
WELSH STATUTORY INSTRUMENTS

2004 No. 219

The Domiciliary Care Agencies (Wales) Regulations 2004

PART III

CONDUCT OF DOMICILIARY CARE AGENCIES

Conduct of agency

13. 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 the 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) The registered person shall, 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, prepare a written plan (“the service delivery plan”) which shall —

- (a) be consistent with any plan for the care of the service user prepared by a local authority;
 - (b) specify the service user’s needs in respect of which personal care is to be provided; and
 - (c) specify how those needs are to be met by the provision of personal care.
- (2)** The registered person shall —
- (a) make the service delivery plan available to —
 - (i) the service user, and
 - (ii) any person acting on behalf of a service user who was consulted in its preparation or revision;
 - (b) keep the service delivery plan under review;
 - (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 delivery plan; and
 - (d) notify the service user of any such revision.

(3) 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 delivery plan.

(4) 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.

(5) The registered person shall ensure that arrangements made for the provision of personal care to a service user —

- (a) specify the procedure to be followed after an allegation of abuse, neglect or other harm has been made, ensuring that appropriate steps are taken immediately to reduce the risk of any abuse, neglect or other harm;
- (b) specify the circumstances in which a domiciliary care worker may administer or assist in the administration of the service user's medication, and the procedures to be adopted in such circumstances;
- (c) include suitable arrangements to assist the service user with mobility in his or her 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.

(6) The registered person shall make suitable 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.

(7) The registered person shall make suitable arrangements, including training of staff, to ensure that domiciliary care workers operate a safe system of working, including in relation to lifting and moving service users.

(8) The registered person shall make suitable arrangements, by training staff or by other measures, to prevent service users being harmed or suffering abuse or being placed at risk of harm or abuse.

(9) 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.

(10) 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.

Fitness of workers

15.—(1) The registered person shall ensure that no person works as a domiciliary care worker for the purposes of the agency unless —

- (a) the person is fit to work for the purposes of the agency;
- (b) there is available in respect of that person full and satisfactory information or (as the case may be) documentation in respect of each of the matters specified in Schedule 3; and
- (c) the registered person is satisfied on reasonable grounds as to the authenticity of the references referred to in paragraph 5 of Schedule 3 in respect of that person.

(2) The registered person shall ensure that a person who is not a domiciliary care worker but who otherwise is required for the purposes of the agency to visit a service user in their home shall not work

for the agency unless there is available in respect of that person full and satisfactory information or (as the case may be) documentation in respect of the matters specified in paragraphs 1 to 6 and 9 of Schedule 3.

- (3) A person is not fit to work for the purposes of the agency unless —
- (a) the person has the qualifications, experience and skills necessary for the work which he or she is to perform; and
 - (b) the person is physically and mentally fit for the purposes of the work which he or she is to perform.

(4) Paragraphs (1)(b) and (2), in so far as they relate to paragraph 4 of Schedule 3, shall not apply until 31st October 2004 in respect of a worker who has been supplied by or worked for the agency at any time during the period from 1st June 2003 to 31st May 2004.

Staffing

16.—(1) The registered person shall, having regard to the nature of the agency, the statement of purpose and the number and needs of the service users, ensure that —

- (a) at all times an appropriate number of suitably qualified, skilled and experienced persons are employed for the purposes of the agency;
 - (b) appropriate information and advice are provided to persons employed for the purposes of the agency, and further information and advice are made available to them at their reasonable 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 is provided to persons working for the purposes of the agency, and further assistance is made available to them at their reasonable 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 time when a person is working for the purposes of the agency; and
 - (e) service users will receive such continuity of care as is reasonable to meet their needs for personal care where persons are employed, or domiciliary care workers are working, on a temporary basis for the purposes of the agency.
- (2) The registered person shall ensure that each member of staff —
- (a) receives training and appraisal which are appropriate to the work which he or she is to perform;
 - (b) receives suitable assistance, including time off, for the purpose of obtaining further qualifications appropriate to such work;
 - (c) is aware of his or her own responsibilities and those of the other members of staff; and
 - (d) is required to notify the registered person if convicted of any criminal offence.
- (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 members of staff, and domiciliary care workers who are not members of staff, receive appropriate supervision.

Staff handbook and code of conduct

17.—(1) The registered person shall prepare a staff handbook and provide a copy of it to every member of staff and every domiciliary care worker who is not a 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 domiciliary care workers, and disciplinary action which may be taken against them;
 - (b) the role and responsibilities of members of staff and domiciliary care workers;
 - (c) record keeping requirements;
 - (d) recruitment procedures; and
 - (e) training and development requirements and opportunities.

Provision of information to service users

18.—(1) The registered person shall ensure that before personal care is provided a service user is provided with —

- (a) the name of each domiciliary care worker who is to provide personal care;
- (b) details of how the service user may contact the registered person, or a person nominated to act on his or her behalf, at all times during the period for which personal care is being provided; and
- (c) the terms and conditions upon which personal care is arranged.

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

Identification of workers

19. The registered person shall ensure that every domiciliary care worker who works for the purposes of the agency is instructed that while providing personal care to a service user he or she must present the service user with identification showing his or her name, a recent photograph of himself or herself and the name of the agency.

Records

20.—(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;
- (b) at all times available for inspection by any person authorised by the National Assembly to enter and inspect the premises; and
- (c) retained for a period of not less than three years beginning on the date of the last entry.

(2) The registered person shall endeavour to ensure that, in addition to the records referred to in paragraph (1), a copy of the service delivery 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

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

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

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

- (a) the name and address of the appropriate office of the National Assembly; and

(b) the procedure (if any) which has been notified by the National Assembly to the registered person for making complaints to the National Assembly 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 28 days after 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.

(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 20(1) shall apply to that record.

(7) The registered person shall supply to the National Assembly 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.

Staff views as to conduct of agency

22.—(1) This regulation applies to any matter relating to the conduct of the agency so far as it may affect the health or welfare of, or the personal care provided to, service users.

(2) The registered person shall make arrangements to enable staff to inform the registered person or, without reference to the agency, the National Assembly of their views about any matter to which this regulation applies.

Review of quality of service provision

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

(2) The registered person shall supply to the appropriate office of the National Assembly a report in respect of any review conducted by him or her for the purposes of paragraph (1) and shall make a copy of the report available to service users.

(3) The system referred to in paragraph (1) shall provide for consultation with service users and their representatives.

Fitness of premises

24. The registered person shall not use the agency premises for the purposes of an agency unless they are suitable for the purpose of achieving the aims and objectives set out in the statement of purpose.

Financial position

25.—(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 set out in the statement of purpose.

(2) The registered person shall provide to the National Assembly such other information as it may require from time to time 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 or her in relation to the agency in respect of death, injury, public liability, damage or other loss.

Notification of incidents

26.—(1) The registered person shall notify the appropriate office of the National Assembly if an incident described in paragraph (2) takes place and such notification shall be given within 24 hours of the registered person being informed, or otherwise becoming aware, that such an incident has taken place.

(2) The incidents are —

- (a) any serious injury sustained by a service user in the agency premises or while a domiciliary care worker is attending on the service user for the purposes of the provision of personal care to him;
- (b) any incident which —
 - (i) occurs in the agency premises or while a domiciliary care worker is attending on the service user for the purposes of the provision of personal care to him, and
 - (ii) is reported to, or investigated by, the police; and
- (c) any allegation of misconduct by the registered person or any person who works for the purposes of the agency.

(3) Any oral notification given in accordance with this regulation shall be confirmed in writing within 48 hours.

(4) The registered person shall ensure that the persons working for the purposes of the agency are required to inform the registered person forthwith of the occurrence of any of the incidents described in paragraph (2).

Notice of absence

27.—(1) Where —

- (a) a registered provider who manages the agency; or
- (b) a registered manager,

is 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 appropriate office of the National Assembly of the 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 absence commences, or within such shorter period as may be agreed with the National Assembly, and the notice shall specify —

- (a) the length or expected length of the proposed absence;
- (b) the reason for that absence;
- (c) the arrangements which have been made for the running of 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) the name, address and qualifications of any person appointed or nominated in accordance with regulation 9.

(3) Where an absence referred to in paragraph (1) arises as a result of an emergency, the registered person shall give notice of the absence within one week of the emergency's occurrence specifying the matters in sub-paragraphs (a) to (e) of paragraph (2).

(4) Where —

- (a) a registered provider who manages the agency; or
- (b) a registered manager,

has been absent from the agency for a continuous period of 28 days or more, and the appropriate office of the National Assembly has not been given notice of the absence, the registered person shall forthwith give notice in writing to that office specifying the matters in sub-paragraphs (a) to (e) of paragraph (2).

(5) The registered person shall notify the appropriate office of the National Assembly of the return to duty of the registered provider or (as the case may be) the registered manager no later than 7 days after the date of return.

Notice of changes

28. The registered person shall give notice in writing to the appropriate office of the National Assembly as soon as it is practicable to do so if —

- (a) a person other than the registered person carries on or manages, or proposes to carry on or manage, the agency;
- (b) a person ceases, or proposes to cease, to carry on or manage the agency;
- (c) where a registered person is an individual, that individual changes, or proposes to change, his or her name;
- (d) where the registered provider is an organisation —
 - (i) the name or address of the organisation is, or is proposed to be, changed,
 - (ii) there is, or is proposed to be, any change of director, manager, secretary or other similar officer of the organisation,
 - (iii) there is, or is proposed to be, any change in the identity of the responsible individual, or
 - (iv) there is, or is proposed to be, a change of ownership of the organisation;
- (e) where a registered provider is an individual, a trustee in bankruptcy for the individual is, or is likely to be, appointed or a composition or arrangement with the individual's creditors is, or is to be, made;
- (f) where a registered provider is a company, a receiver, manager, liquidator or provisional liquidator is, or is likely to be, appointed;
- (g) where a registered provider is in a partnership whose business includes carrying on an agency, a receiver or manager is, or is likely to be, appointed for the partnership; or
- (h) the agency premises are, or are proposed to be, significantly altered or extended, or additional premises are, or are proposed to be, acquired.

Death of registered person

29.—(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 give notice in writing of the death to the appropriate office of the National Assembly.

(2) If only one person is registered in respect of an agency and he or she dies, his or her personal representatives shall give notice in writing to the appropriate office of the National Assembly —

- (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).

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(4) The National Assembly may extend the period specified in paragraph (3)(a) by such period, not exceeding one year, as the National Assembly shall determine, and shall give notice in writing of such determination to the personal representatives.

(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.