

The Care Act 2014 - May 2014

Published 30 May 2014

The Care Act 2014 came onto the statute books on 14 May 2014. It contains a number of provisions which will have a very significant impact on NHS bodies, as well as overhauling the legal duties on arrangement and funding of social care.

Issue

For NHS bodies, key provisions in the Act include:

- Establishing the legal basis for the CQC to introduce a statutory duty of candour, which will come into force via CQC regulations on 1 October 2014;
- Creating a new criminal offence of giving false or misleading information on performance/quality, which will apply to the NHS and independent sector organisations providing care under arrangements with the NHS;
- Changes to the CQC regulatory regime, including new powers to exercise immediate sanctions, new inspection regimes, and a duty to consider referring poor care concerns to Monitor to take additional intervention action;
- Provisions on NHS Trust special administration;
- The statutory basis for the Better Care Fund, i.e. powers to direct CCGs to use NHS funding in projects for developing integrated health and social care services;
- Establishment of Health Education England and the Health Research Authority as statutory bodies and adjustments to the duties of the Health and Social Care Information Centre in relation to dissemination of information;
- A new framework of duties on local authorities for the provision of social care, including a requirement to promote integration between health and social care services;
- New arrangements regarding discharge from hospital and after-care under section 117 of the Mental Health Act.

Market perspective

The Act reflects the new focus on standards of care, transparency and effective regulation of care in light of the Francis Report, the Winterbourne View scandal and other events of public concern. There is a strong impetus to ensure that the same minimum standards of care and transparency apply regardless of the nature of the provider delivering services: so all providers of health and social care services, in the public, private and third sectors, face the same need to effect a significant change in culture and policy.

The Act reveals the intention to place the CQC at the heart of regulatory 'bite', with the express duty to consider and refer NHS Trust providers to Monitor where concerns continue despite enforcement action. If referred, there is a requirement upon Monitor to take action - a conscious shift in emphasis between the two regulators.

The introduction of a new social care framework might seem to have limited relevance for NHS bodies. However it is likely to impact them directly in a number of ways. The volume of assessments of care needs to be carried out by local authorities will increase significantly, potentially leading to greater pressure of demand for joint assessments of health and social care need. The combination of a new test of eligibility for social care provision and continuing financial pressures may further increase the pressure on the boundaries between social care and continuing healthcare. At an operational level, NHS Trusts will need to ensure understanding of these changes to avoid increased delayed discharges in the period of change. Overall, the Act continues the push towards greater integration of services in the context of limited resources, meaning that the NHS has a greater need than ever before to understand the basis on which local authorities commission and fund social care.

Our view

There is a need for "Board to ward" understanding of the duty of candour and the new regulatory regime. This needs to balance understanding of the specific legal duties with clear leadership towards the more general cultural change required for NHS organisations to secure the confidence of the regulators and the public.

You will need to consider how to support staff at the health and social care interface in understanding the forthcoming changes to the social care structure and the potential implications for your organisation's work. This will require engagement with the new framework, and developing expectations of integration, at both a practical and a strategic level.

Authors



Corinne Slingo

Bristol

cslingo@dacbeachcroft.com



Tracey Longfield

Leeds

tlongfield@dacbeachcroft.com



Gill Weatherill

Newcastle

gweatherill@dacbeachcroft.com