

# First implementation regulation of the Flemish Decree on care and assistance

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The Flemish Decree on care and assistance of 18 July 2008<sup>1</sup> describes the legal framework for the professional care and assistance in Flanders. It is a framework decree which will take effect and will be executed by means of implementation regulations of the Flemish government.

A first implementation regulation has been approved by the Flemish government on the 27<sup>th</sup> March 2009 and was published in the Belgian Official Journal on 12<sup>th</sup> May 2009<sup>2</sup>. Unless otherwise mentioned, this decree will take effect on the tenth day following the date of publication, i.e. 22<sup>nd</sup> May 2009.

The regulation applies to all persons<sup>3</sup> that carry out professional activities in the natural home environment of the user. Activities which relate to “physical care”<sup>4</sup> or “psychosocial and pedagogical or agogical assistance”<sup>5</sup>.

If these persons do not work at a social care facility recognized or controlled by the Flemish authorities, they have to register with the ‘Flemish independent agency care and health’ before being admitted to deploy any professional activity in the field of care and assistance. If however they already deploy professional activities of care and assistance, they have to comply with this obligation of registration only as from 30<sup>th</sup> June 2010<sup>6</sup>.

Regardless of the fact whether these persons work at a social care facility recognized or controlled by the Flemish authorities, they have to comply with the **qualification requirements** for the care personnel of the licensed homecare services, more specifically the study certificates recognized by the Minister of Social welfare, which can be obtained through a study in the field of personal care, or an attestation of competence for the all-round caretaker, issued by a certified training center<sup>7</sup>. If however they already deploy professional activities of care and assistance, they have to comply with these qualification

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<sup>1</sup> B.S. 29 August 2008. Will be abbreviated further on as DZB

<sup>2</sup> Regulation of the Flemish Government of 27 March 2009 for the implementation of the decree of 18 July 2008 on in-home care and assistance, further on abbreviated as BVR 27 March 2009.

<sup>3</sup> with the exception of practitioners of a medical profession, the personnel of services attached to the health administration, and personal assistants as described in art. 16,4° VAPH-decree and with the exception of natural persons that supply care and assistance to just one user or to multiple users when living on the same address and belonging to the same household. See articles 3 and 10 DZB.

<sup>4</sup> Such as: help with moving and moving around, in the house as well as out of the house, help with getting dressed and undressed, including the choice of appropriate clothing; help with drinking and eating, help with going to the toilet; assistance with the use of certain adapted auxiliary tools. For an extensive list, see art. 2, 1° BVR 27 maart 2009.

<sup>5</sup> Such as: giving tips concerning a healthy life style, help with social contacts, with leisure time, with administration and the family budget, help with social skills. For an extensive list, see art. 2,2° BVR 27 March 2009.

<sup>6</sup> Articles 5 and 18, second paragraph, BVR 27 March 2009.

<sup>7</sup> Article 3, B, 2°, of Appendix I of the Regulation of the Flemish Government of 18 December 1998 concerning the recognition and financing of associations and social welfare services in home care.

requirements only as from 30<sup>th</sup> June 2010<sup>8</sup>. Under certain conditions also professional qualifications of residents of other European member states can be recognized<sup>9</sup>.

The “Flemish independent agency care and health” and the “Flemish independent agency inspection welfare, public health and family” shall be made responsible for the monitoring of the good execution of these registration- and qualification requirements<sup>10</sup>. The conditions with relation to administrative pecuniary fines however, have not been put into operation yet<sup>11</sup>.

It may come as **a surprise** that on 27<sup>th</sup> March 2009 the Flemish government has for the first time implemented the Decree on care and assistance, knowing that the federal government had already filed a request at the Constitutional Court for the annulment of this decree on 3d March 2009<sup>12</sup>.

It may **raise indignation** that during the ongoing election campaign the parties constituting the majority deplored the growing waiting lists for disabled people, when at the very moment a decree of the Flemish government which they had all approved, took effect. A decree which outlaws every person who is paid for giving assistance to disabled people in their natural home environment outside the framework of a recognized home care service.

Disabled people **should be worried** that the federal and Flemish authorities are trying to work out a mutually negotiated solution for their conflict of interest, but probably without sufficient parliamentary control<sup>13</sup> and without consulting the users concerned and their associations.

Strong vigilance is still required! Wasn't it so that on the brink of the summer recess of last year and after a fierce battle in the media and in the social care committee of the Flemish Parliament<sup>14</sup>, the right of budget holders to freely choose their assistants and of many personal assistants to exercise their profession was safeguarded only at the last moment ?

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<sup>8</sup> Articles 6 and 18, first paragraph, BVR 27 March 2009.

<sup>9</sup> Articles 7 – 12, BVR 27 March 2009.

<sup>10</sup> Art. 8 DZB and art. 13 BVR 27 March 2009.

<sup>11</sup> Art. 9 DZB and art. 17 BVR 27 March 2009.

<sup>12</sup> The case is registered at the Constitutional Court under the registration number 4648.

<sup>13</sup> A written formal question of Tine Van der Straeten to Laurette Onkelinckx, Minister competent for Social Affairs and Public Health, dating from 12 January, *Parl. St. Kamer, 2008-2009, Bulletin van Vragen en Antwoorden*, nr. 51, 49-50. The question (nr. 232) has not been answered yet.

<sup>14</sup> *Parl. St. VI. Parl. 2007-2008, Nr. 1708/ 6 – Appendix. Report of the hearing of 1 July 2008 concerning the draft decree on care and assistance.*