

Forward Plan reference number: FP/262/12/21

Report title: Integrated Residential Nursing (IRN) Framework Annual Refresh and Placement Price Uplifts for 2022	
Report to: Cabinet	
Report author: Councillor John Spence - Cabinet Member for Health and Adult Social Care	
Date: 15 February 2022	For: Decision
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County Divisions affected: All Essex	

1. Everyone's Essex

- 1.1 Everyone's Essex sets out the strategic aim of health, wellbeing and independence for all ages. Within that aim is a commitment to helping individuals to live free from abuse and neglect and enabling independence through access to suitable accommodation and an effective care market.
- 1.2 One way to support this aim is through enabling an effective residential and nursing care home market. It is important that we help shape and support the care home market in Essex, which is currently experiencing unprecedented pressure. The expectation of rehabilitation at pace means that providers are feeling the strain of additional training, staffing and changes to their business model. At the same time, the impacts of the Covid pandemic, including reduced occupancy, are still being felt and wider economic factors are exacerbating matters.
- 1.3 The purpose of this paper is to seek approval of the proposed approach for the annual Integrated Residential Nursing (IRN) Framework refresh for 2022 as well as the proposed price uplift approach for existing Residential and Nursing placements for older people in 2022/23. The proposed price uplift approach in this paper reflects the additional financial pressures facing older people care homes from April 2022 including the Social Care Levy, higher inflation than expected and higher National Living Wage increases.
- 1.4 The proposals in this paper do not create any additional climate impacts, which is consistent with our net zero climate commitments set out in Everyone's Essex.

2 Recommendations

- 2.1 Agree to vary the price matrix in the IRN Framework Agreement with effect from 1 June 2022 so that each price band is increased by:
 - 6.1% for residential care as set out in Appendix A
 - 6.4% for residential care with nursing as set out in Appendix A.

- 2.2 Agree to undertake the annual Preferred Supplier Ranked List Review Process in accordance with the processes set out within the IRN Framework Agreement, to allow new providers on to the IRN Framework and existing IRN Framework providers to resubmit prices that will apply to new placements from 1 June 2022.
- 2.3 Subject to the Executive Director, Adult Social Care being satisfied that it is lawful in each case to do so, to increase the weekly rate of all existing care home placements in place on 31 March 2022 and delivered via the IRN Framework Agreement by 6.1% for Residential and 6.4% for Nursing, capped at £685.72 per week for residential and £835.03 per week for nursing placements, with effect from 1 April 2022.
- 2.4 Agree to vary the IRN Framework Agreement to permit the changes set out in recommendation 2.3 above.
- 2.5 Subject to the Executive Director, Adult Social Care being satisfied that it is lawful in each case to do so, agree to increase the weekly rate of all existing care home placements in place in the administrative area of the Council on 31 March 2022 commissioned by the Council pursuant to a spot purchase contract by 6.1% for Residential and 6.4% for Nursing, capped at £685.72 per week for residential and £835.03 per week for nursing placements, with effect from 1 April 2022.
- 2.6 Agree that the Executive Director, Adult Social Care is authorised, following the conclusion of the annual Preferred Supplier Ranked List Review Process set out in 2.2, to:
 - agree the terms of the variation to the IRN Framework Agreement referred to in paragraphs 2.1 and 2.4 above.
 - award IRN Framework Agreements to new providers;
 - award new providers on the IRN Framework an IRN Call Off Contract;
 - to agree the terms of the contract variations required for existing contracts referred to in paragraphs 2.3 and 2.5 above; and
 - re-rank providers in accordance with the published criteria in the IRN Framework Agreement.

3 Background and Proposal

- 3.1 The Integrated Residential Nursing (IRN) Framework (the IRN Framework) was established in June 2019 to source care in a residential setting for older people and adults with non-complex mental health needs, with or without nursing care. Approximately 80% of residential placements and 50% of nursing placements are made via the IRN Framework. Where placements cannot be made using the IRN Framework, a spot purchase contract may be used instead.
- 3.2 The IRN Framework contains provision for the Council to re-open the IRN Framework every year via an 'annual preferred supplier ranked list' review process (the 'review process'). This review process allows existing providers on the IRN Framework to submit revised prices for new placements, should they so wish, and enables new providers to join the IRN Framework. It is proposed that

the 2022 IRN Framework review process will commence in February 2022 and will be completed on 1 June 2022, in line with the anniversary of the IRN Framework.

- 3.3 As part of the reopening of the IRN Framework, it is also proposed to vary the price matrix in the IRN Framework with effect from 1 June 2022 so that each price band is increased by 6.1% for residential care and 6.4% for residential care with nursing. The revised IRN Framework pricing matrices will be used for the annual review process. The process for determining the provider's position on the ranked list will continue with the Care Quality Commission (CQC) overall quality score (good and outstanding first, then requires improvement and not yet rated) and then price. This uplift will apply to all new placements made after 1 June 2022.
- 3.4 The prices proposed for this uplift have been determined following an annual review of the cost of care work for older people including calculating the inflationary increase expected in the financial year 2022/23. The National Living Wage will increase by 6.6% to £9.50 per hour from April 2022. In addition, providers are incurring other increased costs such as increased prices for fuel, food, and utilities etc. and this impact can be seen through the changes in the Consumer Price Index. Furthermore, from April 2022, a new Health and Social Care Levy is being introduced, which has an impact on both employee and the employer. For financial year 2022/23, this will be added to the National Insurance contribution at a rate of 1.25%. From April 2023, National Insurance will go back to the 2021/22 amounts and the new levy will become a standalone element. All of these elements have been considered as part of the calculation for the proposed price increases set out in this report.
- 3.5 Although the Council and Central Government have provided significant additional resource to care providers in response to the COVID-19 pandemic this has been to address some of the cost pressures directly arising as a result of COVID-19. The proposed increase set out in this report is instead intended to address the increasing pressure arising from other costs facing the sector and to assist providers in ensuring that they can resource services with skilled and qualified staff and deliver high quality care.
- 3.6 The Care Act 2014 places duties on authorities to facilitate and shape their market for adult care so that it meets the needs of all people in their area who need care and support. In discharging this duty, the Council must have regard to ensuring the sustainability of the market; high quality, personalised care and support can only be achieved where there is a vibrant and responsive market of suppliers. This can be achieved through commissioning, market shaping and contract management. People working in the care sector play a central role in the delivery of high-quality services and the Council must consider and address whether contract terms and fee levels are appropriate to provide the agreed quality of care and not compromise the providers ability to meet statutory pay obligations. It is in response to this duty, that the price increases set out in this report are proposed. There are 396 CQC registered care homes in Essex, employing approximately 14,000 staff. The 126 care homes on the IRN framework employ approximately 4,200 staff. Raising wages for typically low paid

staff in the Essex Care sector will have a positive impact on residents and on the wider Essex economy.

- 3.7 It is also proposed from 1 April 2022 to uplift all existing older people care home placements by 6.1% for Residential and 6.4% for Nursing capped at £685.72 per week for residential and £835.03 per week for nursing regardless of whether such placements were made via the IRN Framework or on a spot purchase arrangement. This capped amount equates to what will be the highest available rate on the IRN Framework after the rates have been varied. This proposed approach differs from previous years, where only placements made at least two years prior to the start of the financial year received an uplift capped at the highest available rate on the IRN Framework. This proposed approach for 2022/23 is not intended to set a precedent for future years and is a reflection of the extraordinary financial pressures facing care homes in 2022/23. Capping the uplift at the highest available rate on the IRN Framework on the price matrix for that service type is in line with the approach taken in previous years.

4 Links to our Strategic Ambitions

- 4.1 This report links to the following aims in the Essex Vision:

- Enjoy life into old age
- Develop our County sustainably

- 4.2 Approving the recommendations in this report will have a neutral impact on the Council's ambition to be net carbon neutral by 2030. We are working on wider improvements as part of our longer-term market shaping strategy which will have an impact on this ambition.

- 4.3 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':

- A strong, inclusive and sustainable economy
- Health wellbeing and independence for all ages

5 Options

5.1 Do nothing (not recommended)

- 5.1.1 This option is not recommended as it is not compliant with the current IRN Framework contract, which sets an expectation that the contract will be re-opened annually. It could also impact on the Council's ability to meet its duty under section 5 of the Care Act 2014 and the promotion of a sustainable care home market, to promote choice and control for individuals and their families and to promote consistent quality, with a focus on good and outstanding provision. Providing no placement cost uplifts could risk the Council's ability to source all the residential care it needs to support the people of Essex.

5.2 Uplift the weekly rate of current placements, open the IRN Framework to allow new providers to join and amend the pricing matrix in the IRN Framework Agreement to increase the weekly rates that providers can select from (recommended option)

5.2.1 This option will better equip the market to provide the care home capacity that is needed on an ongoing basis. This supports the strategic intention detailed in section 4. The approach of a fixed monetary uplift on existing packages is easy to calculate and communicate, reduces the risk of being unaffordable by controlling the uplift, and gives all providers the same opportunities. Opening the IRN Framework to allow new providers to join and allowing existing providers to select a new rate from the revised pricing matrices will help support a more sustainable cost which will assist providers in recovering some of the increased costs set out in this report.

5.3 Open the IRN Framework to allow new providers to join but do not increase the weekly rates on new or existing placements (not recommended)

5.3.1 This approach is not recommended as this will not address the additional financial pressures providers are facing detailed in 3.4. It could result in providers withdrawing from the IRN Framework and more placements being made through a spot purchase contract. It could also impact on the Council's ability to meet its duty under section 5 of the Care Act 2014.

5.4 Uplift placements that are over two years only, capped at the highest IRN Framework rate. Keep the framework closed to new providers and cancel the PSRL review and transfer current homes to the same price point on the refreshed pricing matrix (not recommended)

5.4.1 This approach is not recommended as the IRN Framework would remain closed to new entrants, meaning providers and homes wishing to join might have to wait until the fourth anniversary of the IRN Framework for the opportunity. It would also mean that existing homes on the IRN Framework would not be able to change their price point, should they wish to. Only uplifting placement over two years will not address the additional financial pressure providers are facing detailed in 3.4.

6 Issues for Consideration

6.1 Financial Implications

6.1.1 Essex County Council spends a significant proportion of its budget on providing residential and nursing care for older people. The 2022/23 budget plans for a gross cost of £122m and expenditure is expected to be affected in future years by inflationary and demographic pressures. The Medium-Term Resource Strategy (MTRS) takes account of these forecast pressures as part of the budget setting process.

6.1.2 The following tables set out the cost of the recommendations and the impact in 2022/23 compared with the ASC draft budget.

Cost of Recommendations	2022/23	2023/24	2024/25
IRN Refresh	£1.1m	£3.1m	£3.9m
Historic Uplift (> 2yrs)	£1.9m	£1.1m	£0.7m
Historic Uplift (< 2yrs)	£2.4m	£1.4m	£0.8m
Total	£5.3m	£5.7m	£5.4m

National Insurance Impact (Included in above)	2022/23
IRN Refresh	£0.12m
Historic Uplift (> 2yrs)	£0.21m
Historic Uplift (< 2yrs)	£0.24m
Total	£0.57m

6.1.3 The estimated gross cost of the recommendations is £5.3m in 2022/23, a further £5.7m in 2023/24 and £5.4m in 2024/25. This phasing is due to the higher IRN Framework prices applying to new placements and therefore increasing over time, whereas the cost of uplifting prices for existing placements will reduce through attrition as packages end over the same period. Many service users contribute to the cost of their care in full, which may slightly reduce the net financial impact of the price rises to the Council.

6.1.4 The cost of the recommendations includes £570,000 in 2022/23 related to the increased cost of National Insurance to providers from April 2022. The additional cost of extending the eligibility to all current placements (rather than only those older than 2 years) is £2.1m (£2.4m inclusive of the cost of the NI increase). Both elements will be funded from within the ASC budget, where provision has been made to help address potential cost of care and demand risks in the care market.

6.1.5 The recommendations are expected to mitigate the risks and potential consequences of not offering a sufficient uplift to the market at a challenging time and when new, unpredicted inflationary and other pressures will affect providers' cost base. This could, for example, result in financial pressures through provider behaviour on spot prices, or in care home residents being moved due to home closures. The price uplift to existing placements is capped at the maximum IRN rate, which assists with affordability and covers most ECC placements in IRN framework homes, while excluding the outlying prices that are largely held with the spot market.

6.1.6 The financial modelling of the recommended option assumes a neutral position on suppliers joining or leaving the IRN Framework. Whilst the process does allow new providers to join, it is unclear whether providers will choose to do so. It also assumes that existing IRN Framework providers maintain their current position on the pricing matrix, and that the proportion of new placements at contracted rates compared with spot will continue in the same average ratios.

6.1.7 While many IRN Framework providers are already placed at the highest available price, there is a possibility that existing IRN Framework providers may choose to increase from their current point on the pricing matrix. If all existing IRN Framework providers choose the maximum possible rate for their locality, then

this could result in an additional annual pressure of £1.1m by 2024/25, if there were to be no compensating reduction in spot market prices.

6.2 Legal Implications

6.2.1 The IRN Framework Agreement provides that the Council will open the review process annually, on or around the anniversary of the commencement date of the IRN Framework Agreement. Whilst the IRN Framework Agreement does not expressly state that the Council is able to amend the pricing matrices, given that the IRN Framework will be open to new entrants to bid, no one bidder/provider is given a competitive advantage over another. The Annual Review Process will need to give new providers the same length of time to respond to the invitation to tender as was afforded to those bidding in the original tender process, to ensure consistency, transparency and equal treatment.

6.2.2 During the Annual Review Process, providers have the opportunity to amend their pricing from the amended pricing matrix. The newly selected price is then scored in accordance with the published criteria. The ranked list for placements is then updated based on the new scores.

6.2.3 The proposals set out in this report will require a variation to the IRN Framework to increase the weekly rates and permit the uplift to existing placements made via the IRN Framework. Any change to the rates in the IRN Framework Agreement must comply with regulation 72 of the Public Contract Regulations 2015 and be carried out using the change control mechanism in the Framework Agreement.

6.2.4 The increase in rates on contracts for existing placements would be a modification to those contracts during their term. ECC is able to modify the contract where regulation 72 of the Procurement Regulations permits. This will need to be considered on an individual contract basis before such uplift is agreed.

6.2.5 There is a risk that introducing a blanket pricing uplift for new placements and existing placements results in a precedent for future refreshes of the IRN Framework. Whilst this is not likely to create legal difficulties, it may create expectations in the market.

6.2.6 These proposed payments are not required to be made by law or under the terms of any contracts and therefore could amount to a gratuitous payment and potentially a subsidy. The European Union (Future Relationship) Act 2020 places the ECC in a very similar position to that in which it would have been had the Council remained in the EU. However, subsidies to offset the harm done by a global pandemic are likely to be lawful under the subsidy control regime. The staffing difficulties at present can be attributed, at least in part, to the destabilising influence of the pandemic, although no doubt this is not the sole cause. The subsidies awarded will need to be recorded on the BEIS website.

6.2.7 The Council can only be confident that such price increases will result in encouraging sustainable retention and recruitment approaches if this is a contractual requirement of the variations.

7 Equality and Diversity Considerations

- 7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 7.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic. The proposed recommendations will continue to ensure that there is a choice of 'Good' and 'Outstanding' care homes in which placements can be made by the Council.

8 List of Appendices

- 8.1 Appendix A: IRN Framework Pricing Matrix
- 8.2 Appendix B: Equality Impact Assessment

9 List of Background Papers

None declared.