The future regulation of health and adult social care

Consultation questionnaire

Thank you for taking time to give us your views about the issues raised in the future regulation of health and adult social care consultation.

The consultation closes on 17 June 2008.

You will need to refer back to consultation document as you go through the questionnaire.

Please send your completed response to:

Consultation Response
Room 5W55 Quarry House
Quarry Hill
Leeds
LS2 7UE

or e-mail: registration.consultation@dh.gsi.gov.uk

About yourself

It will help us to analyse the responses we receive if you fill in a few details about yourself.

Confidentiality: Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information that you have provided to be confidential. If we receive a request for disclosure of the information we will take full account of your request, but we cannot give an assurance that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Name

Angela Catley

Job title

Head of Projects

Organisation

NAAPS

NAAPS is a UK charity established to represent the interests of all those involved in running very small, individualised, community based care, support and housing enterprises such as Shared Lives (formerly known as Adult Placement).

Its aims are to:

- Promote Shared Lives, Homeshare and other small community enterprises as an important resource to those seeking individualised services
- Promote a legislative environment which ensures safety and quality but allows small community services to flourish
- Promote best practice in the delivery of care and support services

Are you replying as an individual or on behalf of an organisation or group (please put an x in the appropriate box)?

	Individual
x	Group

If you are responding as an individual, do you work in health, social care or are you a member of the public?

	health
x	social care
	member of the public

Did you hold a meeting to discuss the document?

x	yes

	no

If the views you are submitting are the outcome of a meeting, can you describe what kind of people were at the meeting (for example, was it a group of people within an organisation, a group of people from across different organisations, a patient forum etc)?

The Department of Health is funding a two year NAAPS project to stimulate the development of a range of tailored and innovative adult social care and other micro enterprises in order to provide real choice for individuals needing support to live and be part of their local community

A small group of people from within the organisation who are engaged in this project met to discuss this consultation document. A number of those present at the meeting have regular direct contact with providers of very small (micro) social care services and felt able to represent the views and experiences of this group.

We may wish to contact you to discuss your comments. If you are happy to do so, please fill in your contact details - that could be an e-mail address, phone number or postal address.

E mail: angela@naaps.org.uk

Phone: 07764469350

Address: Naaps Uk
6 The Cotton Exchange
Old Hall Street
Liverpool
L3 9LQ

The details you provide here will not be shared with any third party.

Chapter 2: Registration requirements for essential safety and quality

You will be asked for your comments on the individual requirements later in the questionnaire.

We propose to introduce a generic set of registration requirements (set out in regulations) for all providers offering services that are within scope. These requirements will be supplemented by compliance criteria, to be developed by the Care Quality Commission, that are specific to the type of activity. These will be consulted on at a later date. Do you agree with this approach? Do you have any comments?

In principle NAAPS supports an approach that consolidates and streamlines the way health and social care services are regulated. There is recognition that the current system is complex, bureaucratic and can create confusion especially for very micro social care providers.

We agree that the current approach is also very detailed and prescriptive and can be a poor fit for quirky or innovative services that don't fit neatly into the Care Home and Domiciliary Care categories.

However the devil will be in the detail and there is a danger that the registration requirements needed by health providers will have a very different emphasis to those required in social care. There is also danger that tailoring these requirements with large and very large providers in mind will result in very small and micro providers being ignored and the resulting regulations being an even poorer fit for their services than the current system. It is essential to ensure the registration requirements are proportionate to the size of the service as well as the level of risk incurred in delivering it.

Careful consideration needs to be given to the emergence of Personal Budgets and individuals who are commissioning their own services and how this regulatory approach will fit with the government's strategy to ensure that people can direct and manage their own service.

The changes to the regulation of health and social care services provides an opportunity to review the existing system and acknowledge the particular requirements of micro services in the newly emerging social care 'market'. This is particularly timely because; changes in the regulatory approach are needed to stem the rate of closure among existing micro providers; a strong, flourishing micro market is essential to the transformation of social care in order to ensure true diversity and choice in the market. Learning from the micro markets project funded by the DH and managed by NAAPS could usefully inform this work.

Are the areas covered by the registration requirements (set out in Annex A) the right ones to provide the assurance of the essential levels of safety and quality that we are aiming for? If not, are there any we need to add or take out?

Taken individually the areas covered in Annex A are important and have relevance to all providers. Taken together however the focus appears to be on 'health issues and the approach one of expert professionals caring for patients where the patient's views are 'taken into account'. . The approach in particular seems at variance with the government strategy to put people in control of their services.

For example: Medication and 'nourishment' are two areas that are singled out. They are clearly extremely important but are they more important than other areas such as managing money, relationships, learning and development or religion .

Does the wording of the registration requirements in Annex A provide appropriate coverage of these areas? If not, what do we need to add?

Are there any overlaps, or gaps or unintended consequences that will not be picked up by other parts of the system? If so, what are they?

Overlaps
There is some overlap between

Requirement 1 and a number of the other requirements such as requirements 2, 4 and 5
Requirements 15 and 17

Unintended consequences
A large number of micro providers do not employ staff, delivering the service directly themselves.

Requirements 15-17 appear to assume that services are delivered by organisations through employed staff or volunteers. The wording of these requirements needs to be reviewed to ensure that it does not unintentionally exclude other kinds of services and in particular services delivered by micro providers. The use of the word “worker” in requirements 15 and 17 is helpful and should be reflected in the wording of requirement 16.
The wording also implies that workers to be competent must be qualified. It is important to recognise that current qualifications are not appropriate for many micro providers whose roles straddle work boundaries and levels of responsibility. NAAPS is working with Skills for Care on the development of flexible and appropriate qualifications using the flexibilities of the new Qualifications and Credit Framework. The range of qualifications required are not however likely to be in place for 2010.

What are your views on the transition arrangements for existing providers to enter the new registration system?

These seem to be comprehensive and clear whilst taking a pragmatic approach.

A major factor for very small providers considering registration is the costs incurred. Registration fees will need to reflect the size and profitability of the service to be registered in order to ensure that the size of the fee does not drive very small providers out of the market.

Chapter 3: Scope - which health and adult social care services should be registered?

You will be able to comment on the specific activity topics in Annex B of the document later in the questionnaire.

Do you agree with our proposed list of regulated activities in Annex B to be included within the scope of registration?

	yes
	no
x	don't know

Are there any high-risk services not covered? If so, what are they?

The list of regulated activities identifies 15 health care services but only two social care categories.

Have we proposed any inappropriate registration of lower-risk services? If so, which are they?

Table 2:

People who make choices that could put themselves at considerable risk, those who self harm and those that use violence against other people should be included in the groups of people who are particularly at risk.

The definition of personal care to include “prompting and supervision where any person lacks mental capacity to perform any of the above personal care tasks for themselves without such support” . This widening of the definition means that any provider giving verbal prompts or reminders to a person with a learning disability, memory loss or similar will be regarded as providing personal care and could bring a large number of accommodation based services such as supported housing (where the landlord is resident*) and holidays into registration.
* Resident landlords will normally grant a licence to occupy rather than a tenancy as the house is the landlord’s main place of residence
This approach seems at odds with the exclusion of “community based services” (see answer to question below) in which low risk prompting in accommodation based services is brought into registration

What are your views on the exclusion of non-urgent patient transport services under the Emergency and Urgent Care activity topic?

No views

What are your views on the proposals for the registration of agencies who supply workers to other registered providers, under the 'Personal Care' and 'Nursing Care' activity topics?

We feel that these agencies should be subject to some form of registration to assure confidence in regulated services that may use their services. They should have obligations and requirements place upon them in order to ensure they are selecting and managing their employees and ensuring that their workers are operating safely and to a high quality.

Are the activities for registration described at the right level of detail, given that they will be underpinned by more specific and legally enforceable regulations? If not, what do we need to change?

Yes

Is there a risk of inappropriately de regulating high-risk activities in this approach? If so, what do we need to do to avoid that?

The exclusion from the scope of regulation of

‘personal care [provided] in community-based health and social care, for example, day care services where the primary aim of the service is to provide treatment or support health, welfare, education, employment, social activity or kinship support and where people using the service additionally have their personal care needs met to enable them to access the service

has the potential to create a loophole which could be used by social care providers to deregister or avoid registration. Services for people with a learning disability, and to a lesser extent for people with a physical disability or mental ill health are rarely designed with personal care as their primary function and are usually delivered in community settings. Providers of home based services which are currently required to register as a Domiciliary Care Service could use this exemption to avoid registration.

There are also issues with the blanket exclusion of Personal Assistants from registration . For service users who directly employ a PA or team of PAs this exclusion works well. However a number of service users choose not to directly employ their PAs and are increasingly turning to organisations able to work in partnership with them to employ a PA on their behalf and enable them to avoid the responsibility of becoming an employer. We welcome the proposal to regulate these organisations..

Have we determined the right situations in which to register a manager? If not, what do we need to change?

This approach seems comprehensive.

A number of micro social care services are delivered and managed by a single individual or a couple. In the case of a couple the current system requires the allocation of a single registered manager and one member of the couple is therefore designated as such with the other being viewed as a “staff member”. It would be more appropriate in this instance for the couple to be able to register as such and to take joint operational responsibility for the delivery of the service if they wish to.

Chapter 4: Registration of primary care

Does the list of activities in Annex B appropriately capture the services, where people might be at risk of harm provided in primary care settings? In particular, do you agree with our proposal that ultimately all GP and primary dental services should be within the scope of registration? If not, what are your views?

No views

Does the list of activities in Annex B inappropriately capture some services that are less likely to cause harm when provided in primary care settings? If so, what are they?

No views

What information would you expect the new Commission to draw on when making decisions? How could it best do this?

No views

What is the scope for rationalising the existing requirements on primary care providers if a registration system is introduced?

No views

When should services provided in primary care settings be required to register? Should we phase in registration?

No views

If we do phase in registration, how should we determine the services to be captured?

No views

Is our assessment of the costs and benefits in our accompanying Impact Assessment (available on the DH website, alongside the consultation document) reasonable? Do you have any additional information on impact that we could use?

No views

Annex A: Proposed topics for registration requirements - for essential levels of safety and quality

If you have any specific comments on any of the proposed registration requirements, please tell us about them here.

You will need to refer back to Annex A of the document to see the detailed explanation of the requirement.

Requirement 1. Making sure people get care and treatment that meets their needs safely and effectively

This as it stands requires providers to take responsibility for ensuring a service provided by another provider for example social care providers ensuring people get the health care they need and vice versa. This could lead to providers being judged as not meeting the requirement because of the failings of another provider.

Requirement 2. Safeguarding people when they are vulnerable

No specific comments

Requirement 3. Managing cleanliness, hygiene and infection control

This requirement needs to be reviewed to take account of services that are not provided in buildings under the control of the service provider e.g. home based support or community based services. The stated intention of this proposed approach to registration is to move registration away from where it is delivered and instead to focus on how it is delivered. A requirement worded in this way e.g. using the word “premises” seems at odds with this approach.

Requirement 4. Managing medicines safely

It will be important to ensure that the methodology and criteria adopted reflect the service and allow exemption where providers have no responsibility for managing medication In social care there is often the challenge of supporting people who have partial or total control over their own medication but who require monitoring, support or prompting and we would suggest that this is reflected in the detail of this requirement.

Requirement 5. Making sure people get the nourishment they need

We recognise the need for a focus on nourishment in a health care setting but would suggest this requirement be reworded to include all aspects of meals, mealtimes and drinks and not just nourishment. . Small social care providers often provide their service in a family or ordinary home setting and a focus on nourishment would be less relevant to that type of service

Requirement 6. Making sure people get care and treatment in safe, suitable places which supports their independence, privacy and personal dignity

The wording of this requirement needs to take account of services that are not provided in buildings under the control of the service provider e.g. home based support or community based services

Requirement 7. Using equipment that is safe and suitable for people's care and treatment and supports people's independence, privacy and personal dignity

The wording of this requirement needs to take account of services that are using equipment that is not under the control of the registered provider e.g. disabled person with their own hoist at home or a community swimming pool with specialist equipment that allows older people to use the pool.

Requirement 8. Involving people in making informed decisions about their care and treatment

No specific comment

Requirement 9. Getting people's ongoing agreement to care and treatment

No specific comment

Requirement 10. Responding to people's comments and complaints

No specific comment.

Requirement 11. Supporting people to be independent

It would be helpful if the social care example included 'work' and the development of skills not just independent living skills.

Requirement 12. Respecting people and their families and carers

This 'requirement' is trying to encompass at least two distinct areas:; respect and dignity and support to enable people to make and maintain friendships and relationships. There is a danger that combining these two different areas under one requirement will lead to focus on one at the expense of the other. The title of the requirement makes this possibility more likely, focusing as it does on respect rather than friendships and relationships.

The Methodology and criteria will need to be sensitive to the nature of the service being provided. Eg: Providers of very small services often use their own home as a resource – in this situation it would be inappropriate to expect an allocated space for visitors although the provider can be expected to support people to meet with their visitors in private.

Requirement 13. Having arrangements for risk management, quality assurance and clinical governance

Quality assurance is an important focus for all providers . It is important however that the methodology and criteria take account of the size of the service in making judgments about the appropriateness of the ‘system’ in place. There is a danger that a focus on systems rather than outcomes lead to over- bureaucratic requirements that do not produce good outcomes for service users.

The explanation of the requirement should focus more on quality and quality assurance and much less on QA systems. This would enable this requirement to be a good fit for all providers.

Requirement 14. Keeping records about the provision of care and treatment

The explanation of this requirement needs to make it clear that record keeping must be relevant to the quality of the service provided –there is a danger otherwise that record keeping is a bureaucratic requirement that does not link to outcomes for the service user..

The explanation should emphasise the need for records relevant to the individual being kept in an accessible format – this is particularly the case for services supporting people with a learning disability.

Requirement 15. Checking that workers are safe and competent to give people the care and treatment they need

Within micro social care services people often receive care and support in community/ordinary home settings and are totally integrated into the communities in which they live. Individuals may choose to spend time with people who are not their allocated carers or to get support from friends and family.

People delivering direct care and in particular help with a person’s bodily functions need to have the skills and knowledge to do this safely and to a high standard. However a balance needs to be struck between the need for workers to be skilled and the need for service users to live independent lives where they may call on ordinary people to give them the support that they need.

Over regulation in this area could result in service users restricted to spending time with approved and checked care workers, removing all normality and spontaneity from their lives. The detailed explanation of this requirement as it is currently worded implies that people live their lives in service settings and receive support delivered by traditional organisations through employed staff.
The detailed explanation of the term ‘worker’ does not include self employed people delivering support and services themselves – such people act as both manager and worker.

Requirement 16. Having enough competent staff to give people the care and treatment they need

Individuals providing micro services must be competent, work to a high standard and safely. Current approaches to training and development and to evidencing competence are not however always effective and appropriate for micro providers.

Occupational standards and training and qualification requirements could be viewed more flexibly. Micro providers and others could for example be supported to develop skill sets tailored for their role and linked to the national occupational standards.

Requirement 17. Supporting workers to give people the care and treatment they need

The detailed explanation of this requirement assumes that services are delivered by organisations through employed staff. Micro providers that deliver the services themselves and do not employ staff could not meet this requirement. .

Requirement 18. Working effectively with other services

Social care providers are required to work alongside many partners as well as with health for example independent residential providers working with local authority day service providers, a service users' employer, local college or leisure providers.

This is particularly true for those supporting people who have their own personal budget –the wording needs to be amended to reflect the range of possible partners.

Annex B: Scope

If you have any specific comments on our proposals for the scope of regulation please tell us about them here.

You will need to refer back to Annex B of the document to see the lists of activities.

Do you have any comments on the proposals under the activity topic: **Personal care**

The definition of personal care has effectively been widened to include "prompting and supervision where any person lacks mental capacity to perform any of the above personal care tasks for themselves without such support" (currently the definition of personal care is limited to assistance with bodily functions)

This widening of the definition means that any one giving verbal prompts or reminders to a person with a learning disability, memory loss or similar could be seen to be providing personal care and require regulation as a care home or domiciliary care agency. This could bring a large number of accommodation based services such as supported housing (where the landlord is resident and also provides support) and holidays into registration.

Do you have any comments on the proposals under the activity topic: **Accommodation together with personal or nursing care**

We would in principle support the exclusion of 'accommodation provided as part of supported housing arrangements where a person receiving care has the rights and freedoms usually associated with tenancy of the accommodation. In this case the housing corporation concerned would have the primary regulatory role with regard to social housing accommodation'.

However: The housing corporation has no effective role with private landlords and also allows small RSLs to opt out of the regulatory framework. Landlords that give tenancies in houses that accommodate two people of fewer are exempt from the requirement for registration as an HMO. Landlords providing support that is not funded through Supporting People will not be required to meet support standards as set out in the SP QAF. Theoretically if support is purchased by the local authority then the contracts department will set and monitor quality requirements but in practice monitoring is paper based and rarely involves inspection. This leads to a worrying gap in regulation that could be exploited by unscrupulous providers.

Do you have any comments on the proposals under the activity topic: **Accommodation together with intensive treatments**

No comment

Do you have any comments on the proposals under the activity topic: **Accommodation together with personal care and further education**

No comment

Do you have any comments on the proposals under the activity topic: **Palliative care**

No comment

Do you have any comments on the proposals under the activity topic: **Surgical services**

No comment

Do you have any comments on the proposals under the activity topic: **Dental services**

No comment

Do you have any comments on the proposals under the activity topic: **Diagnostic services**

No comment

Do you have any comments on the proposals under the activity topic: **Specialist medical services**

No comment

Do you have any comments on the proposals under the activity topic: **Emergency and urgent care**

No comment

Do you have any comments on the proposals under the activity topic: **Maternity services – obstetrics and gynaecology**

No comment

Do you have any comments on the proposals under the activity topic: **Termination of pregnancy**

No comment

Do you have any comments on the proposals under the activity topic: **Specialist mental health services**

No comment

Do you have any comments on the proposals under the activity topic: **Detention or deprivation of liberty for care or treatment**

No comment

Do you have any comments on the proposals under the activity topic: **Nursing care**

No comment

Do you have any comments on the proposals under the activity topic: **Prescribing, administration, sale and supply of medicines**

No comment

Do you have any comments on the proposals under the activity topic: **Therapies**

No comment

Do you have any comments on the proposals under the activity topic: **Telemedicine and telecare**

No comment.

Do you have any comments on the proposals under the activity topic: **Primary medical services**

No comment

Additional Comment

The compliance criteria detailed in Annex C seem comprehensive and clear. However it is essential that providers compliance is only measured against the criteria that are relevant to the service they provide and not seen to be non compliant if a particular criteria is not relevant to them. This is also the case for the registration requirements.

Equalities Monitoring
You do not have to complete these questions if you do not wish to but it will help us to understand the views of different groups.

The information you provide will be treated as confidential. It will not be saved by the Department of Health once the consultation has been completed. It will not be shared with any other person or organisation.

The ethnic groups used are standard categories for collecting ethnic group information. Using these codes will help us to analyse the responses we get to the consultation. The list of groups is designed to allow most people to identify themselves. The list is not intended to leave out any groups of people but to keep the collection of ethnic information simple.

Ethnicity
Please indicate your ethnic group

x	White British
	White Irish
	Any different White background
	White and Black Caribbean
	White and Black African
	White and Asian
	Any different mixed background
	Indian
	Pakistani
	Bangladeshi
	Any different Asian background
	Black Caribbean
	Black African
	Any different Black background
	Chinese

If your ethnic group is not in the list, please fill in the box below

Disabilities or impairments
If you have an impairment, please state the type of impairment that applies to you. People may experience more than one type of impairment, in which case you may indicate more than one. If none of the categories apply, you may wish to fill in the "other impairment" box, specifying the type of impairment:

	physical impairment - such as difficulty using your arms or mobility issues which means using a wheelchair or crutches
	sensory impairment - such as being blind/having a serious visual impairment or being deaf/having a serious hearing impairment
	mental health condition - such as depression or schizophrenia
	learning disability/difficulty
	autistic spectrum disorder
	long-standing illness or health condition such as cancer
	HIV
	diabetes
	chronic heart disease
	epilepsy

Other impairment - please state.

Age
Please click in the button that shows your age

	under 25
	25-34
x	35-44
	45-54
	55-64
	65 or over

Thank you for completing the questionnaire.

Please send your completed response to:

Consultation Response
Room 5W55 Quarry House
Quarry Hill
Leeds
LS2 7UE

or e-mail: registration.consultation@dh.gsi.gov.uk