



**Health  
Information  
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Authority**

An tÚdarás Um Fhaisnéis  
agus Cáilíocht Sláinte

# Exploring the regulation of health and social care services

## Older People's services

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March 2017

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### Introduction

The concept of the 'designated centre' is a key feature of the legislation and regulations concerned with adult social care in Ireland. Any service which meets the definition in the Health Act 2007 is considered a designated centre, must register with the Health Information and Quality Authority (HIQA) and comply with the relevant regulations. Put simply, a designated centre is a place where a dependent person receives care **and** accommodation (the full definition as it appears in the Act is below).

Models of nursing and social care are evolving, with some of the emerging models of care not sitting within the current definition of a designated centre and thereby presenting challenges in terms of ensuring that dependent and vulnerable people using services are protected. This paper is an opportunity to reconsider some of the Health Act's provisions with a view to making it more relevant to current and emerging care models.

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. It is hoped this paper 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.

The paper will outline the current definition of a designated centre as it is framed in the Health Act 2007, in addition to HIQA's interpretation of this definition. It will then look at current care and support models for older people and present any relevant national policy or research in the area. There will also be a discussion of how similar regulatory frameworks are structured in other jurisdictions.

The conclusion will seek to outline HIQA's view on how care and support of older people could potentially be regulated into the future. In order to further inform HIQA's position, a range of informed and interested parties were invited to a series of meetings to discuss these matters. These stakeholders included representatives

from advocacy and or service-user groups, service providers, housing providers and the Health Service Executive (HSE). Their views are discussed at relevant points in the paper.

## Definition and interpretation

The following is the definition of a designated centre from the Health Act, 2007:

**'designated centre'** means an **institution**—

*(a) at which residential services are provided by the Executive, the Agency, a service provider under this Act or a person that is not a service provider but who receives assistance under section 39 of the Health Act 2004—*

*(i) in accordance with the Child Care Act 1991,*

*(ii) to persons with disabilities, in relation to their disabilities, or*

*(iii) to other dependent persons, in relation to their dependencies,*

*or*

*(b) that is a special care unit,*

*(c) that is a nursing home as defined in section 2 of the Health (Nursing Homes) Act 1990, but does not include any of the following:*

*(i) a centre registered by the Mental Health Commission;*

*(ii) an institution managed by or on behalf of a Minister of the Government;*

*(iii) that part of an institution in which the majority of persons being cared for and maintained are being treated for acute illness or provided with palliative care;*

*(iv) an institution primarily used for the provision of educational, cultural, recreational, leisure, social or physical activities;*

*(v) a children detention school as defined in section 3 of the Children Act 2001,<sup>(1)</sup>*

The Health (Nursing Homes) Act, 1990 provides the following definition of a nursing home:

*2.—(1) In this Act, except where the context otherwise requires, "nursing home", subject to subsection (2), means an institution for the care and maintenance of more than two dependent persons excluding—*

*(a) an institution managed by or on behalf of a Minister of the Government or a health board,*

*(b) an institution in which a majority of the persons being maintained are being treated for acute illnesses,*

*(c) a maternity home carried on by a person who is registered under the Registration of Maternity Homes Act, 1934,*

*(d) a mental institution within the meaning of the Mental Treatment Acts, 1945 to 1966,*

*(e) an institution for the care and maintenance of mentally handicapped persons operated otherwise than for profit and to which grants are paid by the Minister or a health board,*

*(f) premises in which children are maintained in pursuance of an arrangement with a health board,*

*(g) an institution operated otherwise than for profit—*

*(i) that is for the care and maintenance of physically handicapped persons a majority of whom do not receive whole-time nursing care in the institution,*

*(ii) in the management of which representatives of the Minister or a health board and representatives of the persons being maintained in the institution participate with other persons,*

*(iii) to which grants are paid by the Minister or a health board, and*

*(iv) to which paragraphs (a) and (b) of section 333 (1) of the Income Tax Act, 1967, apply, and*

*(h) premises in which a majority of the persons being maintained are members of a religious order or priests of any religion (other than premises in relation to which a payment has been made under section 7), but maintenance by a person of his spouse or of a parent, step-parent, child, step-child, grandchild, brother, step-brother, sister, step-sister, uncle, aunt, niece or nephew of the person or of his spouse shall, for the purposes of this definition, be disregarded.<sup>(2)</sup>*

The definitions of a designated centre and a nursing home are somewhat broad and can be open to interpretation. They comprise a number of key terms including:

- institution
- residential service
- care and maintenance
- dependent person.

Nowhere in the relevant legislation is there a specific definition for residential services. HIQA's interpretation of this term in relation to disability services, in line with the most recent HIQA guidance document, is as follows:

A 'residential service' is one that is comprised of both accommodation and care/support services provided to people with disabilities living in residential settings, on a short or long term basis, whether or not it is their sole place of residence.<sup>(3)</sup>

The Health (Nursing Homes) Act, 1990 provides the following definition for a dependent person:

*"dependent person" means a person who requires assistance with the activities of daily living such as dressing, eating, walking, washing and bathing by reason of—*

*(a) physical infirmity or a physical injury, defect or disease, or*

*(b) mental infirmity.<sup>(2)</sup>*

Taken together, these terms and definitions are intended to capture all services which cater for the needs of vulnerable and or dependent persons in residential settings. The ultimate goal is that there is regulation and oversight of service providers and that the rights and welfare of service users are protected and promoted.

However, there is no definition in any of the relevant legislation of what is meant by 'care' or 'care and maintenance'. Other countries have provided a definition of care in their legislation, most often broken down into categories (personal care, nursing care). The following are some examples of such definitions:

## Definition of Care

### “Nursing care”

Any services provided by a nurse and involving—

- (a) the provision of care, or
- (b) the planning, supervision or delegation of the provision of care, other than any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a nurse;

### “Personal care”

- (a) physical assistance given to a person in connection with—
  - (i) eating or drinking (including the maintenance of established parenteral nutrition),
  - (ii) toileting (including in relation to the process of menstruation),
  - (iii) washing or bathing,
  - (iv) dressing, (v) oral care, or
  - (vi) the care of skin, hair and nails (with the exception of nail care provided by a person registered with the Health and Care Professions Council as a chiropodist or podiatrist pursuant to article 5 of the 2001 Order), or

(b) the prompting, together with supervision, of a person, in relation to the performance of any of the activities listed in paragraph (a), where that person is unable to make a decision for themselves in relation to performing such an activity without such prompting and supervision.

### England



– The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

### Scotland



### “Personal care”

Care which relates to the day to day physical tasks and needs of the person cared for (as for example, but without prejudice to that generality, to eating and washing) and to mental processes related to those tasks and needs (as for example, but without prejudice to that generality, to remembering to eat and wash).

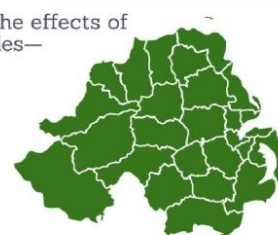
- Regulation of Care (Scotland) Act 2001

### “Personal care”

Includes the provision of appropriate assistance in counteracting or alleviating the effects of any of the matters mentioned in paragraph (1)(a) to (d) and, in particular, includes—

- (a) action taken to promote rehabilitation;
  - (b) assistance with physical or social needs; and
  - (c) counselling.
- Paragraph (1) (a) to (d), referenced above, is as follows:
- (a) old age and infirmity;
  - (b) disablement;
  - (c) past or present dependence on alcohol or drugs; or
  - (d) past or present mental disorder.

### N. Ireland



– The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003

### Australia



### “Care”

Services, or accommodation and services, provided to a person whose physical, mental or social functioning is affected to such a degree that the person cannot maintain himself or herself independently.

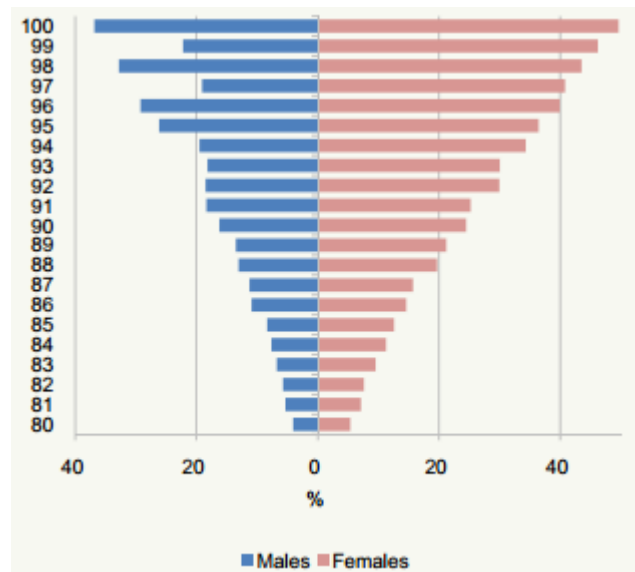
- Aged Care Act 1997

## Demographics

Ireland’s population of over-65s has been increasing in recent years with obvious implications for care services now and into the future. The 2011 Census showed that there were approximately 535,000 people over the age of 65 living in Ireland, representing 12% of the population.<sup>(4)</sup> The number is projected to almost double by 2031, meaning people aged 65 and over will by that time represent 17.8% of the population. The expected increase in those aged 80 and over is even more dramatic with their numbers set to increase by 220%, from 128,000 to 281,800 in the same period.<sup>(5)</sup>

The figures outlined above present a significant challenge to the State in terms of providing for the health and social care needs of these age groups. Central Statistics Office (CSO) figures show that 6% of over 65s are accommodated in communal settings (such as nursing homes or hospitals). The number of people living in these settings increases with age, as illustrated in Figure 1 below.<sup>(4)</sup>

**Figure 1 – Males and females aged 80–100 usually resident in communal establishments as a percentage of the total at each age**



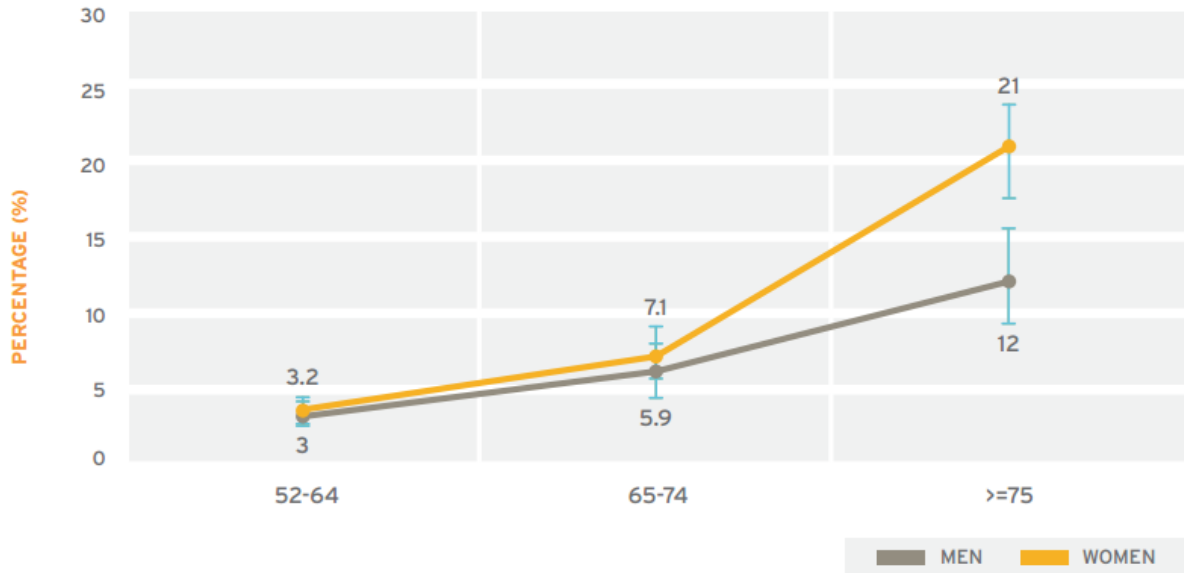
Source: CSO, 2013

In addition to the projected increasing number of older people living in Ireland, there is the added dimension of the complexity of needs that come with longer life



expectancy. Figure 2 below illustrates how the ability to carry out activities of daily living (ADLs\*) diminishes with increasing age.

**Figure 2 — Percentage of people aged 50+ with difficulty dressing, bathing or getting around inside the home, due to disability**



**Source:** Positive Ageing 2016 — National Indicators Report

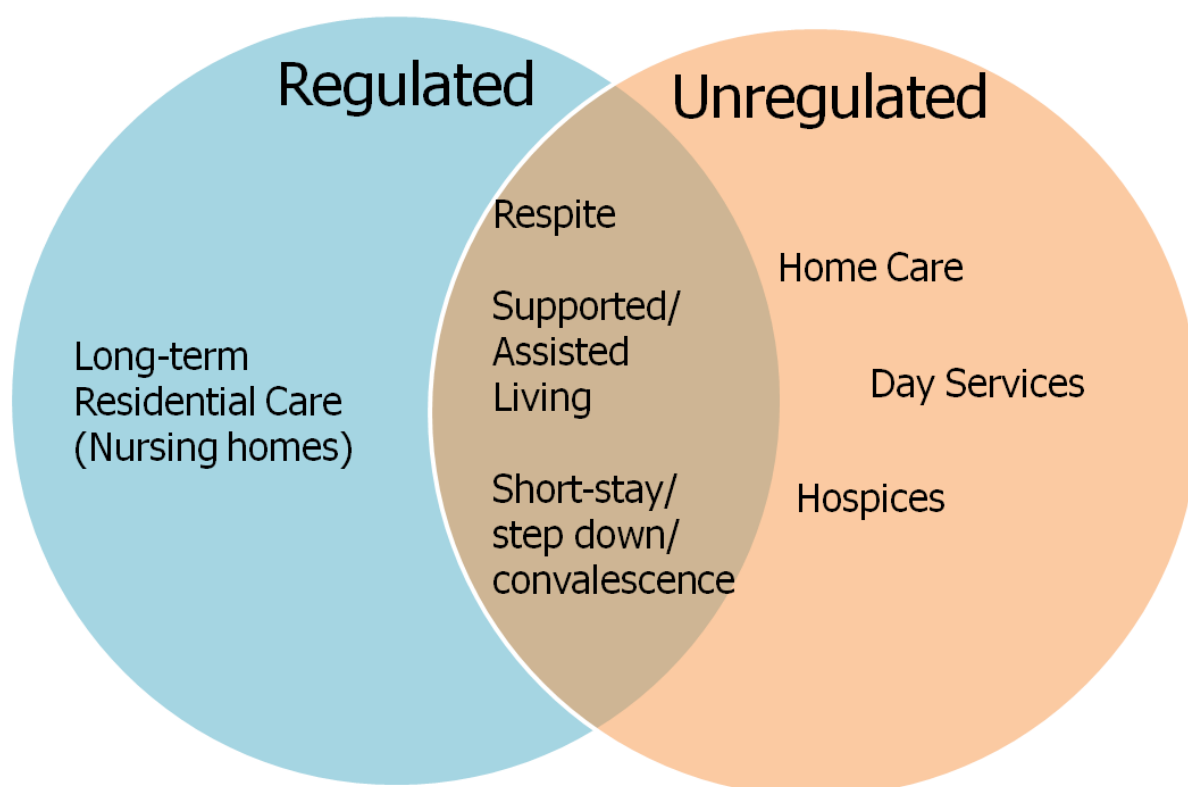
This data points to the need to devise, plan and deliver services that will meet the needs of the aging population into the future.

\* Defined as dressing; walking across a room; bathing and or showering; eating; getting in or out of bed; using the toilet.

## Care and support service models

The following section reviews the current care and support service models for dependent older people in Ireland and discusses how they relate to the definition of a designated centre in the current legislation. Figure 3 shows the current regulatory position of older people's services in Ireland.

**Figure 3 – Regulation of older people's services**



### Nursing homes

Most care for dependent older people in Ireland is provided in nursing homes, and care is for the most part provided by registered nurses and healthcare assistants. All nursing homes operating in Ireland are required to be registered with HIQA as they meet the definition of a designated centre. Nursing homes are funded mainly through the Nursing Home Support Scheme (NHSS) which is on a statutory footing. The NHSS budget for 2016 is almost €1 billion.<sup>(6)</sup> Nursing homes are operated by a mix of public, private and voluntary operators.

### Home care

Care for older people is also provided in the community (sometimes referred to as domiciliary care), principally in the form of 'home help' or 'home care packages'. This

form of care is most often provided by carers as opposed to nurses and usually takes the form of a number of hours per day to assist with activities of daily living (ADLs). Given that this form of care is often not nurse-led and takes place in the service user's home, it does not fit within the definition of a designated centre.

HIQA currently has no remit to regulate this sector, but it has been identified by Government as an area that is under consideration for regulation. A 2009 consultation paper by the Law Reform Commission of Ireland recommended that the definition of a designated centre could be amended to include providers of home care, thereby bringing them under regulation by HIQA.<sup>(7)</sup>

### **Sheltered housing and or assisted living**

Another model of care found in the community is 'sheltered housing' or 'independent and or assisted living'. Mostly provided by voluntary organisations, these forms of care usually entail a small number of purpose-built housing units with a staff person on-site to provide additional supports. As with home care, this model is not nurse-led and is more akin to a social model of care. While accommodation is provided, many such arrangements are on the basis of tenancy agreements. These services do not meet the criteria of a designated centre because of the relative lack of dependency of the service users and the absence of any form of medical care.

In addition, at the discussion meetings with key stakeholders for this research, some of the providers of this type of housing pointed out that they have no role in providing care. They stated that they simply provide the housing and that their staff may assist tenants to access care from third parties. On the other hand, there are also providers of this type of housing that do provide a level of care to the tenants. This sector arguably needs to be regulated given the potential vulnerability of some of the service users.<sup>†</sup>

### **Respite**

Respite services are provided to individuals who are most commonly cared for by a family member in their own home; the service-user is accommodated in a dedicated respite service or within a long-term care setting on a short-term basis. Many designated centres currently registered with HIQA include a contingent of respite beds. While stand-alone respite services do not strictly meet the definition of a designated centre as it currently stands, some are in fact registered with HIQA. These services are then subject to regulations that do not necessarily reflect the type of service provided in a respite setting, that is to say they are geared towards long-term care.

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<sup>†</sup> Providers of supported and or assisted living are typically registered with, and regulated by the Housing Agency. They are referred to as approved housing bodies (AHBs). The Housing Agency does not regulate the care and or support provided to tenants.

## Short-stay or convalescence or step down units

These types of services are usually a temporary arrangement where patients recovering from illness can be accommodated without the need for acute care. At present, there is effectively no regulation of these areas even though it is arguable that they fall under the definition of a designated centre. The question of whether they meet the definition rests on the **residential** element of the service. An example of one such facility that is registered as a designated centre is St. Brigid's Hospital, Carrick-on-Suir, Co Tipperary.

While this hospital is designated by the HSE as a short-stay and convalescent service, a 2015 inspection by HIQA found that many residents had been in fact accommodated there on a long-term basis.<sup>(8)</sup> A second example is Ballina District Hospital in Co Mayo. Again, it is designated by the HSE as a short stay/convalescent facility but unlike the first example is not registered as a designated centre. It has also not been subject to an inspection by HIQA's healthcare division.

A recent communication to HIQA from the HSE Services for Older Persons Division listed 679 beds that were not currently registered with HIQA. These beds were in separate wings of designated centres or were stand-alone units that were not registered. Currently, it is not clear if these centres meet the definition of a designated centre. Ultimately, these centres are currently not subject to oversight by HIQA.<sup>‡</sup>

## Day services

Day services for older people are aimed at providing a care setting during day-time hours to older people who are usually in care in another setting, be that in a nursing home or in their own home. They are not necessarily nurse-led and are focussed on providing social activities. At present, there is no regulation of such services and they would not meet the criteria of a designated centre as they do not provide accommodation.

## Hospice and or palliative care

Most commonly provided in the voluntary sector, hospice and or palliative care aims to improve the lives of those people whose illness is incurable. However, hospices do not currently fall within the definition of a designated centre. The Health Act, 2007 makes specific reference to 'palliative care' being excluded from the definition of a designated centre.

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<sup>‡</sup> HIQA, in conjunction with the HSE, is currently reviewing the care being provided in all such facilities with the aim of determining if they are designated centres and subject to regulation, or healthcare facilities and subject to compliance with the *National Standards for Safer Better Care*.

## Research and policy development

The practice in Ireland has tended towards providing care for older people in residential settings, that is to say nursing homes. Research published by the Centre for Ageing Research and Development in Ireland (CARDI) in 2011 showed that 7% of over 65s lived in nursing homes in the Republic of Ireland, while the figure was 4% in Northern Ireland. In fact, Ireland has the second highest rate of nursing home and or hospital residency for over 65s in the EU.<sup>(9)</sup>

Various Government health strategy and or policy documents since the 1960s have recommended that older people should be cared for in their home for as long as possible.<sup>(10)</sup> Successive programmes for government have committed to increasing home care supports which would allow older people to live independently in their own homes for as long as possible. The following are some of the commitments made in the 2016 Programme for Government:

To remain independent at home, some older people need the support of home help. Currently there are 10.3m hours funded by the HSE annually. We will increase funding for homecare packages and home help every year.

The provision of home care ranges from excellent to irregular for recipients across the country. We will introduce a uniform homecare service so all recipients can receive a quality support, 7 days per week, where possible.<sup>(11)</sup>

Non-governmental and voluntary organisations have also emphasised the need for alternatives to the nursing home model, arguing that older people consistently wish to be cared for in the home.<sup>(9,10,12,13)</sup> An issue which appears frequently in the literature is the lack of a legislative basis for funded community and or home care, similar to what is in place for nursing homes, the NHSS ('Fair Deal' scheme). A 2011 CARDI report argued that community care was under-resourced and that unpaid carers — primarily family carers — provide most care services.<sup>(9)</sup>

The Forum on Long-Term Care for Older People<sup>§</sup> published a report in 2016 describing the challenges facing the sector and set out a broad strategy for how care should be financed and delivered to meet the needs of the ageing population. The following was one of the general findings in the report:

While there is broad acknowledgement of the principle of enabling people to exercise their will and preferences in the way care is provided, people regularly end up in nursing homes against their will because of a lack of community-based alternatives.<sup>(10)</sup>

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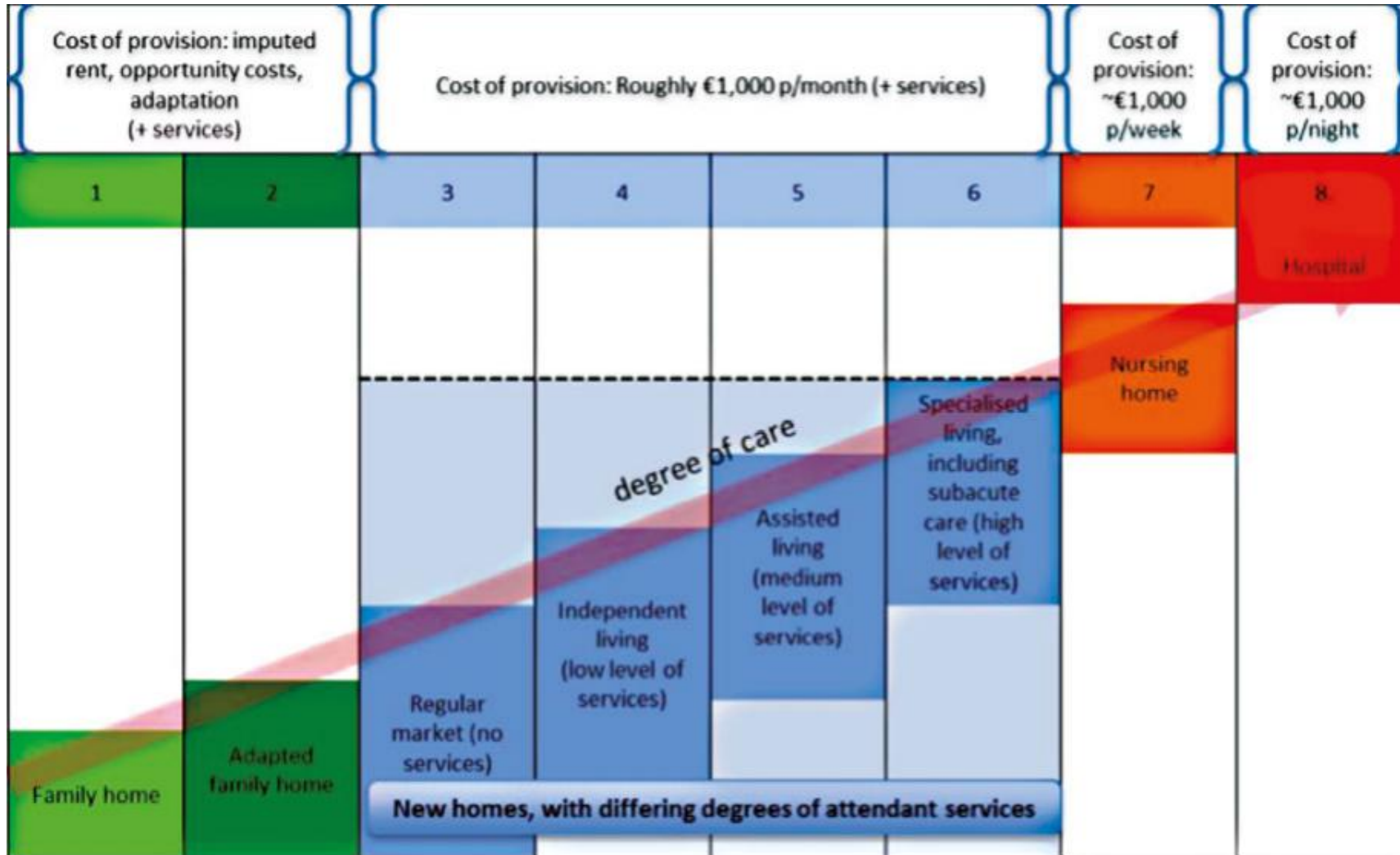
<sup>§</sup> The forum included the NGOs Alone, Third Age Ireland, Family Carers Ireland and SAGE.

The report went on to make a number of recommendations, among them:

- provide a legislative framework for community care services
- ensure the Departments of Health, Environment and Social Protection work collaboratively to develop and implement integrated housing and support models and provide joint funding streams accordingly
- develop realistic alternatives for providing support and care to people who do not wish to spend the last years or months of their lives in a nursing home
- formalise and develop a regulatory framework for home care
- ensure the HSE and local authorities work collaboratively to deliver integrated assisted-living housing.<sup>(10)</sup>

Another report published in 2016 focused on housing and care needs for older people. This research, Commissioned by the Housing Agency and the Ireland Smart Ageing Exchange, looked at the available literature on the subject and also interviewed hundreds of older people. The report echoed much of what has been outlined in previous reports. Of relevance to this paper, the report proffered eight stages of housing and care needs for older people in Ireland. The stages are shown on the following page in Figure 4.

**Figure 4 — Eight stages of housing and care needs for older persons**



Source: Housing Agency and Ireland Smart Ageing Exchange, 2016

Finally, a collaborative report<sup>\*\*</sup> on the experiences of social workers working with older people was published in 2016. Echoing the findings of other research, the authors concluded that:

Older persons requiring care and support in many instances have no choice but to move into residential care settings, due to the under-development of community-based services and inconsistency of provision across the country. This is despite the overwhelming preference of older people for 'ageing in place', their right to private and family life and a state policy that commits to support older people to remain in their homes for as long as possible.<sup>(13)</sup>

Clearly, all stakeholders recognise that there are significant challenges ahead in terms of responding to the needs of Ireland's ageing population. Moreover, there is a general consensus that increasing the availability of home and community-based care is critical to meeting these needs.

Any developments in this direction present challenges to HIQA in terms of applying the concept of a designated centre to these models of service delivery. It has been mooted that home care will be subject to regulation by HIQA.<sup>††</sup> If HIQA's remit is to be expanded into this sector, then it is foreseeable that there will have to be changes to the legislation in order to reflect this model of service.

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<sup>\*\*</sup> Contributors to the research included the Irish Association of Social Workers (IASW), Age Action, the Alzheimer Society of Ireland (ASI) and the School of Social Policy, Social Work and Social Justice, University College Dublin.

<sup>††</sup> This was included in the 2011 Programme for Government and reaffirmed in a November 2016 press statement.



## Country analysis

This section of the paper will examine how regulations and standards for different service models have been established in other jurisdictions.

### Wales

In Wales, the Care and Social Services Inspectorate of Wales is the regulator for social care. All regulations relevant to health and social care in Wales are derived from the Care Standards Act 2000. Of interest in this analysis, the Act provides for the regulation of care homes, domiciliary care and nursing agencies. The following definitions are provided for each:

- **Care home**

*...an establishment is a care home if it provides accommodation, together with nursing or personal care, for any of the following persons.*

*(2) They are—*

*(a) persons who are or have been ill;*

*(b) persons who have or have had a mental disorder;*

*(c) persons who are disabled or infirm;*

*(d) persons who are or have been dependent on alcohol or drugs.*

*(3) But an establishment is not a care home if it is—*

*(a) a hospital;*

*(b) an independent clinic; or*

*(c) a children's home,*

*or if it is of a description excepted by regulations.*

- **Domiciliary care**

*...an undertaking which consists of or includes arranging the provision of personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.*

- **Nursing agency**

*...an employment agency or employment business, being (in either case) a business which consists of or includes supplying, or providing services for the purpose of supplying, registered nurses, registered midwives or registered health visitors.<sup>(14)</sup>*

Each of the above has a separate set of regulations which set out the rights of service users and governs the activities of service providers. Of note, they are not defined in terms of disability or older persons. For example, a care home is defined in such a way that it can cater for the needs of someone who has been ill, is disabled or is infirm. The same applies to domiciliary care.

Until recently, the Care and Social Services Inspectorate of Wales had adopted a similar approach to that found in Ireland, that is to say it registers establishments or centres. New regulations (Regulation and Inspection of Social Care (Wales) Act 2016) will give effect to a change in approach. Beginning in 2018, the Care and Social Services Inspectorate of Wales will designate what are described as 'regulated services'. These will include the following:

- (a) a care home service
- (b) a secure accommodation service
- (c) a residential family centre service
- (d) an adoption service
- (e) a fostering service
- (f) an adult placement service
- (g) an advocacy service
- (h) a domiciliary support service and
- (i) any other service comprising the provision of care and support in Wales as may be prescribed.<sup>(15)</sup>

Any organisation providing one of these services must register with the Care and Social Services Inspectorate of Wales. A service provider will only be required to register once in respect of any regulated service that it provides. This is characterised as a 'service-based' model and is described in an explanatory memorandum accompanying the regulations:

The proposal is to move from an agency and establishment model to a service based regime. This model means that providers are required to

register if they wish to deliver regulated services in Wales. Whilst providers would still be required to identify the place(s) at, from or in relation to which a service is being provided, the new system would only require individuals or organisations to register once with the regulator. If a provider wishes to provide further services or the same service from different places then they would apply to vary their initial registration.<sup>(16)</sup>

The policy change outlined above is intended to provide for greater flexibility and transparency in the system and to align Wales more closely to the regulatory systems in England and Scotland. In addition, a white paper published in 2013 stated that the move to registering services would better position the regulator to respond to emerging service models.<sup>(17)</sup> Individual sites and or premises where the service provider operates the regulated service are included as a condition on their registration (known as 'sub-registration').

## England

The Care Quality Commission (CQC) is the equivalent of HIQA in England. The CQC adopts a service-based approach to regulation similar to what is being planned in Wales. The Health and Social Care Act 2008 is the basis for regulation of services by the CQC. It is the legal body (service provider) that provides the regulated activity that must register with the CQC, as opposed to the location or care setting where it is carried on. The service models relevant to older persons include:

- care home services with nursing
- care home services without nursing
- domiciliary care services
- extra care housing services
- supported living services
- hospices.

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 provide for 'fundamental standards' for all of the activities regulated by the CQC. These are intended to be 'catch-all' regulations that apply across the whole range of regulated activities. The headings of the fundamental standards are as follows:

- General
- Person-centred care
- Dignity and respect
- Need for consent
- Safe care and treatment
- Safeguarding service users from abuse and improper treatment
- Meeting nutritional and hydration needs
- Premises and equipment

- Receiving and acting on complaints
- Good governance
- Staffing
- Fit and proper persons employed
- Duty of candour
- Requirement as to display of performance assessments.<sup>(18)</sup>

Guidance published by the CQC outlines how they will apply the regulations to the various service types, for example:

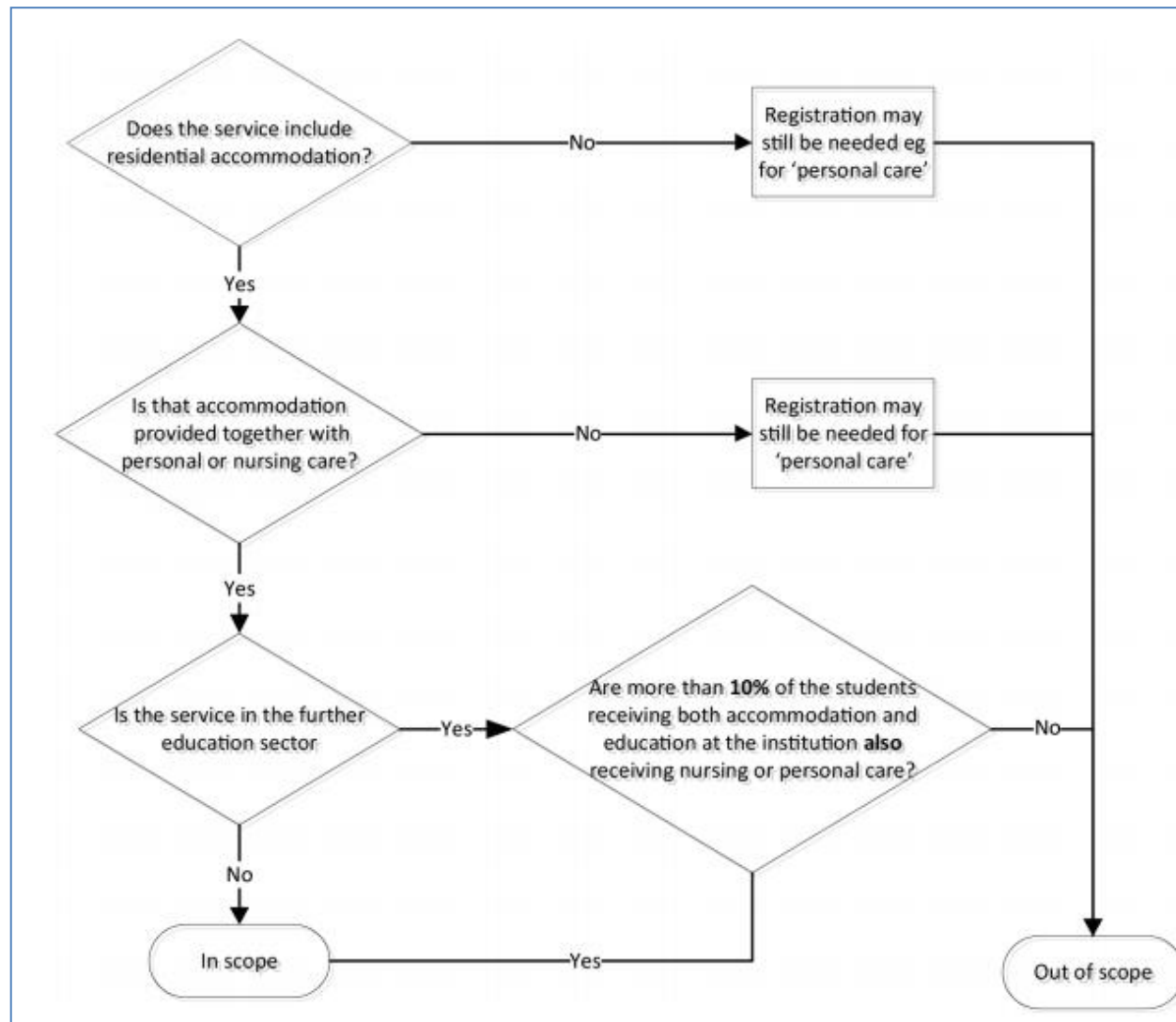
...we will be proportionate in how we apply the regulations to different types of services. We will consider the size and type of services and the relevance of the regulation to the regulated activity provided. For example, when inspecting providers of personal care to people in their own home we would not assess Regulation 15: Premises and equipment, or when inspecting dentists we would not assess Regulation 14: Meeting nutrition and hydration needs, as they would not apply to these types of regulated activity.<sup>(19)</sup>

There are additional registration regulations which deal with governance and management, notifications and fees and so on.

As well as registering as a service provider, an organisation must also register a manager who is in day-to-day charge of the regulated activity, or the regulated activity in a particular location. Guidance published by the CQC offers service providers advice on whether their service meets the definition of a regulated activity. For example, the following process flow chart in Figure 5 is provided for services who are considering whether or not they meet the criteria of 'Accommodation for persons who require nursing or personal care'.

The CQC guidance document gives an overview of each of the categories of regulated activity and is intended to help providers find out if they must register as a service provider.<sup>(20)</sup>

**Figure 5 — Meeting the CQC criteria of 'Accommodation for persons who require nursing or personal care'**



Source: Care Quality Commission, 2015

## Scotland

The Care Inspectorate is the regulator for care and social services in Scotland. The Regulation of Care (Scotland) Act 2001 sets out the types of services that are to be registered and follows a service-based model of registration. The Care Inspectorate regulates a wide range of services including adoption and fostering, childcare, nursing agencies and offender accommodation.

The category most closely related to what is regulated in Ireland is known as a 'care home'. These are defined as 'a service providing accommodation which includes nursing care, personal care or personal support to vulnerable children or adults'.<sup>(21)</sup> Care homes are subdivided as follows:

- care homes for people with physical and sensory impairments
- care homes for older people
- care homes for people with learning disabilities
- care homes for children and young people
- care homes for people with drug and alcohol misuse problems.

In addition to the above service types, the Care Inspectorate also regulates services provided in the home. These include nursing agencies, support services (personal care) and housing support services. Definitions for each of these are provided in the 2001 Act and are listed in Appendix 1 of this paper. All services are monitored against the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011. In addition, each of the categories of care has a separate set of standards.

The model of regulation for housing support services in Scotland is noteworthy. Some of the participants in the discussion meeting for this research spoke positively about Scotland's approach in this sector and felt it was a useful starting point for considering this type of regulation in Ireland. The standards for housing support services, monitored by the Care Inspectorate, provide the following definition for this service model:

Housing support services help people to live as independently as possible in the community. They can either be provided in your own home or in accommodation such as sheltered housing or a hostel for homeless people. Housing support services help people manage their home in different ways. These include assistance to claim welfare benefits, fill in forms, manage a household budget, keep safe and secure, get help from other specialist services, obtain furniture and furnishings, and help with shopping and housework. The type of support that is provided will aim to meet the specific needs of an individual person.<sup>(22)</sup>

As evident in the above definition, this is very much a social model of care. The Scottish Housing Regulator is the agency with responsibility for registering and regulating 'social landlords'. Registered social landlords (RSLs) are not-for-profit bodies that provide social housing, similar to approved housing bodies in Ireland. There are certain circumstances where the regulatory activities of the Scottish Housing Regulator overlap with that of the Care Inspectorate. To this end, there is a memorandum of understanding (MoU) between the two bodies. The principal aims of the MoU are to ensure a coordinated approach to regulation and the avoidance of over-regulation in the sector.<sup>(23)</sup>

## Northern Ireland

The Regulation and Quality Improvement Authority (RQIA) is HIQA's equivalent in Northern Ireland. Registration of care providers, in line with the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003, is focused on an 'establishment or agency'. As such, all locations at which a service is provided must be registered with the RQIA. Therefore, the model of regulation here is that of establishment as opposed to service. This does not apply in relation to services provided in the home (domiciliary care, nursing agencies).

The types of services regulated by the RQIA are much broader than those regulated in Ireland by HIQA. Of relevance to this paper are the regulations governing nursing homes, residential care homes, nursing agencies, day care and domiciliary care. Each activity regulated by the RQIA has its own set of regulations. Those relevant to this paper are listed below:

- The Day Care Setting Regulations (Northern Ireland) 2007
- The Domiciliary Care Agencies Regulations (Northern Ireland) 2007
- The Nursing Agencies Regulations (Northern Ireland) 2005
- The Nursing Homes Regulations (Northern Ireland) 2005
- The Residential Care Homes Regulations (Northern Ireland) 2005.

The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 provides the following definitions for each of the above service types:

- "**day care setting**" means ...a place where persons in need of prescribed services may attend for the purposes of assessment, rehabilitation or counselling but where they are not provided with board or accommodation
- "**domiciliary care agency**" means ...an undertaking which consists of or includes arranging the provision of prescribed services in their own homes for

persons who by reason of illness, infirmity, disability or family circumstances are unable to provide any such service for themselves without assistance

- **“nursing agency”** means ...an employment agency or employment business, being (in either case) a business which consists of or includes supplying, or providing services for the purpose of supplying, registered nurses, registered midwives or registered health visitors
- **“nursing home”** means ...any premises used, or intended to be used, for the reception of, and the provision of nursing for, persons suffering from any illness or infirmity
- an establishment is a **residential care home** if it provides or is intended to provide, whether for reward or not, residential accommodation with both board and personal care for persons in need of personal care by reason of—
  - (a) old age and infirmity;
  - (b) disablement;
  - (c) past or present dependence on alcohol or drugs; or
  - (d) past or present mental disorder.<sup>(24)</sup>

## New Zealand

The regulatory system in New Zealand is referred to as ‘certification’. While the terminology is somewhat different (for example, rest homes is the term used for nursing homes), the social care services which are subject to certification are broadly similar to those found in Ireland.

Under the Health and Disability Services (Safety) Act 2001, service providers apply to be certified if they provide one or more of the listed service types. These include rest homes, residential disability care and psychiatric services. As such, the system in place here is similar in nature to that found in the UK, that is to say a service-based model. Service providers must then comply with standards<sup>++</sup> that were enacted in 2008. There are four sets of standards as follows:

- Health and Disability Services (General) Standards
- Health and Disability Services (Core) Standards
- Health and Disability Services (Restraint Minimisation and Safe Practice) Standards
- Health and Disability Services (Infection Prevention and Control) Standards.

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<sup>++</sup> Standards do not have the same meaning as they do in Ireland. In effect, standards in New Zealand are equivalent to regulations in Ireland.



Rest homes 'are residential care provided for the care or support of, or to promote the independence of, people who are frail (whether because of their age or for some other reason)'.<sup>(25)</sup> The Act also provides definitions for health and disability services under a number of headings, including the following relevant to domiciliary and or community services:

services, provided to people with disabilities or people who are frail (whether because of their age or for some other reason), for their care or support or to promote their independence.<sup>(25)</sup>

Standards New Zealand, a public body, develops a range of health and social care standards in addition to the four listed above. Among them are standards for Home and Community Support.

## Australia

The Aged Care Act (1997) is the legislative basis on which all care of older people is governed in Australia. Persons or organisations wishing to provide such care are known as 'approved providers' and must make an application to the Secretary of the Department of Health. The types of services regulated include residential care, home care and flexible care (respite), all of which are defined in the Act (see Appendix 2). The Act also provides an overall definition of care as follows:

**care** means services, or accommodation and services, provided to a person whose physical, mental or social functioning is affected to such a degree that the person cannot maintain himself or herself independently.<sup>(26)</sup>

The Aged Care Act sets out the responsibilities of approved providers under three principle headings: quality of care; user rights; and accountability for care.<sup>(26)</sup> The Act also provides for introducing standards for each of the three categories of care. Australia has introduced a national body to accredit aged care providers, the Australian Aged Care Quality Agency (the Quality Agency). The Quality Agency assesses compliance with standards, and failure to attain accreditation can result in withdrawal of state subsidy for a service.

Of interest in the context of how services are funded in Ireland, the Australian system seeks to classify service users in terms of their support needs and the level of these needs. Service users are classified as needing care in one of three areas:

- activities of daily living
- behaviour
- complex healthcare.

The level of care needed is then assessed using a standardised tool, the Aged Care Funding Instrument (ACFI), and will provide a result of nil, low, medium or high. The funding provided to the service provider is conditional on the assessment outlined above.<sup>(27)</sup>

## Canada (British Columbia)

As Canada is a federation of states, much of the legislation and regulation around care of the elderly is the responsibility of each individual state. As such, this section will focus only on the regulatory system in the state of British Columbia. Regulation of care of the elderly in British Columbia is organised via a licensing system. The types of services licensed include residential care, community care and assisted living. British Columbia requires that the premises be licensed and, therefore, follows an establishment approach.

All care is legislated for under the Community Care and Assisted Living Act (2002) and the Continuing Care Act (1996) and its associated regulations. There are three sets of regulations which apply to care in the province of British Columbia, and these are listed below, including the scope of the regulations:

- **Residential care**

*(a) hospice, being residential care and short-term palliative services for persons in care at the end of their lives*

*(b) mental health, being residential care for persons who are in care primarily due to a mental disorder*

*(b.1) substance use, being residential care for persons who are in care primarily due to substance dependence*

*(c) long term care, being residential care for persons with chronic or progressive conditions, primarily due to the ageing process*

*(d) community living, being residential care for persons with developmental disabilities*

*(e) acquired injury, being residential care for persons whose physical, intellectual and cognitive abilities are limited primarily due to an injury, including persons suffering from brain injuries or injuries sustained in accidents.<sup>(28)</sup>*

- **Community care and assisted living**

*(a) regular assistance with activities of daily living, including eating, mobility, dressing, grooming, bathing or personal hygiene*

*(b) central storage of medication, distribution of medication, administering medication or monitoring the taking of medication*

*(c) maintenance or management of the cash resources or other property of a resident or person in care*

*(d) monitoring of food intake or of adherence to therapeutic diets*

*(e) structured behaviour management and intervention*

*(f) psychosocial rehabilitative therapy or intensive physical rehabilitative therapy.<sup>(29)</sup>*

- **Continuing care programs**

*(a) home support services*

*(b) adult day services*

*(c) meals programmes (including meals on wheels and congregate meal programmes)*

*(d) continuing care respite services*

*(e) continuing care case management*

*(f) continuing care residential care services*

*(g) short stay assessment and treatment centres*

*(h) home oxygen program*

*(i) assisted living services*

*(j) home care nursing*

*(k) community rehabilitation services.<sup>(30)</sup>*

## **Related considerations for regulation in Ireland**

### **Financial viability**

The nursing home market in Ireland has a broad range of ownership models, that is to say public, voluntary and private. The private sector is comprised of sole traders,

partnerships and limited companies. There has been a degree of consolidation in the market in the past number of years, and there are currently a small number of companies that have a significant share of the market. Currently in Ireland, there is nothing in the regulations of relevance to older people's services which concerns the financial viability of an operator to fulfil its functions.<sup>55</sup> This presents a certain level of risk in terms of the potential for national bed capacity to be reduced as a consequence of a provider ceasing operations at short notice.

Such a situation arose in England when Southern Cross Homes Healthcare PLC encountered financial difficulties in 2011. Southern Cross ran 752 care homes and provided services to 31,000 older people, nearly the equivalent of all the nursing home beds in Ireland. Its collapse was attributed to high leasing costs and poor occupancy rates as a result of under-investment.<sup>(31)</sup> Ultimately, no resident was evicted from their care home and other providers stepped in to take over the running of Southern Cross's services. However, a 2014 report commissioned by the CQC found that the situation could have been much worse had another provider collapsed around the same time. It also warned that it was too early to judge whether the replacement providers would be financially stable in the long term.<sup>(31)</sup>

As a consequence of the collapse of Southern Cross Homes Healthcare PLC in England, there is now a 'market oversight' regime in operation in England, under the auspices of the CQC. Providers that are designated 'difficult to replace' must satisfy the regulator that they are financially sustainable. HIQA does not have any specific cause for concern in terms of the providers operating in the Irish market currently. However, it may be prudent, given what occurred in England, to introduce measures which would guard against a similar situation arising in future in Ireland.

## Registration cycle

The registration period in Ireland for designated centres is valid for three years, after which time the service provider must apply to HIQA for re-registration. HIQA has gone through two registration cycles with older people's services and is currently in the first cycle of registration for residential services for people with disabilities. In fact, the original three-year registration deadline for disability services was extended to five years due to difficulties encountered across the sector in meeting regulatory requirements. The learning from the cyclical registration process is that the requirement to re-register a service is administratively burdensome, both for HIQA and for service providers. It also diverts resources from quality improvement initiatives such as thematic inspections.

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<sup>55</sup> Regulation 23 (a) makes reference to a centre having 'sufficient resources to ensure the effective delivery of care in accordance with the statement of purpose'. This is not currently interpreted as requiring HIQA to carry out a test of financial viability. In addition, the regulation focuses on the designated centre as opposed to the registered provider.

HIQA believes the requirement to re-register designated services detracts from its ability to target resources to where it has identified the highest level of risk. Service providers that attended discussions on this research also expressed the view that the registration cycle is overly burdensome and unnecessary. If the cyclical element of registration was removed, it would allow HIQA to focus on quality improvement initiatives and responsive regulation. Service providers that have a good track record in terms of compliance and quality improvement would have their regulatory burden reduced; conversely, centres where poor practice or high risk has been identified would be subject to increased monitoring.

At present, a portion of HIQA's work is financed by fees levied on service providers as part of the registration process. The cumulative figure for designated centres for older people and people with disabilities is approximately €300,000 per year based on the current number of centres. Should the cyclical registration process be removed, two possible solutions to replace this loss in income are:

1. Create an annual payment equivalent which would replace the registration payment once every three years.
2. Increase the pre-existing annual fee that is based on bed numbers.

## Discussion

Thus far, this paper has set out the various models of non-acute care provided to older people in Ireland. It has also discussed the definition of a designated centre and outlined some of the challenges facing the sector in terms of projected demographics. It has looked at research and policy developments in the area, and it has reflected on how other countries regulate such services. The question necessarily now arises: what, if anything, should change in terms of regulation in Ireland?

HIQA's Corporate Plan is committed to protecting and safeguarding those who are vulnerable. In doing so, we look to take a human rights-based approach to our work. The evidence outlined in this paper shows that there are large numbers of people being cared for in a range of different care settings. There are currently a significant number of these settings that do not fall under the definition of a designated centre and are therefore unregulated. Service users in these unregulated sectors may be just as vulnerable as those being cared for in designated centres. They also have the same right to high-quality care as those people living in designated centres. As such, there is a need to review and expand regulation to have oversight and provide public assurance on the different models of care and service delivery.

Furthermore, regulation should include oversight of whether public monies are being spent appropriately. If the principal objective of regulation is to protect and promote the rights of vulnerable or dependent service users, then it follows that there should be a re-evaluation of the legal concept of the designated centre to include other service models that are currently unregulated in Ireland.

The enactment of the Assisted Decision Making (Capacity) Act in 2015 (herein referred to as the Capacity Act) also presents challenges to the current regulatory framework. The Capacity Act establishes a new framework of rights for people with limited or diminished capacity to make decisions for themselves. Many participants at the discussion meetings for this research paper also recognised the impact that the Capacity Act is likely to have.

The Act has the potential to impact on the current regulations in a number of ways. For example, the existing Regulation 5 (5)<sup>\*\*\*</sup> states that a person in charge, if they consider it appropriate, may make a resident's care plan available to their family. This provision could come into conflict with certain provisions in the Capacity Act. To summarise, the older people's regulations may need to be reviewed in light of the Capacity Act, regardless of any of the changes suggested in this paper.

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<sup>\*\*\*</sup> Health Act 2007 (Care And Welfare of Residents in Designated Centres for Older People) Regulations 2013

There are a large range of service models deployed in the care of older people in Ireland. For some, such as nursing homes, there is no dispute as to whether they meet the criteria of a designated centre. Service models that have a less intensive care component, such as home care and supported living, are in somewhat of a grey regulatory area. In many cases, service providers can legitimately argue that these are not designated centres because the service users are not availing of care in the traditional sense. The reality is that these services are not uniform and there is a good deal of variance in terms of the needs of the service users.

As such, it may prove difficult to devise a definition of a designated centre that draws a line neatly between those who are living independently and those that require a level of care and support in the home or outside of a residential setting that would result in their service being subject to regulation. In the case of home care, it has been signalled by Government that these services will come under regulation by HIQA in the future. To date, there has been no substantive detail provided to HIQA on how such regulation will be configured.

It has been official Government policy for a considerable period of time that older people be facilitated to maintain, where possible, their independence in their own home. Despite this, there continues to be an over-reliance on the nursing and medical model of care in the form of nursing homes. The feedback from participants in the discussion groups for this research all highlighted the fact that State funding is primarily funnelled into the Fair Deal Scheme. Some service providers that have independent living or retirement village units felt that these models of care were underdeveloped. While they agreed that they had great potential as an intermediate level of care, they suggested that it was currently an unattractive proposition due to the absence of a funding model along the lines of Fair Deal.

The examples of how regulators in other jurisdictions define services show that most follow a model of registering or certifying the service provider as opposed to the physical location at which the service is provided. This approach offers a number of advantages:

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.

The above points provide a persuasive argument for adopting a service-provider-based approach to registration. Participants in the discussion groups for this research were also in favour of a model of registration based around the service

provider with an accompanying suite of regulations tailored for different service types. Moving away from a model of registration and regulation based on physical premises raises a number of issues. Firstly, the sections on registration in the Health Act 2007 would need to be revised. In addition, the sections dealing with enforcement would also require review as the focus of an enforcement action would be on the service provider rather than a designated centre.

Secondly, the Department of Health would need to consider what service or activities it wishes to see regulated, that is to say, 'regulated activities'. Currently, nursing homes are regulated because they are providing a residential care service. Given the analysis of the various care and support models in this paper and the types of services regulated in other jurisdictions, the following is a list for consideration as regulated activities:

- residential care for older people
- home care<sup>+++</sup>
- hospice and or palliative care<sup>+++</sup>
- sheltered housing and or assisted living
- day care
- respite care
- short-stay units
- convalescence units
- rehabilitation units
- step-down units.

Each of the above would need a carefully devised definition. Consideration should also be given as to whether each service model needs a separate set of regulations (such as in Northern Ireland) or an overarching set of regulations which are selectively applied depending on the service provided (as is the case in England with the 'fundamental standards'). In such a model of regulation, providers would be required to register with HIQA if they were providing one of the regulated activities. They would be registered as a service provider and would notify HIQA of all the locations at which the regulated activity was being carried on. Reflection is also needed as to whether the service provider should have to be re-registered after a certain period of time, or register once and be monitored on an ongoing basis thereafter. Separate HIQA research into licensing of healthcare in other countries has shown that many regulatory systems do not require re-registration.

In any future scenario, the question of the fitness of the provider would be a key consideration when assessing the quality of a service. Currently, there are separate

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<sup>+++</sup> It may be possible to regulate nursing agencies or other similar private provision of medical care in the home under this grouping. However, other jurisdictions have developed separate regulations for nursing agencies.

<sup>+++</sup> It may be the case that, given the level of medical care provided in these facilities, it would be more appropriate to consider regulation of hospices under the proposed licensing system in healthcare.



regulations which govern the registration of designated centres. If the scope of regulation is to be expanded to include additional models of care, it may be useful to also have an overarching set of regulations which sets out the governance and management requirements for service providers. Such regulations could be applied across all providers of regulated activities.

The above list of regulated activities captures most of the care and support models that are currently evident in Ireland. Providing clear definitions of each model and devising guidance for providers will help to minimise the number of regulatory grey areas, and thereby increase the level of protection for people using these services. However, it is inevitable that new service models will evolve that do not meet any of the above criteria. For example, developments in technology could allow for remote monitoring and telehealth<sup>§§§</sup> to become realistic options for services to older persons.

Therefore, if there are to be changes in the Health Act 2007, it may be worth trying to future proof the legislation as much as practicable or frame it in such a way as to allow the law to respond to new and emerging models of care. One means of doing so would be to define what is meant by 'care'. There is currently no definition in the Health Act 2007 or its associated regulations. Such a definition would provide a benchmark against which any new service models could be measured.

Reform of health and social care services is a complex task requiring the input of a variety of stakeholders. This paper has set out the various models of care and support in Ireland and shown how other countries have approached regulation of these sectors. Based on this learning, the paper sets out a high-level overview of how services might be regulated in the future. HIQA recognises that this discussion is only one piece of a broader discussion on how we, as a nation, plan and deliver services to meet the needs of the population. Our most recent corporate plan outlines a commitment to inform and influence policy in Ireland. It is hoped that this research paper will contribute to this discussion.

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<sup>§§§</sup> Telehealth refers to the use of telecommunications technology to provide health and social care services e.g. virtual consultations, wearable devices, motion sensors.

## Appendix 1 — Definitions in Regulation of Care (Scotland) Act 2001

### 2 *Care services*

(1) A "care service" is any of the following—

- (a) a support service;
- (b) a care home service;
- (c) a school care accommodation service;
- (d) an independent health care service;
- (e) a nurse agency;
- (f) a child care agency;
- (g) a secure accommodation service;
- (h) an offender accommodation service;
- (i) an adoption service;
- (j) a fostering service;
- (k) an adult placement service;
- (l) child minding;
- (m) day care of children; and
- (n) a housing support service.

(2) A "support service" is a service provided, by reason of a person's vulnerability or need (other than vulnerability or need arising by reason only of that person being of a young age), to that person or to someone who cares for that person by—

- (a) a local authority;
- (b) any person under arrangements made by a local authority;
- (c) a health body; or
- (d) any person if it includes personal care or personal support,

but the expression does not include a care home service, an independent health care service, a service which provides overnight accommodation, an adoption service, a fostering service or a service excepted from this definition by regulations, paragraphs (c) and (d) above do not apply where the provider is a health body acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978 (c.29) and paragraph (d) above does not apply if the provider is an individual who personally and solely gives the care or support in question.

(3) A "care home service" is a service which provides accommodation, together with nursing, personal care or personal support, for persons by reason of their vulnerability or need; but the expression does not include—

- (a) a hospital;
- (b) a public, independent or grant-aided school;
- (c) an independent health care service; or

(d) a service excepted from this definition by regulations.

(4) A "school care accommodation service" is a service which is provided to a pupil by an education authority or the managers of an independent or grant-aided school, or by any person under arrangements made by any such authority or managers—

(a) for the purpose of the pupil being in attendance at a public, independent or grant-aided school; and

(b) which consists of the provision, in a place in or outwith the school, of residential accommodation,

but a service may be excepted from this definition by regulations.

(5) An "independent health care service" is any of the following—

(a) an independent hospital;

(b) a private psychiatric hospital;

(c) an independent clinic; and

(d) an independent medical agency.

(6) A "nurse agency" is a service which consists of or includes supplying, or introducing to persons who use the service, registered nurses, registered midwives or registered health visitors; but a service may be excepted from this definition by regulations.

(7) A "child care agency" is a service which consists of or includes supplying, or introducing to persons who use the service, child carers; but the expression does not include a nurse agency and a service may be excepted from this definition by regulations.

(8) In subsection (7) above, "child carer" means a person who—

(a) whether or not for reward; and

(b) whether on a day-to-day or on an occasional basis, looks after a child wholly or mainly in the home of the child's parents.

(9) A "secure accommodation service" is a service which provides accommodation approved by the Scottish Ministers in accordance with regulations made under section 29(9)(a) of this Act.

(10) An "offender accommodation service" is a service which consists of giving advice, guidance or assistance to persons who have been provided with accommodation under subsection (1)(b) or (c) of section 27 of the Social Work (Scotland) Act 1968 (c.49) (supervision and care of persons put on probation or released from prison etc.); but the expression does not include a support service.

(11) An "adoption service" is a service which is—

(a) maintained by a local authority under section 1(1) of the Adoption (Scotland) Act 1978 (c.28); or

(b) provided by a person other than a local authority and which consists of, or includes, the making of arrangements for or in connection with the adoption of children (whether the person functions generally or in relation to some service maintained, or to be maintained, as part of the Scottish Adoption Service).

(12) For the purposes of subsection (11)(b) above, the making of arrangements for the adoption of a child where the proposed adopter is a relative of the child is not an adoption service.

(13) In subsection (11)(b) above, "the Scottish Adoption Service" has the meaning given by section 1(4) of that Act of 1978.

(14) A "fostering service" is a service which is provided by—

(a) a local authority under paragraph (a) of section 26(1) of the Children (Scotland) Act 1995 (c.36) (fostering of children looked after by a local authority);

(b) a person other than a local authority and which consists of, or includes, the making of arrangements for or in connection with the performance of functions assigned to a local authority—

(i) under that paragraph; or

(ii) by virtue of section 5(2) to (4) of the Social Work (Scotland) Act 1968 (c.49) (regulations relating to performance of functions assigned to a local authority under that Act); or

(c) a local authority and which consists of, or includes, the functions assigned to the authority by sections 3 and 8 to 10 of the Foster Children (Scotland) Act 1984 (c.56) (ensuring well-being etc. of certain privately fostered children).

(15) The services mentioned in subsection (14)(a) and (b) above and registered under this Act may be collectively referred to as the "Scottish public fostering service"; and those mentioned in subsection (14)(c) above and so registered may be collectively referred to as the "Scottish private fostering service".

(16) An "adult placement service" is a service which consists of, or includes, arranging for the provision of accommodation for an adult (that is to say for a person who has attained the age of eighteen years), together with—

(a) personal care;

(b) personal support; or

(c) counselling, or other help, provided other than as part of a planned programme of care,

by reason of the person's vulnerability or need, by placing the person with a family or individual; but a service may be excepted from this definition by regulations.

(17) "Child minding" means, subject to subsections (18), (19) and (21)(a) below, looking after one or more children on domestic premises for reward and "act as a child minder" shall be construed accordingly; but a service may be excepted from those definitions by regulations.

(18) For the purposes of subsection (17) above, a person who—

(a) is the parent, or a relative, of a child;

(b) has parental responsibilities (within the meaning given by section 1(3) of the Children (Scotland) Act 1995 (c.36)) relating to the child;

(c) is a foster parent with whom a child is placed by a local authority; or

(d) maintains a foster child (within the meaning of the Foster Children (Scotland) Act 1984 (c.56)),

does not act as a child minder when looking after that child.

(19) For the purposes of subsection (17) above, where a person—

(a) looks after a child for the parents of the child and the work consists of looking after the child wholly or mainly in the parents' home; or

(b) looks after a child for the parents of the child (the "first parents") and another child for the different parents of that other child (the "second parents") and the work consists of looking after the children wholly or mainly in the first parents' home or in the second parents' home, or in both those homes,

that work is not child minding.

(20) "Day care of children" means, subject to subsections (21)(b) to (25) below, a service which consists of any form of care (whether or not provided to any extent in the form of an educational activity), supervised by a responsible person and not excepted from this definition by regulations, provided for children, on premises other than domestic premises, during the day (whether or not it is provided on a regular basis or commences or ends during the hours of daylight).

(21) For the purposes of—

(a) subsection (17) above, a person does not act as a child minder;

(b) subsection (20) above, a person does not provide day care of children,

unless the period, or the total of periods, during which the service is provided exceeds two hours in any day.

(22) Where a person provides a service for children in particular premises on less than six days in any year, that provision is not day care of children for the purposes of subsection (20) above if the person has notified the Commission in writing, before the first occasion on which the service is so provided in that year, of the intention so to provide it.

(23) In subsection (22) above, "year" means the year beginning with the day on which the service is (after the commencement of this section) first provided in the premises concerned; and thereafter any year beginning with the anniversary of that day.

(24) For the purposes of subsection (20) above, a service which consists of looking after children who are patients in a hospital and is provided as part of the medical treatment which they are receiving there is not day care of children.

(25) For the purposes of subsection (20) above, a person does not provide day care of children where—

(a) the children are of school age;

(b) the service is provided—

(i) wholly or mainly in a public, independent or grant-aided school; and

(ii) as part of the school's activities; and

(c) the person is—

- (i) the education authority managing the school
- (ii) the person carrying on the school; or
- (iii) a person employed to work at the school and authorised to provide the service as part of the school's activities.

(26) Expressions used in subsection (3)(b), (4) or (25) above have the meanings given by section 135(1) of the Education (Scotland) Act 1980 (c.44).

(27) A "housing support service" is a service which provides support, assistance, advice or counselling to a person who has particular needs, with a view to enabling that person to occupy residential accommodation as a sole or main residence; but a service may be excepted from this definition by regulations and such residential accommodation does not include accommodation specified as excepted accommodation in regulations under section 91(9) of the Housing (Scotland) Act 2001 (asp 10).

(28) In this Act, unless the context otherwise requires—

"someone who cares for" (or "a person who cares for") a person, means someone who, being an individual, provides on a regular basis a substantial amount of care for that person, not having contracted to do so and not doing so for payment or in the course of providing a care service;

"vulnerability or need", in relation to a person, means vulnerability or need arising by reason of that person—

- (a) being affected by infirmity or ageing;
- (b) being, or having been, affected by disability, illness or mental disorder;
- (c) being, or having been, dependent on alcohol or drugs; or
- (d) being of a young age;

"personal care" means care which relates to the day to day physical tasks and needs of the person cared for (as for example, but without prejudice to that generality, to eating and washing) and to mental processes related to those tasks and needs (as for example, but without prejudice to that generality, to remembering to eat and wash); and

"personal support" means counselling, or other help, provided as part of a planned programme of care.

## Appendix 2 – Definitions in Australian legislation

### 41-3 Meaning of *residential care*

(1) **Residential care** is personal care or nursing care, or both personal care and nursing care, that:

(a) is provided to a person in a residential facility in which the person is also provided with accommodation that includes:

(i) appropriate staffing to meet the nursing and personal care needs of the person; and

(ii) meals and cleaning services; and

(iii) furnishings, furniture and equipment for the provision of that care and accommodation; and

(b) meets any other requirements specified in the Subsidy Principles.

(2) However, residential care does not include any of the following:

(a) care provided to a person in the person's private home;

(b) care provided in a hospital or in a psychiatric facility;

(c) care provided in a facility that primarily provides care to people who are not frail and aged;

(d) care that is specified in the Subsidy Principles not to be residential care.

### 45-3 Meaning of *home care*

(1) **Home care** is care consisting of a package of personal care services and other personal assistance provided to a person who is not being provided with residential care.

### 49-3 Meaning of *flexible care*

**Flexible care** means care provided in a residential or community setting through an\*aged care service that addresses the needs of care recipients in alternative ways to the care provided through residential care services and home care services.<sup>(26)</sup>

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