

FAQ on the Need for Regulatory Reform of Social Care Services

October 2021



Who is the Health Information and Quality Authority?

The Health Information and Quality Authority (HIQA) is an independent body set up to promote safety and quality in health and social care services for the benefit of the health and welfare of the public. Reporting to the Minister for Health and engaging with the Minister for Children, Equality, Disability, Equality and Youth, HIQA has responsibility for:

- setting standards for health and social care services
- regulating social care services nursing homes, care centres for people with disabilities and special care units for children
- regulating medical exposure to ionising radiation (for example, x-rays, CT scans, mammograms, radiotherapy)
- monitoring services
- evaluating and providing advice on health technologies
- the National Care Experience Programme.

What is HIQA's report on 'The Need for Regulatory Reform' about?

'The Need for Regulatory Reform' report provides a broad overview of the social care sector in Ireland and the regulations and standards that govern how it is provided.

It sets out an argument for regulatory reform by illustrating the challenges that HIQA's Chief Inspector experiences when inspecting compliance with regulations that are not currently effective. The report also highlights key areas where greater accountability is needed in terms of the delivery of social services.

What are some of the areas HIQA feels greater accountability is needed?

HIQA has proposed a number of reforms to the Minister for Health, including:

- carry out a full review of the current regulations for social care services in Ireland, and establish a regular review process

- reform the Health Act 2007 to take account of the changing and evolving health and social care landscape in Ireland
- introduce regulation into other forms of care that are currently unregulated and where service users may be vulnerable
- develop a framework that clearly distinguishes between the purchaser and provider of a service, and sets out with clear governance and accountability arrangements.
- develop a comprehensive, integrated social care policy that considers all of social care alongside the Sláintecare policy.

Why is there a need for regulatory reform of the health and social care sector?

Social care in Ireland is changing. Existing approaches towards the provision of care for older people and people with a disability are being challenged. The arrival of COVID-19 in Ireland has highlighted weaknesses in the regulation of social care services, many of which have been present over the last number of years due to the evolving nature and provision of social services. At present,

there is no overarching social care policy or legislation that outlines clearly what the State's role is in the identification and addressing of the social care needs of its elderly and more vulnerable populations. In some instances, it is this absence of clarity regarding the State's responsibility that has led to the anomalies that are described in this report.

What is meant by 'designated centre'?

'Designated centres' are the services that HIQA can regulate and are defined in the Health Act 2007, as amended, as:

- nursing homes
- residential services for people with disabilities
- children's special care units.

In order to be registered, services must meet the definition of a 'designated centre' as set out in the Act. What constitutes a designated centre differs depending on the type of care or support being provided.

What types of social care in Ireland are not formally regulated?

There are a number of social care services in Ireland that are not formally regulated. These include:

- supported and or assisted living and sheltered housing
- personal assistance
- day services
- homecare
- home sharing
- respite
- short-stay or convalescence or step down units
- hospice and or palliative care
- live-in service.

What regulations govern the care and welfare of older people and people with disabilities?

The regulations which set out the rules for the care and welfare of older people and people with disabilities are:

- The Health Act 2007 (Care and Support of Residents in Designated Centres for Persons

(Children and Adults) With Disabilities)
Regulations 2013(19)

- The Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013(2).

The regulations governing nursing homes have been in place since 2009 and were revised in 2013, with an amendment in 2016. The disability regulations have been in place since regulation of this sector started in 2013. These regulations outline how care should be delivered, the rights of people using services and the responsibilities of the person in charge and the registered provider of the centre. The regulations are a key tool that provide assurance to the public that people living in designated centres are receiving a safe, high-quality service.

What is the difference between 'regulation' and 'standards' in social care provision?

The terms 'regulations' and 'standards' are often used interchangeably, but in the context of social care in Ireland, there are important distinctions. Regulations are instruments through which the Government seeks to deliver its policy priorities. They are legally enforceable and all designated

centres must comply with regulations. They set out the basic requirements for a service and can be regarded as a minimum level of quality and safety. Standards, on the other hand, set the bar for quality and safety somewhat higher than regulations. They are devised by HIQA through research and consultation with a range of stakeholders and approved by the Minister for Health. Standards are not legally enforceable, but all designated centres should strive to meet them.

What does HIQA want to change in the current regulations?

Currently in Ireland, all designated centres are governed by the same regulatory framework. This 'one-size-fits-all' approach means that people with a wide range of care needs and functional capacities are subject to the same regulations, be that in a nursing home or a disability service.

HIQA is proposing a move towards a service-based model of regulation, meaning that more care recipients and service users will be protected through a system of independent regulation. Each distinct care setting should be clearly defined, with regulations tailored to specify the needs and

supports available for the people who use the service.

What are the key benefits of regularly reviewing regulatory frameworks?

Regular reviews of regulatory frameworks would ensure that the original objectives of the regulations are still valid and or being achieved. These reviews would be key to measuring whether the regulations are effective. Regular reviews would allow regulatory objectives to be improved or removed in light of legal, economic or social changes.

What is a statutory notification?

The regulations for designated centres also set out a list of incidents or events that must be reported to the Chief Inspector.

The types of notifications can be split into two broad groups:

- those that must be notified within three days
- those that must be submitted on a quarterly basis (every three months).

How would HIQA change the statutory notification process?

It is HIQA's view that the suite of notifications required from designated centres should be reviewed. This should give consideration to the timescales of notifications, the merit of existing notifications, the inclusion of new notifications and an evidence-base for all of the above.

What are 'escalation' and 'enforcement' processes and how does HIQA want them changed?

If a registered provider is deemed to have failed in its legal obligation to meet HIQA's standards of service provision, it may be subject to enforcement action. This is a legal process which may result in court proceedings and/or prosecution.

Escalation is defined as increased regulatory activity up to and including the decision to take enforcement action.

At present, the escalation and enforcement options available to the Chief Inspector are somewhat blunt. Although the Chief Inspector can attach restrictive conditions to a provider's registration, s/he can also go to the courts to seek de-

registration of a designated centre in cases of serious non-compliance or risk to the safety and wellbeing of residents.

In many cases this is not a proportionate response and it does not necessarily improve the safety and welfare of residents or achieve regulatory compliance.

HIQA believes there is a need to develop legal arrangements that allow the Chief Inspector to deal with varying degrees of non-compliance.

What does HIQA mean by an 'accountability framework'?

There is an ethical, moral and fiscal responsibility for the purchaser of services, on behalf of the government, to be held to account.

While the regulatory framework places the responsibility on the registered provider to deliver appropriate services, HIQA is of the belief that accountability must also lie at the point at which services are procured.

HIQA is of the view that an accountability framework is of fundamental importance. Such a framework would explicitly separate out the role

and provisions of the purchaser and the provider of services.

What is Sláintecare?

Sláintecare is the 10-year roadmap to reform of the health and social care sector in Ireland. Central to Sláintecare is the idea of a universal single-tier health and social care system where everyone has equal access to services based on need, and not ability to pay.

Its principle policy is to get 'the right care, in the right place, at the right time', meaning that people with care needs should continue to live in their own homes and communities for as long as possible.

How can the burden of regulation on designated centres be reduced?

Regulation should be reformed in order to reduce the burden on all parties. Reforms may be administrative in nature, for example a reduction in the number of forms and paperwork that must be submitted or retained by a service provider, or they might include a review of the regulations to ensure that unnecessary elements are removed.

What are HIQA's next steps for regulatory reform of the health and social care sector?

HIQA's report on 'The Need for Regulatory Reform' of health and social care services was presented to the Minister for Health, the Minister of State with special responsibility for Mental Health and Older People, as well as members of the Oireachtas in February of 2021.

The report in full can be read [here](#).



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