



Department
of Health

New proposal to expand the scope of performance assessments of providers regulated by the Care Quality Commission (September 2017)

September 2017

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Introduction

1. Section 46 of the Health and Social Care Act 2008 (as amended by the Care Act 2014) places a duty on the Care Quality Commission (CQC) to carry out reviews, and assess and publish a report of its assessment, of the performance of providers of health and adult social care services. The assessment must be by reference to indicators of quality devised by the CQC and is provided by the CQC in the form of a rating.
2. The purpose of a CQC rating is to provide the public with a clear, authoritative summary of the quality and safety of a health or social care provider's services. Where choice exists between providers, a rating can help the public in exercising that choice in an informed way. A rating also provides the public with a clear summary about how their local services are performing, and when combined with the detailed inspection report provides a means through which the public, service commissioners and other stakeholders can challenge providers to improve.
3. The CQC began publishing ratings in October 2014; however this has been limited to NHS Trusts, NHS Foundation Trusts, GP practices, adult social care providers and independent hospitals.
4. In August 2016, we consulted on proposals to expand the scope of the CQC's duty to extend performance assessments and ratings to a variety of additional providers who carry out regulated activities, namely:
 - Independent Community Health Service Providers
 - Cosmetic Surgery Providers
 - Independent Ambulance Services
 - Independent Dialysis Units
 - Refractive Eye Surgery Providers
 - Substance Misuse Centres
 - Termination of Pregnancy Providers
5. Following that consultation we had concerns that this failed to engage certain types of providers, for example some of those falling under the umbrella of 'independent community health service providers'. This sector has therefore been left out of the first set of regulations.
6. In working through these issues the Department of Health and the CQC have come to the view that it would be beneficial to broaden the scope of the CQC's rating regulations so that with some exceptions, all providers of regulated activities are rated. This would bring (amongst others) independent community health service providers and independent doctors within the scope of the ratings regulations.
7. There will be some exceptions as set out in paragraphs 25-46 below.
8. Nevertheless we are making regulations to bring into the ratings regime the following regulated activities, which were the subject of the previous consultation and are currently only within scope if they are carried out by the providers referred to in paragraph 3:

Cosmetic surgery (where the procedure requires intravenous sedation, general anaesthesia or the insertion of an implant), Transport services, Dialysis services, Refractive eye surgery, Substance misuse services and Termination of pregnancy.

The table at Annex A contains the full list of registered service providers and regulated activities that we propose would be rated under these regulations.

9. This consultation document sets out our proposal to expand the scope of the CQC's duty to undertake performance assessments and rating of all providers of regulated activities with the exception of a small number of exclusions.

Policy Background

10. Section 46 of the Health and Social Care Act 2008 (as amended by the Care Act 2014), allows the Secretary of State for Health to make regulations to require the CQC to carry out periodic performance assessments of the carrying on of regulated activities by all health and adult social care providers or such as are prescribed. To deliver assessments of all providers in health and social care would have been a significant undertaking for the CQC, as it would have had to develop different methodologies for many different sectors in a short space of time.
11. The Government wanted to avoid overloading the CQC with having to develop methodologies for all providers without first testing its new approach. Therefore the Care Quality Commission (Reviews and Performance Assessments) Regulations 2014¹ limited the providers and activities to be rated to those listed in paragraph 3. This was to enable the CQC to focus its reviews and assessments on those of most interest or concern and to avoid the CQC needing to assess the entire system all at once. Instead, the CQC was able to develop and test its methodologies for those included sectors, to ensure that its approach was robust before scaling up.

Proposed changes to the scope of ratings

Inclusive approach

12. Since performance assessments were implemented, the CQC has gained confidence in its ability to effectively rate all other sectors. Working with the CQC, the Department of Health consulted on changes to the scope of the performance assessment regulations in August 2016, to enable the CQC to rate additional provider sectors².
13. Following this, the Department of Health has decided to amend the performance assessment regulations for all service types upon which we consulted, except for independent community health service providers. This arose from our concerns that the effect of the proposals may have been to bring within scope, providers of regulated activities who may not have considered themselves to fall under the term of 'independent community health service providers' used in the consultation. We believe that it is important to make these changes quickly and during week commencing 11th September new regulations to do this will be laid before Parliament. (See Annex A).

¹ SI 2014/1788

² Department of Health; Scope of Performance Assessments of providers regulated by the Care Quality Commission; Aug 2016 (<https://www.gov.uk/government/consultations/expanding-cqc-ratings-to-include-independent-healthcare-providers>)

Exclusive approach

14. We believe it is important to rate all health and social care service providers in respect of the regulated activities which they carry on. We now propose to extend the CQC's duty to undertake performance assessments and provide a rating for providers of all regulated activities unless (and to the extent that) the regulations specifically exclude them. This approach will bring within the ratings regime all providers who recognise themselves as independent community health service providers or independent doctors, as well as any other provider of a regulated activity, unless an activity or provider is expressly excluded.
15. This consultation seeks your views as to whether it is appropriate for CQC to extend performance assessment and ratings to all the providers and activities that would be prescribed by this new approach.

Current regulations

16. The current regulations prescribe both the registered service providers and the regulated activities that are subject to rating. They bring into rating NHS Trusts, Foundation Trusts, GP practices, independent hospitals and providers of adult social care. The new regulations to be laid before Parliament during week commencing 11th September adopt a similar approach.

Proposed regulations

17. However, the 'inclusive' approach we previously adopted will need to change to accommodate an evolving health and social care landscape, for example new care models³. There are also some registered service providers that the Department of Health does not wish the CQC to have a duty to rate.
18. We believe that the wider independent sector should also be subject to ratings for service users to reference when choosing providers of such services to ensure parity between NHS and non-NHS provision.
19. The Department of Health therefore proposes to amend the regulations so that CQC has a duty to rate all providers of regulated activities, except for some specific registered service providers or regulated activities. This will offer a more comprehensive insight into the quality of care across the entire health and social care sector. We believe this will be beneficial to the public but also to providers and commissioners of care.

³ <https://www.england.nhs.uk/ourwork/new-care-models/>

Independent community health service providers

20. Because the proposals are to include all providers and all registered activities apart from those set out in the "Proposed Exclusions" below, they will bring independent community health service providers⁴ into rating (unless they are excepted, for example because they only carry on a regulated activity which is excepted).
21. Types of care and services which can fall within the category of independent community health providers include, but are not limited to:
- Community nursing including specialist community nursing services
 - Intermediate care
 - Community rehab, therapy and reablement services
 - Health visiting
 - Services for children with complex needs, long term conditions and disabilities
 - Sexual health services
 - Community end of life care

Independent doctors

22. These proposals would also bring into rating regulated activities carried on by registered providers who are independent doctors and whose sole or main purpose is not the provision of primary medical services under section 83(2), 84 or 92 of the National Health Service Act 2006⁵, apart from those regulated activities intended to be exempt (see "Proposed Exclusions" below). Independent doctor services are wide ranging. They include individual medical practitioners providing services, partnerships providing services, and private organisations providing services. The services can employ specialists, general practitioners or medical practitioners with no specialist qualification.
23. Independent doctor services carried out by such providers can encompass a wide range of activities, for example online or digital services.

Other service providers

24. We propose to bring within the scope of ratings all registered providers who carry on regulated activities unless they are subject to the exclusions discussed below. This includes any other registered provider who may not fall within the description of independent community health service provider or the description of independent doctors above.

⁴ 'Independent community health services' is a term used by CQC to describe a subset of registered providers. Information for providers of independent community health services is available at <http://www.cqc.org.uk/guidance-providers/independent-community-health-services>.

⁵ All doctors whose sole or main purpose is the provision of Primary Medical Services under these sections are already subject to ratings and will continue to be for all activities they carry out.

Would it be appropriate to extend performance assessment and rating by CQC to all but a small number of registered providers as set out in this consultation?

Proposed regulatory approach	Strongly agree	Agree	Neither	Disagree	Strongly disagree
It would be appropriate to extend performance assessment and rating by CQC to all but a small number of registered providers as set out in this consultation					

Proposed exclusions

25. There are a small number of registered service providers or regulated activities for which we consider performance assessment and rating by the CQC to be inappropriate. They will therefore remain exempt from rating. For some regulated activities this is because the number of registered providers is so small that ratings would not contribute to public or consumer choice. For others it is because the activities or the providers who carry them out are already regulated by other agencies besides the CQC, and we would consider their rating by the CQC to run the risk of confusing the public. Finally, there are sectors which are regulated by the CQC but receive infrequent inspection because they are of relatively low risk. Such a frequency of inspection would not be adequate for rating; however, it would not be a good use of resources for the CQC to increase the rate of inspection for these providers.

26. The Department believes that performance assessment and rating by the CQC should not extend to the following registered service providers and regulated activities. However, they will still be regulated by the CQC against the fundamental standards of care and be subject to inspection.

Primary Dental Care

27. We wish to exclude primary care or high street dental practices from rating for all dental services, including cosmetic dentistry. All primary dental services will be exempt from rating unless they are provided by an independent hospital, NHS trust or NHS foundation trust.

28. This sector is already regulated by the General Dental Council and the CQC. There is little variation in the regulatory compliance of dental services and the CQC's approach to inspecting this sector is one of focusing on those providers that are highest risk. The CQC currently only inspects approximately 10% of dentists per annum, on a risk and random basis. Such a frequency of inspection would not be adequate for rating;

however, it would not be a good use of resources for CQC to increase the rate of inspection for these providers.

Minor cosmetic surgery services

29. Our intention is for cosmetic surgery providers who do not undertake procedures requiring intravenous sedation, general anaesthesia or the insertion of an implant to be exempt from rating. This exclusion will apply to a narrow range of procedures considered to be relatively low risk to the extent that they are a regulated activity, for example the surgical removal of skin tags or blemishes⁶. (However, if such a provider carries out any other regulated activity which is not exempted, they would be rated for that activity.) Such services are subject to a lower frequency of inspection than other providers in this sector. Such a frequency of inspection would not be adequate for rating; however, it would not be a good use of resources for CQC to increase the rate of inspection for these providers.

National Screening Programmes

30. All diagnostic and screening procedures provided as part of a national screening programme by a body established solely for the purpose of such a programme, to the extent that they are regulated activities, will be excluded from rating. Public Health England already has quality assurance processes regarding these services, so we would not wish for the CQC to routinely inspect them, but would be able to take action if concerns were raised with them. We therefore think there are no need to rate these.

Health and Justice Services

31. This is the provision of regulated activities in Prisons, Custody Suites, Secure Training Centres, Immigration Removal Centres, Young Offender Institutions and Sexual Assault Referral Centres⁷.
32. We do not propose to rate services provided by registered providers in these settings because there is no question of patient choice and as such a rating would be of limited benefit. Also, most of these services are jointly inspected with other bodies so rating by the CQC would be potentially confusing.

⁶ Curettage, cautery or cryocautery of warts, verrucae or other skin lesions carried out by a medical practitioner are not a regulated activity if carried out without anaesthesia or using a local anaesthetic, nor is the removal of small skin blemishes by the application of heat using an electric current a regulated activity. See paragraph 6(2)(b) Schedule 1 to 1 to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

⁷ Sexual assault referral centres are open access one-stop services to help victims of rape or sexual assault, irrespective of age, on the journey to recovery by providing an immediate health and care response with access to criminal justice services, safeguarding services and integrated follow-up. (NHS England; Service specification No. 30 Sexual Assault Referral Centres; Feb 2016)

33. However, we will continue to rate sexual assault referral services provided in an independent hospital or by an NHS trust or NHS foundation trust or primary medical service.

Hyperbaric Chambers

34. This is the provision of the regulated activity of treatment of disease, disorder or injury by providing hyperbaric therapy i.e. the administration of oxygen (whether or not combined with one or more other gases) to a person who is in a sealed chamber which is gradually pressurised with compressed air.

35. There are very few hyperbaric chambers in England and those in need will access the nearest geographical facility for reasons of urgency. Therefore a rating of this activity will not help the public with decisions they make regarding their care.

Blood and Transplant Services

36. We wish to exclude from rating registered providers of blood and transplant services for which the management of supply of blood and blood derived products, as referred to in paragraph 8 of Schedule 1 to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, if the carrying on of that activity is their sole, main or primary activity. Such providers may be registered for other regulated activities. These providers are also very small in number. We understand that only two registered providers (NHS Blood and Transplant and the Anthony Nolen Trust) would fall into this category. There is therefore little value in their being rated, since the public is unable to exercise choice.

Services licenced by the Human Fertilisation and Embryology Authority

37. Some HFEA licensed providers are currently registered with the CQC for the regulated activity of surgical procedures, as they perform surgical egg or sperm collections. However, the carrying out of surgical procedures in connection with any of the activities listed in Schedule 2 (activities for which licences may be granted) to the Human Fertilisation and Embryology Act 1990 and for which a licence has been granted to that person under section 16 (grant of licence) of that Act will continue to be exempt from rating. HFEA licensed providers may carry out other regulated activities which would not be exempt.

Independent pathology laboratories

38. We wish to exclude the regulated activity of diagnostic and screening procedures when provided by an independent pathology laboratory solely under a contract for services with another registered service provider.

39. This activity normally involves testing and analysing blood and tissue samples from patients for the purposes of discovering the presence, cause or extent of disease, disorder or injury or the use of equipment in order to examine cells, tissues and other

bodily fluids for the purposes of obtaining information on the causes and extent of a disease, disorder or injury.

40. Providers of this activity do not normally have any direct contact with patients and do not directly deliver services to patients. Instead, they provide services under contract with and for another registered service provider, such as an NHS hospital or a GP practice.
41. The public are not able to exercise choice regarding such providers. Clinical Pathology Accreditation⁸ is already in place for these types of services so rating by the CQC would be of little value to the public. However, we do not intend to apply this exemption to an NHS Trust, NHS Foundation Trust, Independent Hospital or a provider who's sole or main purpose is the provision of primary medical services under section 83, 84 or 92 of the NHS Act 2006.

Independent podiatry services

42. We wish to exclude orthopaedic foot surgery carried out by a podiatrist or chiropodist, unless provided by an NHS Trusts, NHS Foundation Trusts, provider of primary medical services⁹ or an independent hospital.
43. These services which are regulated are relatively low-risk and are subject to a lower frequency of inspection than other providers. Such a frequency of inspection would not be adequate for rating; however, it would not be a good use of resources for CQC to increase the rate of inspection for these providers.

Children's homes undertaking regulated activities

44. The majority of children's homes provide some form of health service, ranging from basic first aid to high level health care. However, some of these children's homes offer regulated activities as set out in the Health and Social Care 2008 (Regulated Activities) Regulations 2014. Where this is the case, the provider will need to register with the CQC to ensure that the activities are regulated in the same way as any other healthcare provision, and that they meet essential standards of quality and safety.
45. A small number of providers will therefore need to register both with the Office for Standards in Education, Children's Services and Skills (Ofsted) as a children's home, and with the CQC for the regulated activity they provide under the Health and Social Care Act 2008.

⁸ Further information on Clinical Pathology Accreditation, including a search facility for CPA accredited medical laboratories, is available at <https://www.ukas.com/services/accreditation-services/clinical-pathology-accreditation/>

⁹ A provider whose sole or main purpose is the provision of primary medical services under—

(a) section 83(2) of the 2006 Act (primary medical services);

(b) section 84 of that Act (general medical services contracts); or

(c) section 92 of that Act (arrangements by the Board for the provision of primary medical services).

46. For those children's homes that are rated by Ofsted and are registered with the CQC for the provision of regulated activities, additional rating by the CQC would be potentially confusing.

Are the criteria we have applied to identify registered providers that would remain exempt from rating justified and appropriate?

Proposed exclusions	Strongly agree	Agree	Neither	Disagree	Strongly disagree
The criteria we have applied to identify registered providers that would remain exempt from rating are justified and appropriate.					

Regulatory impact on business

47. The duty on the CQC to undertake periodic performance assessment and publish ratings does not have any additional impact on businesses. This is because the CQC's inspections already enable information to be gathered to generate a rating, and the publication of a rating itself does not place any additional requirements on businesses. Any change made to the inspection regime would be made at the discretion of the CQC as part of its own decisions about its operating model and would be subject to a further consultation undertaken by the CQC.
48. A public rating will make clear the quality of services provided by different organisations, which may enhance or diminish their reputation and thus impact on the success and profitability of the business. Furthermore, this increased transparency of service quality may create incentives for providers to make changes to their services in order to gain a higher rating. This would benefit service users but could result in increased costs for providers depending on how they want to achieve the desired improvements. Overall a rating should simply incentivise providers to improve their service provision which a good provider would be doing in any event whether or not a rating is given.
49. Bringing these providers or activities into the scope of the CQC's performance assessment ratings, will mean that they will have to comply with the requirement¹⁰ to display their rating. This requirement will bring a small regulatory cost to the providers brought into scope. Guidance describing how providers can meet the regulation is available at: <http://www.cqc.org.uk/guidance-providers/ratings/display-ratings>.

¹⁰ Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 20A

Equality impact

50. This policy proposal impacts on providers of health and adult social care subject to performance assessment by the CQC, as set out under section 46 and associated regulations under the Health and Social Care Act 2008. The costs will not impact on people who use services, or any group of individuals who use services, The costs to providers of displaying a rating will be small.
51. The general equality duty that is set out in the Equality Act 2010 requires public authorities, in the exercise of their functions, to have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
52. The general equality duty does not specify how public authorities should analyse the effect of their existing and new policies and practices on equality, but doing so is an important part of complying with the general equality duty.
53. We do not envisage that extending the duty under section 46 to these activities or providers will have an impact on individuals sharing the other protected characteristics under the Equality Act 2010. However, if you do have any concerns that doing so may have an impact in people sharing protected characteristics, we would welcome your comments.

Responding to the consultation

54. This section outlines the areas where we are seeking a response to this consultation.
55. In this document we have set out our aims and intentions and shared our reasoning for the proposals we have made.
56. The scope of this consultation is to establish whether the change in regulations we are proposing will meet the aims we have set out. The consultation questions are listed in the next section.
57. This consultation will run for 8 weeks, closing on 7 November 2017.

To respond to this consultation, you can:

Answer the questions online, at <https://consultations.dh.gov.uk/cqc-sponsorship/performance-assessments-of-providers>

Email your responses to: Paul.Stonebrook@dh.gsi.gov.uk

Post your responses to:

Performance Assessment Regulations Consultation
c/o Paul Stonebrook
Room 235
Richmond House
79 Whitehall
SW1A 2NS

Summary of consultation questions

Question	Strongly agree	Agree	Neither	Disagree	Strongly disagree
It would be appropriate to extend performance assessment and rating by CQC to all but a small number of registered providers					
The criteria we have applied to identify registered providers that would remain exempt from rating are justified and appropriate.					

Annex A

Table

Registered Service Provider	Regulated Activity
An NHS Trust	All regulated activities, except for surgical procedures as referred to in paragraph 6(1) of Schedule 1 to the 2014 Regulations which is carried out in connection with any of the activities listed in Schedule 2 (activities for which licences may be granted) to the Human Fertilisation and Embryology Act 1990 ⁽¹¹⁾ and for which a licence has been granted to that person under section 16 (grant of licence) of that Act.
An NHS Foundation Trust	All regulated activities, except for surgical procedures as referred to in paragraph 6(1) of Schedule 1 to the 2014 Regulations which is carried out in connection with any of the activities listed in Schedule 2 (activities for which licences may be granted) to the Human Fertilisation and Embryology Act 1990 and for which a licence has been granted to that person under section 16 (grant of licence) of that Act.
An independent hospital	All regulated activities except for surgical procedures as referred to in paragraph 6(1) of Schedule 1 to the 2014 Regulations which is carried out in connection with any of the activities listed in Schedule 2 (activities for which licences may be granted) to the Human Fertilisation and Embryology Act 1990 and for which a licence has been granted to that person under

⁽¹¹⁾ 1990 c. 37, to which amendments have been made by sections 11 and 16 of, and Schedule 2 to, the Human Fertilisation and Embryology Act 2008 (c. 22) and by S.I. 2007/1522.

section 16 (grant of licence) of that Act.

A provider whose sole or main purpose is the provision of primary medical services under—

(a) section 83(2) of the 2006 Act (primary medical services);

(b) section 84 of that Act (general medical services contracts); or

(c) section 92 of that Act (arrangements by the Board for the provision of primary medical services).

All regulated activities.

Any other service provider

Personal Care as referred to in paragraph 1 of Schedule 1 to the 2014 Regulations.

Accommodation for persons who require nursing or personal care as referred to in paragraph 2 of Schedule 1 to the 2014 Regulations.

Activity—

(a) within paragraph 3 of Schedule 1 to the 2014 Regulations (accommodation for persons who require treatment for substance misuse);

(b) of treatment for a disease, disorder or injury within paragraph 4 of Schedule 1 to the 2014 Regulations, to the extent that it is for the treatment for drug or alcohol misuse, where that is the main or sole activity carried out by the service provider;

(c) of diagnostic and screening procedures within paragraph 7 of Schedule 1 to the 2014 Regulations, to the extent that it is provided for or in connection with the diagnosis or treatment of drug or alcohol misuse, where that is the main or sole activity carried out by the service provider.

Activity of treatment for a disease, disorder or injury within paragraph 4(1) of Schedule 1 to the 2014 Regulations, to the extent that it is dialysis treatment.

Activity within paragraph 6 of Schedule 1 to the 2014 Regulations, to the extent that the surgery is carried out to the eye to correct refractive error.

Surgical procedures for cosmetic purposes within paragraph 6(1)(c) of Schedule 1 to the 2014 Regulations, where the procedure requires intravenous sedation, general anaesthesia or the insertion of an implant.

Activity—

(a) within paragraph 9(1) of Schedule 1 to the 2014 Regulations (transport services);

(b) of treatment for a disease, disorder or injury within paragraph 4 of Schedule 1 to the 2014 Regulations, to the extent that it is carried out in connection with the regulated activity within paragraph 9(1) of that Schedule;

(c) of surgical procedures within paragraph 6 of Schedule 1 to the 2014 Regulations, to the extent that it is carried out in connection with the regulated activity within paragraph 9(1) of that Schedule.

Termination of pregnancies as referred to in paragraph 11 of Schedule 1 to the 2014 Regulations.

Nursing Care as referred to in paragraph 13 of Schedule 1 to the 2014 Regulations.”
