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CARE BRIEFING JANUARY 2015

BEST PRACTICE IN THE CARE SECTOR AFTER THE CARE ACT 2014

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Best practice – two small words but a massive subject which means different things to different people. In the private care sector there only seems to be one way to understand best practice and that is to align every aspect of owning and running a residential care home with the expectations of the regulator, the Care Quality Commission (CQC). So the trick for owners and managers is to really get under the skin of the regulator and understand what it is they want.

Mind you that's a tall order since the sector has seen 4 regulators over the last 12 or 15 years, each with their own agenda, but we must stay in the present and we see that events such as the Mid Staffordshire Hospital and Winterbourne View scandals have prompted some deep thinking about best practice and what that should look like. Central Government have spent the last year consulting about and preparing the Care Act, which received Royal Assent on the 14 May last year and becomes law on 1 April this year. The time in between is being spent developing the attendant regulations. It's a massive piece of work and will affect every aspect of how to run a care home and deliver high quality outcomes for the people they look after. Alongside this, CQC have been developing their regulatory inspection framework which will similarly affect the way in which care homes organise themselves and run their businesses.

So how will the widening powers being given to the regulator affect your businesses? Well, **the first major impact** will see a substantial shift away from residential care and toward maintaining people in the community for as long as possible – described in the Act as preventing, reducing and delaying needs. The view is that the longer people are looked after in their own homes then the cheaper it is for the public purse. This will be achieved by delivering subtle changes to the eligibility criteria meaning that people will need to have substantial needs that cannot be met at home without substantial cost. There is no doubt that as the care Act begins to bite, residential care home occupancy will reduce from the current broad figure of about 92% (in Somerset) as more people stay at home. Businesses will undoubtedly be affected unless owners prepare themselves to respond in breadth and depth to attract new business. This can be achieved in a number of ways, by developing specialised services such as dementia care, expanding day services to attract community interest and upgrading the environment to make it more attractive to new customers with ever heightening expectations.

Of course, the initial winners in this shift away from residential care will be the domiciliary care providers. Not only will they benefit from reduced residential placements but the demographics will produce a greater natural demand for them. The market has already noticed the opportunity and new domiciliary care agencies are sprouting up all over the place to soak up the demand.

The **next significant impact** develops from the changes to the CQC regulatory inspection framework. This is a fundamental change to the way in which business will be inspected. Following an extensive piloting programme last summer the new regime was introduced on 1 October 2014. Care homes and domiciliary care agencies will be

asked the following questions and be expected to demonstrate with appropriate evidence that they can answer the questions to the satisfaction of the inspector:

- Is the service safe?
- Is the service effective?
- Is the service caring?
- Is the service responsive? And
- Is the service well led?

This set of questions sits above what are described as the fundamental standards which came out of the extensive Francis report into the Mid Staffs scandal and comprise a selection of common sense statements that describe the basic requirements that providers should always meet and set out the outcomes that patients or care-service users should always expect. They form the basis for CQC registration and deal with the following aspects of care:

- Person centred care
- Dignity and respect
- The need for consent
- Safe and appropriate care and treatment
- Safeguarding service users from abuse
- Meeting nutritional needs
- Cleanliness , safety and suitability of premises and equipment
- Receiving and acting on complaints
- Good governance
- Staffing
- Fit and proper persons employed

As you can see it is starting to get complicated and owners and managers will need to concentrate really hard to ensure that care homes and agencies are set up to monitor compliance through their quality assurance processes.

From October last year, it got **even more complicated** when CQC started rating registered services. Inspections start by assuming the service is rated as good and will amend this as the evidence shows. Prior to the unannounced visit the service will have been asked to complete a Provider Information Return (PIR) and this, together with other intelligence (such as GP reports, complaints, notifications, customer reviews on the NHS Choices and other Trip Advisor type websites and Local Authority contract and quality information) CQC may have gathered since the last inspection will form the basis of a series of Key Lines of Enquiries or KLOEs. All this added together will influence the rating judgement and where the rating is 'Requires Improvement' or 'Inadequate' CQC will have to decide whether regulations have been breached and what enforcement action to take. The Care Act gives CQC stronger and more direct powers, so providers will need to be very careful to avoid being caught out. The consequences of non-compliance and the consequential enforcement action can lead to unwelcome costs, intrusions, interference and casualties as the abbreviated list below shows:

- Unsettled relatives, reduced enquiry rate
- Giving business advantage to local competitors
- Closer scrutiny from LA and NHS
- Placement embargoes (LA, NHS and CQC)
- Reduced occupancy and income
- Unsettled staff
- Compromised care standards
- Prosecution
- Business failure

Although this should be avoided at all costs, the cost to prevent this happening is substantial. Business owners are to be encouraged to develop internal systems and processes that constantly update their evidence base so that it is always contemporaneous and available for inspection by inspectors. The PIR, for instance, will take a small to medium

size care home (say 15 to 30 bed size) about 25 hours to complete from cold. This could take the care manager away from his or her normal duties for nearly a week. So, maybe a better way to complete the PIR is to set aside a small number of hours each month to complete each section of the Return and then keep it up to date thereafter. Another must is for Managers and staff to get to know the KLOEs intimately and to work through them line by line to ensure the business holds the evidence to prove compliance. They are themselves quite complicated because they deal with mandatory enquiries in each area, plus optional enquiries should inspectors find they need to dig deeper. For example, the KLOE for 'Is the Service Caring?' shown at pages 8 and 9 in the CQC Guidance document shows 3 mandatory KLOEs and 2 optional. At the time of writing, CQC were still debating whether all KLOEs should be mandatory. Either way, they mean that inspections will last much longer than has been the experience thus far and could extend into 2 full days or even longer – owners, managers and senior staff will need to be very familiar with how to produce all the evidence sought by inspectors. All staff will need to be familiar with the Fundamentals of Care and the Key Questions.

There are some key areas for owners and managers to concentrate on if they are to avoid a rating of anything less than Good or Excellent:

- No registered manager in place for an extended period. Evidence of all efforts made by the provider to install a registered manager will help defray concern by CQC but anything more than about 6 months will automatically result in a low rating for this aspect
- Failure to submit CQC Notifications. These are very clear so there should be no excuse but, if in doubt, the best thing is to submit a Notification
- Acting on people's views. This can come from residents and relatives (verbal or written), visitors to the location, comments on the NHS Choices and other similar websites
- Any cause for concern regarding protecting people's safety

And finally what to do to get ahead and stay ahead:

- Get your copy of the CQC Guidance Handbook and the Appendices. Don't forget they replace the Essential Standards of Quality and Safety. All staff should be aware of the contents. Use it as a working document.
- Update the PIR on a rolling basis, particularly where it ask questions like 'in the last 12 months how many …..?'
- Update your NHS Choices website profile and set the prompt to notify you when comments are added. Don't forget it is public and CQC look at it prior to inspection.
- Do everything possible not to fall foul of the pointers in the last paragraph
- Organise your quality assurance processes so they relate directly to the KLOEs
- Remember your obligation to be open and honest (Duty of Candour) and demonstrate how you learn from mistakes, complaints and the result of safeguarding investigations.

CONTACT

If you would like to arrange an initial no-obligation meeting, at no charge, please contact:

Julie Hopkins, Partner

Julie Hopkins leads Albert Goodman's Care Providers Team providing advice to care sector start-ups, those growing their business and those looking to exit. The team of more than 10 experts advise on business strategies, cash flow management, business structures, minimising tax, acquisitions and disposals, payroll and financial services.

Julie takes a lead in the firm's membership of the Registered Care Providers Association (RCPA). Her depth of expertise within the Care sector includes care homes, nursing, residential, mental health, domiciliary and supported living. Julie qualified as a Chartered Accountant with international firm KPMG and has specialised in SMEs ever since, with a particular emphasis on care providers.

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