

Date: Wednesday 5 November 2003

Venue: Committee Room 1, National Assembly for Wales

Title: Domiciliary Care Agencies (Wales) Regulations and Minimum Standards

Purpose

1. This paper provides the promised opportunity for the Committee to consider the draft regulations and national minimum standards for domiciliary care agencies in Wales before they are taken forward for consideration in accordance with standing orders 22 and 27.

Summary

2. The Committee considered the initial draft regulations and minimum standards for domiciliary care agencies in Wales on 12 March 2003 (HSS-04-03(p3) refers). Since then the Task and Finish Group has given detailed consideration to the consultation responses and has recommended a number of changes to the regulations and standards. Redrafted documents and schedules outlining the changes that I have made, following consideration of the advice from the Group, are attached.

Background

3. HSS-04-03(p3) set out the background to the proposal to regulate domiciliary care agencies in Wales and the arrangements for consultation on the initial draft regulations and standards. This is the first time in Wales that domiciliary care services providing personal care in an individual's own home will be regulated. The domiciliary care sector employs around 14,000 people and provides care to around 30,000 people in Wales. The substantial variation in the quality of domiciliary care services supports the need for robust regulation. This view is widely supported. The Care Standards Inspectorate for Wales (CSIW) will undertake registration and inspection of this sector.

4. My March paper said that a Task and Finish Group had been established in August 2002 to provide expert advice on the realities of applying regulations and minimum standards to domiciliary care

agencies in Wales. The Group - whose membership includes those representing the views of providers, commissioners and service users – has now met 11 times. Membership details are at Annex A.

5. The draft regulations and minimum standards have been considered in detail along with comments made by 102 respondents during the public consultation. In preparing its advice to me on the content of the regulations and standards the Group has also considered how best to address issues raised by the Committee on 12 March 2003 and has drawn upon the early experiences of regulation in England.

Consideration

6. As a result of the Task and Finish Group's work, a considerable number of changes have been made to the initial draft regulations and minimum standards the Committee saw previously. Revised drafts of the regulations and minimum standards are at Annexes B and C respectively. Some changes improve clarity and presentation. Others follow detailed consideration of key areas and, in a small number of instances, advice has been sought from sub groups which have been established for the purpose of advising the main Task and Finish Group in specific areas. Details of the changes are at annexes D and E.

7. On 12th March I undertook to take a number of issues back to the Task & Finish Group for further consideration. These included training, the needs of individuals in supported housing, sole providers, small providers and informal carers. The response to each of these is highlighted below, however as noted at paragraph 5, the Group has considered all of the issues raised during the consultation in depth.

- Training

8. The redrafted regulations and standards provide for ensuring that arrangements are in place for staff induction, the planning of training, and set a target of 50% for the proportion of staff holding qualifications by 2009 as listed in the Care Council for Wales' (CCW) Qualifications Framework. These changes are considered to be achievable and consistent with the Care Council for Wales's framework.

- Supported housing and definition of 'personal care'

9. A key issue has been the types of care which could be captured by the regulation of domiciliary care in the context of supported housing. As a number of supported housing settings have de-registered as care homes, the concern has been to ensure that the domiciliary care regime provides protection for vulnerable people receiving care in such establishments. The consultation draft of the standards referred only, in the context of personal care, to assistance with bodily functions and care which involved physical and intimate touching. This was based on the English approach. In the light of the expressed concern I specifically asked the Group to consider how the domiciliary care regime could be tailored to meet the needs of individuals, mainly with learning disabilities, living in supported housing settings. The Task and Finish Group recommended the inclusion of text in the introduction to the minimum standards which outlines the Assembly's interpretation of personal care in this context. The additional text

incorporates examples of where it might be concluded that non-physical personal care could trigger the requirement to register as a domiciliary care agency:

Extract

"By way of example it is likely that 'personal care' is being provided where there is a package of care, that entails checking, prompting and/or ongoing supervision delivered either by somebody calling regularly - or on a 24 hour, 7 day a week basis - to the home of an individual suffering with dementia or having learning disabilities to: check the individual knows night/day time; to ensure that they get out of bed, are eating, keeping warm, taking medication; to assist in the management of continence and to ensure the person does not become disorientated/ inappropriately wander. "

10. I believe that the proposal results in the majority of supported housing settings being captured by the regime but it should be noted that a setting would only be captured if it is the person's own home and if personal care, which may include some aspects of non-physical care, is provided. Service users in these settings are considered to be among the most vulnerable and the approach reflects the policy approach which I agreed for Wales last year on the interpretation of personal care in statutory guidance issued in August 2002.

11. There was consensus in the Task and Finish Group about the wider interpretation of personal care which I have outlined above but some wished to see it widened even further to include emotional support and encouragement. This is not possible, however, as the Care Standards Act would not support it as part of a regime regulating home care agencies. In light of this, the Task and Finish Group has however made important recommendations for further work to map the commissioning, contracting, inspection and regulatory regimes which protect vulnerable people in supported housing settings. I have accepted these recommendations and the CSIW will monitor the effectiveness of the regulations and minimum standards for people receiving very high levels of personal care, which includes people with severe learning disabilities. The further work will commence later this month.

- Sole providers

12. The consultation draft regulations and minimum standards did not capture sole providers. However, at the Health and Social Services Committee meeting on 12 March 2003, concern was expressed about possible risks for a number of service users if a "rogue individual" was allowed to practise outside the regulatory regime. In order to balance this concern with the desire not to intervene in circumstances where care is provided by for example neighbours, I have decided to extend the regime to sole providers who provide personal care to four or more service users .

- Small providers

13. I have been committed to ensuring that service users are properly protected but without over

burdening small providers - especially in rural areas. The Task and Finish Group has been mindful of this but has advised against a staged implementation of the regulations and minimum standards for small providers, not least of all because such an approach could cause confusion among providers. However, the Group has recommended that small providers are defined and that the fees paid to the Assembly are reduced by 50%, with the fee for the registration of a manager being waived. I propose to apply these reduced fees to agencies which provide fewer than 200 hours of care per week. This achieves a definition which captures agencies providing a broadly similar amount of personal care as a small residential care home (which is defined as a setting with three beds or fewer). I understand that about a third of all providers in Wales would be regarded as "small".

- Informal carers

14. Some have suggested that informal carers were not given enough prominence in the draft regulations and minimum standards and it was proposed that the drafts should be re-visited to establish if the interface between formal and informal care could be made more explicit. I have aimed to do as much as possible in response to this. However, the regime applies to personal care services provided to an individual not to their carer. References to service users and their carers, relatives and representatives have, therefore, been inserted in the standards wherever legally possible.

Implementation

15. I said in March that extra care is needed when a sector is being regulated for the first time and especially where the sector is under a range of pressures already. That is why I intend the implementation of the new regime to be taken forward as a planned programme, led by the Care Standards Inspectorate for Wales. Sector representatives have already, for example, begun looking with CSIW at a leaflet to be distributed widely within the sector and the community to raise awareness of the new regime.

16. In my response to the Committee's previous consideration of these proposals I recognised the potential costs of implementing the new regime. It is difficult to predict accurately the full extent of any cost but we believe, from consultees' responses and representatives on the Task and Finish Group that the most significant cost will be in training staff. Provision is being made available through the Social Care Workforce Development Programme to support the achievement of occupational qualifications for staff, the continued achievement of National Training Targets and to assist in the development of the Social Care Workforce Development Partnership. Additionally, in order to spread this burden over a longer time frame, I have set the target date for compliance with the qualification requirement at 2009.

Timetable for implementation

17. Following the Committee's consideration of the regulations and minimum standards, I intend submitting the regulations to Business Committee in December, with the aim of tabling a final draft of the documents for a plenary debate in early February 2004. Subject to the National Assembly's

approval, the Regulations will be commenced on 1 March 2004 and providers will have 3 months to submit their application for registration i.e. until 31 May 2004.

Action

18. The Committee is invited to:

i) discuss this paper and the draft regulations and minimum standards which have been revised following the Task and Finish Group's detailed consideration of responses to the consultation exercise;

ii) note the intention to proceed with the draft regulations in accordance with standing order 22 and the national minimum standards in accordance with standing order 27. On current plans the intention is to seek the Assembly's agreement to making the drafts in plenary in early February 2004.

Jane Hutt AM Minister for Health and Social Services

Contact: Julie Grant, Social Care Policy Division, tel 029 2082 1089

Annex A

Members of the Domiciliary Care National Minimum Standards and Regulations Task and Finish Working Group

Steve Milsom (Chair)	Social Care Policy (Aug 02 to Sept 03)
Julie Grant (Chair)	Social Care Policy (Sept 03 onwards)
Sandy Acathan	National Home Care Council
Yvonne Apsitis	UK Home Care Association (Wales)
Shirley Bowen	Carers Alliance Wales
Christine Brooks-Dowsett	British Association of Domiciliary Care
Jon Day	Care Council for Wales
Ann Ferris	Care Standards Inspectorate for Wales
Rhian Davies	Disability Wales (Aug 02 to June 03)
David Groves	Disability Wales (July 03 onwards)
Gill Haram	Swansea NHS Trust

Amanda Morgan-Taylor	Contracts & Commissioning Group
Ros Thomas	Association of Directors of Social Services
Lynda Bransbury	Welsh Local Government Association
Jane Pagler	Wales Council for Voluntary Action (Aug 02 to July 03)
Barry Gallagher	Wales Council for Voluntary Action (Sept 03 onwards)
Mario Kreft	Care Forum Wales
Janet Morgan	Association of Directors of Social Services
Richard Wilson	Wales Council for Voluntary Action
Howard Teague	Social Services Inspectorate for Wales
Therese Gray/Andy Raynor	Office of the Counsel General