
STATUTORY INSTRUMENTS

2002 No. 3214

The Domiciliary Care Agencies Regulations 2002

PART 1

GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Domiciliary Care Agencies Regulations 2002 and shall come into force on 1st April 2003.

(2) These Regulations apply to domiciliary care agencies in England only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Care Standards Act 2000;

“agency” means a domiciliary care agency;

“agency premises” means the premises from which the activities of an agency are carried on;

“direct service provider” means a provider who supplies a domiciliary care worker who is employed by, and who acts for and under the control of, the provider;

“domiciliary care worker” means a person who—

(a) is employed by the agency to act for, and under the control of, another person;

(b) is introduced by an agency to a service user for employment by him; or

(c) is employed by a direct service provider,

in a position which is concerned with the provision of personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance;

“organisation” means a body corporate or any unincorporated association other than a partnership;

“registered manager”, in relation to an agency, means a person who is registered under Part II of the Act as the manager of the agency;

“registered person”, in relation to an agency, means any person who is registered as the provider or the manager of the agency;

“registered provider”, in relation to an agency, means a person who is registered under Part II of the Act as the person carrying on the agency;

“responsible individual” shall be construed in accordance with regulation 7(2);

“service user” means any person for whom an agency—

(a) supplies a domiciliary care worker who is employed by the agency (including domiciliary care workers supplied by a direct service provider); or

- (b) provides services for the purpose of supplying him with a domiciliary care worker for employment by him;

“service user’s guide” means the guide produced in accordance with regulation 5(1);

“statement of purpose” means the written statement compiled in accordance with regulation 4(1).

- (2) In these Regulations, references to the supply of a domiciliary care worker mean—

- (a) the supply of a domiciliary care worker who is employed by an agency to act for and under the control of another person;
- (b) the introduction of a domiciliary care worker by an agency to a service user for employment by him; and
- (c) the supply of a domiciliary care worker employed by a direct service provider to a service user.

(3) In these Regulations, the terms “employed” and “employment” include employment under a contract of service or a contract for services, or otherwise than under a contract and whether or not for payment.

Excepted undertakings

3. For the purposes of the Act, an undertaking is excepted from the definition of “domiciliary care agency” in section 4(3) of the Act if the undertaking is carried on by an individual who—

- (a) carries it on otherwise than in partnership with others;
- (b) is not employed by an organisation to carry it on; and
- (c) does not employ any other person for the purpose of the undertaking.

Statement of purpose

4.—(1) The registered person shall compile in relation to the agency a written statement (in these Regulations referred to as “the statement of purpose”) which shall consist of a statement as to the matters listed in Schedule 1.

(2) The registered person shall supply a copy of the statement of purpose to the Commission and shall make a copy of it available on request for inspection at the agency premises by every service user and any person acting on behalf of a service user.

(3) Nothing in regulation 22 shall require or authorise the registered person to contravene, or not to comply with—

- (a) any other provision of these Regulations; or
- (b) the conditions for the time being in force in relation to the registration of the registered person under Part II of the Act.

Service user’s guide

5.—(1) The registered person shall produce a service user’s guide which shall include—

- (a) a summary of the statement of purpose;
- (b) the terms and conditions in respect of the services to be provided to service users, including as to the amount and method of payment of fees;
- (c) a summary of the complaints procedure established in accordance with regulation 20; and
- (d) the address and telephone number of the Commission.

(2) The registered person shall make a copy of the service user’s guide available on request for inspection at the agency premises by every service user and any person acting on behalf of a service user.

Review of statement of purpose and service user’s guide

6. The registered person shall—
- (a) keep under review and, where appropriate, revise the statement of purpose and the service user’s guide; and
 - (b) notify the Commission of any material revision within 28 days.

PART II

REGISTERED PERSONS

Fitness of registered provider

- 7.—(1) A person shall not carry on an agency unless he is fit to do so.
- (2) A person is not fit to carry on an agency unless the person—
- (a) is an individual, who carries on the agency—
 - (i) otherwise than in partnership with others, and he satisfies the requirements set out in paragraph (3);
 - (ii) in partnership with others, and he and each of his partners satisfies the requirements set out in paragraph (3);
 - (b) is a partnership, and each of the partners satisfies the requirements set out in paragraph (3);
 - (c) is an organisation and—
 - (i) the organisation has given notice to the Commission of the name, address and position in the organisation of an individual (in these Regulations referred to as “the responsible individual”) who is a director, manager, secretary or other officer of the organisation and is responsible for supervising the management of the agency; and
 - (ii) that individual satisfies the requirements set out in paragraph (3).
- (3) The requirements are that—
- (a) he is of integrity and good character;
 - (b) he is physically and mentally fit to carry on the agency; and
 - (c) full and satisfactory information is available in relation to him in respect of each of the matters specified in Schedule 2.
- (4) A person shall not carry on an agency if—
- (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged and the bankruptcy order has not been annulled or rescinded; or
 - (b) he has made a composition or arrangement with his creditors and has not been discharged in respect of it.

Appointment of manager

- 8.—(1) The registered provider shall appoint an individual to manage the agency where—

- (a) there is no registered manager in respect of the agency; and
- (b) the registered provider—
 - (i) is an organisation or a partnership; or
 - (ii) is not a fit person to manage an agency; or
 - (iii) is not, or does not intend to be, in full-time day to day charge of the agency.

(2) Where the registered provider appoints a person to manage the agency, he shall forthwith give notice to the Commission of—

- (a) the name of the person so appointed; and
- (b) the date on which the appointment is to take effect.

Fitness of manager

9.—(1) A person shall not manage an agency unless he is fit to do so.

(2) A person is not fit to manage an agency unless—

- (a) he is of integrity and good character;
- (b) having regard to the size of the agency, the statement of purpose and the number and needs of the service users—
 - (i) he has the qualifications, skills and experience necessary to manage the agency; and
 - (ii) he is physically and mentally fit to do so; and
- (c) full and satisfactory information is available in relation to him in respect of each of the matters specified in Schedule 2.

Registered person—general requirements and training

10.—(1) The registered provider and the registered manager shall, having regard to the size of the agency, the statement of purpose and the number and needs of the service users, carry on or (as the case may be) manage the agency with sufficient care, competence and skill.

(2) If the registered provider is—

- (a) an individual, he shall undertake;
- (b) an organisation, it shall ensure that the responsible individual undertakes; or
- (c) a partnership, it shall ensure that one of the partners undertakes,

from time to time such training as is appropriate to ensure that he has the experience and skills necessary for carrying on the agency.

(3) The registered manager shall undertake from time to time such training as is appropriate to ensure that he has the experience and skills necessary for managing the agency.

Notification of offences

11. Where the registered person or the responsible individual is convicted of any criminal offence, whether in England and Wales or elsewhere, he shall forthwith give notice in writing to the Commission of—

- (a) the date and place of the conviction;
- (b) the offence of which he was convicted; and
- (c) the penalty imposed on him in respect of the offence.

PART III
CONDUCT OF DOMICILIARY CARE AGENCIES
CHAPTER 1
QUALITY OF SERVICE PROVISION

Fitness of domiciliary care workers supplied by an agency

12. The registered person shall ensure that no domiciliary care worker is supplied by the agency unless—

- (a) he is of integrity and good character;
- (b) he has the experience and skills necessary for the work that he is to perform;
- (c) he is physically and mentally fit for the purposes of the work which he is to perform; and
- (d) full and satisfactory information is available in relation to him in respect of each of the matters specified in Schedule 3.

Conduct of agency

13. Where the agency is acting otherwise than as an employment agency⁽¹⁾, the registered person shall make suitable arrangements to ensure that the agency is conducted, and the personal care arranged by the agency, is provided—

- (a) so as to ensure the safety of service users;
- (b) so as to safeguard service users against abuse or neglect;
- (c) so as to promote the independence of service users;
- (d) so as to ensure the safety and security of service users' property, including their homes;
- (e) in a manner which respects the privacy, dignity and wishes of service users, and the confidentiality of information relating to them; and
- (f) with due regard to the sex, religious persuasion, racial origin, and cultural and linguistic background and any disability of service users, and to the way in which they conduct their lives.

Arrangements for the provision of personal care

14.—(1) Paragraphs (2) to (12) apply only to the supply of domiciliary care workers to service users by an agency which is acting otherwise than as an employment agency.

(2) The registered person shall, after consultation with the service user, prepare a written plan (“the service user plan”) which shall specify—

- (a) the service user’s needs in respect of which personal care is to be provided;
- (b) how those needs are to be met by the provision of personal care.

(3) The registered person shall—

- (a) make the service user plan available to the service user;
- (b) keep the service user plan under review;

(1) See section 121(1) of the Care Standards Act 2000 for the definition of employment agency.

- (c) where appropriate, and after consultation with the service user, or if consultation with the service user is not practicable, after consultation with a person acting on behalf of the service user, revise the service user plan; and
 - (d) notify the service user or, where applicable, the person acting on his behalf, of any such revision.
- (4) The registered person shall, so far as is practicable, ensure that the personal care which the agency arranges to be provided to any service user meets the service user's needs specified in the service user plan prepared in respect of him.
- (5) The registered person shall, for the purpose of providing personal care to service users, so far as is practicable—
- (a) ascertain and take into account their wishes and feelings;
 - (b) provide them with comprehensive information and suitable choices as to the personal care that may be provided to them; and
 - (c) encourage and enable them to make decisions with respect to such personal care.
- (6) The registered person shall ensure that where the agency arranges the provision of personal care to a service user, the arrangements shall—
- (a) specify the procedure to be followed after an allegation of abuse, neglect or other harm has been made;
 - (b) specify the circumstances in which a domiciliary care worker may administer or assist in the administration of the service user's medication, or any other tasks relating to the service user's health care, and the procedures to be adopted in such circumstances;
 - (c) include arrangements to assist the service user with mobility in his home, where required; and
 - (d) specify the procedure to be followed where a domiciliary care worker acts as agent for, or receives money from, a service user.
- (7) The registered person shall make arrangements for the recording, handling, safe keeping, safe administration and disposal of medicines used in the course of the provision of personal care to service users.
- (8) The registered person shall make suitable arrangements, including training, to ensure that domiciliary care workers operate a safe system of working, including in relation to lifting and moving service users.
- (9) The registered person shall make arrangements, by training or by other measures, to prevent service users being harmed or suffering abuse or being placed at risk of harm or abuse.
- (10) The registered person shall ensure that no service user is subject to physical restraint unless restraint of the kind employed is the only practicable means of securing the welfare of that or any other service user and there are exceptional circumstances.
- (11) On any occasion on which a service user is subject to physical restraint by a person who works as a domiciliary care worker for the purposes of the agency, the registered person shall record the circumstances, including the nature of the restraint.
- (12) The procedure referred to in paragraph (6)(a) shall in particular provide for—
- (a) written records to be kept of any allegation of abuse, neglect or other harm and of the action taken in response; and
 - (b) the Commission to be notified of any incident reported to the police, not later than 24 hours after the registered person—
 - (i) has reported the matter to the police; or
 - (ii) is informed that the matter has been reported to the police.

(13) The registered person shall ensure that any personal information about a service user for whom a domiciliary care worker is supplied by the agency is not disclosed to any member of the agency's staff unless it is necessary to do so in order to provide an effective service to the service user.

Staffing

15.—(1) Where an agency is acting otherwise than as an employment agency, the registered person shall, having regard to the size of the agency, the statement of purpose and the number and needs of the service users, ensure that—

- (a) there is at all times an appropriate number of suitably skilled and experienced persons employed for the purposes of the agency;
- (b) appropriate information and advice are provided to persons employed for the purposes of the agency, and are made available to them at their request, in respect of—
 - (i) service users and their needs in respect of personal care; and
 - (ii) the provision of personal care to service users;
- (c) suitable assistance and where necessary, appropriate equipment, is provided to persons working for the purposes of the agency, and is made available to them at their request, in respect of the provision of personal care to service users;
- (d) suitably qualified and competent persons are available to be consulted during any period of the day in which a person is working for the purposes of the agency; and
- (e) neither of the following circumstances, that is—
 - (i) the employment of any persons on a temporary basis for the purposes of the agency; and
 - (ii) any arrangements made for persons to work as domiciliary care workers on a temporary basis for those purposes,will prevent service users from receiving such continuity of care as is reasonable to meet their needs for personal care.

(2) The registered person shall ensure that each employee of the agency—

- (a) receives training and appraisal which are appropriate to the work he is to perform;
- (b) receives suitable assistance, including time off, for the purpose of obtaining qualifications appropriate to such work;
- (c) is provided with a job description outlining his responsibilities.

(3) The registered person shall take such steps as may be necessary to address any aspect of the performance of a domiciliary care worker which is found to be unsatisfactory.

(4) The registered person shall ensure that each employee receives appropriate supervision.

Staff handbook

16.—(1) Where the agency is acting otherwise than as an employment agency, the registered person shall prepare a staff handbook and provide a copy to every member of staff.

(2) The handbook prepared in accordance with paragraph (1) shall include a statement as to—

- (a) the conduct expected of members of staff, and disciplinary action which may be taken against them;
- (b) the role and responsibilities of domiciliary care workers and other staff;
- (c) record keeping requirements;
- (d) recruitment procedures; and

- (e) training and development requirements and opportunities.

Provision of information to service users

17.—(1) The registered person shall ensure that before a domiciliary care worker is supplied to a service user, the service user is informed of—

- (a) the name of the domiciliary care worker to be supplied, and the means of contacting him;
- (b) the name of the member of staff of the agency who is responsible for the supply of that domiciliary care worker; and
- (c) where the agency is acting otherwise than as an employment agency, details of how he may contact the registered person, or a person nominated to act on behalf of the registered person.

(2) The registered person shall ensure that the information specified in paragraph (1) is, where appropriate, provided to the service user’s relatives or carers.

Identification of workers

18. Where the agency is acting otherwise than as an employment agency, the registered person shall ensure that every domiciliary care worker supplied by the agency is instructed that, while attending on a service user for the purposes of the provision of personal care, he must present the service user with identification showing his name, the name of the agency and a recent photograph.

Records

19.—(1) The registered person shall ensure that the records specified in Schedule 4 are maintained and that they are—

- (a) kept up to date, in good order and in a secure manner; and
- (b) retained for a period of not less than three years beginning on the date of the last entry.

(2) The registered person shall ensure that, in addition to the records referred to in paragraph (1), a copy of the service user plan and a detailed record of the personal care provided to the service user are kept at the service user’s home and that they are kept up to date, in good order and in a secure manner.

Complaints

20.—(1) The registered person shall establish a procedure (“the complaints procedure”) for considering complaints made to the registered person by a service user or a person acting on behalf of a service user.

(2) The registered person shall supply a written copy of the complaints procedure to every service user and, upon request, to any person acting on behalf of a service user.

(3) The written copy of the complaints procedure shall include—

- (a) the address and telephone number of the Commission; and
- (b) the procedure (if any) which has been notified by the Commission to the registered person for making complaints to the Commission relating to the agency.

(4) The registered person shall ensure that every complaint made under the complaints procedure is fully investigated.

(5) The registered person shall, within the period of 28 days beginning on the date on which the complaint is made, or such shorter period as may be reasonable in the circumstances, inform the person who made the complaint of the action (if any) that is to be taken in response.

(6) The registered person shall maintain a record of each complaint, including details of the investigations made, the outcome and any action taken in consequence and the requirements of regulation 19(1) shall apply to that record.

(7) The registered person shall supply to the Commission at its request a statement containing a summary of the complaints made during the twelve months ending on the date of the request and the action taken in response.

Review of quality of service provision

21.—(1) The registered person shall introduce and maintain a system for reviewing at appropriate intervals the quality of personal care which the agency arranges to be provided.

(2) The registered person shall supply to the Commission a report in respect of any review conducted by him for the purposes of paragraph (1) and shall make a copy of the report available on request for inspection at the agency premises by service users and persons acting on behalf of service users.

(3) The system referred to in paragraph (1) shall provide for consultation with service users and persons acting on behalf of service users.

CHAPTER 2

PREMISES

Fitness of premises

22. Subject to regulation 4(3), the registered person shall not use the premises for the purpose of an agency unless the premises are suitable for the purpose of achieving the aims and objectives of the agency set out in the statement of purpose.

CHAPTER 3

FINANCIAL MATTERS

Financial position

23.—(1) The registered provider shall carry on the agency in such manner as is likely to ensure that the agency will be financially viable for the purpose of achieving the aims and objectives of the agency set out in the statement of purpose.

(2) The registered person shall, if the Commission so requests, provide the Commission with such information and documents as it may require in order to consider the financial viability of the agency, including—

- (a) the annual accounts of the agency, certified by an accountant; and
- (b) a certificate of insurance for the registered provider in respect of liability which may be incurred by him in relation to the agency in respect of death, injury, public liability, damage or other loss.

CHAPTER 4

NOTICES TO BE GIVEN TO THE COMMISSION

Notice of absence

24.—(1) Where—

- (a) the registered provider, being an individual in full-time day to day charge of the agency; or

(b) the registered manager,

proposes to be absent from the agency for a continuous period of 28 days or more, the registered person shall give notice in writing to the Commission of the proposed absence.

(2) Except in the case of an emergency, the notice referred to in paragraph (1) shall be given no later than one month before the proposed absence commences, or within such shorter period as may be agreed with the Commission and the notice shall specify—

- (a) the length or expected length of the absence;
- (b) the reason for the absence;
- (c) the arrangements which have been made for running the agency during that absence;
- (d) the name, address and qualifications of the person who will be responsible for the agency during that absence; and
- (e) in the case of the absence of the registered manager, the arrangements that have been, or are proposed to be, made for appointing another person to manage the agency during that absence, including the proposed date by which the appointment is to be made.

(3) Where the absence arises as a result of an emergency, the registered person shall give notice of the absence within one week of its occurrence specifying the matters set out in paragraph (2)(a) to (e).

(4) Where—

- (a) the registered provider, being an individual in full-time day to day charge of the agency; or
- (b) the registered manager,

has been absent from the agency for a continuous period of 28 days or more, and the Commission has not been given notice of the absence, the registered person shall, without delay, give notice in writing to the Commission of the absence, specifying the matters set out in paragraph (2)(a) to (e).

(5) The registered person shall notify the Commission of the return to duty of the registered provider or (as the case may be) the registered manager not later than 7 days after the date of his return.

Notice of changes

25. The registered person shall give notice in writing to the Commission as soon as it is practicable to do so if any of the following events takes place or are proposed to take place—

- (a) a person other than the registered person carries on or manages the agency;
- (b) a person ceases to carry on or manage the agency;
- (c) where the registered person is an individual, he changes his name;
- (d) where the registered provider is a partnership, there is any change in the membership of that partnership;
- (e) where the registered provider is an organisation—
 - (i) the name or address of the organisation is changed;
 - (ii) there is any change of director, manager, secretary or other similar officer of the organisation; and
 - (iii) there is any change in the identity of the responsible individual;
- (f) where the registered provider is an individual, a trustee in bankruptcy is appointed;
- (g) where the registered provider is a company or partnership, a receiver, manager, liquidator or provisional liquidator is appointed; or
- (h) the registered provider acquires additional premises for the purposes of the agency.

Appointment of liquidators etc.

- 26.**—(1) Any person to whom paragraph (2) applies must—
- (a) forthwith notify the Commission of his appointment indicating the reasons for it;
 - (b) appoint a manager to take full-time day to day charge of the agency in any case where there is no registered manager; and
 - (c) not more than 28 days after his appointment, notify the Commission of his intentions regarding the future operation of the agency.
- (2) This paragraph applies to any person appointed as—
- (a) the receiver or manager of the property of a company or partnership which is a registered provider in respect of an agency;
 - (b) the liquidator or provisional liquidator of a company which is the registered provider in respect of an agency;
 - (c) the trustee in bankruptcy of a registered provider in respect of an agency.

Death of registered person

- 27.**—(1) If more than one person is registered in respect of an agency, and a registered person dies, the surviving registered person shall without delay notify the Commission of the death in writing.
- (2) If only one person is registered in respect of an agency, and he dies, his personal representatives must notify the Commission in writing—
- (a) without delay of the death; and
 - (b) within 28 days of their intentions regarding the future running of the agency.
- (3) The personal representatives of the deceased registered provider may carry on the agency without being registered in respect of it—
- (a) for a period not exceeding 28 days; and
 - (b) for any further period as may be determined in accordance with paragraph (4).
- (4) The Commission may extend the period specified in paragraph (3)(a) by such further period, not exceeding one year, as the Commission shall determine, and shall notify any such determination to the personal representatives in writing.
- (5) The personal representatives shall appoint a person to take full-time day to day charge of the agency during any period in which, in accordance with paragraph (3), they carry on the agency without being registered in respect of it.

PART IV

MISCELLANEOUS

Compliance with regulations

28. Where there is more than one registered person in respect of an agency, anything which is required under these Regulations to be done by the registered person shall, if done by one of the registered persons, not be required to be done by any of the other registered persons.

Offences

29.—(1) A contravention or failure to comply with regulations 4 to 6 and 11 to 25 shall be an offence.

(2) The Commission shall not bring proceedings against a person in respect of any contravention or failure to comply with those regulations unless—

- (a) subject to paragraph (4), he is a registered person;
- (b) notice has been given to him in accordance with paragraph (3);
- (c) the period specified in the notice, within which the registered person may make representations to the Commission, has expired; and
- (d) in a case where, in accordance with paragraph (3)(b), the notice specifies any action that is to be taken within a specified period, the period has expired and the action has not been taken within that period.

(3) Where the Commission considers that the registered person has contravened or failed to comply with any of the provisions of the regulations mentioned in paragraph (1), it may serve a notice on the registered person specifying—

- (a) in what respect in its opinion the registered person has contravened any of the regulations, or has failed or is failing to comply with the requirements of any of those regulations;
- (b) where it is practicable for the registered person to take action for the purpose of complying with any of those regulations, the action which, in the opinion of the Commission, the registered person should take for that purpose;
- (c) the period, not exceeding three months, within which the registered person should take any action specified in accordance with sub-paragraph (b);
- (d) the period, not exceeding one month, within which the registered person may make representations to the Commission about the notice.

(4) The Commission may bring proceedings against a person who was once, but no longer is, a registered person, in respect of a failure to comply with regulation 19, and for this purpose, references in paragraphs (2) and (3) to a registered person shall be taken to include such a person.

Signed by authority of the Secretary of State for Health

21st December 2002

Jacqui Smith
Minister of State,
Department of Health