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POLICY BRIEFING

Fair Access to Care Services

England

February 2003

What is Fair Access to Care Services?

Guidance was issued by the Department of Health to local authorities last year called Fair Access to Care. This sets out a framework for local authorities to determine eligibility criteria for adult social care. The aim, according to the guidance, is to ensure that individuals within a council area, who have similar circumstances, receive services that deliver broadly similar outcomes.

Between April 2003 and April 2004, Government expects local authorities to review **all** open cases to ensure that the disabled person's and/or carers' needs still fit within their eligibility criteria.

What are eligibility criteria?

These are a set of criteria that are supposed to determine whether someone should be receiving help from social services. They are based on four bands of risk, which are set out in more detail below:

- * critical
- * substantial
- * moderate
- * low

The key to the eligibility criteria is to maintaining independence over time. The four bands of risk describe the seriousness of risk to independence and other consequences if needs are not addressed. The following are bands for disabled and older people that are set out in paragraph 16 of the policy guidance.

Critical when:

- * life is, or will be, threatened and/or
- * significant health problems have developed or will develop; and/or
- * there is, or will be, little or no choice and control over vital aspects of the immediate environment; and/or
- * serious abuse or neglect has occurred or will occur; and/or
- * there is, or will be, an inability to carry out vital personal care or domestic

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- routines; and/or
- * vital involvement in work, education or learning cannot or will not be sustained; and/or
- * vital social support systems and relationships cannot or will not be sustained; and/or
- * vital family and other social roles and responsibilities cannot or will not be undertaken.

Substantial is when:

- * there is, or will be, only partial choice and control over the immediate environment; and/or
- * abuse or neglect has occurred or will occur; and/or
- * there is, or will be, an inability to carry out the majority of personal care or domestic routines; and/or
- * involvement in many aspects of work, education or learning cannot or will not be sustained; and/or
- * the majority of family and other social roles and responsibilities cannot or will not be undertaken.

Moderate is when:

- * there is, or will be, an inability to carry out several personal care or domestic routines; and/or
- * involvement in several aspects of work, education or learning cannot or will not be sustained; and/or
- * several social support systems and relationships cannot or will not be sustained; and/or
- * several family and other social roles and responsibilities cannot or will not be undertaken.

Low is when:

- * there is, or will be, an inability to carry out one or two personal care or domestic routines; and/or
- * involvement in one or two aspects of work, education or learning cannot or will not be sustained; and/or
- * one or two social support systems and relationships cannot or will not be sustained; and/or
- * one or two family and other social roles and responsibilities cannot or will not be undertaken.

How will these criteria relate to carers?

The criteria affect carers in three ways:

- a) in relation to their own assessments under the Carers and Disabled Children Act 2000 for their own services
- b) in relation to their own assessments under the Carers (Recognition and Services) Act 1995
- c) in relation to the disabled or older person's assessment.

Although the Guidance contains very few references to carers, it states that local authorities should base their eligibility criteria for carers' services on the Practitioner's Guide to Carers' Assessments, part of accompanying guidance to the Carers and Disabled Children Act 2000.

Carers' assessments and eligibility criteria for services

The only tests that carers have to fulfil in order to have a carer's assessment relate to sections 1 of the Carers and Disabled Children Act 2000 and the Carers (Recognition and Services) Act 1995. In other words, they have to be providing or intending to provide regular and substantial care to someone who appears to the local authority to be someone for whom they might provide community care services.

If the carer provides regular and substantial care, requests an assessment, then the local authority has a duty to respond. As legislation does not define "regular and substantial" care, it is up to the local authority to define these terms, but guidance states that it should look at **impact** on the carer. The eligibility criteria described by FACS are **not** meant to apply to whether or not a carer is entitled to an assessment but whether or not they receive services.

Carers and determining risk

In the assessment, the guidance under paragraph 68 of the Practice Guidance on the Carers and Disabled Children Act 2000, suggests that the practitioner should look at two key questions:

- * is the caring role sustainable?
- * how great is the risk of the caring role becoming unsustainable?

Under paragraph 69, the practice guidance states that these questions should explore:

- * autonomy i.e. the carer's freedom to choose the type of tasks they will perform and how much time they will give to their caring role.
- * health and safety. This would include risk to the carer's own health of maintaining their caring role.
- * managing daily routines. Can carers look after their own domestic needs and other daily routines while sustaining their chosen caring role?
- * involvement. To what extent do carers have the freedom to maintain relationships, employment, interests and other commitments alongside caring responsibilities.

Paragraph 70 describes risk as, "the extent of risk to the sustainability of the caring role is the degree to which a carer's ability to sustain that role is compromised or threatened either in the present or in the foreseeable future by

the absence of appropriate support.

The risk factors are very similar to those for disabled or older people except that all of these factors need to be considered in conjunction to whether they can continue caring or not. These risk factors are important as Guidance states that they would determine whether someone would be eligible for services or not.

How would this affect a carer's assessment?

After carrying out an assessment, the local authority has a power to provide services under s. 2 of the Carers and Disabled Children Act. Although this means they can rather than have to provide services, it does not mean that they can make a blanket refusal to provide services to carers. If a carer was deemed to be at critical risk (the highest band) then the local authority should be looking seriously at whether they should be providing services to the carer. If the carer was at critical or even substantial risk, it might also raise human rights issues such as a right to private and family life under Article 8 of the European Convention on Human Rights.

The local authority does have a duty under the Carers (Recognition and Services) Act 1995 to take the results of the carer's assessment into account when deciding what services need to be provided to the disabled person. In other words, if the carer's assessment shows that their caring role is at risk, or they do not wish to perform certain caring functions, or they are at risk of not being able to work, this would mean the disabled person's needs could be higher risk.

How does this affect disabled people's assessments?

The same issue is important where disabled people are being assessed and the carer does not have an assessment. It is important that local authorities do not make blanket assumptions about the amount of care family members, neighbours and friends are able to or wish to provide. This would be a false indication of risk for the disabled or older person, as well as not giving them a choice about how they wish to live. Making these assumptions could open local authorities to legal challenge under Article 8 of the Human Rights Act, a right to private and family life. The example below illustrates how presence of a carer does not automatically mean that a disabled person is not at critical risk.

Example: At the point of hospital discharge, an assumption was made that the wife of an older man would provide all the care that he needed and did not look at her own health needs. The carer's health deteriorated so that she needed health treatment. He was readmitted to hospital because his health deteriorated, as she was unable to provide care for him at the level they had assumed.

What should eligibility criteria look like?

Based on the arguments above, eligibility criteria should, ideally, be separately

drawn up for disabled and for carers. If they are integrated, it is vital that there is no assumption that presence of a carer means that the disabled person is not at risk. They would also have to be very clear about the differences in risk between carers and the disabled person.

It is extremely important that local authorities do not assume that a disabled person's risk is less simply because they have a carer. Carers UK believes that it is important to look at the disabled person's risk first, in isolation, then consider carers' risk second, and finally come to a decision about individual risk. Practitioners must remember that carers and disabled people have individual rights, even though the solutions will often involve them both.

It is important to consider individual rights since these are a central part of the Human Rights Act 1998. Article 8 states that a person has a right to private and family life. The FACS guidance states that the eligibility criteria have to consider human rights issues alongside sex, race and any other potential discrimination issues.

What should carers' groups expect to happen next?

Local authorities should have been consulting carers and disabled and older people about their new eligibility criteria. These criteria should be published documents.

From April 2003, Government expects these criteria to be fully operational and expects local authorities to review every open case by 2004 to see whether the person's needs still fit within their new eligibility criteria. This will be important particularly in areas where local authorities have tightened their criteria. In these cases, it will be important to check that the assessment details have been recorded properly, that assessments have been comprehensive and have looked at all important aspects of the disabled person's and carers' lives.

Each individual has a right to see their own personal file and can write to the local authority to request this under the Data Protection Act 1998. The local authority may levy a "reasonable charge" for access to a personal file, although some do not charge a fee at all.

What can local groups do?

- * contact the local authorities' policy department and ask for a copy of the eligibility criteria. Check that assumptions are not being made about carers' support.
- * ensure carers are aware of their right to request assessments and reassessments.
- * ensure that carers have good access to advice if their case is being

reviewed.

* tell us if the reviews are resulting in services being cut.

Where to find more information:

Fair Access to Care: Guidance on Eligibility Criteria for Adult Social Care can be found at: www.doh.gov.uk/scg/facs or ordered from Department of Health Publications (see below).

The Carers and Disabled Children Act 2000 policy and practice guidance and the practitioner's guide to assessments can be obtained from

www.carers.gov.uk/zone9.htm.

Department of Health Publications, PO Box 777, London SE1 6XH. Tel: 0870 155 5455. Fax: 01623 724524. E-mail: doh@prolog.uk.com.

Other relevant information:

Visit our website: www.carersonline.org.uk

Advice for carers: Carers UK has an advice booklet for carers on carer's assessments. Contact Publications on: 020 7566 7626 or linda@ukcarers.org or andrea@ukcarers.org for more information.

Policy briefings: On the Carers and Disabled Children Act 2000 and carer's assessments and employment. Available from: info@ukcarers.org or 020 7566 7617.

Research: *You Can Take Him Home Now?* Carers' experiences of hospital discharge, published in 2001. Available on our website or free from: publications on: 020 7566 7626 or email: linda@ukcarers.org or andrea@ukcarers.org.

Health's Forgotten Partners, published 2001, is a survey of NHS Trusts' discharge policies in relation to carers. Contains a good practice guide on hospital discharge. Only available on our website: www.carersonline.org.uk

Training for Professionals:

We provide both in-house and training courses that incorporate these issues. For detailed information about courses and booking visit our website www.carersonline.org.uk. Alternatively, contact Chris Hockley on: 020 7566 7632 or e-mail: training@ukcarers.org.

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