

CQC Consultation – ‘Our next phase of regulation’

Accountability – a dramatic widening of the scope

The CQC Consultation proposes wide-ranging reforms: some of which impact on all regulated services, alongside specific proposals on the regulatory approach for primary medical services and adult social care.

This bulletin addresses:

Part 1.1 of the Consultation - ‘**Clarifying the definition of providers and improving the structure of registration**’

Impacts on: **all providers of health and adult social care**

Key points:

One of the guiding themes behind the consultation proposals is that CQC wants to extend the remit of accountability within health and social care and ensure that the ‘guiding minds’ behind provider organisations are held accountable. This means the people who are exercising significant direction and control over the quality and safety of regulated activities - whether they are the entity actually delivering care or other entities which exercise control over delivery indirectly, whether through corporate groups or contractual arrangements.

This would involve regulating intermediate and ultimate parent corporate entities within groups, in addition to the subsidiary operating entity actually delivering the care. Consequently, more entities, as long as they exercise sufficient direction and control, could face being subject to the need for registration and inspection, and the possibility of facing enforcement (including potential prosecution) if there are concerns over standards.

It is also possible that investors, if they “exert significant influence over the quality and safety of services”, may be required to be registered, depending on internal group constitutional arrangements. The bar of what constitutes “significant influence” appears to be set quite low as the consultation document suggests this would include, for example, any entity with the right of veto over the financial plans of operating entities.

The proposals, if adopted, would represent a major departure from the current approach which is that only those with responsibility for the operational delivery and quality assurance/ governance of the day-to-day service are deemed to be ‘carrying on’ the service and need to register.

These measures would also make it much easier for CQC to take action, and enforce at a group level, in relation to systemic issues across a number of a provider’s services.



They are very commercially astute, very pragmatic, very good at complex deals and they’re very good at thinking through risks and different options.

Chambers UK 2017

Current Position

- Usually only a single entity is registered as service provider
- Parent companies, investors and prime contractors of fully subcontracted services tend not to be registered
- Regulatory scrutiny (inspection and enforcement) is concentrated on the entity delivering the service
- Enforcement action is targeted at individual site level

Consultation Proposals

- Potential for parent entities to be registered depending on level of control
- Potential for investors to be registered depending on level of control
- Potential registration of prime contractors of fully subcontracted services
- Regulatory enforcement powers extend to more bodies and their directors (including the Fit and Proper Persons Requirement) (separate bulletin on this to follow)
- Possibility of Group-wide enforcement

Points for providers to consider

- Do we have corporate entities that may fall within the scope of the proposals?
- Do we have investors who may fall within the scope of the proposals?
- How might these proposals impact on any proposed acquisitions or partnering transactions?

There is a lot of detail in the Consultation and not a lot of time to respond – the consultation closes on 8 August 2017. It is important that providers study the proposals closely and make sure their voice is heard on what is being proposed. Bevan Brittan is hosting a consultation event with CQC on 26 July 2017 (in London) – [click here](#) to register for the event; the event will have a particular focus on the adult social care sector, but all providers are welcome to attend.

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For more information about the support we provide please contact:



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