

Number 21

## National Minimum Standards

### Government announce review

The government has recently announced that it will be proceeding with a review of care home standards. Ministers have promised that the National Minimum Standards (NMS) would be reassessed within three years of coming into force in April 2002.

The government have not said how far reaching the review will be, although they have indicated that it will be completed in 2006.

### The status of the National Minimum Standards

The National Minimum Standards are made pursuant to Section 23 of the Care Standards Act 2000 which gives the Minister the power to set out statements of the National Minimum Standards to be applicable to establishments regulated under the Care Standards Act. The aim is that those Standards should reflect the expectations of parliament as to the level of care to be provided.

However, the Standards do not have a free standing effect. Rather, they must be taken into account in the following circumstances<sup>1</sup>:-

- (a) In the making of any decision by the registration authority.
- (b) In any proceedings for the making of an order under Section 20.
- (c) In any proceedings on appeal against such an order or decision.
- (d) In proceedings for any offence under the Regulations.

It is therefore plain that the NMS are not directly enforceable per se although they will clearly have a powerful role to play when decisions under the Care Standards Act are being taken. However the following guidance on the NMS issued by the Department of Health in a letter to the Care Standards Commission of 29 January 2002 is of note:

"Compliance with the National Minimum Standards is not enforceable, but compliance with the Regulations is enforceable subject to the NMS being taken into account. There is no legal requirement to comply with the Standards as such.

The NMS should be used to fulfil two main functions:

- To amplify the legal framework (namely the Care Standards Act and the Regulations).

<sup>1</sup> Section 23 (4) Care Standards Act 2000

CARE HOMES BRIEFING

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- To provide a tool for the Commission and providers to jointly improve the quality of services (see Care Standards Act, Section 7 (2)).

The NMS must be used by the Commission as the basis for inspection and registration and applied in full. Services that are newly registered after 1 April 2002 must comply with the National Minimum Standards in order to be registered.

The Commission should not generally assess whether services comply with the Standards until the first programmed inspection (or registration in the case of services new to regulation). If any of the NMS are not complied with we would expect the Commission to agree an action plan and timescale with the provider to achieve compliance. This should be reviewed at the end of the period through a follow up visit. If there is still non-compliance the Commission should consider enforcement action at this point. However, unless there is significant risk to vulnerable people, the Commission should endeavour to pursue a strategy of working with the provider over time to meet the Standards. The Department wishes to see the Commission using its regulatory powers as a means of raising standards. At the same time the Commission should take swift action regarding dangerous and unsafe practice. Provided non-compliance with NMS does not present such dangers appropriate time should be allowed for providers to put in place actions required to comply.

The Commission must consider very carefully in any case whether enforcement action is appropriate, focusing particularly on allowing providers sufficient time to make improvements. In relation to the environmental National Minimum Standards for care homes, the Commission will consider carefully certain factors such as whether the accommodation overall is satisfactory and service users' views, before coming to any final decision."

The letter then goes to make it plain that the Commission will pay particular attention to the issues of assisted bathing, passenger lifts, wheelchair use of doorways, room sizes and shared rooms.

The NMS therefore clearly have an important role to play in care standards although there is no direct legal duty to comply with them. However, they are matters to be taken into account by the Regulator, although not on the basis that they must always be followed religiously as the Regulator may depart from them if there is good reason to do so. They should be applied in a flexible manner with the overall objective of protecting the best interests of service users. This would suggest that the Department of Health guidance referred to above, where it suggests new services "must comply" with the Standards, puts matters too highly. It is clear that compliance with the Standards requires a careful consideration of the facts of the particular case.

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