



Social Services and Well-being (Wales) Act 2014

2014 anaw 4

PART 4

MEETING NEEDS

Meeting needs: exceptions and restrictions

46 Exception for persons subject to immigration control

- (1) A local authority may not meet the needs for care and support of an adult to whom section 115 of the Immigration and Asylum Act 1999 (“the 1999 Act”) (exclusion from benefits) applies and whose needs for care and support have arisen solely—
 - (a) because the adult is destitute, or
 - (b) because of the physical effects, or anticipated physical effects, of being destitute.
- (2) For the purposes of subsection (1), section 95(2) to (7) of the 1999 Act applies but with the references in section 95(4) and (5) of that Act to the Secretary of State being read as references to the local authority in question.
- (3) But, until the commencement of section 44(6) of the Nationality, Immigration and Asylum Act 2002, subsection (2) is to have effect as if it read as follows—
 - “(2) For the purposes of subsection (1), section 95(3) and (5) to (8) of, and paragraph 2 of Schedule 8 to, the 1999 Act apply but with references in section 95(5) and (7) and that paragraph to the Secretary of State being read as references to the local authority in question.”
- (4) The reference in subsection (1) to meeting an adult’s needs for care and support includes a reference to doing so in order to meet a carer’s needs for support.

47 Exception for provision of health services

- (1) A local authority may not meet a person's needs for care and support (including a carer's needs for support) under sections 35 to 45 by providing or arranging for the provision of a service or facility which is required to be provided under a health enactment, unless doing so would be incidental or ancillary to doing something else to meet needs under those sections.
- (2) A local authority may not secure services or facilities for a person under section 15 (preventative services) that are required to be provided under a health enactment, unless doing so would be incidental or ancillary to securing another service or facility for that person under that section.
- (3) Regulations may specify—
 - (a) types of services or facilities which may, despite subsections (1) and (2), be provided or arranged by a local authority, or circumstances in which such services or facilities may be so provided or arranged;
 - (b) types of services or facilities which may not be provided or arranged by a local authority, or circumstances in which such services or facilities may not be so provided or arranged;
 - (c) services or facilities, or a method for determining services or facilities, the provision of which is, or is not, to be treated as incidental or ancillary for the purposes of subsection (1) or (2).
- (4) A local authority may not meet a person's needs for care and support (including a carer's needs for support) under sections 35 to 45 by providing or arranging for the provision of nursing care by a registered nurse.
- (5) A local authority may not secure the provision of nursing care by a registered nurse in discharging its duty under section 15.
- (6) But a local authority may, despite subsections (1), (2), (4) and (5), arrange for the provision of accommodation together with nursing care by a registered nurse—
 - (a) if the authority has obtained consent for it to arrange for the provision of the nursing care from—
 - (i) whichever Local Health Board regulations require, in the case of accommodation in Wales, Scotland or Northern Ireland, or
 - (ii) whichever English health body regulations require, in the case of accommodation in England, or
 - (b) in an urgent case and where the arrangements are temporary.
- (7) In a case to which subsection (6)(b) applies, the local authority must seek to obtain the consent mentioned in subsection (6)(a) as soon as is feasible after the temporary arrangements are made.
- (8) Regulations may require a local authority—
 - (a) to make arrangements in connection with the resolution of disputes between the authority and a health body about whether or not a service or facility is required to be provided under a health enactment;
 - (b) to be involved in the manner specified in processes for assessing a person's needs for health care and deciding how those needs should be met.

(9) Nothing in this section affects what a local authority may do under the National Health Service (Wales) Act 2006, including entering into arrangements under regulations made under section 33 of that Act (arrangements with NHS bodies).

(10) In this section—

an “English health body” (“*corff iechyd Seisnig*”) means—

- (a) a clinical commissioning group;
- (b) the National Health Service Commissioning Board;

a “health body” (“*corff iechyd*”) means—

- (a) a Local Health Board;
- (b) a clinical commissioning group;
- (c) the National Health Service Commissioning Board;
- (d) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;
- (e) a Special Health Board constituted under that section;
- (f) a Health and Social Care trust;

a “health enactment” (“*deddfiad iechyd*”) means—

- (a) the National Health Service (Wales) Act 2006;
- (b) the National Health Service Act 2006;
- (c) the National Health Service (Scotland) Act 1978;
- (d) the [Health and Personal Social Services \(Northern Ireland\) Order 1972 \(S.I. 1972/1265 \(N.I. 14\)\)](#);
- (e) the Health and Social Care (Reform) Act (Northern Ireland) 2009;

“nursing care” (“*gofal nyrsio*”) means a service which involves either the provision of care or the planning, supervision or delegation of the provision of care, but does not include a service which, by its nature and in the circumstances in which it is to be provided, does not need to be provided by a registered nurse.

48 Exception for provision of housing etc

A local authority may not meet an adult’s needs for care and support (including a carer’s needs for support) under sections 35 to 45 or discharge its duty under section 15 by doing anything which that authority or another local authority is required to do under—

- (a) the Housing Act 1996, or
- (b) any other enactment specified in regulations.

49 Restrictions on provision of payments

(1) A local authority may not provide payments to meet a person’s needs for care and support or a carer’s needs for support under sections 35 to 45 unless—

- (a) the payments are direct payments (see sections 50 to 53),
- (b) the authority considers—
 - (i) that the person’s needs are urgent, and
 - (ii) that it would not be reasonably practicable to meet those needs in any other way,
- (c) the payments are provided under or by virtue of a contract, or

- (d) the payments are provided in circumstances specified in regulations.
- (2) A local authority may not provide payments in the discharge of its duty under section 15(1) unless—
- (a) the authority considers—
 - (i) that the payments would achieve one or more of the purposes mentioned in section 15(2), and
 - (ii) that it would not be reasonably practicable to achieve that purpose or those purposes in any other way,
 - (b) the payments are provided under or by virtue of a contract which relates to the provision of services for the authority's area, or
 - (c) the payments are provided in circumstances specified in regulations.