprietor and the Trust all agree, the resident may pay direct to the home the amount he/she would otherwise pay to the Trust. The Trust is responsible for meeting the balance of the cost in these circumstances and if the resident fails to pay the appropriate amount to the proprietor the Trust is responsible for payment of the full amount. Preserved rights residents should be given the same options in relation to payment arrangements as other residents who are care managed.
24. Due to the work involved in taking forward this transfer, it is unlikely that Trusts will have completed the process of assessing the care needs of, and making residential accommodation arrangements for, all of the

preserved rights residents by 8 April 2002. The legislation provides that the resident's existing arrangements with his/her care home will continue in these circumstances up until the date on which the Trust provides him/her with personal social services and the Trust will be liable to pay for the existing care arrangements during this interim period. The Personal Social Services (Preserved Rights) Regulations enable the Trust to recover all or part of such a payment from the person, in accordance with the principles set out in CRAG. However, Trusts need to bear in mind that residents are unlikely to have any income other than their social security benefits. This means any delay in completing the necessary assessments could make it difficult to recover the whole amount from the resident concerned. In order to avoid undue confusion or concern for the resident or the home owner Trusts should plan to complete all assessments by the end of September 2002.

Abbeyfield Residents

25. Trusts should note that there are currently 6 residents with preserved rights in accommodation owned and run by the Abbeyfield Society. Although not living in a residential care or nursing home, these people were given the right to be paid income support at preserved rights rates in 1993 and as a result, they may appear on the list of preserved rights individuals that the Boards have received from the Social Security Agency. However, as they are not in registered accommodation, Article 36A of the HPSS (NI) Order 1972 does not apply to this group and these residents will not be subject to the new arrangements.

Funding and Monitoring

26. Boards will by now have received information on their financial allocation for the period from April 2002 to March 2003, which includes their allocation in

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respect of the preserved rights transfer. Arrangements will need to be in place, following the transfer, to monitor those individuals who were previously in receipt of preserved rights, as the resources transfer for preserved rights will decrease on an annual basis. Information collected will help inform future bids.

Enquiries

Enquiries about this Guidance should be addressed to:

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