

Explanatory Memorandum to the Care and Support (Provision of Health Services) (Wales) (Regulations) 2015

This Explanatory Memorandum has been prepared by the Department for Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Care and Support (Provision of Health Services) (Wales) Regulations 2015 and I am satisfied that the benefits outweigh any costs.

Mark Drakeford

Minister for Health and Social Services

18 November 2015

Part 1: OVERVIEW

Description

The Social Services and Well-being (Wales) Act 2014 (the Act) brings together local authorities' duties and functions in relation to improving the well-being of people who need care and support, and carers who need support. The Act provides the statutory framework to deliver the Welsh Government's commitment to integrate social services to support people of all ages, and support people as part of families and communities.

Section 47 of the Social Services and Wellbeing (Wales) Act 2014 allows a local authority to arrange for the provision of accommodation together with nursing care provided by a registered nurse, if it has obtained the consent of the appropriate health body. Regulations under section 47(6)(a) are required to stipulate which is the appropriate health body in such cases.

Regulation 4(1) requires a local authority to make arrangements in connection with the resolution of disputes between the authority and a health body about whether or not a service or facility is required to be provided under a health enactment. "Health body" is defined in section 47(10) and includes health bodies in Wales, England, Scotland and Northern Ireland.

Regulation 4(2) provides that such arrangements must include arrangements in connection with the resolution of disputes about (a) decisions as to a person's eligibility for Continuing NHS Healthcare and (b) the contribution of a health body or local authority to a joint package of care for a person who is not eligible for Continuing NHS Healthcare.

Matters of special interest to the Constitutional and Legislative Affairs Committee

No matters of special interest to the Constitutional and Legislative Affairs Committee have been identified.

Legislative background

The powers enabling these Regulations to be made are contained in sections 47 of the Act.

This statutory instrument is subject to the negative procedure. It is proposed that the regulations will come into force on 6 April 2016.

Current legislation

Section 47(6) and (7) of the Act 2014 replaces section 26(1C) and (1D) of the National Assistance Act 1948. The purpose of Section 47(6)(a) is similar to section 26(1C) of the 1948 Act in that it allows a local authority to arrange for the provision of accommodation together with nursing care provided by a registered nurse, if it has obtained the consent of the appropriate health body. Regulations under section 47(6)(a) are required to stipulate which is the appropriate health body in such cases.

Sections 47(6)(b) and 47(7) make similar provision to section 26(1D) of the 1948 Act in so far as they enable arrangements for the provision of such accommodation in urgent cases and - when the arrangements are temporary - without the need to obtain consent of the appropriate health body, provided that consent is obtained as soon as is feasible after the temporary arrangements are made.

Although the wording is different, the effect of the provisions in the 1948 Act and the 2014 Act is the same, with the exception that under the 2014 Act, provision can now be made in the regulations for which Local Health Board must give consent in the case of accommodation in Scotland or Northern Ireland.

Proposed Legislation

These regulations will allow a local authority to arrange for the provision of accommodation together with nursing care provided by a registered nurse. They also require local authorities to put in place arrangements to resolve disputes.

Section 47(6)(a) allows a local authority to arrange for the provision of accommodation together with nursing care provided by a registered nurse, if it has obtained the consent of the appropriate health body. Regulations under section 47(6)(a) are required to stipulate which is the appropriate health body in such cases.

Sections 47(6)(b) and 47(7) enable arrangements for the provision of such accommodation in urgent cases and - when the arrangements are temporary - without the need to obtain consent of the appropriate health body, provided that consent is obtained as soon as is feasible after the temporary arrangements are made.

Provision can now be made in the regulations for which Local Health Board must give consent in the case of accommodation in Scotland or Northern Ireland.

Purpose and intended effect of the legislation

The specified health body for the purposes of section 47(6)

The regulations under section 47(6)(a) specify which is the appropriate NHS body (or trust in Northern Ireland) for the giving of consent to arrangements made by Welsh local authorities for nursing home accommodation in Wales, Scotland, Northern Ireland and England respectively.

It is proposed that in the case of arrangements by a Welsh local authority for the provision of nursing home accommodation within Wales, consent must be obtained from the Local Health Board for the area in which the accommodation is provided (see regulation 3(1)(a))

In the case of arrangements by a Welsh local authority for the provision of nursing home accommodation in Scotland or Northern Ireland, consent must be obtained from the Local Health Board for the area in which the local authority making the arrangements is located (see regulation 3(1)(b))

In the case of arrangements by a Welsh local authority for the provision of nursing home accommodation in England, consent must be obtained from the responsible commissioning group (see regulation 3(1)(c)). Regulation 3(2) defines which is the responsible commissioning group for these purposes.

The provisions in these regulations are in line with the arrangements for the funding of NHS funded nursing care. The four UK governments have reached separate bilateral agreements as to which NHS body (or Trust in Northern Ireland) should be responsible for the cost of NHS funded nursing care required for individuals placed cross-border into a care home. In general terms:

- Where the cross-border placement is between England and Scotland or between England and Northern Ireland (in either direction) the health service of the country of the first authority will be responsible for nursing costs.
- Where the cross-border placement is between England and Wales (in either direction), the second authority's health service will be responsible for the costs of NHS nursing care.
- Where the cross-border placement is between Wales and Scotland, Wales and Northern Ireland, or between Scotland and Northern Ireland, the first authority's health service will retain responsibility for the costs of NHS funded nursing care.

		Placement to:			
		England	Scotland	Wales	Northern Ireland
Placement from:	England	X	CCG (England)	Local health Board (Wales)	CCG (England)
	Scotland	NHS Board (Scotland)	X	NHS Board (Scotland)	NHS Board (Scotland)
	Wales	CCG (England)	Local health Board (Wales)	X	Local health Board (Wales)
	Northern Ireland	HSCT (NI)	HSCT (NI)	HSCT (NI)	X

Arrangements for the resolution of disputes for the purposes of section 47(8)

Regulation 4(1) requires a local authority to make arrangements in connection with the resolution of disputes between the authority and a health body about whether or not a service or facility is required to be provided under a health enactment. "Health body" is defined in section 47(10) and includes health bodies in Wales, England, Scotland and Northern Ireland.

Regulation 4(2) provides that such arrangements must include arrangements in connection with the resolution of disputes about (a) decisions as to a person's eligibility for Continuing NHS Healthcare and (b) the contribution of a health body or local authority to a joint package of care for a person who is not eligible for Continuing NHS Healthcare.

Regulation 4(3) sets out the matters which must be included in the arrangements. The arrangements must include—

- a) a procedure for resolving such disputes which has been agreed with the health body;
- b) provision for meeting the needs of the person to whom the dispute relates pending the resolution of the dispute;
- c) a requirement that any dispute does not prevent, delay, interrupt or otherwise adversely affect the meeting of the needs of the person to whom the dispute relates.

Consultation

A four week consultation on these regulations ran between 17 September and 15 October.

The report and a list of respondents can be found at:

<http://gov.wales/consultations/healthsocialcare/care-and-support/?status=closed&lang=en>

Impact

A separate impact assessment has not been prepared for these regulations. The regulations do not give rise to any demands for additional resources. The regulations replace existing requirements. Section 47(6) and (7) of the Act 2014 replaces section 26(1C) and (1D) of the National Assistance Act 1948. The purpose of Section 47(6)(a) is similar to section 26(1C) of the 1948 Act in that it allows a local authority to arrange for the provision of accommodation together with nursing care provided by a registered nurse, if it has obtained the consent of the appropriate health body. Regulations under section 47(6)(a) are required to stipulate which is the appropriate health body in such cases.

Sections 47(6)(b) and 47(7) make similar provision to section 26(1D) of the 1948 Act in so far as they enable arrangements for the provision of such accommodation in urgent cases and - when the arrangements are temporary - without the need to obtain consent of the appropriate health body, provided that consent is obtained as soon as is feasible after the temporary arrangements are made.

The effect of the provisions in the 1948 Act and the 2014 Act are the same, with the exception that under the 2014 Act, provision can now be made in the regulations for which Local Health Board must give consent in the case of accommodation in Scotland or Northern Ireland.

The regulations are not imposing any new duties with regards to dispute resolution as local authorities and health boards should already have in place mechanisms for resolving disputes.