

Explanatory Memorandum to the Private and Voluntary Health Care (Wales) (Amendment) Regulations 2009

This Explanatory Memorandum has been prepared by the Department of Health and Social Services and is laid before the National Assembly for Wales in accordance with Standing Order 24.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Private and Voluntary Health Care (Wales) (Amendment) Regulations 2009. I am satisfied that the benefits outweigh any costs.

Mrs Edwina Hart MBE OStJ AM

Date: 8 December 2009

Description

1. The new Regulation 24(1A) of the Private and Voluntary Health Care (Wales) (Amendment) Regulations 2009 places a limit on the number of beds an independent hospital may provide where treatment or care is provided for patients with a learning disability whose treatment is anticipated to extend beyond a 12-month period.

Matters of Special Interest to the Subordinate Legislation Committee

2. None.

Legislative background

3. Independent hospitals, as defined in section 2 of the Care Standards Act 2000, must register with Welsh Ministers, through Healthcare Inspectorate Wales (HIW). The Private and Voluntary Health Care (Wales) Regulations 2002 are made under the Care Standards Act 2000. Section 22 (2) of the Care Standards Act 2000 provides that Welsh Ministers may make regulations in relation to private independent hospitals which relate to the fitness of premises to be used. Section 23 of the Act confers powers on Welsh Ministers to publish statements of national minimum standards.

4. This instrument will follow the negative resolution procedure. This means that it will be made and laid before the Assembly but should not be brought into force until at least 21 (calendar) days from the date of laying. However,

Standing Orders also specify a 40 (calendar) day period (not including periods when the Assembly is in recess) which also commences from the date of laying whereby a Member may table a motion seeking the annulment of the instrument. Unless an annulment motion is tabled, there shall be no debate of this instrument in Plenary

Purpose and intended effect of the amendments

5. Independent hospitals operating in Wales must be registered with Welsh Ministers, through Healthcare Inspectorate Wales (HIW), under the Care Standards Act 2000. The Private and Voluntary Health Care (Wales) Regulations 2002 (the Regulations) made under the Care Standards Act 2000, do not specify the size / congregation of the client groups in independent hospitals. It was considered that, in the absence of regulatory guidance, there was the potential for large-scale independent hospitals to be registered with HIW. It was considered that this would raise concerns about the quality of healthcare for people with a learning disability who may receive care in a larger-scale independent hospital and which may also treat persons with mental illnesses, and whether this care would provide a desirable home-like least restrictive environment

6. The new Regulation 24(1A) addresses these concerns by requiring that:
- a) An independent hospital providing treatment and care for patients only with a learning disability, whose treatment is anticipated to extend beyond a 12-month period, and for whom overnight accommodation is provided must not exceed 10 beds, and where reasonably practicable, provided in two or more units.
 - b) An independent hospital providing treatment and care for patients with a mental illness (including those in low and medium secure accommodation) and also for patients with a learning disability, whose treatment is anticipated to extend beyond a 12-month period in the same establishment, and for whom overnight accommodation is provided, must not exceed 15 beds, and where reasonably practicable, provided in two or more units.
 - No other independent hospital shall be located in close proximity to an establishment of the type mentioned in sub-paragraphs (a) or (b) in such a way as it might be considered a “multiple” of the original establishment, and therefore might affect the rationale and purpose of restrictions on the number of patients in establishments as provided in this regulation.

Consultation

7. Details of the consultation undertaken are provided as part of the Regulatory Impact Assessment. The proposed amendment to the Regulations, the proposed statutory supporting guidance, and the proposed change to the National minimum Standards, was subject to a three-month consultation which closed on 16 February 2009. **Annex 1** details who was consulted on the proposals.

8. 28 responses were received - **Annex 2** refers. Only a small number of the responses received did not support the proposals.

9. The following issues were highlighted seeking clarity on the interpretation of the proposals:

- It was suggested that the proposed amendment to the Regulations should be applied retrospectively or, at least apply to all services, in, say, two years time.
- The complexity of diagnosis and treatment may make it difficult to predict lengths of treatment stays.
- If establishments of 10 beds, either in one or two units were provided, the unit costs would increase substantially and may impact on publicly funded places.
- It was suggested that the word “ideally” be removed in the guidance in relation to beds being provided in two or more units, to provide greater clarity about the number of units and the maximum number of people to be accommodated in any one unit.
- It was suggested that there should be no more than 10 persons in any independent hospital.
- It was suggested that the term ‘whose treatment is expected to extend beyond a twelve month period’ is an arbitrary figure and whilst providers may state that it is their intention to provide care for a shorter length of stay to overcome the need for meeting the guidance, in practice patients will stay longer .
- Clarity was sought as to whether the proposed amendment to the Regulation applies to all independent hospitals treating this patient group regardless of whether the accommodation is classed as secure accommodation.
- A range of comments were received on the proposals for patients to be cared for in single-sex environments, including:
 - Single- sex accommodation was not always desirable or feasible and to implement this requirement would have significant resource implications.
 - There was no evidence to support the benefits of single- sex accommodation over mixed-gender provision.
 - Where patients are accommodated in single-sex accommodation, subject to appropriate assessment, there was a need for men and women to be able to interact socially.
 - It should be made a requirement to provide en-suite facilities for each bedroom.
- It was suggested that the proposed guidance should require accommodation to be in home-like environments giving service users the opportunities to access all domestic areas in the house, and personalise their living environments.
- It was suggested that the statement “ Local Health Boards are asked to consider this guidance” was not strong enough and could lead be a loophole since the words “are asked” could be interpreted as optional.
- Clarity was sought as to whether the same policy (in relation to the number of beds provided in one or two units) applies also to the NHS.

- Persons with a learning disability, who are Welsh speaking, should be able to receive services in their first language.
- It was suggested that the evidence in the Learning Disability Implementation Advisory Group (LDIAG) report related more to the resettlement of people with Learning Disabilities from NHS institutions (which were essentially their homes) into the community, than independent hospitals providing treatment. It was also suggested that the LDIAG report should have included reference to the Reed Report.

10. The Welsh Assembly Government's response to the consultation is set out in **Annex 3**, together with proposed amendments to the supporting statutory guidance.

11. In September 2009, Legal Services (following advice from Legislation Committee lawyers) advised that the proposed intention for Welsh Ministers to implement the proposed changes by issuing statutory guidance under the Care Standards Act 2000, supporting the proposed amendment to the PVH Regulations 2002, was not now the best course of action, since it was considered that the powers for Welsh Ministers to issue statutory guidance under the Care Standards Act 2000 is not sufficiently clear and could be outside the scope of the powers of Welsh Ministers. Consequently, Legal Services have advised that the changes which were to take effect by statutory guidance will be better implemented by Regulation, specifically by amending the PVH Regulations 2002 and inserting a new Regulation 24(1A).

12. Accordingly, It is proposed that new Regulation 24(1A) sets out the following requirements:

- An independent hospital providing treatment and care for patients with a learning disability, whose treatment is anticipated to extend beyond a 12-month period, and for whom overnight accommodation is provided must not exceed 10 beds, and where reasonably practicable, provided in two or more units.
- An independent hospital providing treatment and care for patients with a mental illness (including those in low and medium secure accommodation) and also for patients with a learning disability, whose treatment is anticipated to extend beyond a 12-month period in the same establishment, and for whom overnight accommodation is provided, must not exceed 15 beds, and where reasonably practicable, provided in two or more units.
- No other establishment shall be located in close proximity to an establishment of the type in such a way as it might be considered a "multiple" of the original establishment, and therefore might affect the rationale and purpose of restrictions on the number of patients in establishments as provided in this regulation.
- Transitional Provisions

- This regulation applies to all new applications to register or vary an existing registration of an independent hospital with the Welsh Ministers which are made on or after 1 February 2010.
- Applications made prior to 1 February 2010 which can reasonably be determined by the Welsh Ministers within three months of the CIF date will not need to meet the requirements of these Regulations.
- Applications made prior to 1 February 2010 which cannot reasonably be determined by the Welsh Ministers within three months of the CIF date will need to meet the requirements of these Regulations.

13. Amending the PVH Regulations 2002, instead of using statutory guidance, will have no practical effect on the way that the change to the size of independent hospitals will be regulated and implemented.

14. The statutory guidance also made reference to the provision of single sex, gender specific accommodation and facilities. The single- sex accommodation requirements, currently required in the National Minimum Standards (C19.7; M27.2; M27.3 M38.2) will be revised to include the need for gender specific toilet and washing and bathing facilities to be accessed via a single sex route. The need for NHS organisations to take the requirements of the new regulation into account when commissioning future care from independent hospitals will be communicated separately to NHS organisations.

Regulatory Impact Assessment

Options

11. Option 1: To amend the Private and Voluntary Health Care (Wales) Regulations 2002 to place a limit on the number of beds a private independent hospital may provide where treatment or care is provided for patients with a learning disability whose treatment is anticipated to extend beyond a 12-month period.

Advantages - This amendment will assist in ensuring a high quality of healthcare for people with a learning disability being treated in a private independent hospital. The amendment reflects the advice provided to the Assembly Government by a sub-group of the Learning Disability Implementation Advisory Group which highlighted the superiority of small scale community schemes over cluster housing and that non-congregate care services provide better outcomes for service users with behavioural challenges than congregate facilities.

Disadvantages – It is possible that some independent healthcare providers may question the economic viability of independent hospitals which have a limit placed on the number of beds which may be provided where treatment or care is provided for patients with a learning disability whose treatment is anticipated to extend beyond a 12-month period.

12. Option 2: Do nothing.

Advantages – There will be no effect on independent healthcare providers.

Disadvantages – The concerns about the quality of healthcare for people with a learning disability, who may receive care in a larger scale private independent hospital (which may also treat persons with mental illnesses) will remain - since this will not provide a desirable home-like least restrictive environment for care and treatment (in line with Welsh Assembly Government policy for people with a learning disability)

Costs and Benefits

13. There are no financial implications for Healthcare Inspectorate Wales arising from the proposed new Regulation.

14. This amendment will assist in ensuring a high quality of healthcare for people with a learning disability being treated in a private independent hospital.

Competition Assessment

15. Independent hospital treatment and care for persons with mental illnesses (in low and medium secure accommodation) and care for persons with a learning disability in Wales is provided by a relatively small number of healthcare providers in Wales. It is considered unlikely that these proposed amendments will act as restriction on new market entrants. Entry barriers to this market are currently high given the specialists type of healthcare and the need for highly qualified staff. It is considered that the proposed amendments do not favour or affect any particular organisation within the market sector and that placing a size restriction on independent hospitals providing care only for persons with a learning disability will not materially impact the future economic viability of such independent hospitals. Some independent hospital providers already provide care for people with a learning disability in smaller settings. The restriction only applies to independent hospital accommodation for persons with a learning disability. Therefore if an independent healthcare provider wished to operate another type of regulated service on the same site or in close proximity, no restriction would apply.

Post Implementation Review

16. The effect of the legislation will be monitored by reviewing registration applications made to Healthcare Inspectorate Wales after 1 February 2010 by independent hospitals seeking to register independent hospitals providing care for people with a learning disability. A review will be undertaken to assess compliance against the new regulation.

List of organisations / persons consulted

Independent acute and mental health hospitals registered with Healthcare Inspectorate Wales under the Care Standards Act 2000
The Learning Disability Implementation Advisory Group
Mencap Cymru
Healthcare Inspectorate Wales
Care and Social Services Inspectorate for Wales
Health Commission Wales
Learning Disability Wales
All Wales Forum of Parents and Carers
National Autistic Society of Cymru
Autism Cymru
All Wales People First
Downs Syndrome Association
All Wales Community Living Network
Wales Council for Voluntary Action
The Priory Group
Capio Nightingale Hospitals
Craegmoor Healthcare
Cygnet Healthcare
The Inmind Healthcare Group
Partnerships in Care Ltd
St Andrew's Group of Hospitals
The Hospital Management Trust
Spire Healthcare
Ramsay Healthcare UK
Nuffield Hospitals
HCA International
Aspen Healthcare Limited
Abbey Hospitals
Local Health Boards
NHS Trusts - psychiatrists, clinical psychologists, clinical social workers, psychiatric nurses, mental health / learning disability nurses
Directors of Social Services
Welsh Local Government Association
Members of the National Assembly for Wales
The Association of Directors of Social Services Cymru
The Royal College of Psychiatrists
The Royal College of Psychiatrists (Welsh Division)
Welsh Advisory sub-committee in Mental Health
The Royal College General Practitioners
Welsh Applied Psychology Advisory Subcommittee
The Senior Mental Health Nurses
The Royal College of Nursing
The Welsh Therapies Advisory Committee
Healthcare Commission

Care Forum Wales
Children's Commissioner for Wales
Commissioner for Older People in Wales

Annex 2

List of organisations / persons who responded

Organisation

Craegmoor Healthcare
City and County of Swansea, Social Services Department
Velindre NHS Trust
Special Projects Team, Directorate of learning Disability, ABM University
NHS Trust
Welsh Nursing and Midwifery (no organisation name provided)
People First, Porth
Welsh Language Board
ABM University NHS Trust
Bridgend Local health Board
Blaenau Gwent County Borough Council
Partnerships in Care (Llanarth Court)
Rhondda Cynon Taff LHB
Rhondda Cynon Taff RCT Learning Disability Multi Agency Partnership
Group
Camarthenshire County Council
Learning Disability Directorate Gwent Healthcare NHS Trust
Caerphilly LHB
Ludlow Street Healthcare Group Ltd
Mencap Cymru
North Wales Health Trusts Learning Disability Network
Welsh Faculty of Learning Disabilities of the Royal College of Psychiatrists
Not specified
Learning Disability Wales
ARC Cymru, part of the UK-wide Association for Real Change
Drive Ltd
Cartrefi Cymru
Ategi
Community Lives Consortium
The Learning Disability Implementation Advisory Group

The Welsh Assembly Government's Consultation Response

1. Issue: Will the proposed amendment to the Regulations be applied retrospectively?

Response: No. The proposed amendment to the Regulations will not be applied retrospectively. The intention is for the proposed amended Regulation to apply to all applications for registration or applications to vary any condition(s) of registration submitted after the new regulation comes into force. It is proposed to allow a transitional period of three months, from the date the new regulation comes into force, for applications to be determined by HIW which were submitted prior to the coming into force date. Applications received before the coming into force date and that can be determined by 1 April 2010, will not need to meet the requirements of the new regulation. Applications received before the coming into force date that cannot be determined by 1 April 2010 must meet the requirements of the new regulation.

2. Issue: A timescale for all such hospitals (including any equivalent NHS facilities) to reach the standards, no longer than 5 years (from the date of coming into force) should be applied.

Response: The proposed guidance and the proposed amendment to the Regulations will not be applied retrospectively. NHS commissioners of services from the independent sector will take the guidance into account when purchasing NHS funded care and must be satisfied that the setting is clinically appropriate and can meet the individual need of the patient.

3. Issue: Is there any limit to the number of beds for persons with a mental health illness, as long as the beds for persons with a learning disability does not exceed 15?

Response: Yes. If a hospital treats both those with a learning disability and those with a mental illness, whose treatment is expected to extend beyond a 12 month period, in the same establishment, the number of registered beds should not exceed 15, ideally provided in two or more units.

4. Issue: Does this proposed new regulation / guidance apply to all independent hospitals treating persons with a learning disability or mental health illness this patient group regardless of whether the accommodation is secure or not?

Response: Yes. The proposed amendment to the Regulations and the proposed supporting guidance applies to all independent hospitals registered with Welsh Ministers under the Care Standards Act 2000 who provide treatment and nursing either solely for people with a learning disability or treatment and nursing for people with a mental illness, and the treatment and nursing for people with a learning disability in the same independent hospital.

5. Issue: Does the proposed restriction on bed numbers in hospitals treating both the mentally ill and those with a learning disability apply only to low and medium secure services, or does it include any independent hospital treating these two patient groups?

Response: The proposed amendment to the Regulations applies to all independent hospitals (registered with Welsh Ministers under the Care Standards Act 2000) who either solely provide treatment and nursing for persons with a learning disability, or provide treatment and nursing for persons with a learning disability and treatment and nursing for persons with a mental illness.

6. Issue: If a private independent hospital provides care only for persons with a mental illness and / or personality disorder, but does not treat patients with a learning disability, will there be a restriction on bed numbers, whether the hospital is secure or not?

Response: The proposed amendment to the Regulations and the proposed amendment to the National Minimum Standard extends only to independent hospitals providing treatment and nursing care for people with a learning disability. It does not extend to establishments treating people with a mental illness / disorder only and therefore there is no restriction on these hospitals.

7. Issue: Does the proposed new regulation / guidance apply to patients who receive treatment with a dual diagnosis of both a mental illness and a learning disability?

Response: Yes. A learning disability diagnosis will trigger the proposed new regulation and guidance. If a provider wishes to accommodate one or more persons with a learning disability, who may also have a mental illness / disorder, they must comply with the proposed new regulation.

8. Issue: The complexity of diagnosis and treatment will make it difficult to predict lengths of treatment stays.

Response: Providers wishing to offer treatment and nursing care for persons with a learning disability will be aware of the wide ranging needs of this user group, and will need to set out the type of service they intend to provide, in their Statement of Purpose (which is required by regulation 5 of the Private and Voluntary Health Care (Wales) Regulations 2002. The Statement of Purpose must include prescribed information about the kinds of treatment and any other services provided for the purposes of the establishment, the range of needs which those services are intended to meet and the facilities which are available for the benefit of patients). It is for a provider to determine the type of service they want to provide, and to apply to Healthcare Inspectorate Wales for registration. In certain circumstances, Healthcare Inspectorate Wales may impose a condition of registration specifying the maximum numbers of persons who may be accommodated and / or for how long they can be accommodated in the establishment.

9. Issue: Single-sex accommodation is not always desirable or feasible

Response: Where treatment and nursing care is provided for both sexes within an independent hospital, patients are expected to be cared for in single-sex accommodation i.e. single bedrooms (unless their care plan indicates otherwise and/or they choose to share a room) with either en-suite or single-sex toilet and washing / bathing facilities (preferably adjacent to their room), (National Minimum Standards C19.7, M27.2, and M38.2). If it is not appropriate for the patient to be accommodated in a single bedroom it would be expected that they are cared for within gender specific bedrooms with gender specific toilet and washing / bathing facilities (preferably adjacent to bedrooms). Gender specific toilet and washing / bathing facilities, should be accessed via a single sex route. Arrangements should be in place for gender specific facilities (National Minimum Standards M27.3) e.g. a communal area / room (for both sexes) and gender specific communal areas / rooms (i.e. one for males and a separate one for females). It is proposed that the supporting guidance is revised to ensure further clarity in relation the single-sex accommodation. Accordingly, if an application for registration / variation of registration is made to Healthcare Inspectorate Wales which does not specify single-sex accommodation, the applicant will need to justify a departure from this requirement.

10. Issue: Providing establishments of 10 /15 beds, either in one or two units, will increase unit costs substantially, and may impact on publicly funded places since providing the requisite range of clinical care / administrative support in such a small setting would be more costly than in a larger setting.

Response: Providers must decide what services are appropriate and how best to deploy these. There is also evidence of smaller independent hospital provision in Wales.

11. Issue: The 12 month treatment timescale is an arbitrary figure.

Response: It is acknowledged that the 12 months treatment timescale is arbitrary. However, it is judged to be fair and reasonable.

12. Issue: In the proposed guidance, the word “ideally” should be removed in relation to beds being provided in two or more units.

Response: It is not accepted that the word “ideally” should be removed in relation to beds being provided in two or more units. In some cases, providers may choose to provide only one unit and there may be a specific reason for that and so flexibility is required. Healthcare Inspectorate Wales will make a judgement about registration based on the overall business case and not solely on the basis of whether one or two units are provided. Healthcare Inspectorate Wales may also seek expert advice should they have any concerns about an application that may be in breach of the proposed new regulation and guidance.

13. Issue: The statement that Local Health Boards are “asked to consider this guidance” is not strong enough and could lead to a loophole since the words “asked” may be interpreted as optional.

Response: This point is accepted. It is proposed that the words “asked to consider this guidance” are replaced with the words “should take this guidance into account “. It is also proposed that the guidance makes explicit reference to Mrs Ann Lloyds’ letter to Chief Executives of NHS Trusts and LHBs of 13 December 2007(Commissioning Care from Independent Private Hospitals) in commissioning future services in Wales and “out of area” placements .

14. Issue: Do the same principles of 10 beds (in one or two units) apply to the NHS as well as the independent sector?

Response: Yes. The NHS has developed a strategy whereby low and medium secure units for persons with a learning disability only, will be a maximum size of 10 beds.

15. Issue: Should there be made a requirement to provide en-suite facilities for each bedroom?

Response: The decision to provide en-suite facilities is a matter for the provider and will also reflect commissioner’s requirements in terms of the facilities appropriate to meet patient needs.

16. Issue: Should the guidance require accommodation to be in home-like environments which provide service users the opportunities to access all domestic areas in the house and personalise their living environments?

Response: The Regulations already require that independent hospital accommodation is appropriate for the purposes for which it is to be used, and that it must be appropriate for the range of patient needs which are assessed on an individual patient basis. It would be difficult to specify further the degree to which accommodation should be personalised given the need to ensure that it would compromise the ability of the registered person to safeguard patients.

17. Issue: Persons with a learning disability, who are Welsh speaking, should be able to receive services in their first language

Response: The Regulations already provide for services to meet individual patient needs, and with due regard to linguistic background. Accordingly, the registered provider must comply with the Regulations and make appropriate arrangements to ensure that there is effective patient / staff communication for those patients whose first language is Welsh.

18. Issue: The evidence in the Learning Disability Implementation Advisory Group (LDIAG) report relates more to the re-settlement of people with Learning Disabilities from NHS institutions (which were essentially their homes) into the community.

Response: The principles of re-settlement of people with Learning Disabilities from NHS institutions apply also to the independent sector. A report commissioned by the Department of Health (2007) 'Services for People with Learning Disabilities and Challenging Behaviour or Mental Health Needs: Report of a Project Group' (chaired by Professor J Mansell (Paragraph 59), states: "*The appropriate role for psychiatric hospital services for people with learning disabilities lies in short-term, highly focused assessment and treatment of mental illness. This implies a small service offering very specifically, closely defined, time-limited services.*" Although not mentioned by the LDIAG, this does concur with the evidence used in their report.

19. Issue: The maximum number of beds for patients with complex behaviours (whether or not they have psychiatric treatment requirements) should be 10, and all such hospitals should be required to have *at least two units*

Response: We will keep this suggestion under review and, where appropriate, to take forward at a future date.

20. Issue: There is a need to ensure that the benefit of this proposed new regulation is not undermined by the close proximity of similar facilities. The guidance should limit the potential for having two or more separately registered establishments next door to each other.

Response: Accepted. The purpose of the proposed amendment to the Regulations is to avoid the development of 'campus' type accommodation with shared central services, typical of a 'hub and spoke' arrangement. The guidance will be strengthened to include the words "No other private independent hospital should be located in close proximity in such a way as it might be considered as a 'multiple' of the original independent hospital and therefore might affect the rationale and purpose of restrictions on the number of patients in private independent hospitals as provided under this guidance "

21. Issue: Should there be a transition period to consider applications received before the coming into force date of the new regulation?

Response: It is proposed that new regulation 24 (2) (b) (bb), together with the supporting statutory guidance and the change to the National Minimum Standards will be made on 1 October 2009, and will come into force three months later on 1 January 2010. It is proposed to allow a transitional period of three months, from the date the new regulation comes into force, for applications to be determined by HIW which were submitted prior to the coming into force date. Applications received before the coming into force date and that can be determined by 1 April 2010, will not need to meet the

requirements of the new regulation. Applications received before the coming into force date that cannot be determined by 1 April 2010 must meet the requirements of the new regulation.

Proposed amendments to the supporting statutory guidance

1. In order to improve clarity of interpretation of the supporting guidance, the following amendments are proposed:

(a) Issue: Clarity on the requirement for single-sex accommodation with referencing to the National Minimum Standards.

2. The following amendment is proposed “Where both males and females are to be accommodated, patients are expected to be cared for in single-sex accommodation. That is, single bedrooms (unless their care plan indicates otherwise and/or they choose to share a room) with either en suite or single-sex toilet and washing / bathing facilities (preferably adjacent to their room), (see National Minimum Standards C19.7, M27.2, and M38.2). If it is not appropriate for the patient to be accommodated in a single bedroom it would be expected that they are cared for within gender specific bedrooms with gender specific toilet and washing facilities (preferably adjacent to bedrooms). Gender specific toilet and washing / bathing facilities, should be accessed via a single sex route. Arrangements should also be in place for gender specific facilities (see NMS M27.3) eg a communal area / room (for both sexes) and gender specific communal areas / rooms (ie one for males and a separate one for females”

(b) Issue: Guidance on the proximity of independent hospitals to avoid the potential “clustering” of smaller units.

3. The following amendment is proposed: *“No other private independent hospital should be located in close proximity in such a way as it might be considered as a 'multiple' of the original independent hospital, and therefore might affect the rationale and purpose of restrictions on the number of patients in private independent hospitals as provided under this guidance”*

(c) Issue: Clarity on the application of the guidance.

4. The following amendment is proposed: “Revised Local Health Boards should also take this guidance into account when commissioning future services and ensure that service providers are aware of this guidance. Local Health Boards should also take this guidance into account and that set out in Mrs Ann Lloyds’ letter to Chief Executives of NHS Trusts and LHBs of 13 December 2007 (Commissioning Care from Independent Private Hospitals) in commissioning future services in Wales and “out of area” placement”

(d) Issue : Transitional arrangements

The following amendment is proposed : A transitional period of three months from the date the new regulation comes into force, for applications to be

determined by HIW which were submitted prior to the coming into force date, will apply. Applications received before the coming into force date and that can be determined by 1 April 2010, will not need to meet the requirements of the new regulation. Applications received before the coming into force date that cannot be determined by 1 April 2010 must meet the requirements of the new regulation

1. The Final Proposed New regulation 24 (2) (bb) of the Private and Voluntary Health Care (Wales) Regulations 2002

Regulation 24(1) states: “The registered person shall not use premises as an establishment unless those premises are in a location and of a physical design and layout which are suitable for the purposes of achieving the aims and objectives set out in the statement of purpose and;”

After regulation 24(2)(b) it is proposed to insert a new regulation 24(2)(bb) which will read as follows:

‘(bb) if treatment and care is provided in an establishment for patients with a learning disability, whose treatment is anticipated to extend beyond a 12-month period, the maximum number of patients for whom overnight accommodation is provided must have regard to guidance issued by Welsh Ministers.’

2. The Final Proposed Statutory Guidance for Private Independent Hospitals Providing Treatment and Care for Persons with a Learning Disability

Guidance for Private Independent Hospitals Providing Treatment and Care for Persons with a Learning Disability

Introduction

Private independent hospitals who provide treatment and nursing care for people with learning disabilities in Wales, must register with Welsh Ministers, through Healthcare Inspectorate Wales (HIW), under the Care Standards Act 2000. Applications for registration with HIW will need to comply with the Private and Voluntary Health Care (Wales) Regulations 2002 and the National Minimum Standards.

Guidance

This guidance applies to Regulation 24 (2) (bb) of the Private and Voluntary Health Care (Wales) Regulations 2002.

‘(bb) if treatment and care is provided in an establishment for patients with a learning disability, whose treatment is anticipated to extend beyond a 12-month period, the maximum number of patients for whom overnight accommodation is provided must have regard to guidance issued by Welsh Ministers’

A private independent hospital providing treatment and nursing care only for persons with a learning disability, and whose treatment is anticipated to extend beyond a 12-month period, should not exceed 10 beds, ideally provided in two or more units. A private independent hospital providing treatment and nursing care for persons with a mental illness (including low

and medium secure accommodation) and also for persons with a learning disability whose treatment is anticipated to extend beyond a 12-month period in the same establishment, should not exceed 15 beds, ideally provided in two or more units.

No other private independent hospital should be located in close proximity in such a way as it might be considered as a 'multiple' of the original independent hospital, and therefore might affect the rationale and purpose of restrictions on the number of patients in private independent hospitals as provided under this guidance.

Where both males and females are to be accommodated, patients are expected to be cared for in single-sex accommodation. That is, single bedrooms (unless their care plan indicates otherwise and/or they choose to share a room) with either en suite or single-sex toilet and washing / bathing facilities (preferably adjacent to their room), (see National Minimum Standards C19.7, M27.2, and M38.2). If it is not appropriate for the patient to be accommodated in a single bedroom, it would be expected that they are cared for within gender specific bedrooms with gender specific toilet and washing facilities (preferably adjacent to bedrooms). Gender specific toilet and washing / bathing facilities, should be accessed via a single sex route. Arrangements should also be in place for gender specific facilities (see NMS M27.3) e.g. a communal area / room (for both sexes) and gender specific communal areas / rooms (i.e. one for males and a separate one for females).

Application of the guidance

This guidance applies to all registration applications received by HIW after 1 January 2010. HIW will take this guidance into account in considering registration applications (including applications to vary conditions of registration) from independent hospitals providing treatment and nursing care for persons with a learning disability. This guidance will not apply retrospectively to private independent hospitals currently registered with HIW.

A transitional period of three months from the date the new regulation comes into force, for applications to be determined by HIW which were submitted prior to the coming into force date, will apply. Applications received before the coming into force date and that can be determined by 1 April 2010, will not need to meet the requirements of the new regulation. Applications received before the coming into force date that cannot be determined by 1 April 2010 must meet the requirements of the new regulation

Local Health Boards should also take this guidance into account when commissioning future services and ensure that service providers are aware of this guidance.

Local Health Boards should also take into account the guidance set out in the letter from the Chief Executive NHS Wales to Chief Executives of NHS Trusts and Local Health Boards of 13 December 2007 (Commissioning Care from Independent Private Hospitals) in commissioning future services in Wales and "out of area" placements. The letter set out that "where care in independent private hospitals is to be commissioned by the NHS in Wales (for example, commissioning medical and psychiatric treatment intended to rehabilitate male and female adults with learning disabilities), it is the responsibility for each NHS commissioner to be satisfied that the care provided is clinically appropriate, meets the appropriate healthcare standards, and is not available within the NHS in Wales. Where care placements in independent private hospitals are commissioned, NHS commissioners must review the care placement to ensure that the care being provided continues to appropriately meet the care needs of the individual and still cannot be met within the NHS in Wales, and also to ensure that the care needs of the individual are regularly re-assessed."

3. The proposed amendment to the National Minimum Standards

The following amendment to the National Minimum Standard M27 is proposed:

Insert M27.6 to read as follows

“ Premises which provide treatment and nursing care (including secure units) for patients with a learning disability do not exceed the best practice guidance regarding the numbers of patients to be accommodated in an independent hospital. “