



# Care Act 2014

## 2014 CHAPTER 23

### PART 2

#### CARE STANDARDS

##### *Quality of services*

#### **81 Duty of candour**

In section 20 of the Health and Social Care Act 2008 (regulation of regulated activities), after subsection (5) insert—

“(5A) Regulations under this section must make provision as to the provision of information in a case where an incident of a specified description affecting a person’s safety occurs in the course of the person being provided with a service.”

#### **82 Warning notice**

(1) In section 29 of the Health and Social Care Act 2008 (warning notice), after subsection (1) insert—

“(1A) But a warning notice under this section may not be given to an NHS trust established under section 25 of the National Health Service Act 2006 or an NHS foundation trust.”

(2) In subsections (2) and (3)(a) of that section, after “warning notice” insert “under this section”.

(3) After that section insert—

##### **“29A Warning notice: quality of health care**

(1) If it appears to the Commission that the quality of health care provided by an NHS trust established under section 25 of the National Health Service Act

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2006 or by an NHS foundation trust requires significant improvement, the Commission may give the trust a warning notice.

- (2) A warning notice under this section is a notice in writing—
    - (a) stating that the Commission has formed the view that the quality of health care provided by the trust requires significant improvement,
    - (b) specifying the health care concerned,
    - (c) giving the Commission’s reasons for its view, and
    - (d) requiring the trust to make a significant improvement to the quality of the health care concerned within a specified time.
  - (3) Where a warning notice under this section imposes more than one requirement under subsection (2)(d), it may specify different times for different requirements.
  - (4) The Commission must—
    - (a) where the notice specifies only one time under subsection (2)(d), determine at the end of that time whether the requirement has been complied with;
    - (b) where the notice specifies more than one time under subsection (2)(d), determine at the end of the latest of those times, whether the requirements have been complied with.
  - (5) Where, having carried out the duty under subsection (4), the Commission is satisfied that a requirement to which the notice relates has not been complied with, it—
    - (a) must decide what action to take in relation to the trust, and
    - (b) in so deciding in the case of an NHS foundation trust, must consider in particular whether to require Monitor to make an order under section 65D(2) of the National Health Service Act 2006 (appointment of trust special administrator).”
- (4) In each of the following provisions of that Act, after “section 29” insert “or 29A”—
    - (a) section 32(1)(a) (decisions against which appeal may not be made to the First-tier tribunal),
    - (b) section 39(2)(c) (bodies required to be given certain notices), and
    - (c) section 89(1)(e) and (2) (publication of information relating to enforcement action).
  - (5) In section 88(1)(d) of that Act (guidance issued by the Commission about enforcement action), for “section 29” substitute “sections 29 and 29A”.

### **83 Imposition of licence conditions on NHS foundation trusts**

- (1) Section 111 of the Health and Social Care Act 2012 (imposition by Monitor of licence conditions on NHS foundation trusts during transitional period) is amended as follows.
- (2) After subsection (2) insert—
 

“(2A) Where a warning notice under section 29A of the Health and Social Care Act 2008 is given to an NHS foundation trust, Monitor may include in the trust’s licence such conditions as it considers appropriate in connection with the matters to which the notice relates.”

- (3) In subsections (3) to (5) and (7) to (9), after “subsection (1)” in each place it appears insert “or (2A)”.

#### **84 Trust special administration: appointment of administrator**

- (1) In section 65D of the National Health Service Act 2006 (NHS foundation trusts: appointment of trust special administrator), in subsection (1)—

(a) after “satisfied that” insert “—

(a)”,

and

(b) at the end insert “, or

(b) there is a serious failure by an NHS foundation trust to provide services that are of sufficient quality to be provided under this Act and it is appropriate to make an order under subsection (2).”

- (2) After that subsection insert—

“(1A) This section also applies if the Care Quality Commission—

(a) is satisfied that there is a serious failure by an NHS foundation trust to provide services that are of sufficient quality to be provided under this Act and that it is appropriate to make an order under subsection (2),

(b) informs the regulator that it is satisfied as mentioned in paragraph (a) and gives the regulator its reasons for being so satisfied, and

(c) requires the regulator to make an order under subsection (2).”

- (3) In subsection (2) of that section, after “The regulator may” insert “or, where this section applies as a result of subsection (1A), must”.

- (4) After subsection (3) of that section insert—

“(3A) Before imposing a requirement as mentioned in subsection (1A)(c), the Care Quality Commission must—

(a) consult the Secretary of State and the regulator, and

(b) having done that, consult—

(i) the trust,

(ii) the Board, and

(iii) any other person to which the trust provides services under this Act and which the Commission considers it appropriate to consult.”

- (5) In subsection (4) of that section, after “making an order under this section” insert “(except where it is required to do so as a result of subsection (1A))”.

- (6) In section 65N of that Act (guidance for trust special administrators), after subsection (3) insert—

“(3A) Before publishing guidance under this section, the Secretary of State must consult the Care Quality Commission.”

- (7) In subsection (4) of that section, for “the reference in subsection (1) to the Secretary of State is to be read as a reference” substitute “the references in subsections (1) and (3A) to the Secretary of State are to be read as references”.

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- (8) In paragraph 24 of Schedule 14 to the Health and Social Care Act 2012 (abolition of NHS trusts in England: consequential amendments to section 65N of the National Health Service Act 2006), after sub-paragraph (2) insert—

“(2A) In subsection (3A), for “the Secretary of State” substitute “the regulator”.”

## **85 Trust special administration: objective, consultation and reports**

- (1) In section 65DA of the National Health Service Act 2006 (objective of trust special administration), in subsection (1), after paragraph (a) (but before the following “and”) insert—

“(aa) that the services whose continuous provision is secured as mentioned in paragraph (a) are of sufficient safety and quality to be provided under this Act.”.

- (2) After subsection (5) of that section insert—

“(5A) Before publishing guidance under subsection (4)(c), the regulator must consult the Care Quality Commission.”

- (3) In section 65F of that Act (administrator’s draft report), in subsection (2)—

- (a) omit the “and” preceding paragraph (b), and  
(b) after that paragraph insert “, and  
(c) the Care Quality Commission.”

- (4) In subsection (5) of that section, in paragraph (a), for “65DA” substitute “65DA(1)(a)”.

- (5) After that subsection insert—

“(5A) Nor, in the case of an NHS foundation trust, may the administrator provide the draft report to the regulator under subsection (1) without having obtained from the Care Quality Commission a statement that it considers that the recommendation in the draft report would achieve that part of the objective set out in section 65DA(1)(aa).”

- (6) In subsection (6) of that section—

- (a) after “Where the Board” insert “or the Care Quality Commission”,  
(b) for “to that effect” substitute “to the effect mentioned in subsection (5) or (5A)”, and  
(c) after “, the Board” insert “or (as the case may be) the Commission”.

- (7) In section 65G of that Act (consultation plan), in subsection (4), in paragraph (a), for “65DA” substitute “65DA(1)(a)”.

- (8) After that subsection insert—

“(4A) Nor may the administrator make a variation to the draft report following the consultation period without having obtained from the Care Quality Commission a statement that it considers that the recommendation in the draft report as so varied would achieve that part of the objective set out in section 65DA(1)(aa).”

- (9) In subsection (5) of that section—

- (a) after “Where the Board” insert “or the Care Quality Commission”,

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- (b) for “to that effect” substitute “to the effect mentioned in subsection (4) or (4A)”, and
  - (c) after “, the Board” insert “or (as the case may be) the Commission”.
- (10) In section 65H of that Act (consultation requirements)—
- (a) in subsection (7), after paragraph (b) insert—
    - “(ba) the Care Quality Commission;”, and
  - (b) in subsection (9), after “subsection (7)(b),” insert “(ba),”.
- (11) In section 65KB of that Act (Secretary of State’s response to regulator’s decision), in subsection (1), after paragraph (c) insert—
- “(ca) that the Care Quality Commission has discharged its functions for the purposes of this Chapter.”.
- (12) In subsection (2) of that section, in paragraph (b), after “the regulator” insert “and the Care Quality Commission”.
- (13) In section 65KD of that Act (Secretary of State’s response to re-submitted final report), in subsection (3), for “(8)” substitute “(8A)”.
- (14) After subsection (8) of that section insert—
- “(8A) If the notice states that the Care Quality Commission has failed to discharge a function—
    - (a) the Care Quality Commission is to be treated for the purposes of this Act as having failed to discharge the function, and
    - (b) the failure is to be treated for those purposes as significant (and section 82 of the Health and Social Care Act 2008 applies accordingly).”
- (15) In paragraph 15(4) of Schedule 14 to the Health and Social Care Act 2012 (abolition of NHS trusts in England: consequential amendments to section 65F of the National Health Service Act 2006)—
- (a) in the new subsection (2A) to be inserted by paragraph 15(4), in paragraph (a), for “65DA” substitute “65DA(1)(a)”,
  - (b) after that new subsection, insert—
    - “(2AA) Nor may the administrator provide the draft report to the regulator under subsection (1) without having obtained from the Care Quality Commission a statement that it considers that the recommendation in the draft report would achieve that part of the objective set out in section 65DA(1)(aa).”, and
  - (c) in the new subsection (2B) to be inserted by paragraph 15(4)—
    - (i) after “Where the Board” insert “or the Care Quality Commission”,
    - (ii) for “to that effect” substitute “to the effect mentioned in subsection (2A) or (2AA)”, and
    - (iii) after “, the Board” insert “or (as the case may be) the Commission”.