

2003 - No. 8

The Long-term Care Insurance (Guernsey) Regulations, 2003

Made 20th March, 2003.
Laid before the States
Coming into operation 7th April, 2003.

THE GUERNSEY SOCIAL SECURITY AUTHORITY in exercise of the powers conferred on it by sections 3, 10, 11, 21, 23, 24 and 31 of the Long-term Care Insurance (Guernsey) Law, 2002¹ and in exercise of all other powers enabling it in that behalf, hereby orders:-

Interpretation

1. (1) In these Regulations, except where the context otherwise requires, the following expressions have the meanings hereby assigned to them, namely -

“absence” means absence from Guernsey;

“the Board” means the States Board of Health;

“instrument” means any order (including any Order of the Royal Court), regulations, rules or other subsidiary legislative instrument;

“the Law” means the Long-term Care Insurance (Guernsey) Law, 2002;

“Needs Assessment Co-ordinator” means the person appointed by the Board under regulation 13;

“officer” means an employee of the States of Guernsey;

“person concerned” includes a relative or friend of a claimant, an approved care provider and the owner or operator of an approved care establishment;

“presence” means presence in Guernsey;

“residence” means residence in Guernsey;

“the Residence Regulations” means the Social Insurance (Residence and Persons Abroad) (Guernsey) Regulations, 1978²; and

any other expressions shall have the same meanings as in the Law.

(2) Except where the context otherwise requires, any reference in these Regulations to any enactment or regulations shall be construed as a reference to that enactment or those regulations as amended, extended, repealed, replaced or revoked by or under any other enactment or by any other regulations.

(3) The Interpretation (Guernsey) Law, 1948³, shall apply to the interpretation of these Regulations as it applies to the interpretation of a Guernsey enactment.

¹ Order in Council No. XXIII of 2002.

² S.I. 1978 No. 25.

³ Ordres en Conseil Vol. XIII, p.355.

PART I
RESIDENCE AND PRESENCE IN GUERNSEY

Computation of periods of residence and presence

2. (1) In this regulation -

“week” means a contribution week as defined in the Social Insurance (Contributions) Regulations, 2000⁴; and

“full-time education” means full-time education at an establishment recognised by the Authority as being, or as being comparable to, a university, college or school.

(2) In the computation of periods of continuous ordinary residence and presence for the purposes of section 3(2)(c) of the Law:

- (a) a period of absence of less than 13 weeks shall be disregarded provided that it is both preceded and followed by periods of presence of 13 weeks or more;
- (b) a period of presence of less than 26 weeks in an aggregate of 52 weeks shall be disregarded.

(3) In the computation of the period of ordinary residence and presence for the purposes of section 3(2)(d) of the Law a period of absence of less than five complete weeks shall be disregarded.

(4) For the purposes of the preceding two paragraphs, no account shall be taken of periods of absence as a result of -

- (a) service in HM Forces;
- (b) medical treatment;
- (c) full-time education;
- (d) employment outside Guernsey by a Guernsey employer in accordance with the provisions of regulation 3(2)(a) of the Residence Regulations.

PART II
CLAIMS AND PAYMENTS

Claims to be made to the Needs Assessment Co-ordinator in writing

3. (1) Every claim for benefit shall be made in writing to the Needs Assessment Co-ordinator on the form approved by the Authority for the purpose, or in such other manner, being in writing, as the Authority may accept as sufficient in the circumstances of any particular case or class of cases.

(2) Where the Administrator determines that respite care benefit should no longer be payable in respect of any particular claim, no additional claim for care benefit shall be required where the claimant continues to reside in an approved care establishment.

⁴ S.I. 1999 No. 49.

Requirement for assessment of needs

4 (1) Every claim to care benefit shall include a request for an assessment of needs and a claim for a different type of care benefit shall be deemed to be a request for a further assessment.

(2) Any person requesting an assessment of needs shall submit to examination by such person or persons as may seem appropriate to the Needs Assessment Panel and no request shall be effective for the purposes of these Regulations until such examination has, or shall be deemed to have, been made.

Claims not on appropriate forms

5. Where a claim for benefit has been made on an approved form other than the form appropriate to the benefit claimed, the Authority may treat the claim as if it had been made on the appropriate form:

Provided that the Authority may in any such case require the claimant to complete the appropriate form.

Effective date of claim

6. No claim to benefit shall become effective until the first date on which all three of the following conditions are fulfilled:

- (a) a needs assessment has been requested;
- (b) the conditions as to residence and presence have been met;
- (c) the claimant has taken up residence in an approved care establishment.

Claims on behalf of others

7. No claim to benefit shall be invalidated solely on the grounds that it was not made by the claimant or a close relative, or that it was made without the knowledge and consent of the claimant.

Persons unable to act or to deal with benefit

8. (1) Subject to paragraph (2), the Authority may if it thinks fit, upon written application being made to it by or on behalf of a relevant claimant appoint any person aged 18 years or more to receive and deal with payments of benefit due to that claimant.

- (2) An appointment under paragraph (1) -
 - (a) may be made for such term and upon such conditions (not inconsistent with the provisions of this regulation), as the Authority thinks fit;
 - (b) shall terminate on the day immediately prior to the date on which the Authority is notified that a guardian has been appointed in respect of the relevant claimant;
 - (c) may be revoked by the Authority at its absolute discretion at any time; and
 - (d) may be terminated by the person appointed thereunder at any time by way of one month's written notice given to the Authority.

(3) The provisions of the Social Insurance (Duties of Appointees) Regulations, 2002⁵ shall apply *mutatis mutandis* to any person appointed under this regulation as if he were an appointee for the purposes of those regulations.

- (4) For the purposes of this regulation, a “relevant claimant” means -
- (a) a child; or
 - (b) a person who appears to the Authority to be unable to look after his own affairs.

Time and manner of payment

9. (1) Care benefit shall be payable -
- (a) on a Monday weekly in arrears by automated credit transfer -
 - (i) to the bank account of the claimant; or
 - (ii) to such other account as may be directed by or on behalf of the claimant; or
 - (b) at such longer interval and in such other manner as may be approved by or on behalf of the Authority.

(2) Respite care benefit shall be payable weekly in arrears by automated credit transfer to the account of the care provider, or otherwise, in any particular case, as may be determined by or on behalf of the Authority.

(3) Care benefit and respite care benefit may be paid at a daily rate of one seventh of the weekly rate prescribed by Ordinance of the States.

Temporary absence from approved care establishment

10. (1) The proprietor of an approved care establishment shall, as soon as reasonably possible after becoming aware of the occurrence or intended occurrence of the same, give notice to the Administrator of the absence or intended absence from that establishment, for four days or more, of any claimant who normally resides at that establishment, stating the reason for such absence and its likely duration, where known.

(2) For the purposes of section 3(2)(e) of the Law a claimant shall be deemed to continue to be a resident of an approved care establishment at which he normally resides during a temporary absence from that establishment of up to four weeks, or for such longer period as the Administrator may, exceptionally, allow.

- (3) Where -
- (a) a claimant has been absent from an approved care establishment in which he normally resides for a period of seven days or more; and
 - (b) the Administrator determines that the absence is not an absence of a temporary nature;

care benefit shall cease to be payable in respect of that claimant on the fourth day following such determination.

⁵ S.I. 2002 No. 2.

(4) For the purposes of the foregoing paragraphs of this regulation, periods of residence in an approved care establishment of less than three days shall, if preceded and followed by periods of absence from that establishment, be disregarded in determining the absence of a person from that establishment.

Payment of care benefit after death

11. Care benefit shall be payable for the three days next following the death of a claimant.

PART III
ASSESSMENT OF NEEDS

Interpretation in this Part

12. In this Part of these Regulations -

“chairman” means the chairman appointed in accordance with the provisions of the First Schedule to these Regulations; and

“member” means a person appointed by the Board under section 10(1) of the Law.

Needs Assessment Co-ordinator

13. The Board shall appoint a Needs Assessment Co-ordinator who shall -

- (a) record the receipt of claims to care benefit and respite care benefit under the Law;
- (b) record the receipt of requests for review of the assessment of the Panel;
- (c) make arrangements for suitably qualified persons to examine and report on the needs of claimants to benefit;
- (d) by notice convene meetings of the Panel;
- (e) present claims to the Panel for assessment;
- (f) present requests for review to the Panel for consideration;
- (g) record and register assessments issued by the Panel;
- (h) deliver or arrange for the delivery of a certificate summarising the assessment issued by the Panel under regulation 15 to the claimant and to the Administrator;
- (i) assist, where necessary, claimants requesting a review of an assessment to prepare a written statement of the reasons for that request for presentation to the Panel;
- (j) make arrangements for the provision of respite care benefit and liaise with the Guernsey Social Security Authority with regard to the payment of providers of such care; and
- (k) carry out such other functions as are reasonably incidental to those indicated in subparagraphs (a) to (j) of this regulation.

Procedure of the Needs Assessment Panel

14. (1) The Panel may consider written or oral reports from persons who have examined a claimant and may, where it seems appropriate, interview and examine a claimant in person.

(2) The Panel shall record its findings of fact, and, where evidence is presented other than in written form, shall retain a summary of such evidence.

(3) A claimant appearing in person before the Panel may be accompanied by another person who shall have the right to speak on his own behalf as well as on behalf of the claimant.

(4) The procedures of the Panel shall be conducted in accordance with the principles of natural justice, but shall otherwise be such as may seem appropriate to the chairman.

(5) The First Schedule to these Regulations has effect in relation to the Panel.

Assessments of the Needs Assessment Panel

15. (1) An assessment issued by the Panel -

(a) shall be in writing signed by the chairman;

(b) shall record the names of the members and, where the conclusions of the assessment are not unanimous, the names of those members dissenting;

(c) shall include -

(i) a summary of the long-term care needs of the claimant;

(ii) a conclusion as to whether or not those needs would be most appropriately met by the provision of care as a resident of an approved care establishment; and

(iii) where the conclusion is that those needs would not be most appropriately met by the provision of care as a resident of an approved care establishment, a statement of the reasons for that conclusion; and

(d) may include such other matters as the Panel thinks fit.

(2) A certificate of the Panel's assessment shall, provided that the Panel is satisfied that rehabilitative care is complete and where practicable, be delivered to the Administrator and the claimant within 28 days of the receipt of a claim. Any assessment not so delivered shall be accompanied by an explanation of the reasons for the delay.

(3) Subject to the provisions of paragraph (4), where upon assessment the Panel concludes that a claimant's long-term care needs would not be most appropriately met by the provision of care as a resident of an approved care establishment, the certificate issued by the Needs Assessment Co-ordinator shall include the statement of the reasons for that conclusion and an explanation of the right to, and procedure for, requesting a review of that conclusion.

(4) Where, in connection with any assessment, there is medical advice or medical evidence relating to the claimant -

(a) which has not been disclosed to him; and

(b) in respect of which, in the opinion of the chairman of the Panel, the disclosure would be harmful to the claimant's health,

such advice or evidence shall not be required to be disclosed to the claimant, but the Panel shall not by reason of such non-disclosure be precluded from taking it into account for the purpose of determining the claimant's needs.

Review of the Panel's assessment

16. (1) A person who is aggrieved by an assessment of the Panel may request a review on any grounds within 28 days of the date of the assessment.

(2) The Administrator may request a review at any time subject to, and in the circumstances provided for in, regulation 20(2).

(3) Any request for a review of the Panel's assessment shall be accompanied by a statement of the reasons for the request, and where not given in writing, shall be presented in written form to the chairman.

(4) The hearing of any review shall take place, where practicable, within 28 days of the date on which the request is received and shall be subject to the provisions of the preceding regulations relating to the procedure and composition of the Panel.

(5) A request for review shall be heard by a Panel consisting of at least 2 members who were not members of the Panel whose assessment is to be reviewed. An additional examination may be requested either on behalf of the claimant or the Panel, and additional evidence may be adduced from any source.

PART IV
APPROVED CARE PROVIDERS AND ESTABLISHMENTS

Interpretation in this Part

17. In this Part of these Regulations -

“establishment” means a residential home or a nursing home or any other premises upon or at which any combination of residential, supervisory or nursing care is offered; and

“nursing home” and “residential home” have the meanings given by section 18(1) of the Nursing Homes and Residential Homes (Guernsey) Law, 1976⁶.

Applications for designation of approved care providers and establishments

18. (1) A person who -

(a) wishes to be designated as an approved care provider; or

(b) desires any establishment of which he is the owner or operator to be designated as an approved care establishment,

shall make application to the Administrator in such manner as the Authority shall direct, and shall supply such information as the Administrator may require, including in particular, but without prejudice to the generality of the foregoing, the information described in paragraph (2).

(2) The information described for the purposes of paragraph (1) is -

(a) the name and address of the person submitting the application;

(b) where different from the name and address of the person submitting the application, the name and address of the person who wishes to be designated as an approved care provider;

⁶ Ordres en Conseil Vol. XXVI, p. 71

- (c) the address of each establishment -
 - (i) at which care is to be provided; and
 - (ii) which the owner or operator desires to be designated as an approved care establishment;
- (d) in relation to each such establishment, the number of beds or residential places and the individual charges for such beds or residential places;
- (e) where the application is submitted by or on behalf of a body corporate -
 - (i) the beneficial owner or owners of that body;
 - (ii) the names and details of the principal shareholders in that body;
 - (iii) the source and application of the capital funding of the operation of that body.

(3) Every application for designation shall include a written permission for the disclosure to the Administrator of information held in relation to persons concerned with the operation of any establishment referred to in the application, by the Board, the States Income Tax Authority and the Committee for Home Affairs.

(4) Every application shall be accompanied by the original or a true copy of the latest available audited or otherwise certified statement of accounts relating to the person by whom or upon whose behalf the application is submitted and the contents of which -

- (a) may be examined by the Administrator and any officer, responsible to the Authority, authorised by the Administrator;
- (b) shall not be disclosed to any person for purposes other than those connected with this Part; and
- (c) shall be returned after due examination.

(5) The Administrator need not consider any request for designation under section 11 of the Law unless he has received an application that complies with the provisions of this regulation.

Designation as an approved care provider or an approved care establishment

19. (1) In relation to an application for designation under regulation 17, the Administrator shall not designate -

- (a) any provider of long-term care services as an approved care provider; or
- (b) any establishment as an approved care establishment,

unless the matters set out in paragraph (2) are satisfied.

(2) The matters that must be satisfied for the purposes of paragraph (1) are that -

(a) where the proposed care provider and establishment referred to in the application are providing care or are located in Guernsey, the requirements of the provisions of -

- (i) the enactment set out in Part A of the Second Schedule to these Regulations and any enactments or instruments made thereunder; and
- (ii) such codes of practice as may be prescribed by the Authority,

are met in relation to the proposed care provider and establishment referred to in the application;

(b) where the proposed care provider and establishment referred to in the application are providing care or are located in Alderney, the requirements of the provisions of -

(i) the enactment set out in Part B of the Second Schedule to these Regulations and any enactments or instruments made thereunder; and

(ii) such codes of practice as may be prescribed by the Authority,

are met in relation to the proposed care provider and establishment referred to in the application

(c) the facilities and services to be provided by the proposed care provider and at the establishment referred to in the application are commensurate with the amount payable by the Authority by way of benefit; and

(d) whether or not operated for profit, the business of the proposed care provider referred to in the application is, so far as can be ascertained, soundly based and likely to offer continuity of service to residents of any establishment referred to in the application.

(3) The Administrator may revoke or suspend any designation made under paragraph (1) where an approved care provider or approved care establishment no longer satisfies any of the matters set out in paragraph (2).

(4) Every approved care provider shall, on or about the anniversary of his first approval, supply to the Administrator the latest available original or true copy audited or otherwise certified statement of accounts, which -

(a) may be examined by the Administrator and any officer, responsible to the Authority, authorised by the Administrator;

(b) shall not be disclosed to any person for purposes other than those connected with this Part; and

(c) shall be returned after due examination.

(5) Any change to or in the ownership or composition of an approved care provider or approved care establishment, or where the approved care provider is a body corporate, any substantive change in its beneficial ownership, control or shareholdings shall be notified to the Administrator within four weeks of taking effect.

(6) Where, in any case, the Administrator has designated a provider of long-term care services or establishment under section 11(1) of the Law subject to conditions, compliance with those conditions shall be confirmed in writing annually (or such other interval as the Administrator may specify in writing) to the Administrator by the provider or owner or operator of the establishment.

(7) Where an approved care provider becomes insolvent or is found or pleads guilty of or to a criminal offence notification of the occurrence of the same shall be communicated forthwith to the Administrator by that provider.

PART V
ADJUDICATION

Review of decisions

20. (1) An application for the review of a decision of the Administrator under section 20 of the Law may be made in respect of any claim or application on any grounds by any person concerned within 28 days of the date of the decision concerned.

(2) Where the grounds for review relate to an assessment -

(a) issued by the Panel; and

(b) which has not been reviewed the Panel under regulation 16,

the Administrator may request a review of the Panel's assessment.

(3) A review made in consequence of a change in circumstances shall not have effect in respect of any period more than three months before the date on which it was requested.

Non-disclosure of evidence by the Tribunal

21. Where, in connection with the consideration and determination of any appeal, claim, question, application or other matter there is before the Tribunal, medical advice or medical evidence relating to the claimant which has not been disclosed to him and in the opinion of the chairman of the Tribunal the disclosure to the claimant of that advice or evidence would be harmful to the claimant's health, such advice or evidence shall not be required to be disclosed to the claimant, but the Tribunal shall not by reason of such non-disclosure be precluded from taking it into account for the purpose of its consideration and determination.

Reference by the Administrator or the Tribunal to medical practitioner for report

22. The Administrator or the Tribunal, as the case may be, may refer to a medical practitioner for examination and report any question arising for his or its determination.

Procedure at hearings and right to representation

23. (1) Subject to the provisions of the Law and of these Regulations -

(a) the procedure in connection with the consideration and determination of any appeal, claim, question, application or other matter to which these Regulations relate shall be such as the chairman or deputy chairman of the Tribunal shall determine;

(b) any person who by virtue of the provisions of these Regulations has the right to be heard at a hearing of the Tribunal may be represented by another person, whether having professional qualifications or not, and, for the purposes of the proceedings at any such hearing, any such representative shall have all the rights and powers to which the person whom he represents is entitled under the Law and these Regulations.

(2) For the purpose of arriving at its decision or discussing any question of procedure, the Tribunal shall, notwithstanding anything contained in these Regulations, order all persons not being members of the Tribunal, other than the person acting as an assessor or as a clerk to the Tribunal, to withdraw from the sitting of the Tribunal.

(3) Any person having the right to be heard who appears at a hearing before the Tribunal may call witnesses and shall be given an opportunity of putting questions directly to any witnesses called at the hearing and of addressing the Tribunal.

Time and place of hearing before the Tribunal

24. (1) Reasonable notice of the time and place of any hearing before the Tribunal shall be given to the claimant, applicant or person concerned and to any other person who may appear to the chairman of the Tribunal to be interested, and, except with the consent of the claimant, applicant or person concerned the Tribunal shall not proceed with the hearing of any case unless such notice has been given.

(2) If a claimant, applicant, person concerned or other person to whom notice of hearing has been duly given in accordance with these Regulations should fail to appear at the hearing, the Tribunal may proceed to determine the case notwithstanding his absence, or may give such directions with a view to the determination of the case as it may think proper having regard to all the circumstances including any explanation offered for the absence:

Provided that, if a reasonable explanation for his absence has been given by him or on his behalf, the Tribunal shall not, without his consent, determine the case in his absence, unless the hearing has first been adjourned for at least one month and reasonable notice of the time and place of the adjourned hearing has been given to him.

Hearings before the Tribunal

25. (1) The following persons shall be entitled to be present and be heard at the hearing of any case by the Tribunal-

- (a) the claimant, applicant or person concerned ; and
- (b) the Administrator;

and any person appearing to the Tribunal to be interested shall have the right to be present at the hearing of the case.

(2) In such cases as the chairman of the Tribunal may determine, a medical practitioner may sit with that Tribunal as an assessor.

(3) An assessor sitting with the Tribunal as aforesaid shall not take any part in the determination or decision of that tribunal except in an advisory capacity.

Decisions of the Tribunal

26. (1) The decision of the majority of the Tribunal shall be the decision of the Tribunal.

- (2) The Tribunal shall -
 - (a) record in writing all its decisions (whether on an appeal or on a reference from the Administrator);
 - (b) include in the record of every decision a statement of the grounds of such decision and of its findings on questions of fact material thereto; and
 - (c) if a decision is not unanimous, record a statement that one of the members dissented and the reason given by him for so dissenting.

(3) As soon as may be practicable after a case has been decided by the Tribunal, a copy of the record of its decision made in accordance with this regulation shall be sent to -

- (a) the claimant, applicant or person concerned;
- (b) the Administrator; and
- (c) any other person who appears to the Tribunal to be interested; and, if the decision of the Tribunal is in whole or in part adverse to the claimant, applicant or person concerned he shall be informed of the conditions governing appeals to the Ordinary Court.

**PART VI
MISCELLANEOUS**

Extent

27. These Regulations shall have force in the Islands of Guernsey, Alderney, Herm and Jethou.

Citation

28. These Regulations may be cited as the Long-term Care Regulations (Guernsey), 2003.

Commencement

29. These Regulations shall come into force on the 7th day of April, 2003.

Dated this 20th day of March, 2003.



O D Le Tissier
President of the Guernsey Social Security Authority
For and on behalf of the Authority.

EXPLANATORY NOTE

(This note does not form part of the Regulations, but explains their general purport)

These Regulations provide rules to govern -

- the computation of periods of residence and presence in Guernsey, which is defined by the Law as any of the Islands of Guernsey, Alderney, Herm and Jethou;
- the making of claims and payments;
- the procedures of the Needs Assessment Panel;
- the designation of approved care providers; and
- the adjudication of claims and the hearing of appeals;

in consequence of the full coming into force of the Long-term Care Insurance (Guernsey) Law, 2002 on 7th April 2003.

Regulation 14(5)
FIRST SCHEDULE
THE NEEDS ASSESSMENT PANEL

1. The Panel shall convene in accordance with the provisions of a notice issued by the Needs Assessment Co-ordinator under regulation 13.
2. The quorum for meetings of the Panel shall be formed by the presence of at least 2 members appointed under section 10(1) of the Law.
3. For a meeting of the Panel, the Board shall appoint a chairman who -
 - (a) shall be responsible for the conduct of that meeting; and
 - (b) subject to the provisions of the Law and these Regulations, may determine the practice and procedure to be adopted in respect of that meeting including, without limiting the generality of the same, any assessment for which the Panel has responsibility.

Regulation 18(1)

SECOND SCHEDULE
LEGISLATION WHOSE REQUIREMENTS MUST BE MET

Part A - Guernsey

Nursing Homes and Residential Homes (Guernsey) Law, 1976

Part B - Alderney

Nursing and Residential Homes (Registration and Occupation) (Alderney) Law, 1987⁷

⁷ Ordres en Conseil Vol. XXX, p. 371