



Ein cyf/Our ref LF/MD/0552/15

David Rees AM
Chair
Health and Social Care Committee

5 June 2015

Thank you for your letter of 15 May regarding the Health and Social Care Committee's intention to consider the draft Care and Support (Eligibility) (Wales) Regulations 2015 on 11 June.

I want to support the committee's consideration of these regulations and am therefore writing to share with the committee the headline outcomes of our consultation on them and set out the key changes that have been made to the Regulations and code of practice since that consultation.

The Regulations were consulted on from 6 November 2014 to 2 February 2015. This consultation confirmed that our stakeholders fully support the new model of eligibility. This support reflects the extensive work undertaken through the technical groups and wider stakeholder engagement during the development of the Regulations and code of practice.

Changes were made to the Regulations and code of practice to take account of the comments received in this consultation. In light of the particular focus of the committee's attention, I have attached an annex to this letter which sets out the key changes to the Regulations (which are subject to a super affirmative procedure) and code of practice on eligibility which were laid before the Assembly on 8 May.

I would also like to set out the wider context within which these Regulations sit. The Eligibility Regulations sit with the Care and Support (Assessment) (Wales) Regulations 2015 and the Care and Support (Care Planning) (Wales) Regulations 2015. The Assessment Regulations were laid on 8 May, alongside the Eligibility Regulations. The Care Planning Regulations were laid on 1 June. Together these form a suite of statutory instruments that, when taken together with the relevant codes of practice will introduce a whole-system change to the delivery of care and support in Wales.

The Regulations in relation to care and support are supplemented by statutory Codes of Practice. In particular the Code on Part 4 of the Act (Meeting Needs, including both determination of eligibility and care and support planning), and the Code on Part 3 (Assessing the Needs of Individuals), underpin the eligibility framework and include more detail about the process to accompany the Regulations. Collectively, these Regulations and codes of practice set out the process a local authority will go through with the individual to identify whether they have needs for care and support and how their needs will be met.

To support our consultation we produced a short film illustrating the assessment and eligibility process. It is available at this link: <http://www.ccwales.org.uk/learning-resources/> and I would strongly advise committee members to view it; and if possible in advance of the committee meeting or as part of the committee proceedings due to take place on the 11 June to support your considerations.

To reflect on the responses to the consultation I would like to draw the Committee's attention to the consultation summary report which has been published on the Welsh Government's website. This contains detail about the responses. The suggestions for improvement were considered in detail with stakeholders and are reflected in our revised Regulations and codes of practice.

To assist the Committee with its deliberations, the following supplements the information regarding changes to the Eligibility Regulations given in annex 1, by providing a summary of the key changes to the whole framework for assessment, eligibility and care planning:

The National Eligibility Framework

Building on the responses, the code of practice on Meeting Needs has been updated to provide greater clarity and detail about consistency in the application of the eligibility criteria. Whilst the pattern of service delivery will vary from authority to authority what will remain constant is the right to care and support from a local authority where that care and support is not otherwise available to the individual. This reflects the citizen-centred approach set out in the Act.

A National Assessment and Eligibility Tool has been developed to reinforce the consistency of approach to assessing and meeting needs and further work will be done with key stakeholders in the run up to implementation to ensure it is applied consistently across Wales.

The code has been amended to provide that where an assessment concludes that a need will not be met by a care and support plan there will be a requirement to identify in the record of assessment how the local authority consider the proposed action will help someone achieve their personal well-being outcomes. This will give citizens a statement on which to base any disagreement on how best they can be supported to meet their identified personal well-being outcomes.

Children

The Act introduces, for the first time, Regulations about the assessment of the needs of children and the eligibility of those needs to be met by the local authority providing services or arranging for services to be provided. There was a call for more guidance on services for children in the code and clarification of the status of the current Framework for the Assessment of Children in Need. As a result a Task and Finish Group was established with representatives from the statutory, voluntary and regulatory sectors to advise on re-drafting the code. The codes of practice have been amended to reflect and integrate the necessary elements of the Framework for the Assessment of Children in Need and their Families and will continue to be refined

with stakeholders before the final version is laid before the National Assembly in the autumn.

Carers

Carers' groups emphasised the importance of responsive support to meet carers' fluctuating abilities to meet the needs of those they care for and were concerned that there will be a tendency to assume that carers can meet the needs of those they care for. The Regulations were re-drafted and the codes of practice amended, with contributions from the Carers Alliance, to clarify the consideration of support received from others as part of the determination of eligibility. The new approach will require assessments to recognise and record the contribution that carers make to what otherwise would be determined as eligible needs. The codes also recognise that carers may be both unable and unwilling to provide care and there should be no automatic assumption that carers will meet needs.

Advocacy

A stronger reference to advocacy has been embedded within the assessment process. This is being addressed through amendments to the code of practice on assessment and detailed guidance on the national approach to advocacy in the code of practice on Part 10 which is currently out to consultation.

Sensory Impairment

The Welsh Government has worked with Sense Cymru to incorporate the key requirements from the 2001 statutory guidance on care for deafblind children and adults, which was re-issued in 2014, into the codes of practice¹.

Communication

Groups representing people with sensory impairments and other disabilities made specific reference to recognising communication needs as a barrier within the assessment process. This has been reflected both in the codes and in an amendment to the eligibility regulations.

Workforce

Local Authorities were widely supportive of the model but emphasised the need for staff training and public awareness to enable consistent implementation of the new approach.

The Care Council for Wales has been commissioned to lead on the development and implementation of a national learning and development strategy. In addition, we will continue to work with the national partnership forum, the leadership group and citizens panel to support this change, and ensure that people who use services remain at the heart of our programme for change.

We are working in partnership with the responsible authorities to deliver the needed transformation. We have made considerable efforts to engage these partners and I was therefore encouraged to see in *Community Care Online* Sue Evans, the President of the Association of Directors of Social Services Cymru, quoted as saying "We have contributed to the development of this legislation and are committed to making it a success". In a similar vein, I welcome the support expressed by Wayne Lewis, Head of Services at Sense Cymru to the provision in both Codes of Practice of the requirements of the 2001 statutory guidance on care for deafblind children and adults. He noted that "we know that many deafblind people in Wales, both adults and children, struggle to get the specialist

¹ References to "codes of practice" cover the Code on Part 4 of the Act (Meeting Needs), and the Code on Part 3 (Assessing the Needs of Individuals)

assessments and support they need. These new Codes are a step forward in making that a thing of the past.”

I am confident that the new eligibility framework set out in the Regulations and code of practice will offer individuals a more responsive, engaged and fairer process for meeting their care and support needs, and one which will make a substantial difference to the most vulnerable people in Wales. The framework is set in the wider context of the care and support system which includes better designed services through the population needs assessment and improved partnership working; more access to preventative and early intervention services, and a stronger information, advice and assistance service. We must think of eligibility as a single, albeit central, element of the fundamental changes this Act will create in the care and support system. We must think of it as a new system rather than an adaptation to the current system.

I hope that the committee finds this letter of assistance. I want to support the Committee’s scrutiny of this key piece of legislation. Please let me know if there is anything further I can do to assist.

Best wishes,

Mark

Mark Drakeford AC / AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

ELIGIBILITY

Changes to regulations on eligibility included:

1. Amending the wording around those caring for a child to read 'other persons in a parental role', to avoid unintended consequences;
2. Removing the reference to 'specified outcomes', to avoid confusion with the personal well-being outcomes;
3. Removing the term 'basic' in relation to self care;
4. Adding 'ability to communicate' as something which may be classed as an eligible need;
5. Adding that a person is 'unable to meet a need' if doing so:
 - Causes significant pain, anxiety, or distress to that person;
 - Endangers or is likely to endanger the health and safety of that person or another person
 - Takes that person significantly longer than would normally be expected.
6. Amending the regulations to remove a perceived contradiction between regulations dealing with the eligibility of needs and the provision of care by a carer.

Changes to the Code of Practice on Eligibility included:

1. Amending the wording to ensure that there is greater clarity and detail about the application of the eligibility criteria;
2. Clarifying that the process for the determination of eligibility leaves space for professional judgement and supports consistent delivery;
3. Strengthening the wording to ensure that those who are not able to manage their own care will have a right to have care and support which is managed and delivered for them.
4. Clarifying and providing more detail in the process of applying the determination of eligibility, including developing the National Assessment and Eligibility Tool;
5. Adding that an individual, having had their assessment, will have a statement from the local authority on how the well-being outcomes of that individual can be best met, which could be used by the individual should they disagree with outcomes of the assessment/ determination of eligibility;
6. Clarifying that, for individuals in need of care and support, the support they receive from others is taken into account in the determination of eligibility; and
7. Removing language and terminology associated with the old legislation and culture and including more overt references to the social model of disability i.e. reference to the Transforming Social Services: Towards an Enabling Wales Toolkit.