

STATES OF JERSEY



DRAFT LONG-TERM CARE (HEALTH AND SOCIAL SERVICES CHARGES) (JERSEY) LAW 201-

**Lodged au Greffe on 29th October 2013
by the Minister for Health and Social Services**

STATES GREFFE



Jersey

DRAFT LONG-TERM CARE (HEALTH AND SOCIAL SERVICES CHARGES) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Health and Social Services has made the following statement –

In the view of the Minister for Health and Social Services the provisions of the Draft Long-Term Care (Health and Social Services Charges) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy A.E. Pryke of Trinity**

Minister for Health and Social Services

Dated: 28th October 2013

REPORT

Summary

The Island faces a substantial increase in both the number and proportion of older residents over the next 30 years, with care costs predicted to more than double by 2044. In response to this issue, in July 2011, the States approved the Long-Term Care (Jersey) Law 2012. Details of the operation of the proposed scheme have now been set out in Proposition P.99/2013, which will be debated before this Law is considered.

The introduction of a Long-Term Care (LTC) scheme is designed to share long-term care costs more fairly across the community; and the scheme will establish a clear and simple process to help individuals and their families understand the choices available and plan for the cost of long-term care. The proposed new scheme will provide financial support to Jersey residents who have significant long-term care needs and who are being cared for either in their own home or in a care home.

As set out in section 20 of P.99/2013, as part of the introduction of the long-term care scheme, it is proposed to replace the existing Hospital Charges (Long-Stay Patients) (Jersey) Law 1999, which restricts the ability of the Health and Social Services Department to charge for long-term care services funded by that Department. The new Law will allow the Health and Social Services Department to charge fees which will be set in line with the LTC standard rates and the minimum co-payment.

Background

The current Hospital Charges (Long-Stay Patients) (Jersey) Law 1999, (the ‘Hospital Charges Law’), restricts the ability of the Health and Social Services Department (‘HSS’) to charge for long-term care services.

Currently someone over 65 years of age placed in an HSS long-term care bed, for example at The Limes, Sandybrook, Rosewood House, or in a long-term care bed that HSS has purchased in the private sector, is subject to the Long-Stay charge of £474.81 per week (2013) – even if they have the financial resources to pay more. The total cost of most HSS placements is over £1,000 a week, and the effect of the current Law is to provide a substantial subsidy to those residents who are placed in long-term care by HSS who could afford to meet their own care costs, whereas others who make their own long-term care arrangements meet their full costs themselves. This results in different levels of financial support being available to individuals with the same level of care needs, depending on whether they are placed in long-term care through the Health and Social Services Department or whether they arrange their own placement.

The Hospital Charges Law also restricts charges to those who are aged 65 and above. Individuals receiving long-term care provided by the Health and Social Services Department who are under 65 years old do not make any payment towards their living or care costs. For example, there are HSS-run group homes for younger adults, mainly catering for individuals with learning difficulties, where a number of individuals utilising these facilities have income and/or capital but do not contribute towards their care and accommodation costs as older adults currently have to.

Under the new Long-Term Care (Jersey) Law 2012 (‘LTC’ Law) , all eligible adults aged 18 and above will be entitled to long-term care benefit if they are assessed as having a long-term care need and meet the residence requirements set out in the LTC Law, Long-Term Care Scheme (the ‘Scheme’) and by Regulation. The Scheme will be administered by the Social Services Department (‘SSD’).

It is therefore proposed to replace the Hospital Charges Law with the Long-Term Care (Health and Social Services Charges) (Jersey) Law 201- to allow the HSS to levy fees which will be set in line with the LTC benefit rates and the minimum co-payment rate. These charges will be introduced at the same time as the LTC benefit is introduced, planned for 1st July 2014, and will apply to all adults receiving long-term care.

Proposed long-term care charges

Under the LTC Law, anyone aged 18 and over assessed as being in need of long-term care and resident at an approved care home or in receipt of an approved care package, will be required to make a co-payment (if they have the means to do so) towards their gross care costs so they can access the long-term care benefit. Means-tested assistance will be available for those unable to pay towards these costs.

The proposed Long-Term Care (Health and Social Services Charges) (Jersey) Law (the 'LTC HSS Charges Law'), also covers individuals aged 18 and above. The charge will apply to the provision of long-term care services by HSS and the definition of long-term care services in Article 1 of the new LTC HSS Charges Law is directly linked to the definition of long-term care needs used in the LTC Law.

Under the LTC Law, all adults will be able to request assistance with long-term care costs through the LTC Scheme. The increase in the charges levied by HSS will have no impact on residents with limited income and assets. These residents will receive means-tested support through the LTC scheme.

Setting the level of charges (Article 2)

The actual charges to be levied by HSS will be set by Ministerial Order. In light of the close relationship between the provision of long-term care services by HSS and the payment of LTC benefit, the proposed Law will require the Minister for Health and Social Services to consult with the Minister for Social Security before setting or amending these charges.

The main charges will be aligned with the LTC benefit rates and the minimum co-payment. These will be finalised in the spring of 2014.

The order will also specify additional detail in various circumstances. There will be situations in which it is inappropriate to levy a charge; for example, an individual receiving long-term care under specific areas of the Mental Health Law. In other cases, a charge in excess of the LTC rate will be available: for example, an individual who has only lived in Jersey a short time and does not satisfy the residency conditions under either the LTC Law or the Income Support Law. In this case, HSS will be able to recover the actual cost of accommodation and care from those residents.

Similarly, in the small minority of cases where an individual has finished receiving treatment in hospital and refuses to leave the hospital to take up a care package either in their own home or in a care home, the HSS will be able to levy a charge on that individual at a higher rate (e.g. the rate for a private patient) to acknowledge the additional cost of occupying an acute bed within the hospital unnecessarily.

LTC residents being treated in hospital

Many individuals receiving long-term care in their own home, or in a care home, will need hospital treatment from time to time. Whilst in hospital, they will be provided with care normally provided as part of their long-term care package. HSS will not impose additional long-term care charges on long-term care individuals for services received as part their hospital treatment.

Timing of the changes

The new charges will be introduced at the same time as the LTC benefit is introduced, which is expected to be from 1st July 2014. However, the new LTC HSS Charges Law is designed to come into force independently of the LTC Law and charges will be set under the new Law in line with existing legislation until LTC benefit is introduced; those aged 65 and above will continue to pay the current Long Stay Charge (£474.81 per week in 2013) and individuals aged below 65 will not be charged.

Financial and manpower implications

For individuals in long-term care from whom HSS already collects the Long-Stay Charge, this charge will be replaced with the new charge for long-term care services on the introduction of LTC Benefit. HSS will utilise existing resources to collect additional long-term care charges; however, it is expected the majority of individuals utilising HSS's long-term care services will elect for their Long-Term Care Benefit to be paid directly to HSS, thus reducing the impact on the Department.

It is being proposed that the additional income HSS will receive in 2014 and 2015 from being able to charge for long-term care services will be transferred to the Long-Term Care Fund, thus having a net nil financial impact on HSS. HSS's budgets will then be adjusted accordingly in the next Medium Term Financial Plan in 2016.

Human Rights

The Law Officers' Department has indicated that the draft Law does not give rise to any human rights issues.

Explanatory Note

This Law provides for the charging of fees for long-term care services the provision of which is administered or arranged by the Minister for Health and Social Services (“Minister”).

Article 1 is an interpretation provision. “Long-term care services” are defined to mean services provided to a person aged 18 or over for the purpose of providing the person with permanent help with activities that are an essential part of normal daily living (such as bathing, dressing, grooming and eating). Such services may include the provision of accommodation. It is not relevant whether the person has been assessed as being in need of long-term care under the Long-Term Care (Jersey) Law 2012.

Article 2 allows the Minister to prescribe charges by Order for the provision of long-term care services. No person may be charged for long-term care services provided to a person unless the person has been assessed by or on behalf of the Minister as requiring such services. An Order may be made only after consultation with the Minister for Social Security.

Article 3 allows the Minister to recover any charges payable in accordance with an Order under Article 2 as a civil debt.

Article 4 repeals the Hospital Charges (Long-Stay Patients) (Jersey) Law 1999.

Article 5 sets out the title of the Law and provides that it will come into force 14 days after it is registered.



Jersey

**DRAFT LONG-TERM CARE (HEALTH AND
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LAW 201-**

Arrangement

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Jersey

DRAFT LONG-TERM CARE (HEALTH AND SOCIAL SERVICES CHARGES) (JERSEY) LAW 201-

A LAW for the charging of fees for long-term care services the provision of which is administered or arranged by the Minister for Health and Social Services and for related purposes.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law –

“accommodation services” means the provision of accommodation, including meals and other services incidental to the provision of accommodation;

“long-term care services” means services, including any accommodation services, provided to a person who has attained the age of 18 years for the purpose of providing to that person permanent help with activities that are an essential part of normal daily living (such as bathing, dressing, grooming, and eating), the provision of such services being arranged, administered or supplied by the Minister (whether or not the person has been assessed as being in need of long-term care under the Long-Term Care (Jersey) Law 2012¹);

“Minister” means the Minister for Health and Social Services;

“permanent” means continuing, or likely to continue, for the rest of a person’s life.

2 Power to charge for long-term care services

- (1) The Minister may, by Order, provide for the making and recovery by the Minister in such manner and in such circumstances as may be specified in the Order, of such charges as may be prescribed for long-term care services.
- (2) An Order under paragraph (1) may be made only after consultation with the Minister for Social Security.
- (3) Without prejudice to the generality of paragraph (1), such an Order may –
 - (a) prescribe charges with reference to different descriptions of particular long term care services as may be specified in the Order whether by reference to different levels of care or other criteria;
 - (b) provide for the remission or deferment of the whole or part of any charges in such circumstances as may be specified in the Order.
- (4) No person shall be charged for long-term care services provided to him or her unless the person has been assessed by or on behalf of the Minister as requiring such services.
- (5) An Order under this Article may make such transitional, consequential, incidental or supplementary provisions as appear to the Minister to be necessary or expedient for the purposes of the Order.

3 Recovery of charges as a civil debt

Without prejudice to any other method of recovery, the Minister may recover as a civil debt any charges payable in accordance with an Order under Article 2.

4 Hospital Charges (Long-Stay Patients) (Jersey) Law 1999 repealed

The Hospital Charges (Long-Stay Patients) (Jersey) Law 1999² is repealed.

5 Citation and commencement

This Law may be cited as the Long-Term Care (Health and Social Services Charges) (Jersey) Law 201- and shall come into force 14 days after it is registered.

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- ¹ *L.21/2012*
² *L.2/1999 (chapter 20.550)*