

Standing Order 31 - Feasibility Report

Original motion NNDM 3280 tabled by Tamsin Dunwoody AM, debated and agreed in Plenary on 14 November 2006.

To propose that the National Assembly for Wales, acting under Standing Order 31.2, supports in principle legislation to:

To make regulations under S42 of the Care Standards Act 2000 to:

Provide for the inspection of private dental practices in Wales and the introduction of mechanisms for reporting any findings.

Summary

To report to National Assembly Members on the feasibility of making changes through regulation to provide for the inspection and regulation of private dental practices / treatment in Wales and the introduction of mechanisms for reporting any findings.

The Feasibility Report responds to a Standing Order 31 Debate by Assembly Members on 14 November 2006 when there was a vote in favour of an agreement in principle to the aims of the motion.

The Feasibility Report sets out proposals to put the principle behind the motion into practice. The proposals involve:

- Making regulations under S42 of the Care Standards Act 2000. The use of section 42 of the Care Standards Act 2000 and the provision of the whole of Part II of the Care Standards Act (to apply to persons who provide private dental services which are akin to those which may be provided by the NHS) encompasses registration, regulation and enforcement (including both civil and criminal enforcement).
- Practitioners, who provide private dental treatment (including practitioners whose practices are NHS funded who provide private dental treatment), registering under the Care Standards Act 2000. It is proposed that Healthcare Inspectorate Wales (HIW) will be responsible for this requirement and for dealing with any offences, such as failure to register or to comply with the regulations.
- HIW having the option to commission the Dental Reference Service (DRS), an internal unit of the NHS Business Services Authority, to undertake inspection visits in relation to private dental practices / treatment. (The DRS currently carries out inspections, on behalf of the Welsh Assembly Government and Local Health Boards, of NHS funded dental practices / treatment and monitor the standard of record keeping).

- It is proposed that the inspection of private dental practices / treatment, provided by NHS funded practices (“mixed practices”) and wholly privately funded dental practices, will be against the same standards for healthcare (Healthcare Standards for Wales) as that currently applied to NHS funded dental treatment.
- The Chief Dental Officer supports the use of the DRS undertaking this inspection work since this arrangement will ensure continuity of professional expertise and will minimise additional inspection costs. Importantly, the DRS is also part of a statutory body - the NHS Business Services Authority, which is a Special Health Authority.
- Should DRS undertake inspections of wholly private or mixed practices they will report their findings on the private elements to HIW who will take forward any findings as appropriate.

Background

1. Motion NNDM 3280 was tabled by Tamsin Dunwoody AM, and debated and agreed in Plenary on 14 November 2006. The motion proposed that the National Assembly for Wales, acting under Standing Order 31.2, supports in principle legislation to make regulations under S42 of the Care Standards Act 2000 to provide for the inspection of private dental practices in Wales and the introduction of mechanisms for reporting any findings.

2. The Health and Social Care (Community Health and Standards) Act 2003 conferred on the National Assembly for Wales powers and functions to conduct reviews of, and investigations into, the provision of health care by and for Welsh NHS bodies, together with powers of the rights of entry, powers to require documents and information, and powers to require explanation. The functions and powers conferred on the National Assembly under the Act have been delegated to Healthcare Inspectorate Wales (HIW), a unit of the Welsh Assembly Government. HIW was launched on 1 April 2004.

3. The HIW inspection framework includes:

- Inspecting NHS bodies and service providers against national standards, agreements and clinical governance guidance.
- Assessing the management arrangements in place to deliver clinical and NHS services.
- Assessing the quality of NHS services across agencies/sectors.

4. On 1 April 2006, HIW was also established as the regulator of independent healthcare and has delegated authority for its regulatory decisions under the Care Standards Act.

5. The NHS Business Services Authority (BSA) is a cross-border Special Health Authority and is jointly funded through the Welsh Assembly Government and the Department of Health.

6. The BSA, through its internal unit the Dental Reference Service (DRS), carries out inspection of NHS funded dental treatment in Wales. The DRS resides within the BSA Dental Practice Division and its workforce of qualified dentists, based across Wales and England, supports Local Health Boards in Wales and Primary Care Trusts in England in their role as local service commissioners.

7. During surgery visits the DRS will, on behalf of the Welsh Assembly Government / Local Health Boards carry out inspections of NHS funded dental practices / treatment and monitor the standard of record keeping.

8. The DRS produces a report following each practice visit and each patient examination, thus helping to maintain high quality dentistry through clinical governance /quality assurance. The Local Health Board, through the DRS, will wish to gain assurance that quality of NHS dental care accords with the Healthcare Standards for Wales. The Healthcare Standards for Wales, which were published in May 2005, sets out the Welsh Assembly Government's common framework of healthcare standards to support the NHS and partner organisations in providing effective, timely and quality services across all healthcare settings.

9. The DRS is an integral part of the NHS dentistry clinical governance arrangements in place in Wales and England.

Objective

10. The purpose of this Feasibility Report is to respond to the initial motion as agreed in Plenary on 14 November 2006. It sets out proposals for making changes through regulation to provide for the inspection and regulation of private dental practices / treatment in Wales.

Scope of the Initial Motion

11. The initial motion provides for the inspection of wholly private dental practices in Wales and the introduction of mechanisms for reporting any findings. In this context, the inspection of private dental practices will include the monitoring of dental treatment. The motion, however, does not provide for the inspection of private dental treatment provided by dentists whose dental practices are NHS funded i.e. the mixed practices. Plenary discussions on 14 November 2006 made reference to private dental treatment provided by dentists whose dental practices are NHS funded and implied that this area of work was currently subject to inspection. It has been confirmed that private dental treatment, provided by dentists whose dental practices are NHS funded, is not currently subject to inspection.

12. It has been agreed, following discussion with Tamsin Dunwoody, to extend the scope of the initial motion to the inspection of private dental treatment provided by dentists whose practices receive NHS funding.

Legislation

13. The Assembly has the power to make regulations under section 42 of the Care Standards Act 2000, which can provide for Part II of the Care Standards Act to apply to prescribed persons, including persons providing dental services privately.

14. The use of section 42 of the Care Standards Act 2000 and the provision of the whole of Part II of the Care Standards Act (to apply to persons who provide private dental services which are akin to those which may be provided by the NHS) encompasses registration, regulation and enforcement (including both civil and criminal enforcement).

15. Section 42 of the Care Standards Act 2000 however does not extend to treatment that cannot be provided by the NHS e.g. wholly cosmetic treatment - this aspect of treatment is being addressed through amendments which are currently being considered in relation to the Private and Voluntary Healthcare Regulations. It is considered unlikely that many dental practices in Wales provide wholly cosmetic treatment.

16. Assembly lawyers have considered whether, from an NHS healthcare perspective, existing legislation could be applied to the regulation / inspection of private dental treatment. In terms of NHS functions (most typically the NHS healthcare review functions as set out in Chapter 4 of Part 2 of the HSC (CH&S) Act 2003 or any general powers under the 1977 Act) they would not be of relevance because they deal with care provided under the NHS rather than privately funded care.

Consultation

17. The Chief Dental Officer has discussed the proposals of the motion with representatives of the General Dental Council, the Dental Reference Service and a UK provider of financial services to dentists offering dental care under private arrangements. All the above parties welcome the intentions of the motion. Officials have also discussed the proposals with the British Dental Association.

18. Subject to plenary approval, the regulations will be drafted over the coming months. The draft regulations will be subject to formal consultation.

Developments in England and Scotland

19. The motion to inspect and regulate private dental practice / treatment is consistent with the recent developments in England and Scotland.

20. The consultation document “ *The Future Regulation of Health and Adult Social Care in England*” published in November 2006 sets out the health reform programme in England. The consultation document makes reference to the future regulatory structure in England which includes the regulation of privately funded healthcare (which will encompass private dental treatment).

21. NHS Quality Improvement Scotland / Scottish Executive published, in December 2006, *National Standards for Dental Services*. These standards apply to any private dental service (including private treatments providing alongside NHS treatments in “mixed practices”) and any primary care NHS dental services (including those provided by community dentists). The Scottish Commission for the Regulation of Care will assess applications from people who want to provide private dental services. It will also inspect the services to make sure that they are meeting the regulations and, in doing so, will take account of the national care standards.

Evidence for Change

22. There is, currently, no regulation and inspection of private dental treatment that is offered to the public in Wales.

23. At November 2006 there were 1022 dentists recorded as being on the NHS payment system. Although dental practices in Wales that are NHS funded are subject to inspection of NHS funded dental treatment through the Dental Reference Service (DRS), DRS inspections do not extend to private dental treatment provided by NHS funded practices. Although exact figures are not available, many of the dentists working for the NHS also offer private dental treatment.

24. No information is currently collected on the number of wholly privately funded dental practices in Wales, but it is estimated that there are approximately 20 wholly privately funded dental practices that involve approximately 50 practitioners.

25. Given the current level of private dental treatment in Wales, together with the potential for private dental treatment to increase, there is a strong need to ensure that private dental treatment offered to the public in Wales is subject to inspection against the same standards of healthcare as that applied to NHS funded dental treatment i.e. against Healthcare Standards for Wales.

26. The incident involving a Gwynedd healthcare dental worker providing private dental treatment that involved the screening of over 5000 patients for HIV as well as hepatitis B and C by the National Public Health Service in May 2006 also re-enforces the need for regulation and inspection in relation to private dental practices / treatment.

27. The inspection of private dental practices / treatment against the same standards of healthcare applied in NHS practices is integral to the on-going development of safe, high quality care for all patients in Wales.

Delivery of the objectives

28. It is proposed that all dental practitioners who provide private dental treatment will be registered under the Care Standards Act 2000.

29. As part of the registration process, practitioners will be required to meet a level of fitness that will be set out in the Regulations. The requirements of the level of fitness will include an aim to replicate the requirements of the NHS dental performers list (under the Performance List Regulations for Wales, dentists may not perform any primary dental services unless their name is included on a Dental Performers List). It is proposed that HIW will be responsible for registering the practitioners who provide private dental treatment (including practitioners whose practices are NHS funded). Providing private dental treatment without being registered will be a criminal offence.

30. HIW will also be responsible for regulating and inspecting private dental practices / treatment and dealing with offences, such as failure to comply with the regulations. In reaching decisions as to registration and enforcement HIW will take into account a statement of National Minimum Standards which will incorporate the Healthcare Standards for Wales.

31. It is proposed that HIW has the option to commission the BSA (through its internal Unit the DRS), subject to arrangements pursuant to section 83 Government of Wales Act 2006, to inspect private dental practices / treatment.

32. The Chief Dental Officer supports the use of the DRS since these arrangements:

- will help to ensure the continuity and consistency of professional expertise across the NHS and private dental sector.
- will help to minimise additional regulatory and inspection costs.
- will help to minimise the burden of regulation and inspection.

33. Given the need to minimise the bureaucratic burden of regulation and inspection, it is envisaged, that for mixed practices both the NHS and private components will be inspected during the same visit. It is also proposed that HIW has the option to use the DRS to undertake inspection of wholly funded private practices and dental treatment.

34. Should DRS undertake inspections they will report their findings to HIW who will prepare a report and take forward any enforcement action.

Options

35. (a) To delay making regulations until developments in England become clearer.

The consultation document “ *The Future Regulation of Health and Adult Social Care in England*” published in November 2006 by the Department of Health sets out the future structure of regulation in England. This includes the regulation of privately funded healthcare, which will include private dental treatment.

Advantages - the regulation of private dental treatment can be taken forward from an England and Wales perspective. This would ensure a consistency of

approach if Wales decide to mirror proposals in England and to consider joint legislation

Disadvantages – The consultation document *The Future Regulation of Health and Adult Social Care in England* sets out proposals for a new health regulator in England following the proposed merging on The Healthcare Commission, The Mental Health Act Commission and the Commission for Social Care Inspection. The merge of these bodies is anticipated to come into effect April 2008 with the new regulator being fully operational by 2009/10. Consequently, it is possible that regulation of private dental treatment may not be addressed until 2009/10 given the competing priorities of the new regulator.

It is considered that the potential timescales for England to address regulation of private dental care is, potentially, too distant to be a practical option to consider.

36. (b) Not to inspect / regulate private dental treatment

Advantages - The resources devoted by HIW (in registering, regulating and enforcing the Care Standards Act) and the resources devoted by DRS (in inspecting private dental treatment) can be redeployed.

Disadvantages – The public in Wales will gain no assurance on the quality of private dental facilities /dental treatment.

Given the potential for private dental treatment to grow and complement a developing NHS sector, it is considered that the advantages of inspection and regulation outweigh the disadvantages.

Financial Implications

37. Additional costs associated with the regulation and inspection of private dental treatment is anticipated to be in the region of £90,000 per year. It is anticipated that these costs can be funded from existing and future Assembly budgets.

Recommendation

38. Members are asked to consider the proposals in the draft Feasibility Report and will have the opportunity to discuss these proposals at a Plenary Debate on 14 March 2007.

To propose that the National Assembly for Wales, acting under Standing Order 31:

1. Welcomes the proposal set out in the motion tabled by Tamsin Dunwoody [NNDM 3280] and agreed in Plenary on 14 November 2006.

2. Agrees the proposed way forward set out in the feasibility report laid in table office and emailed to Assembly Members on 7 March 2007, which includes the inspection and regulation of private dental treatment provided by dentists whose practices are NHS funded, and the intention to take forward related supporting secondary legislation.

3. Recommends the National Assembly for Wales proceeds with the proposal.

39. In line with the terms of Standing Order 31 procedure Tamsin Dunwoody (sponsor of the initial motion) has been consulted on the proposals set out in this report.