Written evidence to the House of Commons Health and Care Bill Committee

13 Sept 2021

About CQC

1. The Care Quality Commission (CQC)[1] is the independent regulator of health and adult social care in England. Our purpose is to make sure health and social care services provide people with safe, effective, compassionate, high-quality care and we encourage these services to improve.

Introduction

2. We welcome this opportunity to offer written evidence to the Health and Care Bill Committee. Our evidence sets out our view on the legislation and outlines our position on the specific proposals of interest to our work.

3. The Bill is a once in a decade opportunity to improve health and social care. It rightly addresses the need for greater integration, accountability and reduced bureaucracy across services. We are working with the government to ensure the successful implementation of these objectives.

4. Several proposals impact on our work and have implications for our recently launched strategy[2], which we will be implementing over the coming years. Our strategy was developed in collaboration with providers of health and social care and people who use their services. It focuses on improving people's experience by looking at every stage of their journey through the health and care system. We want to support a common understanding of quality and look at how services work together to improve people's experiences and outcomes.

Integration and collaboration

5. We welcome the move to place Integrated Care Systems (ICS) on a statutory footing, as part of a broader attempt to improve integration across health and social care. The ICS clauses (12-25) published in the Bill make detailed provision for the establishment of two new ICS bodies: the Integrated Care Board (ICB) and the Integrated Care Partnership (ICP).

6. The ICS will need to ensure that there is equal partnership across health, social care and public health in the design and delivery of integrated care. There should be further clarity around the relationship between an ICB and the ICP, and how the ICB will pay sufficient attention to the ICP's local integrated care strategy. Additionally, the ICP needs to secure the involvement and input of the voluntary, community and social enterprise (VCSE) and independent sectors.

7. We also note the Secretary of State for Health and Social Care's (SofS) commitment to the Health and Social Care Select Committee[3] about our future 'assessments' of ICSs. We welcome this new oversight role. Our ICS reviews would offer independent assurance of how effectively ICSs deliver high-quality, safe care to their local population. Our reviews could best add value and avoid duplication by looking across health, public health and adult social care services to assess leadership, integration, quality and safety.

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[1] https://www.cqc.org.uk/

[2] https://www.cqc.org.uk/about-us/our-strategy-plans/new-strategy-changing-world-health-social-care-cqcs-strategy-2021

[3] https://committees.parliament.uk/publications/6630/documents/71458/default/

8. Moreover, our ICS reviews would enhance transparency and accountability and offer a lever for improvement. They would highlight good practice and areas requiring improvement to people using services, the public, the government and those working across the health and care sector. In 2022-23 we will design and test our assessment approach with providers and emerging ICS organisations, including how we can adapt the methodology to different sized places and levels of risk.

9. The ICS proposals have significant implications for our future strategy, which focuses on improving people's experience of care by looking at every stage of their journey through the system. Reviewing our regulatory model and assessment approach in the context of our new strategy gives us an opportunity to develop **a joined-up approach to regulation across providers, ICSs and Local Authority assurance**. Our ambition is to develop a framework that can work across all these activities.

10. We also support Healthwatch England's[4] (HWE) call for greater public voice representation at an ICS level. Specifically, we support HWE's recommendation that the Bill be amended to include provision for Healthwatch activity, currently commissioned at local authority level, to be replicated at system level and sustainably funded. This will ensure a strong, effective and consistent approach to incorporating the voice of local people in the planning, design and scrutiny of health and care services. This challenge can be useful for the system and will provide us with a valuable source of intelligence when considering people's experience of health and care.

11. Finally, we support HWE's recommendation that Healthwatch (either local Healthwatch or new regional ICS-level Healthwatch) should be represented at both the ICB and the ICP.

Local Authority assurance

12. In Clause 121 of the Bill, there is a new duty for us to review, assess and report on "regulated care functions" of English local authorities under the Care Act 2014. A role for us in the oversight of Local Authorities, particularly in respect of commissioning, is welcomed. Commissioning is a key influencer of quality and adult social care commissioners have a significant impact on care quality.

13. We are working closely with government, the Local Government Association and the Association of Directors of Adult Social Services, on the development of our approach. We will be developing a methodology to assess and report on how well local authorities are delivering their Care Act duties, working with partners and stakeholders (particularly people using care services) to achieve this.

14. We will develop our approach in parallel with our model for provider regulation and with consideration for how our role across health and social care systems might develop. Our aim is to create an approach which offers clarity for the public, while minimising any additional burden on providers.

15. The Bill stipulates that key parts of our assessment, such as setting quality indicators for our reviews, determining review frequency and methodology would be set by us and then subject to SofS *approval*. This differs to the regulation of the provider sector as set out in the Health

[4] https://www.healthwatch.co.uk/

and Social Care Act 2008, under which we set the approach independent of government, with a duty to *consult* SofS.

16. We consider the level of SofS control over these matters currently set out in the clauses to be unnecessary given our **operational independence and expertise**, and note that this will be cumbersome in practice. We would welcome a government amendment that would only require us to seek SofS approval for **substantial changes** to quality indicators, frequency, and methodology. This will allow us to make minor changes dynamically in response to rapidly evolving issues or in response to accessibility requirements without being impeded by burdensome bureaucratic processes each time. Examples of changes we consider substantial/insubstantial are detailed below.

	SUBSTANTIAL CHANGES	INSUBSTANTIAL CHANGES
QUALITY INDICATORS	Changing scope of quality indicators	Re-wording a quality indicator without changing meaning or scope in order to meet accessibility guidelines
FREQUENCY	Changing from flexible, risk-based model to routine inspection approach	Changing the way in which data/intelligence informs our risk-based inspection model
METHODOLOGY	Changing the five key questions[5] we use when assessing services	Creating an accessible format of the published methodology and making changes to sections in the report template

17. We also understand that it is the government's intention to introduce an amendment setting out powers for SofS to intervene where Local Authorities are failing to meet their duties. We have welcomed discussions to date with the Department of Health and Social Care (DHSC) on this matter and look forward to having sight of, and commenting on, their proposed amendment. It is our understanding that it will be set out in the accompanying policy guidance that any intervention from SofS will be informed directly by the independent advice of the CQC. We would welcome a commitment from DHSC to this effect during the Bill's Committee stage.

18. Finally, we are pleased to see that the government has set out its proposals to fund health and social care – it is critical that the money which has been promised to adult social care is delivered to make sure that we have a sustainable care system which so many people rely upon.

Hospital food standards

19. Access to good quality nutritious food and hydration is an important part of patient care and recovery. We support the proposals to amend legislation to more clearly establish hospital food standards on a statutory footing, to ensure staff, patients and visitors can eat well when in the hospital environment.

[5] https://www.cqc.org.uk/what-we-do/how-we-do-our-job/five-key-questions-we-ask

20. CQC will be expected to enforce the NHS food and drink standards[6], and we will develop our regulatory approach accordingly. We do not expect that this would involve our inspectors carrying out detailed inspections of commercial food retailers or vending machines, and our work should avoid overlap with the responsibilities of other bodies such as the Food Standards Agency.

21. Our role in this area is focused on ensuring the food and drink supplied by hospitals meets the nutritional, hydration and wellbeing needs of service users, taking account of individual requirements and preferences as appropriate. We are updating our assessments in line with the recommendations of the NHS Hospital Food Review.[7] We also have a role in assessing how NHS trusts' overall organisational approaches to food provision are complying with national guidance, and how they are ensuring the wellbeing of their staff.

Data sharing

22. We welcome greater information sharing (clauses 79-83). It has the potential to reduce the duplication of data requests and therefore reduce the burden on the health and care system. It will be important that the implementation of this part of the Bill builds on existing data sources which already provide valuable information to the system.

23. Alignment is necessary to build a national picture and to combine the insights from CQC regulation, Healthwatch visits, Local Authority monitoring and assessment. Effective data sharing and use will only ever be partially successful until sufficient common ground on quality is established so that the multiple bodies requesting data and information have more closely aligned requirements. We would recommend that any move towards greater sharing is coupled with a common understanding of quality - this would ensure a consistent approach to collecting meaningful data about a person's care and access to services.

Health Service Safety Investigations Body (HSSIB)

24. We welcome the new legislation to establish the HSSIB as an independent statutory body (all HSSIB clauses range from 93-119). We are pleased that the Bill recognises that HSSIB and other bodies (including CQC) must cooperate and coordinate investigations with each other. Reducing the burden on providers is essential and the duty to cooperate and coordinate is key to this.

25. Information confined to discussions in safe spaces could limit our ability to take immediate **necessary action to protect people** in health and care settings. However, we believe that the development of a Memorandum of Understanding and/or an Information Sharing Agreement with HSSIB will enable us to receive vital information relating to our regulatory functions (e.g. keeping people safe) in a timely fashion.

Further opportunities presented by, but not included in, the Bill

26. **Online regulation:** the pandemic has had a significant impact on how care is accessed and delivered, with more people accessing digital healthcare services. We are keen to support innovation and welcome greater patient choice. The ease with which people can now access

[6] More information on this in the Bill explanatory notes: https://publications.parliament.uk/pa/bills/cbill/58-02/0140/en/210140en.pdf

[7] https://www.gov.uk/government/publications/independent-review-of-nhs-hospital-food

treatment online can make this an attractive option to people. However, as remote care and the internationalisation of healthcare rapidly accelerates, there are also greater associated risks.

27. We continue to receive information about cases involving deaths and harm linked to non-UK based online providers. In these cases, an unsafe prescription from a non-UK based provider has been acquired by a patient in England and we have been unable to act because of regulatory gaps**.**

28. We have been strongly encouraging the government to consider primary legislation to enable us to take enforcement action against non-UK based online providers offering regulated activities to people in England, where we suspect harm may be caused. We are recommending that the government use this opportunity provided by the Bill to combat the regulatory loopholes in online care, and to prevent further avoidable deaths.

29. Whilst DHSC have agreed to secondary legislative change that would allow us to register non-UK based providers, without primary legislative change we will be unable to take effective enforcement action against them when necessary. Given the infrequency of relevant health legislation, we would strongly encourage Parliament to take the opportunity presented by this Bill to include a new clause that would allow us to take effective enforcement action, or alternatively an enabling clause allowing this provision at a later point following further parliamentary consideration.

30. **Giving the National Guardian Office[8] statutory status:** we also support the National Guardian Office's request to be placed onto a statutory footing. This would promote its independence, transparency and accountability as the organisation continues to expand.

For more information

If you have any queries regarding this briefing please contact Senior Parliamentary and Engagement Adviser, Ayesha Carmouche at Ayesha.Carmouche@cqc.org.uk or the CQC parliamentary team at parliamentaryaffairs@cqc.org.uk

[8] https://nationalguardian.org.uk/