

## **Part 6: Determination of reasonable and necessary treatment and care needs**

This Part of the Lifetime Care and Support Guidelines is made under sections 11A, 11AA, 23, 28 and 58 of the *Motor Accidents (Lifetime Care and Support) Act 2006* (the Act).

This version of Part 6 of the Lifetime Care and Support Guidelines (the Guidelines) takes effect on the date of gazettal in the NSW Government Gazette and, on and from that date, applies to all participants in the Scheme, whether interim or lifetime, and whether accepted into the Scheme before or after the date of gazettal.

The Lifetime Care and Support Authority (Lifetime Care) may waive observance of any part or parts of this Guideline. Waiving observance of all or part of this Guideline in any particular circumstances is not an indication that Lifetime Care will waive observance of this part or any other parts of the Guidelines in other circumstances.

### **1 Paying for reasonable expenses**

- 1.1 Under section 11A of the Act Lifetime Care is to pay for reasonable expenses incurred by or on behalf of a person in relation to the assessed treatment and care needs of the person while the person is a participant in the Scheme where those treatment and care needs are reasonable and necessary in the circumstances and relate to the motor accident injury in relation to which the person is a participant in the Scheme.
- 1.2 Lifetime Care is to make an assessment of treatment and care needs that are reasonable and necessary in the circumstances, relate to the participant's motor accident injury, and satisfy the eligibility requirements in the Guidelines.
- 1.3 Treatment and care needs are defined in section 5A (1) of the Act as a participant's needs in connection with any of the following:
  - a) medical treatment (including pharmaceuticals);
  - b) dental treatment;
  - c) rehabilitation;
  - d) ambulance transportation;
  - e) respite care;
  - f) attendant care services;
  - g) aids and appliances;
  - h) prostheses;
  - i) education and vocational training;
  - j) home and transport modifications;
  - k) workplace and educational facility modifications; and
  - l) such other kinds of treatment, care, support or services as may be prescribed by the regulations.
- 1.4 A participant may have treatment and care needs that are related to the motor accident injury that are reasonable and necessary in the circumstances, but which are not needs in connection with treatment and care needs as defined in section 5A of the Act or regulations, if any. Lifetime Care is not able to pay for these.
- 1.5 Lifetime Care is not able to pay for:
  - a) treatment and care needs that are not reasonable and necessary in the circumstances; or
  - b) an incurred expense that is not reasonable.

## **2 Criteria used to determine a participant's treatment and care needs**

- 2.1 Lifetime Care is to determine a participant's treatment and care needs in accordance with the Act and the Guidelines.
- 2.2 Lifetime Care will assess a participant's treatment and care needs on a case by case basis applying the criteria specified in this Part of the Guidelines, relevant criteria in other Parts of the Guidelines, and any other criteria or information Lifetime Care considers relevant in the circumstances.
- 2.3 The criteria or considerations that Lifetime Care may use in making decisions about whether treatment, equipment or a service is reasonable and necessary include whether:
  - a) the treatment, equipment or service will benefit the participant;
  - b) the treatment, equipment or service is appropriate to the participant's treatment and care needs;
  - c) the provider is appropriate;
  - d) the treatment, equipment or service is cost effective; and
  - e) the treatment or care need relates to the motor accident injury in respect of which the person is a participant.

### ***Benefit the participant***

- 2.4 In determining whether the participant will benefit from the proposed treatment, equipment or service, Lifetime Care may consider whether:
  - a) the participant has been involved in the planning of goals and outcomes;
  - b) where possible, the participant has identified, understood and agreed to the goals and outcomes;
  - c) the proposed treatment, equipment or service relates to the participant's goals and makes it easier for them to participate in the community;
  - d) the participant prefers the proposed treatment, equipment or service to others or they have agreed to the service request;
  - e) there is relevant information showing the requested treatment, equipment or service will benefit the participant;
  - f) any risk from providing the treatment, equipment or service is sufficiently offset by the expected benefits;
  - g) any risk from providing the treatment, equipment or service is assessed and a plan to manage any risk is developed and documented with the input and agreement of the participant, people close to them, service providers and Lifetime Care;
  - h) the participant's recovery/management will be progressed or maintained by the outcomes;
  - i) an adverse outcome or risk of such an outcome may occur if the treatment, equipment or service is not provided; and
  - j) the treatment, equipment or service or similar or related services have been provided in the past with positive results or outcomes.

### ***The treatment, equipment or service is appropriate***

- 2.5 In deciding whether the treatment, equipment or service is appropriate to meet treatment and care needs, Lifetime Care may consider whether:
  - a) the proposed treatment, equipment or service relates to the participant's goals;
  - b) the treatment, equipment or service is in accordance with current clinical practice, is evidence-based or evidence informed and/or in accordance with clinical guidelines;
  - c) the requested treatment, equipment or service is consistent with the participant's current medical or rehabilitation management;
  - d) there is evidence that the requested treatment, equipment or service is effective;

- e) a similar treatment, equipment or service is currently provided;
- f) the proposed treatment, equipment or service is congruent with other services (or proposed services) to be provided to the participant;
- g) there are any contraindications of the proposed treatment, equipment or service;
- h) other treatments, provision of equipment or services will not provide an improved outcome;
- i) after considering other available treatments, equipment or services, the proposed treatment, equipment or service is the most appropriate available;
- j) the participant prefers the proposed treatment, equipment or service to others or has agreed to the proposed treatment, equipment or service;
- k) if the treatment, equipment or service is new or innovative, there is sufficient rationale for offering it and measures exist to quantify its outcomes. Lifetime Care will consider there is sufficient rationale for new or innovative treatment only when satisfied that:
  - i. its efficacy is demonstrated by peer-reviewed journal articles or other evidence-based or evidence-informed literature;
  - ii. it is widely supported by practitioners in the field;
  - iii. it has progressed past the early stages of clinical trial;
  - iv. there is a Medical Benefits Schedule (MBS) item number (for medical treatment, procedures and surgery); and
  - v. when there is a risk associated with the treatment, the participant has made an informed choice to accept the risk and has documented their consent.

***The provider is appropriate***

- 2.6 In deciding whether the provider of the treatment, equipment or service is appropriate, Lifetime Care will consult with the participant or a person acting on behalf of the participant and consider whether:
- a) the participant has chosen or expressed a preference for a provider, or has agreed to the proposed provider;
  - b) the provider is qualified and appropriately experienced to provide the service;
  - c) the provider of the treatment, equipment or service is available to meet treatment and care needs;
  - d) the participant can readily access the provider;
  - e) if the provider is a health practitioner as defined in section 5 of the Health Practitioner Regulation National Law (NSW) No 86a, the provider is registered by the Australian Health Practitioner Regulation Agency, if applicable; and
  - f) the provider is an approved provider under Part 18 of the Guidelines (if applicable).

***The treatment, equipment or service is cost effective***

- 2.7 In deciding whether the treatment, equipment or service is cost effective, Lifetime Care will consider:
- a) the long-term benefits compared to the short-term benefits;
  - b) whether the cost is reasonable to achieve the expected outcomes;
  - c) fees charged by providers of comparable services in the same geographical or clinical area;
  - d) if other treatment, services or equipment are not available, appropriate or able to be provided when needed;
  - e) whether equipment or modifications are required;
  - f) cost and other factors relating to lease or rental of equipment when compared to purchase or modification;
  - g) whether there are other services that will achieve comparable outcomes;

- h) relevant advances in technology; and
- i) changes to the participant's needs over time.

***The treatment or care need relates to the motor accident injury***

- 2.8 In deciding whether the treatment or care need is related to the motor accident injury, Lifetime Care will consider:
- a) the evidence that demonstrates that the service relates to the injury or injuries sustained in the motor accident;
  - b) whether pre-existing injuries are exacerbated; and
  - c) time since injury, subsequent injuries and comorbidities.

***Other relevant criteria***

- 2.9 Lifetime Care may consider other relevant criteria or considerations including the participant's age, ethnic, cultural and linguistic background when determining a participant's reasonable and necessary treatment and care need.

**3 Other guidelines to be used**

- 3.1 Under section 58(3) of the Act, the Guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
- 3.2 These Guidelines adopt the following current versions of the following publications for the purpose of undertaking assessments:
- a) *Neuropsychological assessment of children and adults with traumatic brain injury: Guidelines for the NSW Compulsory Third Party Scheme and Lifetime Care and Support Scheme*;
  - b) *Guidance on the support needs for adults with spinal cord injury*;
  - c) Any additional guidelines developed or adopted by Lifetime Care and published on Lifetime Care's website at: [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au).
- 3.3 All publications and guidelines that are to be used are available on Lifetime Care's website at: [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au).

**4 Considering risk in assessing whether a treatment, equipment or service is reasonable and necessary**

- 4.1 Lifetime Care considers an expense will not be reasonable, and a treatment and care need will not be reasonable and necessary if any of the following circumstances apply:
- a) it is likely to cause harm to the participant or others;
  - b) it relates to an illegal activity; or
  - c) it poses an unacceptable risk to the participant or others.

**5 What reasonable treatment and care expenses do not include**

- 5.1 Lifetime Care considers an expense will not be reasonable, and a treatment and care need will not be reasonable and necessary if any of the following circumstances apply:
- a) the service is not within any of the categories of treatment and care needs specified in section 5A of the Act or in the regulations, if any;
  - b) the treatment, equipment or service is for the participant's family members;
  - c) the expense, treatment or service compensates for economic loss relating to the motor accident such as lost wages, weekly benefits or other forms of income maintenance or income support;
  - d) the expense, treatment or service constitutes assistance to keep a business open, such as paying for temporary staff to do a participant's job;
  - e) the expense, treatment, equipment or service relates to items lost or damaged in the motor

accident; or

- f) the expense, treatment, equipment or service relates to payments for large capital items such as houses and cars.

5.2 Lifetime Care may have regard to other considerations in deciding that, in the circumstances, proposed or incurred expenses are not reasonable, or do not relate to reasonable and necessary treatment and care needs.