Health and Community Care Committee

2nd Meeting, 2001 (Session 1)

Wednesday 17 January 2001

The Committee will meet at 9.30 am in The Chamber, Assembly Hall, The Mound, Edinburgh

1. **Regulation of Care (Scotland) Bill:** The Committee will take evidence on the general principles of the Bill at Stage 1 from—

   The Deputy Minister for Health and Community Care and the Scottish Executive officials responsible for the Regulation of Care Bill

   National Care Standards Committee

   Chief Executive of Board General Managers Group

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The following papers are attached for this meeting:

Agenda Item 1

Written submission from Chief Executives of Health Boards

HC/01/2/1

Agenda Item 1

17 JAN 2001
Health and Community Care
Committee

Health and Community Care Committee: Consideration of Regulation of Care (Scotland) Bill

Submission on behalf of Health Board Chief Executive Group

1. Introduction.

The Scottish Health Board Chief Executives welcome the opportunity to present evidence to the Committee on this important piece of legislation.

2. The reasoning behind the introduction of the Bill.

Health Boards welcome the major thrust of the Bill: to enhance the protection of the some of the most vulnerable members of our society. Boards can also identify with the twin mechanisms identified to achieve this: the regulation of care and the regulation of the social work profession.

There is no doubt that the improvement in the regulation of care is timely. The present system of nursing homes registered and regulated by Health Boards, of private and voluntary residential homes being registered and regulated by Social Work Departments and of some areas of care being unregulated must be unsustainable in the 21st century. The present undesirable situation is due to a variety of factors. The legislation used to regulate nursing homes predates the NHS by 10 years and was written for an era where few frail elderly people were cared for in nursing homes. Although slightly more modern, the legislation operated by Social Work colleagues is still 35 years old. Also, whilst local authority owned and operated homes have been inspected by arms length units over recent years, they remain unregistered. With the best will in the world, this causes voluntary and private operators to question the existence of the level playing field in care provision. Neither the nursing home, nor the residential home legislation is sensitive enough to adapt quickly to meet the needs for protection of vulnerable individuals who are cared for in innovative schemes which allow them to remain in the community.

The establishment of the Scottish Commission for the Regulation of Care should address many of these concerns. The increasingly artificial divide between residential and nursing home care will be removed by the creation of the single care home. The National Care Standards should ensure that a person receiving care from Stromness to Stranraer and from Campbeltown

to Crathie receives the same level of care regardless of the nature of the operator providing that care. This should reassure those NHS and social care staff working to commission and provide services for the affected client groups within the community, that standards will be maintained.

Health Board's very much welcome the proposals in the second part of the Bill to establish the Scottish Social Services Council. Given the key roles played by social work staff in complementing NHS care for very many vulnerable clients, their regulation as a profession in terms of education, registration, conduct & practice and removal from the register is a welcome assurance of professional standards. We look forward to seeing further detailed implementation guidance concerning the training and regulatory requirements and the overlap between NHS and social care staff.

In considering the Bill it is important to ensure that it remains sufficiently flexible to meet changing needs in the regulation of care and professional social work practice without the need for extensive and time consuming revision. As a general principle as much discretion as possible must be given to allow changing circumstances to be addressed by Regulations, Directions and other secondary devices.

3. Key Issues

There are a number of significant issues to which the Committee's attention is drawn. All should be taken in the context of the overall welcome for the objectives of the Bill.

Concerns about the Commission's remit and operation.

The concept of the single care home is a new one for both commissioners and providers of care. To date, very few Home operators have sought joint health/social work registration. The management, operational and staffing arrangements to turn the concept into reality will require close attention and detailed work both within the Executive and also local services. We are aware of the current ongoing work in this area and look forward to its conclusion.

The second concern relates to the National Care Standards. The idea of framing national standards is wholly appropriate but in order to deliver improved care for people, the standards must be enforceable and measurable. Based on the drafts issued to date for consultation it is unclear that either criterion can be met. It is also unclear what the expression "taken

into account" means in paragraph 5:2 (3) of the draft bill means. For the standards to bite, the Commission must be able to insist on their implementation.

A further issue relates to the funding of the Commission. It is understood, that the Commission will fund itself from fees charged to those it registers or those who seek registration. If this is correct, it is a cause of concern. The present fees paid by operators to Health Board's and Local Authorities may have to rise significantly to totally cover the Commission's costs. If this happens, the operators will have to reflect the increases in their fees for providing care, as the bulk of service users are publicly funded, the increased fees would have to be met from either local authority or DSS funds. The Committee's attention is drawn to this potential for a vicious circle to evolve. As a general principle providers must be given time to adapt to standards to ensure sufficient care remains available to meet the need. Phased introduction should be considered.

To balance these concerns, there are a number of new powers given to the Commission which are to be welcomed including the power to issue improvement notices, to impose conditions and to proceed with urgent cancellation of registration. Experience shows that had these powers been available to present regulatory authorities standards within homes would have been improved more quickly than has been possible. Encouragement can be inadequate but de-registration too severe.

For the Commission to be effective from its date of inception, it is essential that at least some of the existing NHS staff working in the field of regulation transfer to its employment. Whilst recognising that it is difficult for detail to be progressed in this area before the Bill becomes law, it is vital that the Executive maintain, and where possible improve their communication with these key staff in order to prevent their loss to the system. This is a real possibility if they cannot see an attractive and fulfilling career path ahead of them.

On a positive note also, the proposed introduction of conditional and unconditional approval, both in relation to registration and to the designation of "fit person" is a welcome graduation from the present, less flexible arrangement.

A cause of concern to rural and island Health Board's is the location of the Commission's regional offices. At present, local NHS and Local Authority

staff know the operators and senior staff of the Homes they regulate. These relationships work to the benefit of regulators, homes and most importantly clients. If these arrangements are disrupted by the Commission's organisation they will be difficult to reinstate. Whilst supportive of the small number of offices proposed, we would urge caution and consultation with existing staff in determining location and area covered; for instance it makes no apparent sense to split responsibility for an existing, co-terminous registration and inspection function between two regional offices.

Given the changing pattern of NHS services and closer working with social work colleagues the Commission and its regional staff will need to develop early and effective relationships with health and social work bodies and fully involve them in strategic planning and decision making processes.

The proposal to have a single visit to each Home/Establishment each year as the minimum requirement is a dilution of the current standards, whereby the minimum is two annual visits. Based on the experiences here, about the potential for standards to slip materially in some Homes in the absence of the rigour which the certainty of six monthly visits helps to bring to the system of registration and inspection there may be concerns.

Linked to this, the proposal to have single-handed visits feels less satisfactory than the current position where, typically, at least two inspectors will participate. The involvement of two inspectors is important not just in ensuring clarity and corroboration around the main findings and recommendations fed back at the end of each visit, but in addressing more serious deficiencies both currently and in implementing the proposed enforcement arrangements.

Health Boards would not wish to comment on matters affecting the Council.

4 Consequences of Enactment.

The enactment of the Bill will affect Health Boards at both the macro and micro levels.

At the macro level, all those vulnerable members of the population who need care should be assured of common standards, access to effective complaints procedures and other benefits of a single, national regulatory body. Similarly, those non NHS providers with whom we contract to provide services as part of NHS reprovision will deal with a single body regardless of their location, for those who operate multiple homes this means that they

will be spared their present frustration of meeting differing standards in different areas.

At the micro level, Health Board's will be relieved of one of their statutory duties and will lose a number of dedicated and in many instances long serving staff. Coupled with this will be a loss of financial resources.

5. Consultation

The consultation process preceding the Bill has been comprehensive. A consultation paper was issued following the original White Paper "Aiming for Excellence" was issued in November 1999 followed by a Policy Position Paper issued in July 2000, the first tranche of the National Care Standards was also subject to consultation. More generally, two helpful newsletters have been published. A concern among some colleagues in the health community has been that their comments on the various consultation documents have been overwhelmed by those of social care colleagues and thus lost from view. Whether private providers have received sufficient opportunity for consultation should be determined.

For the future, consultation must continue and must be directed at staff, their employers and their representatives, The current series of road shows being mounted by the Executive are a helpful start. The other group with whom communication must be enhanced are present and future users of the services to be regulated.