

NURSING HOMES

Funding and whether it can be avoided

No one wants to go into permanent care and no one wants to have to sell their home and spend the money on paying care home fees, and not everyone needs to do so. So what is the position.

The funding of care homes and preservation of your assets is a very complex area. This leaflet is intended to provide some general information. As everyone's circumstances are different we would recommend you make an appointment to discuss your own individual needs with us. We may charge a small fixed fee for the advice.

Care in your own home

Everyone wants to remain as independent as possible for as long as possible. Sometimes this can be achieved by provision of care in your own home. The NHS and Community Care Act 1990 (S47(1)) obliges Social Services Authorities to carry out an assessment of anyone who appears to be in need of community care services.

Once this assessment has been undertaken it should help you to explore a number of options, including staying at home, sheltered accommodation or care/nursing homes. The provision may include assistance with equipment to use at home, arranging for someone to assist you in dressing, washing, showering/bathing, food preparation, medication, undressing etc.

Whether you have to pay for the assistance will depend on how much capital and income you have (excluding the value of your home). If you have to pay for the care yourself you will be able to choose who should provide the care and make your own arrangements.

Hopefully making these arrangements will either delay the day when you will eventually need to go into permanent care or prevent this ever being necessary.

Care/Nursing Home Funding

This is extremely complex.

NHS Fully Funded Care -The first question that needs to be asked is whether a person should have their nursing care paid for by the NHS.

Only a very small proportion of people in nursing homes are fully funded by the NHS. In general the person's condition will need regular assistance from qualified health care professionals and the person's care needs will have to be unpredictable and unstable.

If the NHS fund the care a person's house will not have to be sold and they will keep their savings. Clearly this is the best situation from a financial point of view. If the funding is refused it is possible to challenge that decision but the process is extremely long and time consuming.

The only real downside is that you cannot choose your care home, this will be chosen by the NHS.

Where there is no NHS funding:

The Government set some **capital thresholds** and review the thresholds in April each year. For example in the year 2009/2010 the upper threshold is £23,000 and the lower threshold £14,000.

If you have more than the upper threshold you would have to pay for any care provision yourself in full. If you have between the upper and lower thresholds you will make a contribution towards the care with the Local Authority paying the remainder. If you have below the lower threshold the Local Authority will pay the costs.

However, the Local Authority have a sum they are prepared to pay and care homes charge differing amounts. If therefore you chose a care home where the cost is more than the amount set by the Local Authority you will only be able to live in that care home if someone other than yourself or your spouse is prepared to pay the difference – the **Top Up Fee**.

If Top Up fees are mentioned we recommend you seek advice from us. We have also been able to assist with advice as to how to challenge the amount of the top up fees.

So what is **capital**. Again this is complex, but basically you add together the amount of your cash savings, the value of stocks and shares, and the value of your house. Some Investments Bonds and income from Trusts count others do not. Life Policies generally do not count, nor do personal possessions. But you will need specific advice on what does and does not count.

If you have **joint bank or building society accounts** for example with your spouse, generally one half of the value in the account is added to the value of assets in your own name.

Sometimes your **home** will not be taken into account. Whether the house is in your sole name or not, if your spouse or partner or another member of your family who is over 60 or under 16 or disabled continues to occupy the house the Local Authority will not take the house into account. They also have a discretion to ignore the house in some cases e.g. the person living at the house was your carer.

There is also a possibility of using something called the **deferred payment scheme**. If this applied you would not have to sell the house immediately but at the later date you would have to repay the Local Authority the money it has paid out for care fees,

You might also be in a position that you have to pay fully for the care home fees to start with, but your capital then drops to below the thresholds and you then need to apply to the Local Authority for them to pay in future.

Paying privately for the care does mean you have the choice of your care home, and some are better than others. However, we do find that some homes charge privately paying residents more than those funded through the Local Authority, so in some cases allowing the Local Authority to negotiate the rates to start with may be better than you negotiating yourself.

Preserving your Assets

A frequent request is 'I wish to give away my house to my son and daughter, please do the necessary work'

Usually you would be strongly advised against this course of action. When asked the reason you wish to make the gift the primary and sometimes only reason is often to prevent the house having to be used to pay for nursing care.

There are very many reasons why this is not to be recommended. Even where you are confident your children will look after you should the need arise. These are other problems and these include the death, bankruptcy or divorce of the children and also because the children will have to pay Capital Gains Tax (CGT) when the house is eventually sold and this could amount to a very large sum.

In some cases we are able to place the house into a Trust, but there can still be problems with Tax – either CGT or Inheritance Tax. Also you need to understand that once placed in the Trust it ceases to be your house. Therefore if you decide to move to a cheaper property later any balance is not yours to spend but belongs to the trust and you would have to ask the Trustees if you could have the money. Also, if you wanted raise some capital e.g on an Equity Release Loan this would not be possible. In addition care has to be taken not to fall foul of the **Deprivation of Assets rule**.

All too often the request is made at a time when the health of the person or of one of a couple has already deteriorated or they have been given a diagnosis that suggests a real likelihood of being in need of nursing care in the future. If any action is taken at this stage to either give the house away to an individual or transfer it into a trust it will be viewed as an attempt to prevent you having to pay for the nursing costs and the Local Authority will either refuse to pay until the capital you would have had from the sale of your house would be spent or look to the person who received the house to pay the costs of care.

If you have to fund your own care it may be worth looking at obtaining an **Immediate Care Annuity** which may be able to cover the costs of the care home for the rest of your life, on payment of a lump sum. This has the effect of preserving some of your assets and ensures that you would be able to leave some money to your family. We can recommend an Independent Financial Advisor who is able to give you the specialist advice this type of scheme requires.

If the house is in the joint names of a couple and one is ill there are two situations to consider:

1. **One spouse needs care, the other spouse is the carer.** There is no problem unless the carer dies – and this does happen quite often. At that stage the house and all the capital assets pass to the surviving spouse and they have to go into care. The result is that the assets will then have to be used to pay the care home fees.

2. **One spouse goes into care and the other is still living in the house.** The house is safe unless the spouse living in the house dies. All assets pass to the surviving spouse and will, again have to be used to pay for the care home.

In either case action can be taken to **preserve half the value** of the house from being used to pay for the care home. You can change the ownership of the house to tenants in common (see information leaflet on Joint Ownership) and the spouse who is well changes his/her will and leaves his/her share of the house and any cash assets in their name into a **trust**. The money in the Trust will be ring-fenced and would not be required to be used to pay for the care home. However flexibility can be built into the trust to enable the money to be used e.g. using the trust money is the only method of ensuring the spouse continues to live in the nursing home in which they are settled.

Other points to consider

Welfare Benefits, Lasting Powers of Attorney, Registering Enduring Powers of Attorney, Advanced Decisions, Will

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