



**Department of Health:
Draft Regulations for Providers of Home Support Services**

**Submission by the Ombudsman for Children's Office
September 2022**

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1. Introduction

The Ombudsman for Children's Office (OCO) is an independent statutory body, established in 2004 under the Ombudsman for Children Act 2002 (2002 Act). Under the 2002 Act, as amended, the Ombudsman for Children has two core statutory functions:

- to promote the rights and welfare of children under the age of 18 years living in Ireland, and
- to examine and investigate complaints made by or on behalf of children about the administrative actions of public bodies, schools and voluntary hospitals that have or may have adversely affected a child.

The OCO has prepared this submission pursuant to sections 7(1)(a) and 7(4) of the 2002 Act, which provide for the Ombudsman for Children to advise any Minister of the Government on the development and coordination of policy relating to children and on any matter concerning the rights and welfare of children.

The OCO has previously highlighted its concerns about the lack of a national policy with regard to home care support for children.¹ The OCO therefore welcomes the development by the Department of Health of draft regulations for providers of home support services, with the purpose of ensuring that home support services are of high quality and safeguarding service users.² The OCO also welcomes the development by HIQA of draft national standards for home support services, which will complement the minimum requirements for service providers set out in the regulations.³ However, as outlined in a letter to the Department of Health in June 2021, the OCO is deeply concerned about the exclusion of home support packages for children from the regulatory framework for home support services. Accordingly, the purpose of our submission is to follow up on this correspondence and inform the Department's work to develop the draft regulations, in the interests of ensuring that the rights of children receiving home support care and services are fully upheld.

2. Inclusion of children in the draft Regulations for Providers of Home Support Services

Section 2(1) of the draft regulations defines a service user as a person of age 18 or older who by reason of illness, frailty or disability requires home support services.⁴ Home care services for children are therefore excluded from the remit of the regulations.⁵ The Department's recent public consultation on the draft regulations asked stakeholders to indicate whether they agree with the exclusion of services for people under the age of 18 from the remit of the regulations.⁶

¹ Ombudsman for Children's Office (2013), [Annual Report 2012](#), p. 23.

² Department of Health, [Public Consultation on Draft Regulations for Providers of Home Support Services](#), 16 June 2022.

³ HIQA, [HIQA launches scoping consultation for Draft National Standards for Home Support Services](#), 9 September 2021.

⁴ Department of Health (2022), [Draft Regulations for Providers of Home Support Services: Public Consultation Document – June 2022](#), p. 6.

⁵ Department of Health (2022), [Draft Regulations for Providers of Home Support Services: Public Consultation Document – June 2022](#), p. 3.

⁶ Department of Health (2022), [Draft Regulations for Providers of Home Support Services: Public Consultation Survey](#), p. 4.

The OCO has significant concerns about the exclusion of children from the remit of the draft regulations and the impact that this will have on fully upholding the rights of children in receipt of home support services.

Following ratification of the UN Convention on the Rights of the Child (CRC) in 1992, Ireland has an obligation under international law to respect, protect and fulfil the rights of all children in Ireland. Establishing a comprehensive framework for regular, independent inspection of children's services is an essential element of guaranteeing that children's rights are respected, by maintaining standards and ensuring that the organs of the State are held to account.⁷ In instances where the private sector is involved in the provision of services to children, the UN Committee on the Rights of the Child (Committee) has emphasised that States parties to the CRC have a legal obligation to ensure that non-State service providers operate in accordance with the CRC.⁸ In this regard, the Committee has stated that appropriate standards should be developed by competent bodies, particularly in the areas of health and with regard to the number and suitability of staff, and such services should be subject to rigorous inspection.⁹

Independent monitoring is a vital component of safeguarding children in receipt of home support service and ensuring that such children are provided with consistent, high quality home support and care. As the Department is aware, the OCO has dealt with a number of complaints about the provision of home support service packages for children, many of whom have complex medical needs. These complaints include concerns about safety, the competence of staff to meet the child's needs, and management of the service, including the management of complaints about the service.¹⁰

In this regard, the OCO welcomes work by the HSE to improve the quality of care provided to children through home support services, including the development of a National Quality Assurance Initiative for paediatric homecare packages. Nevertheless, the OCO notes that the HSE and the commissioned service providers are currently responsible for monitoring the delivery of home support services to children,¹¹ and, as such, children's services will not benefit from the same level of independent oversight as that envisaged for services provided to adults in the draft regulations.

Though the majority of home support services are provided to older people, the OCO notes that an increasing number of children and families avail of similar services in their home, with 651 paediatric homecare packages estimated to be provided in 2022.¹² The exclusive focus on adults in the regulations for home support services indicates that such children do not merit the same level of

⁷ U. Kil Kelly (2007), *Barriers to the Realisation of Children's Rights in Ireland*, p. 105; UN Committee on the Rights of the Child (2003), *General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, CRC/GC/2003/5, para. 27 and para. 46; .

⁸ UN Committee on the Rights of the Child (2003), *General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, CRC/GC/2003/5, para. 43; UN Committee on the Rights of the Child (2002), *The Private Sector as Service Provider and its Role in Implementing Child Rights*, para. 9.

⁹ Article 3(3) CRC; UN Committee on the Rights of the Child (2003), *General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, CRC/GC/2003/5, para. 44.

¹⁰ See, for example: Ombudsman for Children's Office (2021), *Childhood Paused: Ombudsman for Children's Office Annual Report 2020*, pp. 23-24.

¹¹ HIQA (2021), *Regulation of Homecare: Research Report*, p. 33.

¹² HSE (2022), *National Service Plan 2022*, p. 140.

independent regulatory oversight as adults. It is in the interests of children, their families, healthcare staff and service providers that a common framework is put in place that provides for a level of oversight equal to that put in place for adult services.

Similar observations have been made by HIQA in its *Evidence Review to inform the development of National Standards for Homecare and Support Services in Ireland*, which highlights that, in light of inconsistencies in homecare and support services for children with complex needs, reform of such services presents an opportunity to establish a framework for best practice for all people using such services, without age restrictions.¹³

The OCO therefore encourages the Department to give serious consideration to the inclusion of services provided to children within the remit of the regulations for home support services, with explicit reference made to children and their rights. We believe the failure to do so, or to legislate for their inclusion on a phased basis, could be considered discriminatory.

3. Definition of home support in the draft Regulations for Providers of Home Support Services

Section 2(1) of the draft regulations defines home-support as all forms of enabling care and other practical assistance provided to an individual who by reason of illness, frailty or disability is in need of such care and assistance.¹⁴ The regulations exclude services provided by healthcare professionals, such as nurses, physiotherapists, and occupational therapists.¹⁵

As with the exclusion of services for children, the Department's consultation on the draft regulations also asked stakeholders to indicate whether they agree with the exclusion of services provided by registered healthcare professionals from the remit of the regulations.¹⁶

Children receiving home support services require a range of supports from healthcare professionals, such as nursing care, in addition to home care assistance. As medical care is the primary form of care that children receive as part of paediatric home support packages, the OCO encourages the Department to include services provided by healthcare professionals in the definition of home support. By including all services provided in the home by a licensed home support provider, this would ensure that all care professionals providing services to children are subject to the same standard of care and independent oversight.

¹³ HIQA (2022), [Evidence review to inform the National Standards for Homecare and Support Services](#), p. 12.

¹⁴ Department of Health (2022), [Draft Regulations for Providers of Home Support Services: Public Consultation Document – June 2022](#), p. 5.

¹⁵ Department of Health (2022), [Draft Regulations for Providers of Home Support Services: Public Consultation Document – June 2022](#), p. 5.

¹⁶ Department of Health (2022), [Draft Regulations for Providers of Home Support Services: Public Consultation Survey](#), p. 4.