Institute
and Faculty
of Actuaries

The Care Act 2014

Draft regulations and guidance to implement the cap on care costs and policy proposals for a new appeals system for care and support

IFoA response to the Department of Health

30 March 2015

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Care and Support Funding Reform and
Appeals Consultation
Department of Health
Room 313B
Richmond House
79 Whitehall
London
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30 March 2015

Dear Sirs

IFoA response to The Care Act 2014 draft regulations and guidance to implement the cap on care costs and policy proposals for a new appeals system for care and support

1. The Institute and Faculty of Actuaries (IFoA) welcomes the opportunity to respond to the Department of Health's (DH) consultation. This response has been led by the IFoA's Health and Care Board with input from members of the Pensions and Long Term Care Working Party and Pensions Board. Our members have expertise in examining models and products for self-funding of long term care.

2. Our response considers how individuals might be enabled, and encouraged, to take personal responsibility for funding their long term care needs, and how financial products might be able to help individuals plan for and mitigate catastrophic costs. The IFoA has undertaken work looking at the role pensions can play in helping individuals to fund their long term care.[1] We have focused our response on those areas where actuaries have expertise, and so the DH will note we have not responded to Part 2 of the consultation. Note also that we have set out a number of further considerations, not covered within this specific consultation paper, but where we would welcome the opportunity to have further discussion with the DH.

Question 1: Do you agree that the draft regulations and guidance will provide a robust framework that will protect the 1 in 8 of us that will face catastrophic care costs? Please state yes or no along with any rationale.

3. The IFoA welcomes the spirit of these reforms - that it is important when people enter care, often at a point of crisis, they will receive the level of care they need without facing unlimited costs. The IFoA has completed modelling on the likelihood of an individual entering care reaching the cap. The model found that for individuals age 85 (the typical age an individual will enter care) there is an 9 per cent chance for a male and 17 per cent chance for a female reaching the cap.[2] Those who hit the cap will have spent around £124,000 (based on the average across England, this will vary by geographic regions) before reaching the cap. For the 1 per cent of individuals who will live in care for 10 years the cost can reach around

[1] IFoA (2015) *How pensions can help meet consumer needs under the new social care regime (updated January 2015) based on Laing & Buisson (2014) Care of Elderly People UK Market Survey 2013/14*

[2] *ibid*

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£265,000.[3] It is important that communications enable individuals to understand that, should they have long term care needs, the costs that they will be required to meet could be more than the £72,000 cap.

4. The IFoA appreciates the difficulty the DH faces in balancing national costing and regional costing for these reforms, but would highlight the variation in care costs across the country. This will have a significant impact on the time taken to reach the cap and the personal costs incurred by that point. For example, an individual entering a care home at age 85 in the West Midlands is expected to incur a personal cost of around £143,000 before reaching the cap after six years. This compares to £114,000 with the cap reached after four years for someone entering a care home in London.[4]

5. For many individuals these costs could be viewed as catastrophic and so we suggest that a robust communication strategy is in place. As stated in paragraph 2.18 of the consultation, more people will come into contact with their local authorities – it is therefore important that local authorities are able to communicate to people, based on their individual circumstances:
    - what their likely care costs will be, dependent on the length of time they are in care, or
    - be able to sign-post them to services that will help individuals to undertake this review.

6. Whilst local authorities have a role in providing individuals with information, we suggest central government has an over-arching responsibility to provide communications which ensure that:
    - individuals understand the function and limitations of the cap – it does not cover daily living costs or any potential top-up costs.
    - individuals are encouraged to save. Encouraging saving may also prove useful in creating the level of demand needed to make financial products for long term care viable.

7. One way individuals could plan for their long term care costs could be to buy an appropriate financial product. Such a product could mitigate decision-making at the point of crisis, which could otherwise result in both distress and a sub-optimal outcome. We would suggest that the greater clarity the eligibility regulations have, and the clearer both central government and local authority communications are, the more likely it is that people will understand their saving needs for funding long term care. This, in turn, could increase the demand for long term care financial products.

8. In addition to the opportunity for developing new products, pensions provide an existing framework that could be developed further. However, for the level of innovation and provision in the marketplace that these reforms are seeking to achieve there will have to be sufficient demand for these products. We would welcome the opportunity to discuss this in further detail with the DH.

Question 5: Can more be done to ensure that the care account is a useful tool to support people in planning for care costs?

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[3] *ibid*

[4] *ibid*

9. Care accounts will increase the visibility of local authority and personal contributions needed to meet care costs under the new regime. This will enable individuals to understand their potential care costs when making financial decisions regarding their retirement income. We suggest the visibility of the split between local authority and personal contributions for care costs could also be a useful inclusion in the Government's initiative Pension Wise.

Question 8: Is there evidence to support further consideration of the level and / or approach to daily living costs? Please state yes or no along with any rationale and provide any evidence you may have to support this rationale.

10. We suggest the level and approach to daily living costs should be considered further. As mentioned in our response to question 1, IFoA research shows that varying costs of care between regions in England will mean that people in different areas of the country will move towards the cap at different paces and will have spent varying amounts before reaching the cap. Setting a national amount for daily living costs, based on an average across England, could mean that in regions where living cost is lower, individuals are paying more towards their daily living costs than perhaps they would if they were not in care. This could be particularly true for those:
    - on low incomes who would not normally spend £230 per week on their daily living costs; or
    - where one member of the household is in care, and the other remains at home - they will have to pay the £230 per week living costs for the individual in care, in addition to their standing household bills.

Question 10: Do you agree that the guidance is clear on how the extensions to the means test will work and that the draft regulations achieve their intended purpose? Please state yes or no along with any rationale.

11. There are two particular scenarios where we suggest further guidance will be required to ensure individual understanding:
    - The graph on page 44 of the consultation document assumes that an individual's income matches hotel costs, where this is not the case those individuals will continue to deplete their assets.
    - The Independent Personal Budget is based on the local authority's determination of care costs. This assumes an individual is able to access care at the local authority rate, which may not necessarily be the case.

<u>Further comments</u>

12. The IFoA has a number of further considerations that do not directly relate to the questions asked in this consultation, but where we suggest further attention may be required. We would welcome the opportunity to meet with the DH to assist in any further work in these areas.

    i. The IFoA considers it important that individuals are able to understand the interaction of the pensions tax regime and the financial assessment for social care costs in later life. While this goes beyond the specific content of the consultation, we would encourage DH and HM Treasury to indicate clearly how pension funds within different decumulation vehicles, as well as any lump sums that have been withdrawn from these funds, would be treated. For example:
        a. If uncrystallised funds and drawdown pots are treated as assets, many pension scheme members may be unaware that they could face significant care costs in later life.

b. Where an individual elects to take their retirement income through an annuity, with an enhancement for long term care needs, the benefit is currently taxed as 'earned income'. This could have a significant tax impact, particularly where it takes someone into a higher rate band.

c. Where an individual opts to withdraw a lump sum, it is not clear how the spending of pensions for a specific purpose will impact the 'deprivation of assets' rule in the care assessment, if that purpose is not deemed to be essential.

ii. If people are to be encouraged to make provisions for their long term care costs those who have made provisions should not lose out. The system should be such that it does not encourage people to run down their assets to be eligible for means-testing. One way this could be achieved is by ensuring that any savings made for long term care can be passed to future generations (ring-fenced for funding long term care) with reduced liability to Inheritance Tax.

iii. Another disincentive to saving may be where individuals are paying above the local authority rate for the same accommodation and services as those in receipt of means-tested local authority rate care. They would be paying for the same level of care that they would receive if they had not made any savings.

iv. The proposed care cost framework could create a generational difference in benefits for those already contributing to their care. As the number of people who will reach the cap will be relatively low we suggest the DH explores applying this policy retrospectively.

v. In the past we have relied on a "pay as you go" approach, where each working age generation pays for the current cohort of those in care. With an ageing population this model is unlikely to be sustainable. However, moving to a self-funded scheme, whilst potentially desirable, could create severe hardship for the generation(s) who would have to fund themselves, as well as having funded earlier generations. We suggest reforms that move towards a self-funded scheme take account of this generational consideration and where possible minimise the impact of a potential 'double hit' for the transitional generation(s).

vi. It would be helpful to specify how the cap will rise in the future. This would be useful to financial institutions in designing savings or insurance products to fund long term care. One potential basis for increasing the cap could be increases in the local authority average cost of care across England. This will ensure the cap remains aligned with the likely costs individuals will face.

Should you wish to discuss any of the points raised in further detail please contact Steven Graham, IFoA Technical Policy Manager in the first instance (steven.graham@actuaries.org.uk / 02076322146).

Yours faithfully

Nick Salter
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