

Opening Statement by Ms. Teresa Cody, Assistant Secretary, Department of Health to the Joint Committee on Health (30th March, 2017)

Health and Social Care Professionals (Amendment) Bill 2016 (Deputy Brendan Howlin, T.D.)

Chairman and Members of the Committee

1. Introduction

I want to begin by thanking the Chairman and the committee for inviting us here today to talk about the Health and Social Care Professionals (Amendment) Bill, 2016. I would like to introduce myself and my colleagues. I am Teresa Cody, Assistant Secretary in charge of National HR Division in the Department. I am joined by Deirdre Walsh, Principal Officer and Kieran Duffy, Assistant Principal Officer from the Professional Regulation Unit of my Division and by Geraldine Luddy, Principal Officer, Bioethics Unit, which forms part of the Office of the Department's Chief Medical Officer.

The Health and Social Care Professionals (Amendment) Bill, 2016 seeks to amend the Health and Social Care Professionals Act 2005 and while I do not intend to go into details on the provisions of the 2005 Act in my Opening Statement, I think it important to give the Committee a brief overview of the 2005 Act as this is key to considering the amendments proposed in the 2016 Bill. The information brief furnished to the Committee also provides detailed background information on the operation of the Act and progress to date on the regulation of the designated professions.

2. The Health and Social Care Professionals Act, 2005

Regulation under the Act is primarily accomplished through the statutory protection of professional titles by confining their use solely to people who have been granted registration. The structure of the system of statutory regulation comprises registration boards, a committee structure to deal with disciplinary matters and the Health and Social Care Professionals Council, known as CORU, which has overall responsibility for the regulatory system. CORU is Ireland's only multi-profession health regulator with 14 professions currently designated for regulation under the Act. Government policy is to conclude, by late 2018, the

regulation of the 14 designated professions and to designate by Regulation, in the coming months, the professions of Counsellor and Psychotherapist for regulation under the Act.

3. The Health and Social Care Professionals (Amendment) Bill, 2016

Deputy Howlin's primary concern, as shared by others, is to better protect women who are experiencing crisis pregnancies and seeking support at a time of extreme distress and vulnerability. He seeks to ensure that crisis pregnancy agencies and individual counsellors offering crisis pregnancy counselling do so responsibly. This concern is shared by Government and Minister Harris has advised the Dail that officials will work with Deputy Howlin to address these concerns.

Deputy Howlin's Bill seeks to amend Section 4 of the 2005 Act to address the issue of persons who masquerade as counsellors, providing information on crisis pregnancy that is clearly neither truthful nor objective. The Bill seeks to do this by adding crisis pregnancy counsellor to the list of 14 professions designated for regulation under Section 4 and define the scope of practice of a crisis pregnancy counsellor by regulating the activity engaged in.

As outlined in detail by Minister Harris at 2nd Stage debate, there are a number of policy, legal and implementation difficulties with the detail of these proposals. Firstly, the Bill seeks to establish crisis pregnancy counsellors as a profession separate and distinct from counsellors as a whole. Crisis pregnancy counsellor, not being a distinct profession, does not meet the criteria for designation nor does it fulfil the legislative requirements with regard to implementation by way of establishment and population of a professional registration board and maintenance of a professional register. It is intended that the priority work currently underway on the designation in the coming months of counsellors (generally) by way of Regulation under the 2005 Act will encompass crisis pregnancy counsellors as part of this profession. This does not require an amendment to the primary Act and will provide an opportunity to assist in addressing Deputy Howlin's concerns.

The Amendment Bill also seeks to regulate crisis pregnancy counsellors by way of defining the activity engaged in. However, the activity outlined is also undertaken by a variety of other regulated professionals who may include doctors, nurses, social workers and psychologists (whose registration board will be appointed in the coming weeks). The 2005 Act regulates professions by way of setting qualifications and protecting title and not by activity /scope of practice and there are very sound policy and legal reasons for this.

The amendments to the 2005 Act proposed in the Private Member's Bill would not prevent rogue crisis pregnancy counsellors from deliberately providing incorrect information. Registration under the 2005 Act is voluntary. While it is an offence for non- registrants to use protected titles rogue practitioners (including those struck off the register for professional misconduct) could get around this by using an alternative title such as advisor.

Scope of practice is ever changing as education, training and the impact of technology on health and social care professions evolves, as indeed it should do. The activities engaged in by a number of professions can overlap and the professions often regulated by different regulatory bodies with differing legislative provisions. Defining in primary legislation the scope of practice and /or the activity engaged in by a health profession has the potential to hinder health professionals working to ever expanding scopes of practice something which is vitally important in the delivery of services across all health settings. It would also result in primary legislation having to be amended on an ongoing basis as scope of practice evolves and most importantly to ensure that those working to an expanded scope of practice did not find themselves being brought to fitness to practice arising from their scope of practice being rigidly defined in primary legislation.

Introducing a defined scope of practice for one profession under the 2005 Act would undermine the entire legislative construct of the 2005 Act which is based on protection of title and not defined activity. If the 2005 Act were amended to define activity for one profession it could give rise to similar amendments being sought by some or all of the other 14 designated professions. This could restrict entry to the professions and pose significant legislative and practical difficulties given that their scope of practice overlaps, in part. As in the case of crisis pregnancy counsellor, defining the activity or scope of practice of these professions in primary legislation could also result in restricting their delivery of services on the ground and complicate implementation of the Act's 2005 fitness to practice provisions.

With regard to other technical matters, the Bill as drafted does not make provision for a number of key requirements such as the critical issue of setting grandfathering qualifications, a challenging but essential requirement for the registration of existing practitioners. When a designated profession is being regulated for the first time the level of grand-parenting qualifications to be set will determine the number of existing practitioners that will be granted registration. In addition, provision would also have to be made for the establishment of a 13

person Registration Board and a range of consequential amendments that would have to be made to the Health and Social Care Professionals Act 2005.

4. The body of work to be undertaken

Minister Harris, in the second stage debate on the Amendment Bill last November and in his desire to be constructive and make progress on this matter detailed a sizeable and important body of work to be undertaken over a period time in order to give consideration to better protecting the public from certain crisis pregnancy agencies or counsellors that are providing information that is clearly neither truthful nor objective. He committed to making progress through the forthcoming registration of counsellors, the existing Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995 and the review of this Act.

5. The proposed regulation of counsellors and psychotherapists

With regard to the regulation of counsellors, having consulted with the Health and Social Care Professionals Council as required under the 2005 Act and having proceeded to public consultation on the 1st September 2016, 84 submissions were received by closing date, 30th November, 2016. Following examination, it is envisaged that the next steps in the statutory regulation of the profession(s) under the Act will commence in the coming months with the submission of draft designation regulations to the Houses of the Oireachtas. This will be followed by the establishment and appointment by the Minister of the 13-member registration board charged with establishing the registers which in turn commences the two-year transitional period, after which only registrants will be permitted to use the protected titles.

6. The Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995

I now turn to the Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995. This Act prescribes the conditions for making available information to pregnant women and the public about services lawfully available outside the State for the termination of pregnancies. During the second stage of the Health and Social Care Professionals (Amendment) Bill 2016, the Minister undertook to have this Act reviewed by the Department to establish if

its provisions need to be strengthened. This review is currently ongoing and a range of possibilities are being examined. For example, subject to the views of the Attorney General, it may be possible to amend this Act to ensure that only registered professionals provide services under the Act. In particular, this might be feasible if as expected it were decided to proceed with the statutory regulation of counsellors. This will be looked at in tandem with forthcoming decisions on the statutory regulation of counsellors.

It is important to note, in relation to publicly funded crisis pregnancy services, the Crisis Pregnancy Programme in the HSE developed a framework for crisis pregnancy counselling services. The standards were designed in line with the HIQA's National Standards for Safer Better Healthcare and consist of 8 themes broken down into 28 essential elements. The Framework commenced in 2015 and there is a requirement to implement the Framework within the HSE's funded services – this requirement is outlined in the signed Service Agreements between the HSE and the individual service providers.

However agencies that seek to manipulate women by providing 'disingenuous' crisis pregnancy counselling have been in the main private establishments that appear to set up and close down over short periods of time and have no linkage with the State funded services.

7. In conclusion

Minister Harris also committed to keeping Deputy Howlin informed on matters as work progress. He wrote to Deputy Howlin on 11th January, 2016 and Department officials also met with members of his team on Wednesday 8th March, 2017 and engaged further in the matter.

I hope that my statement has assisted the Committee in appreciating that what appears to be a short and straight forward Bill in fact poses significant policy, legal and practical difficulties for the operation and ongoing implementation of the Health and Social Care Professionals Act 2005 and for the regulation of health and social care professions in general when considered in the broader context. I would also like to reiterate the Minister's intention to address the serious issues involved by working through the sizeable and important body of work that is currently underway. My colleagues and I are happy to take your questions.

