

CONSULTATION RESPONSE

Department of Health regulations on providers
publishing false or misleading information

9 June 2014

About the Health Foundation

The Health Foundation is an independent charity working to improve the quality of health care in the UK. We are here to support people working in health care practice and policy to make lasting improvements to health services.

We carry out research and in-depth policy analysis, run improvement programmes to put ideas into practice in the NHS, support and develop leaders and share evidence to encourage wider change. We want the UK to have a health care system of the highest possible quality – safe, effective, person-centred, timely, efficient and equitable.

Scope of the regulations

The consultation from the Department of Health is seeking views on how the regulations relating to the new criminal offence for supplying false or misleading information should be applied in England. The introduction of the offence forms part of the government's response to the findings of the Mid Staffordshire Public Inquiry. The focus of the offence is on 'the most serious cases, where patient lives have been, or may be, put at risk' by such actions.¹

The Health Foundation's overall view is that it is appropriate for organisations, and those senior leaders within them, to be subject to effective sanctions if they are found to have provided false or misleading information in response to statutory or other legal obligations. As is proposed, this would include information requested by CQC, Monitor and the Secretary of State for Health, plus the information published in Quality Accounts, for example.

The consultation exercise uses the example of Mid Staffordshire to make the case for introducing the offence, where the public inquiry found that the trust repeatedly made inaccurate statements about its mortality rates. If it has not already done so, we suggest that the Department also tests how the regulations would have theoretically applied in the case of Colchester Hospital University NHS Foundation Trust, where a CQC review found that 'in 22 cases the treatment dates recorded on the system had been changed' with regard to cancer waiting times for urology and lower GI disorders.²

¹ <https://www.gov.uk/government/consultations/healthcare-providers-supplying-misleading-information>

² <http://www.cqc.org.uk/location/RDEE4/inspection-report/RDEE42014-03-18>

While there may be benefit to introducing the offence to act as a deterrent in these cases, our concern is that there would only be a tiny number of occasions when the offence would apply, with yet fewer cases that would likely lead to a successful prosecution. This would particularly be the case when it comes to proving beyond reasonable doubt that senior individuals were party to such actions. The Department of Health needs to ensure that it is clear about the scale of the problem it is seeking to solve with the regulations.

Our other major comment on the scope of the regulations is to ask the Department to provide further clarification as to what is really meant by providing 'misleading' information. For instance, could NHS providers using a 'quota management' approach to enable them to meet the 18 week referral to treatment target be classed as providing misleading information? This approach results in patients that have already waited longer than 18 weeks having to wait even longer, with their place taken by a patient who is coming up to their 18 week deadline. Aside from clearly being morally questionable and having the potential to lead to harm to patients, would it be constituted as misleading as set out in the regulations?

Building board level capability and insight

The Health Foundation considers that there is a wider problem of NHS trust boards fully understanding the risks and safety concerns that are present in their organisations, particularly those that relate to real-time and anticipated problems. This is an issue that relates to the capabilities of boards, rather than to any deliberate attempt to mislead patients and the public.

Last year, the Health Foundation published a study which analysed the perceptions of boards on the quality of care in their own hospital in the US and the UK.³ These perceptions were compared with some accepted measures of quality. As recently highlighted in Dr Jennifer Dixon's blog of 30 April 2014, the result was that 'the boards of poorly performing hospitals had almost the same perceptions of those in the best performing – that quality was good.'⁴ In other words, the level of insight of a trust board into the quality of their care would present as much of a risk to patient safety, if not more of one, than the few deliberate acts of connivance that have recently come to light.

An example of the Health Foundation's contribution in this area is the work we funded Professor Charles Vincent and colleagues to undertake, on understanding how organisations can measure and monitor their own levels of safety.⁵ The researchers developed a framework which describes the five questions that organisations, and their boards, should ask to understand whether the care they provide is safe or not. The framework emphasises the need for organisations to integrate and act upon their various sources of information about quality in a way that is meaningful to ensure organisation-wide learning from safety incidents.

³ <http://content.healthaffairs.org/content/32/4/677.full?sid=0e09d6cb-b9e7-45cc-b078-a576593c3abe>

⁴ <http://www.health.org.uk/blog/piercing-the-illusion/>

⁵ <http://www.health.org.uk/publications/the-measurement-and-monitoring-of-safety/>

We consider that the capability of boards to do this effectively is an area that requires greater focus. We would also be happy to work with the Department in order to tackle some of these wider issues that the Mid Staffordshire Public Inquiry brought to light.

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