



The States of Jersey Department for
Health & Social Services

**Health Protection
Public Health Services**

**REGULATION OF CARE (JERSEY) LAW 200-
Stakeholder Consultation**

NOVEMBER 2007

PROPOSED REGULATION OF CARE LAW STAKEHOLDER CONSULTATION

1. Introduction

As we grow older or suffer from disability we hope to maintain good health and continue to lead independent and active lives. It is accepted however that there will always be a number of people who require some kind of supported living arrangements either in a care home environment or with home care support. Where this is the case it is essential that such provision promotes independence, is of a high standard, and offers skilled care.

It is acknowledged that the Legislation underpinning care home and domiciliary care regulation in Jersey is no longer fit for purpose. Consequently this affords insufficient protection for the most vulnerable sections of society.

The need to update Jersey's health and social care regulation was acknowledged and drafting time for new legislation was approved in May 2006 by the Council of Ministers.

The aim of this consultation is to engage stakeholders at an early stage to help shape how health and social care should be regulated in the future in Jersey.

2. Executive Summary

2.1 Purpose of Consultation

This document sets out the first consultation about the proposed Regulation of Care (Jersey) Law.

The purpose of the consultation is to ensure that those people and organisations that will be affected by this proposed legislation have an opportunity to be aware of the deficiencies in the current legislation and how it is proposed to resolve these problems. To do this we will;

- Provide information about the current legislation
- Provide information about the proposed changes to legislation
- Provide an opportunity to meet with stakeholders both as groups or individuals to discuss the proposals
- Circulate a questionnaire to stakeholders
- Publish the outcome of this consultation
- Enter into further consultation once initial drafting is completed prior to finalising the legislation

2.2 Current Legislation for Nursing and Residential Care in Jersey

All care homes operated by the Parishes, Private and Voluntary organisations in Jersey are regulated by the Minister for Health and Social Services under the Nursing and Residential Homes (Jersey) Law 1994, the Residential Homes (General Provisions)(Jersey)Order 1995 and the Nursing and Mental Nursing Homes (General Provisions)(Jersey)Order 1995. Copies of the Law and Orders can be found at www.jerseylegalinfo.je . The current Jersey Law is based on legislation originally enacted in England and Wales in 1984 which was subsequently replaced in 2000 with

corresponding legislation in Scotland in 2001. This leaves Jersey lagging behind in terms of modern regulation and best practice and potentially exposes vulnerable people to poor standards. It also risks conflicting with the States of Jersey aim of ensuring levels of health and social care compare favourably with accepted professional standards.

2.3 Current Legislation for Nursing Agencies in Jersey

The second area where there are deficiencies in the legislative framework relate to home care support services. The Nursing Agencies (Jersey) Law came into force in 1978 and gives limited powers to officers to inspect only basic records. Copies of the Law and Order can be found at www.jerseylegalinfo.je. Personal care agencies that provide staff to work individually with vulnerable frail people in their own home to assist with personal care are not covered by legislation at all.

2.4 Current Regulation Of States Health And Social Care Provision

The current Laws to regulate health and social care in Jersey specifically exempt Health and Social Services and other States operated facilities and services.

2.5 Proposed changes to Legislation

A new Regulation of Care Law provides an opportunity to address some of the problems. Its primary purpose is to present legislation that facilitates best practice and is fit for purpose by producing an equitable, comprehensive and consistent regulatory framework for a range of health and social care provision. This will ensure that those working with vulnerable people have appropriate skills and expertise to be safe practitioners. It will ensure that there are clear, where necessary enforceable standards based on the needs of those using the services, and in so doing it will be consistent with the States of Jersey's role in ensuring the health, safety and the protection of well being of the population.

2.6 Consultation Period

This first consultation period will commence on 1st January 2008 and will end on 1st May 2008. A 12 week consultation with stakeholders will be provided once the detailed legislation is drafted.

3. How to Respond

3.1 Summary of the questions about the proposed Regulation of Care Law

1. Should care homes and acute hospital type services continue to be regulated in Jersey?
2. Should services providing care to people in their own homes be regulated?
3. Should all acute hospital type services be regulated?
4. Does the current Nursing and Residential Homes Law need updating?
5. Does the current Nursing Agencies Law need updating?
6. Should the proposed Law have a single category care home with one set of regulations and standards?

7. Should Health and Social Services and other States facilities and services continue to be exempt under the proposed legislation?
8. Who should be responsible for the regulation of care in Jersey?
9. To measure compliance, should minimums standards specific to different categories of homes be included in any proposed new law?
10. Should inspection reports for health and social care facilities and services be available to the public?
11. What areas of health and social care services and facilities should be inspected and how often should this take place
12. Should services providing care to people in their own homes be regulated?
13. Should the fees charged to providers be set at a level that makes regulation self funding?

- 3.1 A stakeholder questionnaire is in appendix 1 and this should be completed and returned to:

Christine Blackwood
 Registration Team
 Health Protection
 Le Bas Centre
 St Saviour's Road
 St Helier
 JE1 4HR

Tel: 01534 623719 Fax: 01534 623720

Email: c.blackwood@health.gov.je

- 3.2 The consultation will also include a series of presentations and discussions about the proposed changes to the legislation. A list of stakeholders can be found in appendix 2 and groups will be individually invited to a presentation.
- 3.3 Focus groups for service users will be organised and individual agencies will be contacted to facilitate this.
- 3.4 Meetings with individual stakeholders will be held where requested.
- 3.5 For further information about how to get involved, please contact Christine Blackwood, Team Leader, Registration and Inspection at the address set out above.
- 3.6 The closing date for this consultation is 1st May 2008

4. Nursing and Residential Care Homes

4.1 Summary of issues

The Minister of Health has responsibility for the registration and monitoring of standards of care in Nursing and Residential Homes under the Nursing and Residential Homes (Jersey) Law 1995. Experience of working with the present legislation for care premises, the Nursing and Residential Homes (Jersey) Law 1994, the Residential Homes (General Provisions)(Jersey)Order 1995 and the Nursing and Mental Nursing Homes (General

Provisions)(Jersey)Order 1995, has indicated that it is insufficient in detail to ensure that the regulatory body can adequately set and monitor compliance with current best practice and high standards of care.

4.2 Issues with the current legislation

- It is limited in terms of the requirements for pre employment checks on staff. This can, and has, led to inappropriate people being recruited to look after very vulnerable people
- The onus is on the Minister to prove the person applying for registration or the person registered is unfit
- 'Fitness' for registration is poorly defined
- No provision to set clear enforceable standards
- A number of premises are not fit for purpose. There is limited power to require existing providers to improve the environmental conditions. There are care homes with bedrooms where up to three people share. Some service users have no choice but to share a bedroom with someone they don't know. Care homes have accommodation that does not meet the current minimum size standards and some fall far short of this standard
- It does not enable the Minister to ensure that service users can access all parts of the home. In homes with no lift, service users can be effectively trapped on the upper floors of the home
- The current structural condition of some nursing homes will not permit the provision of a safe haven in the event of fire threatening the lives of users unable to be moved
- There are two different subordinate Orders, one setting the requirements for nursing homes and the other setting out different requirements for residential care homes. This is unnecessarily cumbersome and confusing for operators, particularly those who are dual registered as they must meet two differing sets of requirements
- The nursing home Order has no provision for regulating standards of care. Rather quality of care relies solely on the basis of the professional standards of those operating and managing the home.
- There is insufficient emphasis placed on standards of care and service user experience
- There is a lack of transparency as inspection reports are not available for public scrutiny
- There is no clear requirement to ensure service users are protected from abuse.
- The procedure for varying conditions of registration at the request of providers is bureaucratic, time consuming and unnecessary complicated as there is an automatic right of appeal that must be followed.
- There is no opportunity within the legislation to enable risk based inspection i.e. reduced inspections for well performing services with corresponding increased inspection of poorly performing services
- The existing regulation of acute hospital services, operating theatres, x-ray facilities, endoscopy, laser treatment, acute nursing etc, is inadequate and does not meet current safe practice standards. The Jersey Nursing and Residential Homes Law was adopted in 1995 from existing UK legislation dating back to 1984. Over the intervening period standards of care, practice and governance have improved considerably and those changes should be reflected in our legislation

- There is a lack of clarity around the use of laser treatment, primarily in beauty salons, that otherwise offer no health services
- The provisions within the existing Law are ambiguous with regard to the regulation of minor surgery and treatments provided by a doctor in his own premises for his own patients
- Health and Social Services and other States premises are exempted from the Law

4.3 Proposed changes to the Legislation

The proposed legislation will have a greater service user focus, promote best practice and standards of care, place emphasis on demonstrating compliance, make requirements more specific and easily understood and facilitate the regulation authority to gather evidence. The main features will include:

- Registration of a single category care home with additional requirements if nursing care is provided
- An explicit requirement for all health and social care facilities to have appropriate recruitment policies and procedures including police checks, adequate references, appropriate training, qualifications and competence.
- An explicit requirement for Registered Managers of health and social care facilities to prove their fitness for registration by demonstrating appropriate qualities, knowledge, skills and expertise.
- The power to set clear, enforceable standards based on identifying and meeting the needs and safety of service users.
- Requirements to ensure processes are in place to protect service users from abuse.
- A requirement for premises offering health and social care to be fit for purpose.
- Requirements for acute hospital services that are consistent with safe practice and current standards.
- An unambiguous requirement for all minor surgical and laser treatment to be regulated
- Streamlined and simplified registration and variation procedures.
- An opportunity to develop over time, a risk based inspection regime
- Making reports from inspections of individual premises available to the public
- An opportunity to remove the current exemptions to ensure a “level playing field” for States, Private and Voluntary services

4.4 Costs and benefits of changing the legislation

Costs

- Where businesses already provide facilities and services of a satisfactory standard there will be little or no compliance costs. Owners of substandard premises may incur costs that would vary according to the extent of remedial work involved. In the extreme, such as the lack of ability to provide a safe haven for immovable users, this may involve the demolition and re building of premises.

- Where businesses already support training and development for staff there will be little or no additional compliance costs. Owners who do not already support staff training and development are likely to sustain additional costs.
- If the exemption for states facilities and services are removed additional costs to cover the regulation will be required. (However £150,000 is already identified in the H&SS 2006/7 business plan for regulation costs). Additional costs may be incurred to comply with the required minimum and best practice standards. The scale of this is unknown as these premises have not previously been subject to independent regulation.
- If minor surgery and laser treatment services are subject to legislation additional resources will be required to cover the cost of regulation

Benefits

- Improvement in public confidence by delivering services to the public at an appropriate level of quality and standard.
- Meets the State's responsibility to "...place an increasing emphasis on the promotion of health and wellbeing".
- Reduces risks to vulnerable people within the community.
- Independent and transparent processes to judge performance of health and social care.
- Simplified and clear regulatory processes, cutting unnecessary red tape.
- Provides a focussed quality based framework and mind set for those providing and delivering health and social care.
- Provides independent, transparent external scrutiny of self governance processes

Do nothing option

- Continue with inefficient regulation processes
- Increased risks to vulnerable people in the community
- Limited protection for service users receiving health and social care

4.5 Summary of questions

1. Should care homes and acute hospital type services continue to be regulated in Jersey
2. Should all acute hospital type services be regulated?
3. Does the current Nursing and Residential Homes Law need updating?
4. Should the proposed Law have a single category care home with one set of regulations and standards?
5. Should Health and Social Services and other States facilities continue to be exempt under the proposed legislation?
6. Who should be responsible for the regulation of care in Jersey?
7. To measure compliance, should minimums standards specific to different categories of homes and health care services be included in any proposed new law?
8. Should inspection reports for health and social care facilities and services be available to the public?

9. What areas of health and social care services and facilities should be inspected and how often should this take place
10. Should the fees charged to providers be set at a level that makes regulation self funding?

5. Nursing Agencies and Home Care Services

5.1 Summary of the Issues

The Minister of Health and Social Services is responsible for the licensing of Nursing Agencies under the Nursing Agencies (Jersey) Law 1978. This Law does not extend to personal care agencies and it is known that there are at least four on the island. These agencies are currently supplying non nursing care staff to assist vulnerable people with intimate personal care in their own homes without any regulatory monitoring of standards. The Nursing Agencies Law gives only limited power to the Licensing Authority to inspect basic records pertaining to details of service users, staff, fees charged and salaries paid.

5.2 Issues with the current legislation

- No provisions for adequate recruitment procedures for care staff to safeguard service users
- No requirement for operators of nursing agencies to ensure that their staff are properly trained and competent
- The onus is on the Minister to prove person applying for a licence is “unsuitable” to hold a licence
- “Suitability” is not defined
- No provision for regulating standards or quality of care. This relies solely on the basis of the professional standards of the person holding the licence.
- No provision to set clear enforceable standards
- No set inspection schedule
- Inspection is restricted to inspecting the agency premises and accessing basic records of the names and addresses of service users, names addresses and age of employed care staff, the fees charged to service users and the salaries paid to employed care staff
- A lack of transparency as inspection reports are not available for public scrutiny
- No provision to ensure service users are protected from abuse
- Agencies operated by Health and Social Services, other States departments, any district nursing or similar organisation established with the purpose of providing patients with the services of a nurse to visit them in their own home are exempt from the current licensing requirements
- No protection at all for people receiving care from personal care agencies as these are not covered by the existing legislation

5.3 Proposed changes to the legislation

It is proposed to incorporate the regulation of Nursing Agencies and Domiciliary Care (home care) into the Regulation of Care Law following similar principles and requirements to those in registered health and social care facilities. This will provide some consistency

and standardisation in the quality of health and social care provided on Jersey irrespective of the setting in which it is provided. The main features will include:

- Repeal of the Nursing Agencies (Jersey) Law 1978
- Incorporating the registration and regulation of home based nursing and personal care into the proposed Law
- Explicitly requiring all health and social home care agencies to have appropriate recruitment policies and procedures in place ensuring that criminal records are checked, adequate references are obtained, appropriate training has been undertaken, staff have appropriate qualifications, skills and competence to do the job
- Explicitly requiring Registered Managers of health and social home care agencies to prove their fitness for registration by demonstrating appropriate qualities, knowledge, skills and expertise.
- Requiring providers of health and social care to maintain staff training, competence and development following initial employment
- Setting clear, enforceable standards based on identifying and meeting the needs and safety of service users.
- Requiring processes are in place to protect service users from abuse.
- Setting out clear inspection processes
- Making inspection reports publicly available
- An opportunity to remove the current exemptions to ensure a “level playing field” for States, Private and Voluntary services

5.4 Cost and benefits of changing the legislation

Costs

- Good existing providers of home based nursing and domiciliary care should be working to best practice and therefore the changes will incur little cost. Poor providers of home based nursing and domiciliary care may need to invest in infrastructure to support their business and this is likely to require increased resources
- Where businesses already support training and development for staff there will be little or no additional compliance costs. Owners who do not already support staff training and development are likely to sustain additional costs.
- If the exemption for Agencies operated by Health and Social Services, other States departments, any district nursing or similar organisations are removed additional costs to cover the regulation will be required.

Benefits

- Improvement in public confidence by delivering services to the public at an appropriate level of quality and standard.
- Meets the State’s responsibility to “...place an increasing emphasis on the promotion of health and wellbeing”.
- Reduces risks to vulnerable people within the community.

- Independent and transparent processes to judge performance of health and social care.
- Provides a focussed quality based framework and mind set for those providing and delivering health and social care.
- Provides independent, transparent external scrutiny of self governance processes

Do nothing option

- Continue with inefficient regulation processes
- Increased risks to vulnerable people in the community
- Limited protection for service users receiving health and social care

5.5 Summary of Questions

1. Does the current Nursing Agencies Law need updating
2. Should Health and Social Services and other States facilities and services continue to be exempt under the proposed legislation?
3. Who should be responsible for the regulation of care in Jersey?
4. Should inspection reports for health and social care facilities and services be available to the public?
5. What areas of health and social care services and facilities should be inspected and how often should this take place
6. Should services providing care to people in their own homes be regulated?
7. Should the fees charged to providers be set at a level that makes regulation self funding?

Appendix 1
**Health and Social Services Department
Proposed Regulation of Care (Jersey) Law**

Stakeholder Questionnaire

Question 1

Do you think that the following facilities should be independently regulated:

	YES	NO	DON'T KNOW
Care homes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Acute Hospital Care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Home nursing/social care (domiciliary care)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Minor Surgery in General Practice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please give comments on your responses.

Question 2

Do you think that the current Nursing and Residential Homes Jersey Law 1994 needs updating? Copy of the legislation can be found at www.jerseylegalinfo.je

YES NO DON'T KNOW

If you answered yes, what changes would you like to see included in a new law?

Question 3

Do you think that the current Nursing Agencies Law 1978 needs updating? A copy of the legislation can be found at www.jerseylegalinfo.ie

YES NO DON'T KNOW

If you answered yes, what amendments, additions would you like to see included in a new law?

Question 4

Currently the Nursing and Residential Homes (Jersey) Law 1994 has separate registration and different requirements for Nursing and Residential Homes. It is intended to simplify this by having a single category care home with one set of regulations and standards. What are your views about this?

Question 5

The current Nursing and Residential Homes (Jersey) Law 1994 specifically exempts any facility that is operated by Health and Social Services or any other States Department from regulation. Under new legislation should this:

Please Tick

- a) Remain the same
- b) Include H&SS and other states departments
- c) Don't know

Please give reasons for your answer.

Question 6

Who should be responsible for the regulation of care services in Jersey?

Please Tick

- a) An Inspectorate as part of H&SSD
- b) A local Inspectorate independent from H&SSD
- c) An external Inspectorate (for example UK regulatory body, etc.)
- d) Another agency (please specify)

Question 7

To measure compliance should enforceable minimum standards specific to different categories of homes and health care services be included in any proposed new law?

- | | | |
|--------------------------|--------------------------|--------------------------|
| YES | NO | DON'T KNOW |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Please give comments on your answer

Question 8

Currently inspection reports are not available to the public. Do you think that inspection reports should be available to the public?

- | | | |
|--------------------------|--------------------------|--------------------------|
| YES | NO | DON'T KNOW |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Please give comments on your answer

Question 9

The Inspection process will form part of any new legislation. Do you think that inspections should be:

Please tick your favoured option

- a) Twice a year
- Annual
- Risk based (frequency based on quality of service)
- Other (please specify)

Please tick your favoured option

- b) Announced (prior notification given to managers and service users)
- Unannounced (inspectors arrive without notice)
- A mixture of announced and unannounced

Please tick your favoured option

- c) General including all aspects of the service
- Specific focussing in depth on one or two aspects of the service
- A mixture of general and focussed

Please give any other comments you may have about inspection

Question 10

Do you think that personal care agencies (that is agencies providing home/social care to people in their own homes), should be regulated.

YES NO DON'T KNOW

Please give comments on you answer

Question 11

Currently the Nursing Agencies legislation exempts any service operated by a states department or district nursing association. Under new legislation should this remain the same?

YES NO DON'T KNOW

Please give reasons for your answer.

Question 12

Currently cost of regulation of care is mainly funded by the States of Jersey with providers of services set at a minimum level. Should fees be set at a rate that makes regulation self funding?

YES NO DON'T KNOW

Please give reasons for your answer.

Question 13

What, in your opinion, are the most important changes you would like to see in any new legislation?

NAME.....

ORGANISATION

POSITION HELD.....

DATE.....

Please return to Christine Blackwood, Team Leader, Registration and Inspection, Health Protection, Le Bas Centre, St Saviour's Road, St Helier, JE1 4HR

All completed questionnaires should be returned by 1st May 2008

Appendix 2

PROPOSED REGULATION OF CARE LAW CONSULTATION LIST OF STAKEHOLDERS

All Nursing and Residential Home Owners
All Nursing and Residential Home Managers
Service Users from Residential and Nursing Homes
All Nursing Agency Owners
Known Personal Care Agencies
Known providers of Laser treatments
All General Practitioners
Jersey Care Federation
Health and Social Services Senior Management Team
H&SS Adult Social Work Team
H&SS Special Needs Team
H&SS Elderly Mental Health Team
H&SS Elderly Care Service
FN&HC
Employment and Social Security
States of Jersey Fire Service
Special Needs Advocacy Worker
Mental Health Advocacy Worker
Age Concern
Mencap
Jersey Association of Carers
Jersey Multiple Sclerosis Society
Jersey Parkinsons Disease Society
Jersey Society for the Disabled
Jersey Stroke Society
Motor Neurone Disease Association
Alzheimer's Society
Headway