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Department of Health & Social Care

Guidance

Duty of candour review: terms of reference

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Applies to England

Contents

This publication is available at https://www.gov.uk/government/publications/duty-of-candour-review-terms-of-reference/duty-of-candour-review-terms-of-reference

Introduction

The review ('the review') into the statutory duty of candour ('the duty') is commissioned by the Secretary of State for Health and Social Care.

Governance and accountability

The Department of Health and Social Care (the reviewer) will undertake the review and be accountable to the Secretary of State for delivery of the review.

Purpose

The review will consider the design of the statutory (organisational) duty of candour and its operation (including compliance and enforcement) to assess its effectiveness and make advisory recommendations.

The review will focus on solutions in response to concerns within independent reports that the duty is not always met as intended.

The review will not consider the professional duty of candour, which is overseen by regulators of specific healthcare professions.

Background

The statutory duty of candour is about people's right to openness and transparency from their health or social care provider.

It means that when something goes wrong during the provision of health and care services, patients and families have a right to receive explanations for what happened as soon as possible and a meaningful apology.

The duty of candour applies to all health and social care providers that the Care Quality Commission (CQC) regulates. The duty is set out in regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (https://www.legislation.gov.uk/ukdsi/2014/9780111117613/regulation/20). It has been in place for NHS trusts and NHS foundation trusts since 2014 and for all other providers regulated by the CQC since 2015.

Regulation 20 puts a legal duty on health and social care providers to be open and transparent with people using services and their families. It sets out actions that providers must take when a 'notifiable safety incident' happens. Notifiable safety incidents:

- are unintended or unexpected
- happen during the provision of an activity the CQC regulates
- are incidents that - in the reasonable opinion of a healthcare professional - could, or already appear to have, resulted in death or severe or moderate harm to the person receiving care

As soon as a notifiable safety incident has been identified, organisations must act promptly and are expected to:

- tell the relevant person, face-to-face, that a notifiable safety incident has taken place
- say sorry
- provide a true account of what happened, explaining what is known at that point
- explain what further enquiries or investigations will take place
- follow up by providing this information and the apology in writing, and giving an update on any enquiries
- keep a secure written record of all meetings and communications with the relevant person

The CQC regulates compliance with the duty. Failure to comply with the duty can result in enforcement activity ranging from warning or requirement notices to criminal prosecution.

Issues to be considered

The review will focus on consideration of 3 aspects relating to the duty:

1. To what extent the policy and its design are appropriate for the health and care system in England.
2. To what extent the policy is honoured, monitored and enforced.
3. To what extent the policy has met its objectives.

Methodology

The reviewer will work with providers that are subject to the duty, and other stakeholders, as appropriate. The review will consist of methods that may include desk-based research, interviews with leaders and other staff across providers as well as service users, and evidence sessions with regulators and other stakeholders.

Output

The Secretary of State for Health and Social Care will publish the findings of the review. This will include an appropriate level of recommendations for better meeting the policy objectives of the duty and which can be implemented at pace.

Confidentiality

At times there may be specific information shared that is confidential. The reviewer shall keep such information confidential. This includes not disclosing identifiable information without the express permission of participants to the review.

Timetable

The Secretary of State for Health and Social Care will publish the review in spring 2024.

↑ Back to top