

## **THE CARE STANDARDS ACT 2000 AND 'SUPPORTING PEOPLE'**

For people with learning disabilities their income and the financial support for services depends on whether they live in a registered care home or in housing perhaps with additional support. The criteria for registration of care homes and their supervision is dealt with in the new Care Standards Act 2000. Housing with support is now dealt with under new *Supporting People* arrangements for support funding.

### **THE CARE STANDARDS ACT**

The Care Standards Act 2000 was passed on 20 July 2000. The Act aims at extending the regulation of social care and follows on from two white papers published by the Government in 1998 and 1999 entitled “Modernising Social Services and Building for the Future”. Care services in the housing sector range from residential care homes and nursing homes to domiciliary care. Up until now this range of care services has been regulated under the Registered Homes Act 1984. The 1984 Act was passed to protect the welfare of vulnerable adults in residential care in the private sector.

The current arrangements under the 1984 Act are unsatisfactory. There is a lack of consistency in the way the regulations are applied and there are some forms of supported housing, which are not being regulated, which ought to be. The aim of the Care Standards Act 2000 is to make sure that the care of vulnerable people, in different types of supported housing is properly regulated, to improve care standards and introduce consistency in the regulation of services provided.

#### **1. The main changes introduced by the Act**

- For the first time local authorities will have to be regulated and meet the same care standards as independent sector providers.
- The Act introduces a new, independent regulatory body for social care known as the National Care Standards Commission. The NCSC will monitor care homes on a national basis and they will no longer be regulated by local inspectorate units.
- The Government has the power to introduce minimum care standards
- The Act establishes a general social care council for England and a care council for Wales. The councils will register social care workers, regulate the training of social workers and raise standards in social care through codes of conduct and practice.
- Domiciliary care agencies will be registrable. Any organisation arranging for people in their homes to receive personal care must be registered.

#### **2. Definition of a care home**

A major change is the new definition of a care home, which must be registered. Accommodation will be registrable if care is being provided and that care includes assistance with bodily functions, where such assistance is required. The important factor will be whether or not assistance is available. If it is and personal care in the wider sense is actually being provided, the accommodation will constitute a care home and be registrable.

Although it does not appear in the Act another factor which will be relevant is that officials have from the DoH implementation team and ministers have said that the definition is not

intended to apply to someone's own home whether this is tenanted or owned outright. If someone holds a tenancy it is difficult to see how the rights conveyed under a tenancy can be consistent with the management requirements for registered care homes. A tenancy can be of self contained accommodation or of a room with some shared living space. If the landlord intends to create a tenancy, an agreement has been offered and rent paid it is not easy to see how this can be treated as a registered care home. It can however be regulated under the new arrangements for domiciliary care.

The Act does not define personal care, but it says that personal care does not include any activity prescribed by regulation. So it will be possible for the Government to exclude particular activities that might otherwise be considered to amount to personal care.

### **3. Financial consequences**

If a scheme is registered under current legislation, there are financial consequences. Residents in registered homes are not entitled to housing benefit. The cost of providing accommodation is paid in total by the local authority which has placed the person in the residential accommodation being provided and the individual has a small allowance.

### **4. Implementation**

The Care Standards Act sets out the framework but the detailed operational requirements will be introduced by regulation. The current Residential Care Homes Regulations 1984 are being reviewed by the Department of Health's Social Care Policy Group. The Department of Health expects to make available first consultation documents on national minimum standards this Autumn. This will be followed by other topics for consultation.

The headline dates we are working to at the present are as follows:

- "Fit for the Future" Standards published - Summer 2000
- Consultation on minimum standards and regulations - Autumn 2000
- Commission legally established - March 2001
- Minimum Standards and Regulations Published - Apr 2001 onwards
- Staff transfer to NCSC - 1 April 2002
- NCSC takes over regulatory duties from Local Authorities and Health Authorities together with new regulatory duties - 1 April 2002

There is a National Care Standards Commission Implementation Team in the Social Care Division at the Dept of Health. Details can be found on the government website including members of the team and contact details.

### **5. Problems with registration and inspection arrangements:**

The Audit Commission in *Home Alone* (1998) commented upon:

- the lack of regulation outside registered care e.g. sheltered housing
- the variation in registration requirements and the need for national standards
- residents being financially worse off in registered care
- clearer definition required for 'residential care' and the requirement to register

In the case of people with learning disabilities 75% of those receiving accommodation and support are in registered care homes but this varies widely in different part of the country.

The system has been useful in

- eliminating the obviously poor providers
- introducing a degree of independent supervision
- providing *some* protection for vulnerable people although the *Longcare* report showed how this could fail
- asserting the need for good material standards, eg facilities, fire precautions etc.
- simple tests and inspections which can identify weaknesses

But is seen to be weak because of:

- the inconsistency of the requirement to register and standards applied
- management and accommodation standards which can be incompatible with achieving an ordinary domestic environment and resident choice and control
- the incompatibility of tenants' rights with the degree of supervision required for registration
- limitations for residents - disposable income, access to benefits, incentive to work, independence and ordinary living
- registered care with a different financial structure from housing plus support
- failure to take account of the diversity of types of service and residents

There are potential problems with *Supporting People* arrangements for funding where people resident in a residential care home are unlikely to be eligible. Depending on the interpretation of 'personal care' the Act could require the registration of homes not at present registered.

## **6. Recommendations**

People with a learning disability should be helped to have their own home. The government aim of promoting independence and less reliance on registered care will be frustrated if services providing housing care and support are fitted into a residential care home model for regulation and administration. It is therefore suggested that

1. People holding a tenancy are more properly considered as having their own home and therefore not be treated as living in a registered care home. Regulation of domiciliary care could be registered through the agency providing that care.
2. Funding and benefit entitlement should not be linked directly to registration status but more properly depend on their tenancy or occupancy agreement
3. Where care is provided under an agreement separate from their housing this should more properly be treated as domiciliary care.
4. Where the local authority are purchasing support or care services these should additionally be supervised through contract monitoring and care management.