

The Private Dentistry (Wales) Regulations 2016

1. Introduction

1.1 This Regulatory Impact Assessment (RIA) aims to assess the impact of the Private Dentistry (Wales) Regulations 2016.

1.2 In *Together for Health, a National Oral Health Plan for Wales 2013 – 2018* Welsh Government made the commitment to work with the dental profession and other stakeholders to revisit the private dentistry regulations and in particular, consider whether and how dental practices – rather than individual dentists – can register to provide private dental care. In addition we agreed to seek advice on how private dentistry can meet the *National Minimum Standards for Independent Healthcare* so that standards for private dentistry are consistent with NHS services.

1.3 The General Dental Council (GDC) is the UK regulator for dentists and Dental Care Professionals (DCPs) who have to register with the GDC as individuals. In addition Healthcare Inspectorate Wales (HIW) regulates private dentists in Wales meaning that individual dentists providing private care and treatment have to register with both the GDC and HIW.

1.4 In 2013 the GDC made a decision to allow direct access. This permits certain DCPs, particularly dental hygienists, dental therapists and clinical dental technicians to provide appropriate dental care to patients/ service users without having to see a dentist first. This supports the principles of prudent healthcare in allowing this group of healthcare professionals to more readily use their full range of skills i.e. to organise the workforce around the principle of 'only do what only you can do'. Under direct access DCPs must work within the GDC Scope of Practice and be suitably qualified, trained and indemnified for the role. The current private dentistry regulations allow dentists to register with HIW, but not DCPs. Therefore it is possible for private direct access DCPs to operate their own practice in Wales without registration with HIW and without the safeguards registration offers to patients and the practice.

2. Purpose & intended effect of the legislation

2.1 The current regulations do not address a number of important quality and safety indicators. They need to be revised to ensure greater consistency with NHS dental practice and to ensure that wholly private practice is required to meet recognised quality standards consistent with those set out in the Health and Care Standards.

2.2 The majority of NHS dental practices also provide some private care. NHS dentists who provide private care must register with HIW. However HIW inspects **practices**, but not individual dentists. Practice registration and inspection bring the whole dental team into the safeguards of registration and inspection.

2.3 The current regulations provide very limited scope for HIW to remove a dentist from their private dentist register. Practice registration rather than individual dentist registration will better support the HIW practice inspection and peer review process.

2.4 A small number of dentists use lasers to provide specialised dental treatment. Under current regulations dentists have to register both to use a laser and to provide private dentistry. This dual registration is anomalous since dentists are not required to register separately to use other specialised equipment. The revised regulations will also address this.

2.5 Under the current Private Dentistry Regulations a dentist registered with HIW has to have an enhanced Disclosure and Barring Service check (DBS) every 3 years. Dentists who want to work in NHS dental practice in Wales must submit an enhanced criminal record certificate when they apply to be included in the health board NHS Dental Performers List. They do not require another DBS check unless they move to another health board or unless they commit an offence which requires another check. There are no reasons for private dentists to routinely have 3 yearly checks.

3. Policy Intentions

The three broad policy intentions are to:

- Improve registration. Regulate the practice rather than the individual. The GDC is the UK regulator for dentists and DCPs who have to register as individuals. In addition HIW regulates private dentists in Wales. The new regulations will help to address the fact that individual dentists providing private care and treatment have to register with both the GDC and HIW.
- Direct Access. Allow DCPs who are suitably competent, trained and indemnified to provide private direct access to patients within their scope of practice as described by the GDC. Our intention is the regulations will require DCPs who set up business in a premises/establishment offering private hygienist services/ relevant professional services, would be registered.
- Quality and Safety. After consideration we have concluded it will not be necessary to issue separate National Minimum Standards (NMS) for Private Dentistry. We intend the new regulations to address the quality and safety 'gaps' in the regulations and ensure consistency with what is required by both the NMS for Independent Health Care Services in Wales and the Health and Care Standards for Wales (which apply to NHS services). Welsh Government will issue guidance on the new private dentistry regulations to signpost readers to additional sources of help and advice (for example advice on infection control in dental practice).

4. Options

a. Do nothing

Advantages: The required amendments to meet our policy intentions may be able to be delivered through the development of the Green Paper: Our Health, Our Health Service.

Disadvantages: The potential length of time it may take for this to become legislation will delay the required improvements and changes.

HIW's regulatory powers will not be as robust as possible, and their costs of regulation not being substantially recovered.

The 'gaps' in the regulations will remain creating a lack of synergy between the NMS for Independent Health Care Services in Wales and the Health and Care Standards for Wales.

Inconsistencies relating to DBS checks will continue.

Private direct access DCPs will continue to operate their own practices in Wales without registration with HIW and without the safeguards registration offers to patients and the practice.

b. Introduce new Regulations

Advantages: Private Direct Access services will be regulated by HIW. Introducing the new Regulations will: address the unintended gaps and consequences of the existing regulations; ensure the costs of regulation continue to be substantially recovered; and strengthen HIW's regulatory powers helping to improve quality and patient safety.

A level of greater consistency between private and NHS practices.

Disadvantages: The profession may not welcome any increase in an annual registration fee, particularly at a time when there is a perceived reduction in annual dental income and an increase in practice expenses.

5. Costs and benefits

Benefits

5.1 Regulating private dental treatment will continue to act as a strong mechanism to encourage continuous improvement in the provision of private dentistry. This includes the improvement of quality and safety throughout primary dental care in Wales helping private dentistry to use the Health and Care Standards so that standards for private dentistry are consistent with that of NHS services.

Costs

5.2 HIW will regulate dental practices which provide private dental services in Wales. The costs of regulation include costs associated with the registration process, the inspection of private dental treatment, the preparation of inspection reports, the handling of any complaints and dealing with on-going registration related issues. The fee of £500 is the same as that paid by private general medical practices who register with HIW and less than that required for dental practices registering with the Care Quality Commission in England.

5.3 It is anticipated that any unfounded costs can be borne from HIW's existing and future budgets and through increases in annual registration fees. It is anticipated any proposed increase in fees will not adversely impact competition between dental practitioners, since they will apply uniformly to all dental practices.

5.4 The increased practice registration fee will be offset by reduced costs of 3 yearly DBS checks. For larger practices the reduction in individual registration will also offset the increased fee for practice registration. Single handed practices or those with only 2 or 3 dentists will have to pay more than under the current system. However the process of practice registration, inspection and reporting involves almost the same level of input from HIW as that required for a large practice.

5.5 The proposed amendments will not act as a restriction on new market entrants and do not favour any particular dental practitioner.

6. Impact on the public

6.1 No impact on the general public is foreseen.

7. Impact on the private, local government and third sector

7.1 While the impact on wholly private practitioners is detailed below, no impact on local government or the third sector is foreseen.

8. Impact on dental practitioners

Registration

8.1 Registration under the Care Standards Act 2000 ("the Act") takes place in respect of a "registered person", who can be an individual, a partnership or an organisation¹, in respect of "an establishment or an agency" that they carry on or manage. Where an organisation is registered as the "registered person" an individual is usually required to be nominated as the "responsible individual" on behalf of the organisation.

¹ Each set of regulations under "the Act" sets out what type of "registered person" is registered, e.g. whether provision is made for an organisation a partnership or an individual.

8.2 Care homes for example are registered per “establishment”, a domiciliary care agency is registered as an agency that provides a given number of hours of domiciliary care.

8.3 Our intention is that the regulations will require:

- a private dental provider to be registered per establishment;
- a manager/responsible individual to be registered per establishment;
- two dentists who share a building but operate independently will require two registrations;
- an organisation, such as a Body Corporate or Partnership, with more than one premises from which dental services are offered, will be required to register each practice/building separately as per the current system of registration under “the Act”;
- HIW to be notified if a dentist leaves the practice; and
- HIW to be notified of all the names of the dentists operating from the premises.

8.4 If HIW as the regulator has a concern about one of the dental practices that an organisation operates it can cancel the registration of the practice in respect of which it has concerns. The organisation will continue to operate its other practices and separate enforcement action would need to be taken in respect of each of the practices despite the fact that they are owned by the company.

8.5 If there is a misconduct issue in respect of one dentist in a practice HIW can allow the whole of the practice to remain registered while the issue of the dentist is addressed, unless it becomes clear that the practice as a whole is not safe.

Effects of cancellation of registration

8.6 If HIW cancel the registration of the “registered person”, in a given practice all dentists listed as working as part of that practice would be affected. The group of dentists would have to appoint a new registered person and would not be able to provide dentistry from the premises until they had done so.

Balance of work

8.7 The practice has to register with HIW no matter how small the amount of private dentistry provided. Dental hospitals (dental treatment under general anaesthesia) are already registered under “the Act” and Independent Health Care (Wales) Regulations 2011 (the “IHC (W) Regulations”) as an independent hospital. It is intended that they are not captured twice by the Private Dentistry (Wales) Regulations 2016 and thus legally obliged to register again.

Lasers

8.8 Treatment using a Class 3B or Class 4 laser product is a “listed service” under “the Act”. An establishment (that is not an NHS hospital) that provides a “listed service” is an independent hospital. A person who “carries on or manages” an independent hospital must register it under Part 2 of the Act.

8.9 There is an exception where treatment using a Class 3B laser is carried out by, or under the supervision of, a health care professional (regulation 3(2)(b) of the IHC(W) Regulations). “Health care professional” includes a dentist - it includes anyone who is registered as a member of a profession to which section 60(2) of the Health Act 1999 applies.

8.10 A small number of dentists use Class 4 lasers to provide specialised dental treatment. Under current regulations dentists have to register both to use a laser and to provide private dentistry. This dual registration is anomalous since dentists are not required to register separately to use other specialised equipment. The revised regulations will need to address this. It is intended that the Private Dentistry (Wales) Regulations 2016 amend the definition to remove the use of Class 4 lasers from the list of “listed services”.

Fees and Administration Process

8.11 The current fee to register as a private dentist with HIW (£75 per annum) does not reflect the cost of registration and the recently introduced quality assurance systems and practice inspection/peer review process. The level of any new fee is likely to be less than that paid by practices in England who register with Care Quality Commission (CQC) – currently between £600 and £1300 per annum depending on the size of the practice. HIW envisage an annual fee payable by the practice on the same date every year.