

All Change!

A timetable of changing regulations could trip up unwary treatment services. David Finney offers a quick guide to keep you on track

Over the next few months drug and alcohol treatment services are going to experience considerable change in the way they are statutorily overseen. The fear is that it is going to feel like Clapham Junction, with issues arriving from all quarters and people wondering where each one is going and which ones are the most important. There are commendable reasons behind each government initiative but their arrival all at once can seem confusing. I will attempt to highlight the importance of each one so that you can see where they fit into the scheme of things.

In brief, there is:

- Care Quality Commission's registration guidance about compliance with the Health and Social Care Act 2008
- Comprehensive area assessments by the Audit Commission, with implications for 'star' ratings
- Department of Health's 'Putting People First' initiative, also known as the personalisation agenda
- Independent Safeguarding Authority and the Vetting and Barring Scheme
- Deprivation of liberty safeguards and Mental Capacity Act

Registration guidance

As you will probably know, the Care Quality Commission (CQC) is the successor to the Healthcare Commission, the Commission for Social Care Inspection (CSCI) and the Mental Health Act Commission. It been tasked by the Department of Health to consult on compliance criteria for a whole range of services which will require registration. These criteria will replace the National Minimum Standards (NMS) for care homes and domiciliary services which have applied ever since 2002 under the provisions of the Care Standards Act 2000.

Essentially the criteria draw on the best of the NMS and the Standards for Better Health and will apply across the health and social care fields for the first time. (You can download the 256 page document from the CQC website – or start with the 'easy read' version as I did!)

How is it different?

These criteria will apply to independent hospitals, NHS detoxification facilities, residential rehabilitation services and 'quasi residential services' where treatment and accommodation are provided or organised together.

The focus is on the views and experiences of people using services. Quality will be defined in terms of outcomes wherever possible. This moves away from the emphasis on inputs in the NMS and means that services have to demonstrate good outcomes – rather than room sizes, for example.

Providers are held responsible for delivering services to the required quality. Good providers will already be doing this, but if your organisation has not yet

developed a good evidence base it needs to start now so that it is well prepared.

Registration will be of the provider rather than each individual service, and they will need to make declarations about how requirements are met in each service. The guidance will also be explicit about the legal basis of human rights, equalities and diversity.

There is generic and specific guidance. The generic guidance covers issues such as involvement and information, personalised care, treatment and support, safeguarding and safety, and suitability of staffing and management. In my view these are not a threat to good providers as they will already be meeting these criteria – however they may need to order their information in a different way to demonstrate compliance.

What should our sector be aware of?

For the first time there is a distinct section about the drug and alcohol treatment sector. It is within Section 5 of the specific guidance (page 156-161) and is of key importance, highlighting 'services provided by a substance misuse rehabilitation and/or treatment service'. It specifically draws attention to some of the features of treatment services such as limitations to choice and flexibility – the need to co-operate with a programme, a focus on the need for good discharges alongside arrangements for unplanned discharges, staff who are trained in accordance with DANOS and relevant professional standards.

These criteria are designed to regulate services where treatment and accommodation is not necessarily on the same site. This should ensure a level playing field, so people can be sure such services are operating as safely as an already registered residential service.

During the consultation period it is essential that, as treatment providers, you engage in the dialogue with CQC to ensure that these criteria are relevant to your services. The closing date for reply to the consultation is 24 August and there are events being organised on behalf of CQC for formal consultation, so my recommendation is that you seek out these events through the CQC website.

The implementation date has been set for October 2010 so there is plenty of time to get ready – however if your service wishes to stay ahead of the game, preparation is best done sooner rather than later.

Area assessments

The Audit Commission has already started comprehensive area assessments, which take into account the impact of all the statutory services provided within a council area, including education, police, transport, health and social services. A 'story of place' will be developed, describing what it is like living in an area. Treatment services will have a role in ensuring, for example, that an area is safe in terms of lowering crime and drink related hospital admissions, improving children's safety within families, and offering people ways out of their addictive



behaviours through returning them to employment and full health. The effect is that the community safety and public health agendas are being addressed comprehensively. Treatment services are clearly a small part, but if one service has a weakness it can affect the whole comprehensive area assessment.

Within this framework, many councils are choosing performance indicators, such as numbers of people entering treatment, retention and completion rates, and quality ratings of the services used. The latter is absolutely crucial. In their own research CSCI found that councils were very aware of the importance of quality ratings and some used them as part of their fee paying structure. Building on this, CQC will be questioning councils this summer on whether they use services which have achieved only 'good' or 'excellent' quality ratings – so if your service is below these ratings there is a possibility that local authority funding will not be made available. It's never been more important to keep your quality rating up.

'Putting People First'

This 'personalisation' agenda is seeking to give service users more control over how their statutory funding is spent. The impact is that people will be either allocated an 'individual budget' which will be discussed with a care manager who spends it on their behalf, or they will have a 'direct payment' which will be given directly to a service user to spend as they think fit. The aim is to increase choice and control, rights and accessibility and self determination for service users, some of whom may choose residential services as their preferred option. In these instances the accountability will be much more towards the service user rather than the commissioning care manager, which will set up a different dynamic. Services will also need to look very closely at how they can individualise their treatment programme, as 'one size fits all' will no longer apply.

This initiative is already gaining ground in the learning disability and mental health sectors, so it will not be long before it will begin to apply to the drug and alcohol treatment field. Further information can be found on the Department of Health website under the headings 'individual budgets' and 'direct payments'. There is also a website dedicated to this topic called 'In Control', with a link to a very useful booklet – *Impact of personal budgets on third sector providers of social care*.

Vetting and barring

The Vetting and Barring Scheme (VBS) is a joint venture of the Home Office, Department for Children and Families, and Department of Health, administered by the Independent Safeguarding Authority (ISA). Its aim is to initially advise and then take on responsibility for deciding who should be barred from working with children and vulnerable adults. The scheme will replace the POVA (Protection of Vulnerable Adults) list on 12 October 2009. It will work alongside the Criminal Records Bureau (CRB), not replace it.

Further timelines are 26 July 2010 when all new entrants to roles working with

vulnerable groups will be able to register with the ISA and then November 2010, when it will be a legal requirement for employees to register with the Vetting and Barring Scheme for employers to check their status.

The implications for the treatment sector are that residential homes will be considered to be 'regulated activity', in which staff are expected to be registered with the VBS. Furthermore, the guidance for decision-making which the ISB have issued lists offences related to addictive behaviour as a relevant conviction indicating a 'risk of harm'. I trust that case law will develop whereby these offences will be assessed in their proper context and not themselves be a bar to working in this field. (For more information see the Independent Safeguarding website, which will give details of summer roadshows that are open to all with an interest.)

Mental Capacity Act 2005 & Deprivation of Liberty Safeguards

With the increasing prevalence of mental illness among the population of people being treated for addiction, treatment services need to be aware that they could be involved in taking decisions for people in circumstances where they are unable to take a decision for themselves.

Hopefully these circumstances are few and far between in regular treatment settings. Nevertheless, an awareness of these provisions could be helpful if someone becomes acutely incapacitated, perhaps during detoxification or when demanding discharge, and/or you sense that they may be putting themselves or others at risk of harm.

There are technical definitions of when these provisions become relevant and they relate to 'functional tests of capacity'. There has to be 'an impairment of, or disturbance in, the person's mind or brain' and 'the impairment or disturbance must be sufficient that the person lacks the capacity to make a particular decision'. These are outlined in the Code of Practice to the Mental Capacity Act 2005. This lack of capacity will probably be a temporary matter, but if it not assessed, managed and recorded then there can be serious consequences for services, to the extent that there is a new criminal offence of 'ill treatment or neglect of a person who lacks capacity'. More information can be obtained from your local Adult Social Services Department who will have a Mental Capacity Act officer appointed who will offer training and information.

Treatment services need to be constantly aware of the changing regulatory landscape as it affects their service users. Only skeletal information is possible in this article, so I suggest that services engage in consultations where applicable, attend roadshows and events and seek further information where relevant.

David Finney was a senior manager in CSCI where he took the lead on substance misuse services. He is now an independent consultant specialising in residential services. Further information can be found at www.davidfinney.org.uk