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Dyddiad/Date: 28 November 2003

Dear Colleague

DOMICILIARY CARE: IMPLEMENTATION OF REGULATIONS AND NATIONAL MINIMUM STANDARDS

Purpose

1. This circular is issued to provide a further update on progress with regulating domiciliary care services in Wales and revised details of the timetable for implementation.

Background

2. The earlier circular (NAFWC 24/2003), issued on 6th June 2003, provided an update on the issues which were being considered following the consultation exercise and set out future work to be undertaken.

3. This is the first time in Wales that domiciliary care services providing personal care in an individual’s own home will be regulated. The need for robust regulation is widely supported and the Care Standards Inspectorate for Wales will undertake registration and inspection of this sector.
4. A Task and Finish Group was 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 met 12 times and its membership included those representing the views of providers, commissioners and service users.

5. The draft regulations and minimum standards have been considered in detail, along with comments made by 102 respondents during the public consultation exercise. In preparing its advice to the Minister for Health and Social Services on the content of the regulations and minimum standards, the Task and Finish Group drew upon the early experiences of regulation in England.

6. Following the Task and Finish Group’s work, the National Assembly’s Health and Social Services Committee considered revised drafts of the regulations and minimum standards on 5 November.

Who will be regulated?

7. All domiciliary care agencies which consist of or arrange the provision of personal care in an individual’s own home will be regulated and will need to register with the Care Standards Inspectorate for Wales. This includes the exercise of functions of a public authority, such as a local authority or NHS Trust. The only exception is an agency carried on by an individual who is not employed by an agency, does not employ anyone else, and who cares for fewer than four people.

Key points to note

8. As a result of the work which has been done over recent months, a considerable number of changes have been made to the draft regulations and minimum standards, which formed the basis of the consultation exercise, and revised drafts are enclosed for information. Some changes improve clarity and presentation, whilst others follow detailed consideration of key areas identified, for example, in the consultation responses and by members of the Task & Finish Group. The key points to note as a result of the work which has been undertaken fall within the following areas:

   •  Training

9. The redrafted regulations and minimum standards provide for ensuring that arrangements are in place for staff induction and 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’ Qualifications Framework. These changes are considered to achieve the right balance between the desire to raise the level of qualifications held by the workforce and keeping costs manageable.

   •  Supported housing and definition of ‘personal care’

10. 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 minimum standards referred only, in the context of personal care, to assistance with bodily functions and care which involved physical and intimate touching. In light of the expressed concern, the Minister for Health and Social Services specifically asked the Task and Finish 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. This has led to text being inserted 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. “

11. The Assembly Government believes that this results in the majority of supported housing settings being captured by the regime but it should be noted that a setting will 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 is consistent with what the Minister for Health and Social Services agreed for Wales in relation to the interpretation of personal care in statutory guidance which was issued in August 2002.

- Sole providers

12. The draft regulations and minimum standards, which formed the basis of the consultation exercise, did not capture sole providers. However, concern has been 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, the Minister for Health and Social Services has decided to extend the regime to sole providers who provide personal care to four or more service users.

- Small providers

13. The Assembly Government has been committed to ensuring that service users are properly protected but without over burdening small providers. Therefore, the Minister for Health and Social Services has decided that small providers (defined as agencies which provide fewer than 200 hours of care per week) will benefit
from a 50% reduction in the fees payable to the Assembly and the waiving of the registered manager fee.

- Informal carers

14. Calls for informal carers to be given more prominence in the draft regulations and minimum standards and for the interface between formal and informal care to be made more explicit have been responded to wherever legally possible. However, the regime applies to personal care services provided to an individual - not to their carer.

Approach to implementation

15. In recognition of the complexities associated when a sector is being regulated for the first time, the implementation of the new regime will be taken forward as a planned programme – managed by the Care Standards Inspectorate for Wales. This will include a National Provider Liaison Group, roadshows at a regional level, leaflets for providers and service users, and a national conference which is planned for Monday 9th February 2004. The Care Standards Inspectorate for Wales will be engaging with providers on an ongoing basis with the aim of raising awareness across the board during the implementation phase.

16. The Assembly Government believes that the most significant costs associated with compliance 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.

Timetable for making and implementing the legislation

17. Following the Health and Social Services Committee’s consideration of the regulations and minimum standards earlier this month, the Minister for Health and Social Services will be submitting the revised drafts to the Business Committee in December. On current plans, the documents are on course for a plenary debate in early February 2004. Subject to the National Assembly’s approval, the regulations and minimum standards will be commenced on 1 March 2004 and providers will have 3 months (i.e. until 31 May 2004) to submit their applications for registration to the Care Standards Inspectorate for Wales.
When will you hear from the Assembly Government again?

18. The final regulations and minimum standards will be available on or after 1\textsuperscript{st} March 2004. We will write to you following the plenary date in February to confirm the coming into force dates and how you will be able to obtain copies of the documents. If you do not wish to receive this mailing and/or others associated with the regulation of domiciliary care agencies in Wales, please contact us, as detailed below, and we will remove your details from our mailing list. The personal details (referred to in the Data Protection Act 1998 as personal data) that we hold will be used only for the purpose of informing you of the domiciliary care regulations and national minimum standards in Wales. Your personal details will be treated in accordance with the Data Protection Act 1998 and will be held in confidence. As such your details will not be disclosed outside of the National Assembly for Wales. Within the National Assembly, your details will only be used by those whom it is necessary to involve in order to ensure you receive the information you seek.

Action

19. It will not be possible for providers to submit applications for registration before 1 March 2004. However, the Assembly Government would urge those involved in providing personal care in an individual’s own home to familiarise themselves with the contents of the revised regulations and minimum standards and to begin working towards the requirements laid out within them. It is possible that some further changes may be made as a result of the plenary debate which is planned in the National Assembly in early February 2004. In order to facilitate the introduction of the new regime, as noted at paragraph 13, the Care Standards Inspectorate for Wales will be leading an implementation programme, which will include awareness raising and a national conference on Monday 9\textsuperscript{th} February 2004. Providers, commissioners, and others affected by these changes are encouraged to engage with the programme, which is due to commence early in the new year, either directly or through representatives.

20. If you wish to receive a Welsh language version of the draft regulations and minimum standards, please contact us, as detailed below.

Enquiries

- National Assembly processes
21. Enquiries which specifically relate to the process which is now being followed to commence the regulations and minimum standards on 1 March 2004 should be directed to:

EITHER

Simon Tew
Social Care Policy Branch 3
Welsh Assembly Government
Cathays Park
Cardiff
CF10 3NQ.
Tel: (029) 2082 3478
Email: simon.tew@wales.gsi.gov.uk

OR

Ruth Sanger
Social Care Policy Branch 3
Welsh Assembly Government
Cathays Park
Cardiff
CF10 3NQ
Tel: (029) 2082 5191
Email: ruth.sanger@wales.gsi.gov.uk

- Implementation of the regulations and minimum standards
22. Any other queries about the implementation of the regulations and minimum standards – including further communications and registration processes – should be directed to your regional Care Standards Inspectorate for Wales office:

- CSIW Vale & Valleys
  Tel: 01443 848527

- CSIW South West Wales
  Tel: 01792 310420

- CSIW Cardiff
  Tel: 029 20478600

- CSIW West Wales
  Tel: 01267 223467

- CSIW North East
  Tel: 01352 707900

- CSIW South East
  Tel: 01495 766500

- CSIW North West
  Tel: 01286 662300

- CSIW South West Wales
  Tel: 01792 310420

Alternatively, you can write to CSIW’s National Office:

Professional Adviser – Domiciliary Care
Care Standards Inspectorate for Wales
4-5 Charnwood Court
Heol Billingsley
Nantgarw
CF15 7QZ
Tel: (01443) 848450

Yours sincerely

Julie Grant
Head of Social Care Policy Branch 3
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Directors of Housing
Directors of Social Services
Finance Directors of Local Health Boards
Local Health Alliance Co-ordinators

Wales Care Strategy Group Members
Domiciliary Care Task & Finish Group Members
Domiciliary Care Conference (7th February 2003) – all delegates
Domiciliary Care Consultation – all respondents

Care Homes in Wales (x 1300)
Domiciliary Care Providers/Agencies in Wales (x 250)
Nursing Agencies in Wales (x 40)

Abbeyfield Society
Action on Elder Abuse
After Adoption Wales
Age Concern Cymru
Age Concern Gwent
Alzheimer’s Disease Society
Arthritis Care in Wales
Arts Disability
Association of Crossroads
Association of Welsh Community Health Councils
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CSV National Network
Depression Alliance
Disability Rights Commission
Disability Wales
Disabled Persons Transport Advisory Committee
Downs Syndrome Association
Eaga Partnership
ELWa
Federation of Independent Nursing Agencies
General Medical Council
Gingerbread
Gwent Association for the Blind
Health Commission Wales
Health Professions Wales
Help the Aged Cymru
Home Start
Institute of Healthcare Management – Welsh Division
Living Streets
Manic Depression Fellowship
MDF Wales
Mencap in Wales
Mind Cymru
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