

## Executive summary

# Exploring the regulation of health and social care services

## Disability and older people's services

March 2017

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### Introduction

The Health Information and Quality Authority (HIQA) has regulated older people's residential services since 2009 and residential services for people with disabilities since 2013. The legislative framework for this regulation derives from the Health Act 2007 (as amended). In relation to adult social care, the Act confers certain powers on the Chief Inspector which is an office within HIQA. The Act outlines what services are to be regulated and how they must register. It also empowers the Minister of Health to make regulations and provides the Office of the Chief Inspector with enforcement powers.

A key component of this framework is the 'designated centre', the entity which must register with HIQA and comply with the Act and its regulations. A designated centre is defined as an institution where residential services are provided to certain groups of people. These groups include adults or children with disabilities, older persons and dependent persons. The Act outlines which services cannot be considered designated centres, for example, hospices, acute care facilities or centres registered with the Mental Health Commission. HIQA's own guidance says a designated centre is a service which provides both care **and** accommodation.

### The changing service environment

Through its regulatory work, HIQA is aware of several different models of residential and non-residential care for older persons and people with disabilities. Some of these models of care do not sit within the current definition of a designated centre and present challenges in terms of ensuring that dependent and vulnerable service users are protected. The Department of Health is currently reviewing the Health Act 2007 and the Government has established a Committee on the Future of Healthcare. This is an opportune time to reflect on how we, as a state, provide services to people into the future, and how these services should be regulated.

This summary gives an overview of two research papers developed by HIQA: one on older people's services and one on services for people with disabilities. The papers

explore the current definition of a designated centre; demographic projections; the different and emerging models of social care in Ireland for older people and people with disabilities; and the contemporary policy and research in each sector. They also consider how other jurisdictions regulate various types of care. Each paper was informed by the views of a range of interested and informed parties who were invited to take part in discussion groups on these topics. Each paper concludes by setting out HIQA's position on a possible future direction for regulation of various types of care for older persons and people with disabilities.

### Care and support models in Ireland

Each paper describes the different care and support models that are currently being provided in Ireland. It discussed each in terms of whether or not it meets the definition of a designated centre. The following table outlines each model of care and the primary (though not exclusive) users of these services:<sup>1</sup>

Model	Older Persons	People with Disabilities
<b>Nursing homes</b>	✓	
<b>Congregated settings</b>		✓
<b>Community residential</b>		✓
<b>Home care</b>	✓	✓
<b>Sheltered housing/Assisted living</b>	✓	✓
<b>Respite</b>	✓	✓
<b>Short-stay/convalence/step-down</b>	✓	
<b>Day services</b>	✓	✓
<b>Home sharing</b>		✓
<b>Hospices</b>	✓	
<b>Personal assistants</b>		✓
<b>Secure units</b>		✓

<sup>1</sup> The categories outlined in the table are not intended to be definitive. For example, it may be the case that a person with a disability is cared for in a nursing home or an older person is accommodated in a community residential setting. Rather, the table identifies who are the primary users of each service.

The only services in the table above that are regulated by the Office of the Chief Inspector within HIQA are nursing homes, congregated settings and community residential services for adults and children with disabilities. Some of the other service models represent a grey area in terms of whether or not they fall within the definition of a designated centre. For example, there is a significant degree of variation in the level of care provided to users of these services. In addition, many of them are on the basis of tenancy arrangements and, as such, may not satisfy the definition of a designated centre, primarily because accommodation is not being provided. The only unregulated service model in Ireland where new regulation has been mooted is home care.

### **Research and policy development**

The general thrust of national policy, both for older persons and people with disabilities, is that they be provided with care in the home. Successive programmes for government have reaffirmed this position. Both HIQA research papers identify research which supports the view that service users, where possible, wish to be cared for in their home or in their locality. Furthermore, the research in older person's services suggests that there is an over-reliance on long-term residential care and a lack of intermediate models of care. The future demographic challenges, particularly for older person's services, underline the need to develop alternatives which will meet the needs of the population.

### **Regulation in other countries**

Both research papers looked at the regulatory framework in the following countries and region: Northern Ireland, Scotland, Wales, England, Australia, New Zealand and British Columbia in Canada. It was found that all of these jurisdictions have well-established regulatory systems which have developed in tandem with changes in how care is delivered. Some jurisdictions provide definitions of care in their primary legislation, often broken down into sub-categories such as nursing care, personal care, social care. This is something which is absent in the Irish legislation.

A key finding from other countries is in some cases a fundamentally different approach to registration of services compared to Ireland. Some follow an 'establishment' model which means that each physical location at which a care activity takes place must be registered. This is also the model in place in Ireland. Other countries have moved to a 'service-based' model. This means that a service provider registers with the regulator and informs them of the different types of care they are providing, and in what locations. The stated advantage of this system is that it allows for greater innovation and flexibility in how providers deliver their services. In addition, providers simply register once and are then monitored for

compliance on an ongoing basis thereafter; there is no requirement to renew their registration.

The regulatory systems in all of the regions reviewed include, to varying degrees, non-residential care. Differences emerge in how regulations are applied to these services and how they are registered, certified and or licensed. For example, the Regulation and Quality Improvement Authority (RQIA) in Northern Ireland is tasked with regulating day services, home care agencies, nursing agencies, adult placement, residential care homes and nursing homes. There are different regulations governing the care in each of these different models.

In England, the Care Quality Commission (CQC) has powers to regulate a greater number of services. However, it does not have a discrete set of regulations for each. Rather, it uses 'fundamental standards' which apply to all services. Its approach is that it will select the elements of the fundamental standards that are appropriate to a particular setting.

## Discussion

Both HIQA papers contend that the definition of a designated centre does not capture all of the current and emerging models of care in Ireland for older persons and people with disabilities. All of these models have potentially vulnerable and dependent service users who have the same right to high-quality care and protection as those currently living in designated centres. Given the current appetite for reform in health and social care, HIQA believes it is an opportune moment to reflect on how these services might be regulated.

Many of the participants in the discussion groups for this research felt that the current regulations were not appropriate in some settings due to their 'one size fits all' nature. For example, a person in receipt of predominantly social care in a designated centre is subject to the same regulations as someone who is deemed high dependency and who needs 24-hour nursing care.

There was a consensus among all these groups that a service-based model of registration — coupled with a suite of regulations specific to each model of care — represented the best course for regulation into the future. Under such a system, a provider would be registered with the regulator rather than an individual centre or service being the registered entity. A provider may provide multiple services and would identify all the locations where it is providing these services.

HIQA agrees with such an approach for the following reasons:

1. It provides clarity to service users, providers and regulators.
2. Separate regulations can be tailored to the service model.

3. Service providers can be more flexible and innovative. For example, they could accommodate service users with different support needs in the same settings.
4. Administration would be reduced, both for the service provider and the regulator.

Both HIQA research papers propose several types of service models which should be considered for regulation in such a future scenario. In addition, each paper points out that currently, services must renew their registration with HIQA every three years. It is HIQA's view that this registration cycle is overly burdensome, both for the service provider and the regulator. If this were removed, it would allow for more thematic inspection programmes and greater flexibility to target resources at the areas of highest risk.

It should be borne in mind that a discussion on how to regulate services is only one component of a broader discussion on how to provide care to older persons and people with disabilities. Funding was consistently raised as an issue among all the discussion groups for these research papers. The argument was not necessarily that more funding was needed but that funding should be more evenly distributed in order to develop alternatives to long-term residential care.

HIQA's Corporate Plan 2016-2018 commits the organisation to delivering a programme of regulation which will safeguard service users, focused on human rights principles. In addition, HIQA has committed to informing and influencing policy across health and social care services. It is in this context of driving improvement and protecting vulnerable persons that we have undertaken this research.

There is a recognition among all stakeholders that we, as a nation, must begin to address the multiple challenges facing health and social care services. Regulation must respond to the changing health and social care landscape. Failure to do so will leave thousands of people without adequate protections. It is hoped these papers will highlight the need to review and expand regulation to have oversight and provide public assurance on the different models of care and service delivery. HIQA will look to contribute positively to this discussion, and it is hoped that these research papers will further inform the debate.