



## **Nursing Homes Standards Regulatory Impact Analysis**

### **1. Policy Context**

#### **Government Policy on Standards for Residential Care Settings for Older People**

- 1.1 Government policy is to support older people to live in dignity and independence in their own homes and communities for as long as possible and, where this is not possible, to support access to quality long-term residential care.
- 1.2 This policy approach is renewed and developed in the latest partnership agreement, "*Towards 2016*". Both the Government and the social partners have agreed a number of principles to inform the development of future policy on long-term care for older people. Included in this is the principle that where community and home-based care is not appropriate, quality residential care should be available.
- 1.3 The programme for Government 2007 -2016 recognises that the demand for nursing homes will continue to increase and that the public is entitled to expect high quality and appropriate supports for all residents.
- 1.4 The present standards for nursing homes are set out in the 1993 Care and Welfare Regulations. The Health Service Executive (HSE) inspects private nursing homes under the Health (Nursing Homes) Act, 1990, on the basis of these standards. Inspections are carried out on an on-going basis with a national standardised approach across the country which underpins this

process but under the current system the HSE does not inspect public homes.

- 1.5 The Health Strategy “*Quality and Fairness - A Health System for you*” (Department of Health and Children, 2001) recommended that the remit of the Social Services Inspectorate be extended to include all residential care for older people and that national standards should be prepared for long term residential care.
- 1.6 The *Audit of Structures and Functions in the Health System* (Prospectus Report, 2003) included a recommendation for the establishment of a Health Information and Quality Authority to ensure that quality and effectiveness of care is promoted throughout the system. This would provide an overall mechanism to independently monitor the quality of standards for all nursing homes on an ongoing basis.
- 1.7 The 2006 Report into the events at Leas Cross Nursing Home illustrates the public concern for the treatment and care provided to older people and the need to introduce an independent and robust system of inspections.
- 1.8 The Health Act, 2007, provides for the establishment of the Health Information and Quality Authority (HIQA) and for the registration and inspection of all nursing homes – public, private and voluntary. Future inspections will be carried out by the Chief Inspector of Social Services, part of HIQA. This will replace the current system set out under the Health (Nursing Homes) Act, 1990. Statutory responsibility is given to the Chief Inspector of Social Services for inspecting and registering children’s residential centres, residential centres for people with disabilities and all nursing homes for older people (public, voluntary and HSE run).
- 1.9 Formal standards are a key requirement for inspection and registration. An important function of HIQA is the setting of standards on safety and quality in relation to services provided by the HSE and other service providers and to monitor their compliance in an open and transparent way. The Chief

Inspector will inspect centres against the regulations and standards approved by the Minister.

## **Development of the standards**

- 1.10 In 2007 the Minister for Health and Children published a new set of draft national standards for residential care for older people. As the Health Act, 2007 provides that the inspection function will be taken over by HIQA, the draft standards were formally referred to the Authority for consultation and finalisation.
- 1.11 HIQA established a Working Group to finalise the draft standards which included public consultation. The Working Group held its final meeting in December, 2007. The draft *National Quality Standards for Residential Care Settings for Older People* was submitted by the HIQA Board to the Minister for Health and Children in February 2008, for her approval, as required under section 10 (2) of the Health Act, 2007.
- 1.12 Following receipt of the draft, the Standards were examined and, in addition to extensive inter-departmental consultation, public consultation on the standards and proposed regulations involving the HSE, private and voluntary residential care providers, government departments and stakeholder representative groups was held in October 2008. (see *Consultation* below for further detail).
- 1.13 Following the result of the consultation and examination the Board of HIQA resubmitted revised standards for approval on 2<sup>nd</sup> February, 2009 and the *National Quality Standards for Residential Care Settings for Older People* were approved by the Minister on 17<sup>th</sup> February, 2009. They were launched by the Minister and the CEO of HIQA on 9<sup>th</sup> March, 2009.
- 1.14 The approved national standards consist of 32 standards under the following seven groupings:
- 1 Rights

- 2 Protection
- 3 Health and Social Needs
- 4 Quality of Life
- 5 Staffing
- 6 The Care Environment
- 7 Governance and Management

1.15 Highlights of the approved standards include:

- They are more person centred, focusing on the outcomes for the resident.
- They apply to all nursing homes – public, private and voluntary.
- They require the preparation of individual care plans for all residents.
- They specify training for staff.
- They emphasise good communications with residents and relatives

1.16 The Standards must now be underpinned by Regulation.

## **2. Objectives**

- 2.1 The Government is committed to reforming the current registration and inspection regime for nursing homes. The long-term objective is to foster the ongoing quality improvement in residential care for those who can no longer live at home in the community.
- 2.2 The immediate objective is to ensure the safety, well-being, dignity and autonomy of residents through the enforcement of rigorous standards underpinned by regulations.

### **3. Policy Options**

#### **A. Do nothing**

This option would maintain a two tiered system whereby the private and voluntary nursing homes would continue to be subject to registration and inspection under the existing Care and Welfare Regulations while there would be no such requirements for the HSE ones. This is not considered realistic in view of the Government commitment as outlined above.

#### **B. Introduce a voluntary code of practice for the public sector**

This option requires the introduction of a voluntary code of practice for the public system while maintaining the current regulatory system for the private sector. Private nursing homes would continue to be subject to the 1993 Care and Welfare Regulations. A voluntary code of practice for the public system would improve the transparency of standards in the public system but would not promote consistency or equity whereas a regulatory framework for all providers would ensure consistency and fairness. The need for effective mechanisms to maintain and enhance confidence in the service that is being provided by public, private and voluntary sectors is essential and therefore providers must be legally required to meet standards.

#### **C. Implementation of new standards for the public, private and voluntary sectors underpinned by regulation**

This option would equalise the system of standards and regulation applying to the public, private and voluntary providers. It would ensure that equal standards and inspections would apply to all nursing homes in the State.

## **4. Costs, Benefits and Impacts**

### **4.1 Costs**

The Department of Health and Children commissioned an “*Assessment of costs of the National Quality Standards for residential care setting for older people in Ireland*” which examined the potential costs associated with the new standards and the proposed regulations. A copy of that extensive analysis is attached in an Appendix to this RIA. Highlights from this analysis are outlined under option C.

#### **4.1.1. Option A - Continue with current Care and Welfare Regulations**

There are no additional direct costs to either the public or private and voluntary sectors if the current system is retained. The private and voluntary providers will continue to have to meet the standards set out in the 1993 regulations and would continue to register with the HSE. The HSE would face no additional costs, above what it already faces, as the standards will still not apply to their nursing homes.

While there may be no additional financial costs associated with this option there is likely to be a cost in terms of public confidence in the system. To do nothing following the commitments already given in this area would represent a retreat from commitments already made and undermine confidence in the current registration and inspection regime.

#### **4.1.2. Option B - Introduce a voluntary code of practice for the public sector**

The impact on the private and voluntary sector would be the same as with the previous option. They are already subject to the 1993 Standards and would continue to be so.

The introduction of a voluntary code of practice for the public sector cannot guarantee an equalisation of standards between the public and private sectors. There is the danger that the code would only reflect the existing

position rather than seek to improve standards and bring them into line with the 1993 Standards that the private sector is subject to. The absence of an independent mechanism for setting standards and an independent inspection regime inherent in this option would be unlikely to bolster public confidence in the quality and safety of public nursing homes.

#### **4.1.3. Option C - Implementation of new standards for the public, private and voluntary sectors underpinned by regulation**

In preparing this RIA the Department commissioned an “*Assessment of costs of the National Quality Standards for residential care setting for older people in Ireland*” which was carried out by PA Consulting (see appendix).

Both the HSE and private providers were consulted about the potential impact of the draft standards and consequent regulation and based on detailed information obtained from the HSE and a proportion of private providers the assessment identified the principal areas and cost drivers where work would be needed to meet the new standards and regulations and the major costs associated with this work.

The main points highlighted by the assessment are:

- Many of the private nursing homes are already largely compliant with the quality standards, particularly those relating to the physical environment. In this context existing private and voluntary nursing homes will, as part of the new regulations and quality standards, have to comply with the minimum standards set out in the 1993 Regulations. Some existing private nursing homes may argue that the implementation of the new standards and regulations will force them to comply with the criteria for new builds in order to remain competitive in the market. However, this is identified as a market condition and not a true cost of implementing the new standards. The situation in the private sector contrasts with the public sector where significant shortfalls in relation to the physical environment are evident in public nursing homes. Many public sector settings will require significant refurbishments or replacement to comply with the quality standards.

The costs associated with this are significant and depending on the relative proportions of units being replaced and upgraded is estimated to be of the order of €1.2 billion at 2008 prices. The standards, however, do allow the Chief Inspector to agree a time frame to come up to standard in circumstances where a fully costed plan with a detailed schedule is agreed between the Chief Inspector and the provider.

- Significant variations in staffing levels and staff mix were reported between the public and private sector. This is particularly evident when comparing nurse and care assistant ratios. The higher ratio of nursing staff to care assistants in the public sector indicates that it will meet, and possibly exceed, the standards.

The standards do not include a specific minimum standard regarding staffing levels and skills mix as this is dependent on the configuration of the residential centre, the number of residents and their dependency levels. This will change for each residential centre reflecting the needs of the residents at any specific time. In the absence of a specific minimum standard is not possible to identify any absolute costs associated with the staffing quality standard. For illustrative purposes, the application of a minimum staffing level has been tested and is included in the appendix. This is merely to highlight the potential costs associated with changes to the staffing requirements in private nursing homes.

- The requirement to have written policies and procedures is central to many of the quality standards. While many of the private sector nursing homes report that they are already compliant in most of the specified areas, the results highlight that both sectors need to ensure greater compliance across many important areas, as well as ensuring staff awareness of those policies and procedures. The cost of implementing this requirement was estimated to be between €1 million

and €3.3 million depending on whether a set of standard policies and procedures were purchased from an external supplier or developed internally by providers.

## **4.2 Benefits**

### **4.2.1. Option A - Continue with current Care and Welfare Regulations**

The main benefit of this option is the minimal cost to the public sector in relation to improving existing facilities and the maintenance of the *status quo* for both the private and public sectors.

### **4.2.2. Option B - Introduce a voluntary code of practice for the public sector**

The principal benefit of this could result in higher standards in the public sector and the quality of life for residents of public facilities would improve as a consequence of the improvements to these facilities.

### **4.2.3. Option C - Implementation of new standards for the public, private and voluntary sectors underpinned by regulation**

The benefits of this option would fall into two main areas – improvements in and equalisation of the quality of life for residents of both public and private facilities and an increase in confidence in the system of regulation of the sector.

1. The new standards are aimed at improving the quality of life for all residents (public, private and voluntary). They are focused on the needs of the individual residents and set out seven broad headings under which quality can be measured and improved. The implementation of consistent levels of care across the entire system consequent on the application of the same standards and regulations in both the public and private sectors can be expected to lead to an incremental improvement in the quality of care in line with the objective of continuous improvement inherent in the standards.

2. The independent registration and inspection regime operated by HIQA will increase confidence in the system and ensure that residents will receive the same quality of care irrespective of whether they are in a public or private facility. The introduction of this independent registration and inspection regime based on standards underpinned by regulation is likely to be seen as a positive response to recent incidents, including Leas Cross, which highlight the failings of the current system and will begin the process of restoring confidence in the safety and quality of residential care for older people.

### **4.3 Impacts**

#### **4.3.1 Impact on National Competitiveness**

Not applicable.

#### **4.3.2 Impact on Socially Excluded or Vulnerable Groups**

Option A – no impact

Option B – The introduction could result in higher standards in the public sector and the quality of life for residents of public facilities would improve as a consequence of the improvements to these facilities.

Option C - The introduction of the standards will have a significant positive impact on residents of nursing homes. The care centred approach and ongoing commitment to foster improvement and innovation which is at the core of the standards can be expected to lead to improvements in the quality of life of residents of facilities for older people. The improvements required to meet the standards will lead to an improved quality of life for people resident in them.

#### **4.3.3 Impact on the Environment**

Not applicable

#### **4.3.4 Impact on the Economic Market including an examination of the Impacts on Consumers and Competition**

Option A – no impact.

Options B and C - The impact on the economic market must be seen in the context of the Nursing Home Support Scheme “*Fair Deal*”. The Scheme will equalise State support for public and private long-term care recipients which means that State support should be indifferent as to whether a person is in public or private care. In the future, there will be one, transparent system of support towards the cost of care that will be fair to all, irrespective of whether they are in public, private or voluntary nursing homes. Therefore any impact on the market due to the introduction of the standards has to be viewed in the light of the impact of other changes occurring around the same time.

#### **4.3.5 Impacts on the Rights of Citizens**

Options A and B – no impact as the current situation will continue.

Option C - New Standards and Regulations for all nursing homes will be directly beneficial for the resident. The regulations will underpin the standards to ensure the focus is on the individual at the centre of the service.

#### **4.3.6 Compliance Burdens**

Option A – no impact.

Option B – no impact. A voluntary code of practice for the public sector would not involve independent registration. Consequently it would not impose a compulsory compliance burden on the HSE to which it would apply.

Option C - Under the recommended options the compliance burden for the HSE will be greater than at present. The Private Sector has been subject to Regulation since 1993 and as a result is broadly compliant with the regulations concerning the physical environment. However, it will face an additional burden complying with staffing levels and skill mix.

## 5. Summary of Costs, Benefits and Impacts

### 5.1 Summary Table

	<b>Option A</b>  <b>Do nothing</b>	<b>Option B</b>  <b>Voluntary code of practice for the public sector</b>	<b>Option C</b>  <b>Implementation of standards underpinned by regulation</b>
<b>Costs</b>	<ul style="list-style-type: none"> <li>No additional costs for public or private sector operators</li> <li>Likely to impact negatively on public confidence in the system.</li> </ul>	<ul style="list-style-type: none"> <li>No direct costs to private sector.</li> <li>Possible additional cost to HSE in bringing existing facilities up to the new standards</li> </ul>	<ul style="list-style-type: none"> <li>Additional cost to HSE in bringing existing facilities and practices up to standards</li> <li>Possible additional costs to private sector in meeting standards</li> </ul>
<b>Benefits</b>	<ul style="list-style-type: none"> <li>No direct additional costs to the HSE or private nursing home operators</li> </ul>	<ul style="list-style-type: none"> <li>Improved standards for residents of public facilities</li> </ul>	<ul style="list-style-type: none"> <li>Improved quality of care for residents of all facilities</li> <li>Will have a positive impact on public confidence in the registration and inspection regime.</li> </ul>
<b>Impacts</b>	<ul style="list-style-type: none"> <li>No direct impact as the current situation will continue</li> </ul>	<ul style="list-style-type: none"> <li>Positive impact for residents of public facilities who are a potentially vulnerable group.</li> </ul>	<ul style="list-style-type: none"> <li>Positive impact for residents of all facilities who are a potentially vulnerable group.</li> </ul>

## **6. Consultation**

- 6.1 In October 2008 the Minister and her colleague the Minister for Older People hosted a consultation session on the National Quality Standards for Residential Care Settings for Older People in Dublin Castle.
- 6.2 This provided key stakeholders an opportunity to feed into and inform the RIA before finalisation and to discuss the standards, their criteria and proposed Regulations in advance of their introduction. Participants and invitees included representatives from;
- The National Federation of Pensioners Association.
  - Caring for Carers,
  - Patient Focus,
  - Rehab Group,
  - Peter Bradley Foundation
  - Disability Federation of Ireland,
  - Age Action,
  - Senior Citizens Parliament,
  - The Irish Haemophilia Society and
  - The Office of the Ombudsman,
- 6.3 Service providers were represented by Nursing Homes Ireland, representative organisation for the private and voluntary nursing homes sector, the Health Service Executive, together with several private nursing home owners and several participants from the Voluntary Sector. Representatives from HIQA were also in attendance together with a number of representatives from the medical professional organisations.
- 6.4 The Department also commissioned an independent consultancy to carry out an assessment of costs on the impact of the standards. This work included a survey of private and public facilities (see appendix - “*Assessment of costs of the National Quality Standards for residential care setting for older people in Ireland*”).

6.5 While drafting the Standards in 2007 HIQA held a consultation session with key stakeholders in Farmleigh. In addition public advertisements were placed in the national media and on HIQA's website inviting comments on the draft standards, it is understood 103 submissions were received in response to this campaign. HIQA also undertook ten focus groups with residents, relatives/carers and prospective residents together with ten workshops held throughout the country.

## **7. Enforcement and Compliance**

- 7.1 Under the Health Act, 2007, statutory responsibility is given to the Chief Inspector of Social Services, part of HIQA, for inspecting and registering residential services for children, older people and people with disabilities. The nursing home settings for older people will be inspected against the National Quality Standards for Residential Care Settings for Older People.
- 7.2 Regulations are required to underpin the standards. These regulations are being drafted and will be signed by the Minister to commence on 1<sup>st</sup> July, 2009.
- 7.3 The Chief Inspector will have the power to refuse to register, attach conditions to a registration or cancel a registration in the event of non-compliance with the regulations that underpin the standards.