

Consultation on proposed changes to regulations for Care Quality Commission registration

This response relates to the General Areas set out in the consultation and those specific to social care as indicated in the proposals.

It is useful that DH have completed this review of the current regulations introduced under the Health and Social Care Act 2008 to ensure that they remain contemporary and reflect current models of health and social care services delivered. It is also helpful to define where these services may fall within the definition of a regulated activity.

What follows are some general comments on the consultation proposals before setting out specific comments in response to the relevant sections of the questionnaire.

GENERAL COMMENTS

ADASS is concerned that the role set out for CQC in point 3, which is described as focussing on “providing assurance that providers meet essential levels of safety and quality in the delivery of services” ignores the very important role that CQC used to play providing people who use services with information about which services are provided at above minimum standards. This is a role that was lost without consultation when the current registration arrangements were introduced and Quality Ratings were abandoned. It was an important role that not only supported people who use services to be better informed consumers but also supported improvement in the sector by encouraging provision to aim for excellence, and one which was not effectively addressed in the recent Excellence Scheme consultation

ADASS welcomes the objectives set out for the registration system in point 15, and in particular welcomes the commitments to flexibility “to adapt to new and innovative service models” and to ensure that all providers “are treated fairly regardless of ... settings” as these principles are consistent with the flexibility and innovation required of provision to respond to the demands of Think Local Act Personal. Nevertheless considerable thought and debate is required to work through how this might best be done in practice and this is not fully addressed in the proposals here.

CONSULTATION QUESTIONS

ABOUT YOU

Before answering the consultation questions, it would be useful for us if you could fill in a few details about yourself.

What is your name?

| |
|--------------|
| Sarah Norman |
|--------------|

Are you responding as an individual or on behalf of an organisation?

| | |
|--------------|-----|
| Individual | |
| Organisation | yes |

If responding on behalf of an organisation, what is the name of it?

Association of Directors of Adult Social Services (ADASS)

What kind of organisation is it?

| | |
|---------------------------------|-----|
| Charity | |
| Social care provider | |
| NHS body | |
| User representative body | |
| Other Government Department | |
| Independent healthcare provider | |
| Royal college | |
| Provider representative body | |
| Trade union/professional body | yes |
| Regulator | |
| Other | |

What is your position or job title in the organisation?

Co-chair ADASS Standards and Performance Committee

What is your e-mail address or other contact details?

team@adass.org.uk

IMPACT ASSESSMENT

Q1. Does the consultation stage impact assessment provide a fair assessment of the likely costs and benefits of this proposal?

| | |
|-----|---|
| Yes | x |
| No | |

Q2. Can you provide any evidence to support your view?

ANALYSIS OF THE IMPACT ON EQUALITY

Q3. Does the analysis of impact on equality provide a fair assessment of the likely impacts on protected groups of the proposals?

| | |
|-----|---|
| Yes | x |
| No | |

Q4. What other evidence of the impact on protected groups should we consider?

PROPOSALS FOR CHANGES TO THE EXTENT OF REGULATION

Q5. For each of the proposals, can you provide any evidence that supports the proposed approach, the current position, or an alternative approach?

| |
|--|
| |
|--|

Fitness of Providers (Partnership requirements)

Q6. Do you agree with the proposal that we should allow the partnership as a collective body to meet the requirements for the relevant skills and experience, rather than all the individuals within the partnership being required to meet them individually?

| | |
|-----|--|
| Yes | |
| No | |

Comments:

Whilst ADASS welcomes reduced burden being placed upon providers through this proposal it would need to be carefully monitored. Some level of assurance would be required that should the individuals within the partnership or collective body who have the relevant skills and experience leave, a suitable replacement would be found or re-skilling within the partnership undertaken to maintain standards. This could be difficult for the CQC to monitor and verify and without knowing how this would be done ADASS is unable to support this proposal.

In addition, ADASS is seriously concerned that the proposals make no mention of the “financial fitness” of regulated providers. A key question is “how can the public be reassured that the provider possess financial fitness to ensure both continuity and stability of provision”.

Further, ADASS would like to see clarity as to the arrangements if a “unit” within a provider “group” fails and how CQC will handle any implications upon the whole group particularly to ensure that there is no wider systematic failures

Format of statutory notifications

Q16. Do you agree with the proposal to allow CQC to specify a standard format for statutory notifications?

| | |
|-----|-----|
| Yes | yes |
| No | |

Comments:

ADASS welcomes clarification and simplification of the notification arrangements and would suggest that the proposed reforms of the adult social care legislative framework, as detailed in the Law Commission report should reflect any new duties or responsibilities placed upon providers as set in the proposals where appropriate

Q17. Do you agree with the proposal that providers should be required to notify CQC of these additional incidents?

| | |
|-----|--|
| Yes | |
| No | |

Comments:

There are two comments relating to Domiciliary care registered services linked to the suggested additional notification 'To make it explicit in the regulations that adult social care providers are required to notify CQC of the death of a service user wherever that death occurs'. Firstly, if the provider was not present at the time of death i.e. the service user was on holiday or in hospital (which could be viewed as being under the care of the NHS) when the death occurs, placing the responsibility on the adult social care provider in all sets of circumstances to notify CQC seems inappropriate. Secondly, if the adult social provider is to undertake this role, then the lines of communication and the need to co-operate must be made very explicit so if the service user is in hospital and under the care of the NHS, the hospital must ensure the provider is advised as this amendment is placing all the responsibility on the social care provider.

In relation to the requirement on providers of primary medical care services to notify CQC, ADASS seeks clarification as to the definition of primary medical care services. For example would services that can involve health professionals but may be provided in a social care or joint health and social care setting, such as reablement or occupational therapy, be included?

ADASS welcomes the proposal for notifications concerning the Deprivation of Liberty Safeguards as these would reduce the burden placed on both health and social care without reducing effective oversight

Domiciliary care for children and vulnerable adults

Q18. Do you agree with the proposal to exclude providers directly arranged by an IUT, parent or carer from the requirement to register?

| | |
|-----|-----|
| Yes | yes |
| No | |

Comments:

Although ADASS is supportive of reducing burden and simplification of care arrangements. ADASS is also very concerned as to extent of assurance that the public will have as to making informed choices without reference to any a national recognised scheme balanced against the individual right to make choices and to take responsibility for these choices.

Further, ADASS seeks clarification as to the likely adverse implications upon councils, who under these proposals are then expected to help individuals make informed choices through the provision of advice and information for those individuals with a personal budget

ADASS is working closely with CQC, DH and the LGG in developing Sector-led improvement, as well as working with the Think Local Act Personal partnership towards realizing the Vision for Adult Social Care, and both sets of activities are supportive of market driven improvement and sector led assurance. ADASS welcomes such approaches but acknowledges that these activities are still embryonic and transparent public assurance must be sustained during this period of development.

A specific comment is that where domiciliary care is arranged by a parent or carer, information needs to be included that this is where permission has been given or lack

of capacity has been established to ensure service users views are being properly considered.

Q19. Do you agree with the proposal to amend the regulations to make it clear that IUTs, parents and carers should not be regulated as providers of care when they directly employ an individual or individuals to provide care to one person?

| | |
|-----|-----|
| Yes | yes |
| No | |

Comments:

ADASS agrees that someone acting as a representative should not need to be regulated where they are supporting, or acting, on behalf of an individual, providing capacity issues are addressed as above.

Personal care away from home

Q20. Do you agree with the proposal to establish a minimum threshold of four weeks annual activity beneath which providers of personal care will not need to register?

| | |
|-----|----|
| Yes | |
| No | no |

Comments:

Four weeks of unregulated care could expose a vulnerable person who uses services to considerable risks, particularly as people who are away from home may be away from the usual support and protection they receive when family members visit.

Q21. Do you agree that requiring providers who are operating within threshold to register with the CQC would be unnecessarily burdensome?

| | |
|-----|----|
| Yes | |
| No | no |

Comments:

See response to question 21

Notifications of absence without authorised leave

Q29. Do you agree with the proposal to revise the level at which notifying CQC of absences is required?

| | |
|-----|-----|
| Yes | Yes |
| No | |

Comments:

This seems a sensible reduction in the burden on providers as it would focus on more secure units where obviously risk is higher. Local commissioners can continue to monitor absences on mainstream wards across boroughs so ADASS would agree with this proposal.

Q30. Do you agree with the proposal to require providers to submit details of an absentee's return?

| | |
|-----|-----|
| Yes | yes |
| No | |

Comments:

This would seem an acceptable proposal

Exemption for the Olympics and Paralympics

Q31. Do you agree with the proposal to exclude services solely put in place for the Olympics and Paralympics from CQC registration?

| | |
|-----|-----|
| Yes | yes |
| No | |

Comments:

This would seem to be a reasonable approach providing the Olympic and Paralympic authorities take some responsibility for ensuring that the standards of services provided are broadly consistent with those that would be provided under the regulations

Enforcement

Q33. Do you agree with the proposal that a new statutory requirement notice arrangement should be put in place before CQC is able to bring a prosecution that would allow the possibility for CQC to prosecute a provider or manager for a major one-off failure to comply with the registration requirements?

| | |
|-----|-----|
| Yes | yes |
| No | |

Comments:

Proposals are clear and will make this process more effective

Q34. Do you agree that the defence against the offence of failing to comply with registration requirements should be changed to apply where a provider or manager took all reasonable steps and exercised all due diligence?

| | |
|-----|-----|
| Yes | yes |
| No | |

Comments:

Proposals are clear and will make it a fairer process

PROPOSALS FOR MINOR CLARIFICATIONS TO THE REGULATIONS

Q35. Do you agree with the proposals for minor clarifications to the regulations?

| | |
|-----|-----|
| Yes | Yes |
|-----|-----|

| | |
|----|--|
| No | |
|----|--|

Comments:

With respect to SOADS ADASS has no problem with the proposal which makes sense. In terms of consent requirement for those not able to give consent ADASS support the requirement for providers to comply with current legislation.

NEXT STEPS

Q36. What other issues should we be considering as part of this review?

| |
|--|
| |
|--|

Q37. Are there any other matters we should be considering as part of our wider review?

| | |
|-----|---|
| Yes | |
| No | x |

Comments:

| |
|--|
| |
|--|