

CQC's next phase of regulation: Consultation 2 - deadline 8 August

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Summary

The CQC is currently consulting on major changes to the way it regulates and inspects health and social care services. The second in a series of three consultations is currently open for responses, closing on 8 August 2017. The consultation includes some important changes for providers, most notably registering and rating groups of providers, rather than the entity that sits above each location.

In this briefing, we summarise the proposals.

Where we are now

The CQC has now carried out comprehensive inspections of all adult social care services in England - around 24,000 different locations in total. The report summarising the CQC's findings (*The State of Adult Social Care 2014 - 2017*) paints a picture of where we are currently in terms of the quality, safety and leadership of adult social care.

As is often the case, the Press coverage of the CQC's report focused mainly on the bad news in terms of where services are falling short. However, the report in fact contains quite a lot of good news too. In particular, over three quarters (77%) of adult social care services are rated 'good' overall, the vast majority (92%) are rated 'good' for being 'caring' and 81% of locations initially rated 'inadequate' improved their rating subsequently.

The less good news, however, is that nearly a fifth (19%) of services are rated 'requires improvement'. There is also evidence of providers finding it difficult to sustain improvements - e.g. 26% of locations which were rated 'good' when first inspected, dropped to a lower rating when re-inspected. There are also still 2% of services (343 locations) currently rated 'inadequate'.

Also of concern to the CQC is that, of the 5 'Key Questions' against which adult social care services are assessed (i.e. Are services safe, effective, caring, responsive and well-led?), 'safe' has the poorest ratings, with 23% of services rated 'requires improvement' and 2% rated 'inadequate'.

Next phase - consultation 2

It is against this backdrop that the CQC is currently consulting on how it will monitor and inspect adult social care services going forward.

The headline proposals in the [second consultation](#) include:

Provider-level assessments

The CQC proposes to introduce 'provider-level' assessments to enable corporate leadership to be held to account for systemic failings across a corporate provider's services.

This would mean parent companies and group organisations appearing on the CQC register as well as the service providers currently registered. In order to decide whether a particular corporate entity needs to be on the register, the CQC plans to introduce a set of criteria looking at how much direction and control it has over the quality of services delivered (e.g. does the parent company/group organisation provide assurance/auditing systems or common policies and procedures around quality and safety of care?).

This would open the way for the CQC to monitor, inspect and rate at all levels of an organisation, including those ultimately accountable for the quality of care at the top of the corporate chain.

The central plank of this would be the introduction of 'provider level' assessments (which the CQC describes as assessments at 'the highest level at which we register any organisation that delivers more than one service'). This essentially means that the CQC will be able to inspect and rate corporate health and social care providers on how they operate at board/senior management level.

In terms of how these 'provider-level' assessments and ratings would work in practice, the consultation sets out the 4 options being explored by the CQC:

- Introducing a separate, bespoke provider-level assessment framework with a single rating for quality and safety of the organisation as a whole;
- Assessing and rating just 'well-led' at provider level;
- Assessing and rating each of the 5 Key Questions at provider level, which could then be aggregated into a single rating; or
- Adopting the approach currently used for NHS Trusts - i.e. assessing 'well-led' at provider level and giving an overall rating for each of the other 4 questions based on aggregation of ratings at service/location level.

There are a range of risks that arise from this proposal. Providers with a mix of services may find that even their better services may struggle to attract service users if the provider's overall rating is not at least 'Good'. In the event of serious incidents, it is also likely that the parent companies rather than subsidiaries will be prosecuted. As sentencing guidelines are based on turnover, this could lead to higher fines.

Monitoring

The consultation proposes a live, online approach to collecting information to help monitor adult social care services instead of providers just completing a form in the run-up to an inspection, plus a new 'CQC Insight' model which will bring together information about all a provider's locations to help inspectors see the broader context for performance. Providers may want to comment on the importance of the CQC ensuring that it only uses and shares information that is reliable, accurate and proportionate.

Frequency of inspections

It is proposed that comprehensive inspections addressing all 5 Key Questions will continue for all adult social care services (unlike the revised regime for NHS Trusts, which will move away from comprehensive inspections), but with longer gaps between inspections for services rated 'good' (2.5 years instead of the current 2 years) and 'outstanding' (3 years instead of the current 2 years). Services rated 'requires improvement' will continue to be re-inspected every year and those rated 'inadequate' every 6 months.

Focus on 'well-led'

More use is to be made of 'focused' inspections, which will not necessarily look at all Key Questions, but will always include a 'well-led' assessment (reflecting a greater focus across all types of provider on 'well-led').

6 month limit

The plan is to remove the '6 month limit', which currently only allows the CQC to change an overall rating if a focused inspection is carried out within 6 months of the last comprehensive inspection. This is likely to be welcomed by the sector. Previously, a provider might have improved its services but found that the CQC did not improve the rating because of this limit.

Focus on 'requires improvement'

The CQC plans to increase focus on services rated 'requires improvement' in the light of evidence that these services in particular struggle to improve - e.g. 38% of services rated 'requires improvement' retained the same rating after re-inspection and 5% actually got worse.

The proposals include a robust plan for services which fail to improve - e.g. if a provider receives an overall rating of 'requires improvement' more than once, the CQC will always consider whether there has been a breach of Regulation 17 (good governance) and may use its enforcement powers in relation to this. It may also ask providers to provide an action plan and require them (presumably using conditions of registration) to agree the plan with commissioners.

This is a point providers may wish to query in response to the consultation, as it could lead to providers' compliance on conditions being subject to the views and actions of its commissioners, which is outside its control.

Services that are rated 'requires improvement' three times will be subject to a management review meeting for the CQC to consider using its enforcement powers.

What next?

The current consultation on changes to how the CQC monitors and inspects adult social care providers will close on 8 August. Subject to the outcome of this consultation, the main changes would come into effect by March 2018, apart from the proposed 'provider-level assessments' which would be piloted from April 2018 and implemented from April 2019.

How we can help

Our experienced team of regulatory and governance specialists can help adult social care providers with the full range of issues that CQC regulation brings with it, including:

- Advice on CQC registration requirements (e.g. in connection with new models of care or new entrants into the market);
- Support ahead of CQC inspections, including reviews of key policies and governance systems (e.g. pre-inspection well-led reviews and review of arrangements for learning from complaints, claims and incidents);
- Working with in-house CQC compliance teams to make best use of the 10 day window for raising factual accuracy points about draft inspection reports;
- Representations about Warning Notices and their publication;
- Representations about Notices of Proposal relating to conditions on registration and suspension/cancellation of registration;
- Appeals to the First Tier Tribunal about Notices of Decision relating to conditions, suspension/cancellation of registration and urgent cancellation orders;
- Advice and support during CQC investigations and prosecutions, including preparing/accompanying registered managers and/or nominated individuals at interviews under caution for regulatory breach; and
- Training for senior management teams on what it means to be a 'well-led' organisation, including meeting the CQC's well-led KLOEs.

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