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SOLICITORS

UNCERTAINTIES AND ESCAPE ROUTES: CARE FEES

NHS funding is at the heart of manifesto promises across the main parties in the run up to the General Election, but irrespective of who wins on 8th June, it will continue to face huge pressure. Add to this the anxieties over the nation's care homes, an adult social care system at extreme snapping point and an ageing demographic, then difficult times for our vulnerable citizens are not just on the horizon - they are here now. There is nothing that one can do to protect against care fees because the private sector will not insure against them. It is a moot point that those who have the means necessary must self fund their care and, Tory u-turn or not, it is arguable that their social care policy is a fairer and more equitable system based on a cap of £100,000 (above which care must be paid for) than the current one where those with assets in excess of £23,250 must self-fund their care.

Leaving social care aside for the moment, the remit of this article is about Continuing Healthcare funding (CHC). CHC funding is a package of continuing care provided outside hospital. If you are eligible, you can receive NHS continuing healthcare in any setting. In your own home, the NHS will pay for healthcare, such as services from a community nurse or specialist therapist and personal care, such as help with bathing, dressing and laundry. In a care home, as well as healthcare and personal care, the NHS will pay for your care home fees, including board and accommodation.

The rules around health and social care are arbitrary and complex and it is not surprising that information in the press is misleading. Financial gate keeping by the NHS and incorrect application of the rules by those who purport to work within the system means far fewer qualify for CHC funding when they should. Whilst complexities in the existing funding philosophies greatly emphasises the need for reform and simplicity, it is important that assessments are comprehensive and robust. In spite of the National Framework and uniform eligibility criteria, a degree of subjectivity employed by some nurse assessors renders the whole process open to challenge. All too often, there is a difference in what is discussed at the assessment and what the nurse assessor records with language that misleads the CHC Panel and plays down an individual's health needs. If you or your relative is refused CHC funding and social care is required, then these assessments may be contested. However, as my bugbear is the abundance of misinformation in this area, I should like to dispel five myths commonly associated with CHC funding as follows:

- The NHS has not been privatised. It offers a service that is free at the point of delivery and only social care is means tested. In short, whether you are the Duke of Westminster

or an impoverished waiter, if you have a primary healthcare need then the NHS **must** fund your assessed needs.

- You do not have to be knocking on heaven's door to qualify for CHC funding. It is for any stage of life. And nor is CHC dependant upon specific diagnosis or specific care needs.
- If ineligibility is determined on the basis that the care home manages an individual's needs well, then challenge the assessment! This is the usual way in which the NHS will dodge its funding responsibilities. Care may be routine for those giving it, but this is because it is their job to do so. It should not marginalise a person's care needs because **a well managed need is still a need** unless it has been permanently removed or reduced.
- CHC funding is not just available for those in care homes; it is also available for those who receive care in their own home as well.
- If your relative has been assessed as eligible for CHC funding, then you do not have to pay top up care fees to meet budgetary deficits and nor should you be asked to do so. Top up payments are for social care only. Equally, there is no limit on CHC funding since all assessed needs should be met.

The best advice is to seek legal advice. For more information regarding this article, please contact Emma Mitcham on 01803-213251 or emma.mitcam@wollenmichelmores.co.uk