

STATES OF JERSEY



REGULATION OF CARE WORKERS' EMPLOYMENT STANDARDS (P.29/2017): COMMENTS

**Presented to the States on 22nd May 2017
by the Minister for Health and Social Services**

STATES GREFFE

COMMENTS

Members are asked to oppose the Proposition of Deputy G.P. Southern of St. Helier.

With reference to parts (a) and (b) of the Deputy's Proposition, the Approved Provider Framework ("APF") does not make any reference to employment practices or standards in its provisions, and there is no intention for it specifically to do so. The APF Agreement for home care services was introduced to develop and monitor standards of care throughout the sector in the absence of existing legislation or regulation to support the introduction of the Long-Term Care ("LTC") benefit in July 2014. All providers must meet minimum standards of safety and quality.

Terms and conditions of employment are a matter for employers and employees, subject to them meeting statutory and regulatory requirements. This is also true for those who provide the fully-funded services mentioned by the Deputy in part (c) of his Proposition.

The purpose of the APF is to set clear standards in relation to the way that care services are delivered, including in people's homes. The APF is an interim measure; it will be superseded by the [Regulation of Care \(Jersey\) Law 2014](#) ("the 2014 Law") when the remaining provisions of that Law which have not yet commenced come into force towards the end of 2017.

Neither the APF nor the forthcoming Regulation of Care Law is intended to regulate the employment standards of those employees delivering such services. Under the APF, it is important that staff possess the appropriate qualifications, experience and skills to competently perform the duties required of them. Similarly, employers are expected to have policies and procedures covering the recruitment and vetting of staff, and to adhere to health and safety and discrimination and other employment legislation.

Employers in the care sector set terms and conditions appropriate to the market in which they operate, and this is the proper comparator. In setting terms and conditions of employment, they take into account what they as private and third sector businesses can afford in order to recruit and retain staff. For their part, with a range of employers, employees can look for the best overall terms and conditions package and the working arrangements that suit them.

As agencies' funding comes from the fees charged to clients, any increase in terms and conditions that is implicit in the Deputy's Proposition would be likely to result in higher costs, which would have to be passed on to clients. Some clients may not be willing to pay higher fees, and would therefore restrict the care they should properly receive at home, which would be detrimental to their condition.

The Deputy's Proposition would be likely to result in higher fees in the domiciliary care market, creating a pressure on both Long-Term Care and Income Support budgets.

Part (c) of [P.29/2017](#) requests that the Minister for Health and Social Services introduce Regulations under the Regulation of Care (Jersey) Law 2014, requiring care providers to apply employment standards equivalent to Health and Social Services Department employment standards.

The 2014 Law, which was adopted, by 43 votes to 6, by the States Assembly on 3rd July 2014, and associated Regulations, fall within the remit of the Chief Minister as opposed to the Minister for Health and Social Services. It is envisaged that the remaining provisions of the 2014 Law will come into force towards the end of 2017, pending the States agreeing and adopting Regulations and Orders made under that Law.

Regulations relating to the definition of regulated services, and to standards and requirements, are currently being drafted further to a stakeholder consultation process which finished in late April 2017. Those Regulations do not relate to standards of employment because the Law does not provide the relevant powers.

Powers to impose requirements on service providers are set out in Article 14 of the 2014 Law. This includes Article 14(3)(c) which provides for powers related to “*the recruitment, management and training of workers who work in any service provided in the carrying on of a regulated activity*”. Article 14 does not include reference to matters relating to terms and conditions of employment, because it was never intended that the Care Commission would act as an economic regulator nor be charged with looking at employment standards.

The Employment (Jersey) Law 2003 (“the 2003 Law”) was introduced to consolidate enactments relating to matters such as terms of employment and the payment of wages. The 2003 Law, and the associated Regulations, make provision in relation to the minimum wage and who qualifies for the minimum wage. The 2003 Law provides the States Assembly with powers to change who qualifies for the minimum wage, but those powers cannot be used to treat different areas of Jersey, different sectors of employment or occupations differently, i.e. there is no ability to make different provision in relation to particular industries.

Using the 2014 Law to set employment conditions and wages would, to all intents and purposes, establish a minimum wage for those working in care services (that being equivalent to the Health and Social Services Department). This would present a significant risk, as the powers provided by the 2014 Law would doubtless be exceeded, particularly given that the 2003 Law prohibits the setting of sectoral minimum wages.

Whilst the 2014 Law does not provide a vehicle for imposing minimum terms of employment on services providers, it does provide the Care Commission with powers to report on any deficits in care standards. This could include deficits that arise, or could potentially arise, as a result of terms and conditions of employment, along with any other reason. The Commission may make this information public to all existing and potential care users.

In summary, Members are urged to reject the Proposition on the grounds that neither the Approved Provider Framework nor the Regulation of Care Law, which are intended to monitor and regulate standards of care, are appropriate vehicles for setting employment standards and practices. Subject to meeting minimum statutory requirements, such as the minimum wage, these issues are always a matter for employers and employees.