

Regulating residential care for elderly people

Over 300,000 people in England now live in the 12,000 residential care homes for elderly people registered and inspected by local authorities. How effective is this machinery for maintaining standards? What are the options for change? This study, by Patricia Day, Rudolf Klein and Sharon Redmayne of the Centre for the Analysis of Social Policy at the University of Bath, addresses these issues as a contribution to the debate prompted by the Department of Health's decision to review the whole system of regulation. The main conclusions are:

- f Standards in homes have risen, though credit for this must be shared between the regulatory system, increased competition among providers and rising expectations among both public and private purchasers.**
- f Much of the friction between regulators and providers reflects the problems involved in setting up the new local authority Inspection Units and the inexperience of some inspection staff.**
- f The 107 Inspection Units in England are now solving many of these problems but there are considerable variations in the standards they demand of providers, in the frequency of inspections and in the methods they use.**
- f A choice must be made about the balance to be struck between the flexibility offered by local regulation (at the risk of inconsistency) and the uniformity of national regulation (at the risk of bureaucratic rigidity).**
- f Inspectorial effort could be targeted more precisely by the use of 'alarm bells' to identify those events or practices which should not happen in a well-run home.**
- f More systematic use could be made of resident-centred inspections, although asking users what they think is not a substitute for other methods: homes with low standards tend to generate low expectations.**
- f The publication of inspection reports on individual homes is a powerful new tool of regulation but only a minority fulfil their potential as a source of information for consumers.**
- f Proposed improvements in standards should be costed, so that explicit decisions can be taken as to whether any extra spending represents the best way of improving care for elderly people. This could be the role of a new National Standards Advisory Committee.**

From public provision to State regulation

Residential care for elderly people has undergone a double revolution over the past 15 years. On the one hand, the sector as a whole has expanded greatly in the UK: from 227,000 places in 1981 to 320,000 in 1991, with demographic trends amplified by the availability of social security funding. On the other hand, the public provision of places has shrunk. Whereas in 1981 local authorities were by far the biggest providers, by 1991 they accounted for less than half the places. Both trends look set to continue.

The main function of the public sector is, in future, likely to be to fund (in part) and to regulate (in whole) the provision of residential care for elderly private owners and voluntary organisations. The machinery of regulation has, as a consequence, become much more central than ever before. Its effectiveness will, to a large extent, determine whether the new pattern of provision will succeed in delivering services that satisfy the expectations of both users and of society as a whole. This study gives a picture of how the present system is working, identifies the emerging policy issues and sets out options for change.

The machinery of regulation

The 1990 NHS and Community Care Act introduced two major changes in relation to residential care. First, the role of local authorities was redefined: they were to become purchasers rather than providers of care. Second, the remaining local authority homes - previously immune from any systematic outside scrutiny - were brought under the regulatory umbrella. To ensure the even-handed treatment of both local authority and independent homes, the 107 Inspection Units in England were given semi-autonomous status within social services departments. Lay assessors were introduced into the inspection process; the inspection reports on individual homes became public documents; Advisory Committees, including representatives of providers, were set up alongside each Inspection Unit.

The Department of Health's current review of the regulatory system is therefore taking place against a recent history of change and expansion. In effect, the new Inspection Units set up in the 1990s have had to invent themselves. In addition to their responsibility for homes for elderly people, they have a range of other duties, including the registration and inspection of day care and residential facilities for children. If the machinery is creaking, it is in part at least because the burdens placed on it have increased. And past performance in coping with this transformation is not necessarily an accurate guide to the future.

But although the scale and scope of the regulatory machinery have increased greatly over the past decade, the statutory framework has not changed fundamentally. The requirements which residential care homes are expected to meet are still in essence defined by the 1984 Registered Homes Act as translated into regulations and amplified by guidance from the Social Services Inspectorate (SSI). The national requirements are set out in very general terms - of 'adequacy' and 'sufficiency' - leaving it to the registration authorities to flesh them out in the local guidance to home managers and owners setting out the conditions of registration.

How effective is regulation?

Regulators and regulated agree that standards have improved over the past decade. However, it is impossible to establish how far this is attributable to the effective enforcement of more stringent standards. Increased competition among providers, at least in some areas, has also contributed. So, too, have rising expectations among purchasers, both public and private. As purchasers, local authorities can use their financial muscle to raise standards - as some are doing - but their willingness to do so may be circumscribed by their desire to keep costs down.

Regulatory concern is now concentrated on a minority - perhaps 10 per cent - of homes which are persistent recidivists. An analysis of 200 reports on individual homes found that 7.5 per cent of homes accounted for 21 per cent of the total 'requirements' (changes that the homes must make in order to meet the conditions of registration). However, this study identified a number of specific problems:

- Many local authorities cannot, or will not, invest the capital needed to upgrade their own homes and inspectors cannot force them to speed up modernisation by threatening deregistration.
- The conditions under which homes operate are laid down at the time of registration and cannot be altered unless the ownership, management or character of the residents have changed. This effectively means multiple standards, depending on the date of registration.
- Inspection staff are uncertain and divided about how far they can *require* rather than merely recommend that homes meet quality of care standards (privacy; choice; care plans) set out in guidance from the SSI.

National or local regulation?

Inspection Units differ considerably in the way they are organised and operate, creating, in effect, 107 regulatory regimes. Differences in budgets do not relate to the number of homes being regulated. Standards required vary, if around a common core: for example, some insist that all rooms should be single occupancy, while others require only 20 per cent. The methodology of inspection varies and, even in the same Unit, inspectors may interpret the rules and implement standards differently.

Such variations irritate providers and cause some friction. The providers - as represented by their various associations - do not want to dismantle the present regulatory system but to improve it. They see it as offering them protection against unscrupulous or incompetent competitors (or, it might be said, against more efficient and innovative ones). Further, the study suggests, regulators and regulated increasingly share a set of expectations about good practice, often forged at the time of registration when Inspection Units tend to invest much effort in counselling prospective providers.

However, there is strong support among providers - to an extent shared by inspectors - for moving towards national standards in order to iron out the inconsistencies of the present system: providers feel that the present system gives inspectors too much scope to use their discretion to ratchet up standards and, in a few cases, to make unreasonable demands.

There are a number of different options for a national system. Model A would be to have national standards of registration and inspection but to administer them, as at present, locally. Model B would be a national regulatory agency with its own staff implementing national standards. Model C would be, following the example of the Office for Standards in Education, to have a national agency that contracts out inspection.

The choice between these options is likely to depend on the view taken of the balance of risks involved. The present devolved system has the advantage of flexibility and responsiveness to the circumstances of individual providers. But it gives scope for regulatory inconsistency and arbitrariness. Setting national standards would not necessarily overcome this: many of the complained-of inconsistencies reflect the fact that any standards - whether national or local - are open to interpretation in implementation. Conversely, any national agency - whether of Model B or Model C - would promise a more uniform, more consistent approach across the country but with the price of limiting and monitoring inspectorial discretion and thus risking bureaucratic rigidity.

Whatever the option adopted, one problem has to be overcome. The fact that the present legislation defines standards in terms of adequacy and sufficiency is both its weakness - because it allows multiple interpretations - and its strength - because it allows standards to respond to changing social expectations. Any new system must therefore have the capacity to adapt. One solution would be to set up a National Standards Advisory Committee charged with carrying out regular reviews. Such a committee, this study argues, should produce costed standards. At present decisions about raising standards are usually made without taking the financial implications to both public and private purchasers into account. In future, they should only be taken after considering whether the money spent represents the best buy for the care of elderly people.

Improving the methods of inspection

There is, clearly, some scope for improving the way in which inspectors carry out their task. This may not necessarily cut the regulatory 'burdens' - such as paperwork and the disruption of routine caused by inspectorial visits - of which some providers complain. But it could bring about a better use of regulatory resources: for example, exceeding the statutory minimum of two inspections a year as a matter of routine - as some Inspection Units do - may not represent a good use of staff. Inspection efforts could be targeted more precisely by developing a set of 'alarm bells', i.e. indicators of things that should not happen in a well-run home such as a high rate of accidents or of staff turn-over.

Inspection has, over the past decade or so, moved away from concentrating on 'inputs' (buildings; number of staff) to monitoring also 'outputs' (the quality of care delivered). There is now growing interest in moving one step further and looking at outcomes: to adopt the Australian model of resident-centred inspection and to put more emphasis on the views of users. Although most inspections currently do involve some interviews with residents, it would clearly be desirable to make this an integral part of inspection. But this would not obviate the need to examine the way in which the home is managed. Many residents may be too confused or fearful of retaliation if they complain. More important still, homes tend to condition the expectations of residents: those with low standards tend to generate low expectations.

The limited power of users is greatest when they are deciding which home to enter. In this respect the power of users has, in theory at least, been greatly strengthened by the publication of inspection reports on individual homes. But the analysis of 200 reports

showed that these vary greatly. Some are extremely informative and detailed, giving a real sense of what the home is like. Others are short and terse: over half do not provide information about accessibility, visiting hours and the availability of special aids. There is a need to test systematically what prospective users want - and what the best methods are for diffusing the reports - if the full potential of this innovation is to be achieved.

Is there an alternative to public regulation?

Public regulation is not the only way of ensuring adequate standards in residential care: in theory at least, there are three alternatives. One option would be to leave it to market competition to eliminate poor providers. But there is no evidence that competition would necessarily take the form of rivalry to keep up quality, rather than keeping prices down and profits up. Another would be to rely on self-regulation by the providers: to substitute accreditation by provider associations for public regulation. But this would be widely seen as self-interested and therefore lacking legitimacy. A final option of leaving regulation to local authority purchasers would leave self-financed users unprotected.

There is also a positive case for public regulation. Public policy has shaped the residential care sector for elderly people and public funds support almost half the residents in the homes concerned. Considerations of public accountability reinforce concern for the well-being of those living in the homes. The debate about the regulatory machinery should be concerned at least as much with issues of effectiveness, equity and efficiency as with reducing or simplifying regulatory requirements.

About this study

This one-year study was designed to examine the performance of the existing regulatory system and to identify the policy issues emerging from the experience of the last half decade. The evidence was gathered by interviewing the Directors of the Social Services and the heads of Inspection Units in 11 areas, the national associations of inspection staff

and providers, representatives of users and analysing 200 inspection reports on individual homes. A report on this analysis, by Sharon Redmayne, has been published separately by the Centre for the Analysis of Social Policy. Other sources included SSI reports and studies of regulatory systems in other countries. The study was also informed by the authors' previous work on the regulation of nursing homes and housing associations.

Further information

The full report, *Why Regulate? Regulating residential care for elderly people* by Patricia Day, Rudolf Klein and Sharon Redmayne, is published by The Policy Press in association with the Joseph Rowntree Foundation (price £11.95).

Related Findings

The following *Social Care Findings* look at related issues:

- 44 Pets and residential care (Dec 93)
- 67 Complaints procedures in social services departments (May 95)
- 69 Job satisfaction and dissatisfaction amongst residential care workers (Jun 95)
- 71 Adult placement services and the effect of the Registered Homes (Amendment) Act (Aug 95)

The following are also relevant:

Summary 6 Care standards in the residential care sector (Sept 95)

Briefings 1 NVQs in residential homes (Sept 94)

For further information on these and other *Findings*, contact Sally Corrie on 01904 654328 (direct line for publications queries only; an answerphone may be operating).



Published by the
Joseph Rowntree Foundation
The Homestead, 40 Water End
York YO3 6LP
Tel: 01904 629241 Fax: 01904 620072
ISSN 0958-3815

The Joseph Rowntree Foundation is an independent, non-political body which funds programmes of research and innovative development in the fields of housing, social care and social policy. It supports projects of potential value to policy-makers, decision-takers and practitioners. It publishes the findings rapidly and widely so that they can inform current debate and practice.