# Registering the right support

## CQC's policy on registration and variations to registration for providers supporting people with a learning disability and/or autism

June 2017

# Contents

# Background

Since the BBC Panorama programme in 2011, which exposed the abuse of people at Winterbourne View hospital, there has been increased scrutiny of how the health and social care needs of people with a learning disability are being met. The first response to this was the Department of Health report, *Transforming care: A national response to Winterbourne View Hospital.*[1] This was accompanied by the Winterbourne View Concordat that many organisations, including the Care Quality Commission (CQC), signed up to.[2] Through this, signatories committed to taking action to transform the provision of health and social care for people with a learning disability and/or autism who display behaviour that challenges, including those who have a mental health condition. This was particularly in reference to those who are cared for in specialist hospitals.

This programme of work has added momentum to previous strategies and reports, such as *Valuing People: A New Strategy for Learning Disability for the 21st Century,* and the Mansell reports, which have long recognised that long-term institutional care is not a successful approach to supporting people with a learning disability and described what good quality care looks like for people with a learning disability. [3,4,5] There is limited evidence that hospital placements are effective, particularly in the longer term. The Transforming Care programme[a] has also shown that care in institutional settings is rarely person-centred can lead to abusive practices, and hospital placements may be far from people's families, friends and communities. Specialist hospital placements can also be far from the commissioning case managers who are responsible for reviewing the placements. This can lead to a lack of effective monitoring, and may mean the person does not progress or even deteriorates without intervention to promote discharge.[6]

In October 2015, NHS England, the Association of Directors of Adult Social Services (ADASS), and the Local Government Association (LGA) published *Building the Right Support*.[7] This is a national plan to develop community services and close inpatient facilities for people with a learning disability and/or autism who display behaviour that challenges, including those with a mental health condition. They also published an accompanying service model for commissioners of health and care services.[8] These documents look at the impact of closing hospital beds for people with a learning disability and the services that need to be in place in the community to support them. The principles set out here for commissioning good services, including quality of life, keeping people safe, and choice and control, are consistent with both the fundamental standards set out in regulations and CQC's overall framework of quality.

In December 2016, NHS England, ADASS and the LGA published a new housing guidance document, *Building the Right Home*[9], which is intended to be supplementary to *Building the Right Support* and the accompanying service model. This is guidance for NHS and local authority commissioners on how to expand the housing options available for people with a learning disability and/or autism who display behaviour that challenges, including those with a mental health condition.

[a] https://www.england.nhs.uk/learning-disabilities/care/

We support this work as a partner organisation of both the original Winterbourne View Concordat and the Transforming Care Delivery Board. It provides a clear picture of what good quality care models should look like. As NHS England and local commissioners are planning to reduce inpatient provision and develop community services, we will support this by making sure that applications from providers to register or change their registration are in line with this plan and the model because they are aimed at delivering good quality care. We will also consider the extent to which applicants for registration and variations to their registration for services for people with a learning disability and/or autism have considered, and can demonstrate that they have applied, this model when determining whether to grant applications.

We have committed to taking a firmer approach to the registration and variations of registration for providers who support people with a learning disability and/or autism in *A fresh start for registration* and our report *The state of health and adult social care in England 2014/15*.[10,11] In October 2016, we published *The state of health and adult social care in England 2015/16*[12] in which we identified concerns that providers were continuing to apply to register residential services that were not consistent with the new service model for people with a learning disability.

The Department of Health's 2012 report *Transforming Care* states that:

> "…the norm should always be that children, young people and adults live in their own homes with the support they need for independent living within a safe environment. Evidence shows that community-based housing enables greater independence, inclusion and choice, and that challenging behaviour lessens with the right support. People with challenging behaviour benefit from personalised care, not large congregate settings. Best practice is for children, young people and adults to live in small local community-based settings."[13]

As *Building the Right Support* says:

> "Over the last few years hundreds of people from hospital have been supported to leave hospital – but others are admitted in their place, often to inappropriate care settings, so the number of inpatients remains steady. We have not made enough progress when it comes to changing some of the fundamentals of care and support.
>
> …Just like the rest of the population, people with a learning disability and/or autism must and will still be able to access inpatient hospital support if they need it. What we expect however is that the need for these services will reduce significantly. The limited number of beds still needed should be of higher quality and closer to people's homes."[14]

As the quality regulator, and in accordance with our overall objectives under section 3 of the Health and Social Care Act 2008, we have a strategic role in encouraging the development of new services for people with a learning disability and/or autism that comply with the *Building the Right Support* guidance and other key national policy and good practice guidance.

This policy statement sets out our position and clarifies the factors that will make it more likely that applications to register or vary registration will be granted.

Our registration decisions are based on compliance with the fundamental standards and other relevant regulations. Providers that demonstrate that their model of care follows best practice are more likely to be able to evidence compliance with the legal requirements of registration.

We recognise that it is a challenging time to operate in health and social care, but we have a clear and informed understanding of what good practice looks like. We will not compromise on ensuring the best care for people with a learning disability and/or autism. It is CQC's policy that we should make registration decisions aimed at ensuring that models of care for people with a learning disability and/or autism are developed and designed in line with *Building the Right Support* and other best practice guidance. We will support models of care that comply with national and best practice guidance, including those referenced in this statement. In particular:

- We recognise that providers need to make decisions about how to invest their capital to expand their services, and that the likelihood of securing CQC registration is a key factor for providers,
- Larger services that do not comply with best practice guidance may be more financially attractive for providers because they allow economies of scale. However, providers should be able to demonstrate that they can provide appropriate, person-centred care (although the sustainability of these services over the longer term may be an issue),
- We recognise the difficulties of discharging people from assessment and treatment units, given that the current lack of suitable accommodation for people with a learning disability and/or autism and behaviour that challenges, or mental health conditions can mean that new facilities, which do not comply with *Building the Right Support,* may nonetheless be likely to attract placements from commissioners. However, commissioners have signed up to implement the new service model at a national level, and we believe that commissioners would prefer to commission services from developments in their own areas that comply with *Building the Right Support*, as opposed to commissioning services outside their areas that do not do so.

We are therefore seeking to work with providers to develop services that follow best practice, in order to underpin principles of choice, promote independence and inclusion for all people with a learning disability and/or autism. We encourage applications which are in line with best practice guidelines and which comply with the fundamental standards and other relevant regulations.

We will seek to promote the registration of providers of services that reflect the longstanding principles on what constitutes good quality care for all people with a learning disability and/or autism. We will put systems in place to enable providers to discuss their proposals or development ideas with us before they submit them. The opportunity to discuss proposals in advance should provide an opportunity for providers to gain an understanding as to whether an application to undertake regulated activity complies with the service models in *Building the Right Support* and/or other key national policy or good practice guidance, or if the application does not comply, and why it may be likely to be refused.

# Scope and purpose

The purpose of this policy statement is to ensure that we have a consistent approach to registration and that we make our expectations clear to registration applicants. Registration managers and inspectors will use this statement to guide their assessments of providers of services for people with a learning disability and/or autism, and to decide whether to grant or refuse registration applications or applications to make variations to registration.

The service model within *Building the Right Support* refers specifically to "people with a learning disability and/or autism who display behaviour that challenges, including those with a mental health condition". We do, however, believe that the underpinning principles of choice, promotion of independence and inclusion for individuals are fundamental to what a good service looks like for every person with a learning disability. This position has the support of the national Transforming Care Delivery Board and is aligned with current national policy and the long held expectation that people with a learning disability are as entitled to live an 'ordinary' life as any other citizen. We know that the needs of people who use services change over time, and that new services are needed to support a range of people with varied and diverse needs. Our registration assessments will, therefore, ensure that the needs of people who use services are at the heart of our registration decisions.

We will expect providers to demonstrate in their application that their proposals comply with the principles of this guidance and the accompanying service model, or to explain why they consider there are compelling reasons to grant an application despite it departing from best practice guidance. This applies to any service that provides care, or that might intend to provide care in the future, to people with a learning disability and/or autism.

Providers of services for people with a learning disability and/or autism are more likely to have their application granted if they can demonstrate how their model of support is:

- is in line with *Building the Right Support* and the accompanying service model;
- built on evidence-based care; and
- in line with national policy, for example, Department of Health, Association of Directors of Adult Social Services (ADASS), Local Government Association (LGA) and NHS England guidance.

Providers who demonstrate that services for people with a learning disability and/or autism comply with *Building the Right Support* and the accompanying service model when designing or redesigning their service are more likely to be able to demonstrate that the development satisfies the criteria set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. Compliance with nationally recognised evidence-based guidance when developing and delivering care will enable providers to show that their services meet the needs and experiences of people with a learning disability and/or autism.

This policy statement applies to three key areas of registration:

1. Applying to provide regulated activity in specialist hospital provision, such as an assessment and treatment unit for people with a learning disability and/or autism.

2. Applying to provide regulated activity in other services specifically for people with a learning disability and/or autism.
3. Applying to vary the provider's conditions of registration by adding or removing a location, or increasing the number of places provided at a location.

We will also take a consistent approach across registration and inspection. We understand that some people will decide that their individual interests may be best served by remaining in their current service or home, even though this does not meet the standards set out in the guidance. We do not want to disrupt the lives of people who are currently residing in a service that is not small-scale, provided that the care provided is person-centred. However, where people's needs are not being met, or where providers are unable to demonstrate that the care they provide is person-centred, and promotes choice, inclusion, control and independence, we will always take appropriate regulatory action to improve the quality and safety of these services.

We do not wish to be overly prescriptive, and it is not our intention to create a 'one size fits all' approach. We will support genuine innovation where providers are able to demonstrate that their model aligns with the national model and is underpinned by evidenced-based best practice.

The purpose of this statement is to guide the judgements of our experienced registration managers and inspectors, and inform providers, people who use services and their families and carers of our approach to the registration of services for people with a learning disability and/or autism.

# Opening a new specialist assessment and treatment unit or hospital

## Applications to register from new providers or applications by existing providers to vary their registration in relation to regulated activity in new hospital services (new locations) for people with a learning disability and/or autism.

*Building the Right Support* sets out plans to close hospital services and strengthen support in the community. It has been estimated that around 2,400 people with a learning disability/and or autism will require new living arrangements when they are discharged from inpatient care by March 2019[15]. As a result, CQC will expect providers of new inpatient services to be able to demonstrate that a clear need is identified. Any new hospital services should usually have been requested by/agreed with local commissioning partnerships, and should be designed to support the delivery of the plans laid out in *Building the Right Support.*[b]

*Building the Right Support* has also tasked local commissioning partnerships to develop local Market Position Statements. The aim of these is to detail the needs of people with a learning disability and/or autism in each area and to identify what services are required to meet their local needs. When reviewing new applications for new hospital services for people with a learning disability and/or autism, we expect to see a clear statement in the Market Position Statement about why this facility is needed locally. We will also need to see written correspondence between the local Transforming Care Commissioning Partnership and the provider confirming they have been asked to provide this service. For regional provision, applicants must have written confirmation from NHS England to the provider of the request to provide hospital services.

Applicants will need to demonstrate that they understand the model for commissioning learning disability services, set out alongside *Building the Right Support,* and how this will be applied to the service they intend to provide. They are expected to show evidence of this in their applications and during the assessment. Evidence includes having effective systems for discharging people to avoid long-term hospital placements, supporting people to increase independence and be part of the community, and involving people and their families in their care. This is not an exhaustive list and providers are expected to have carefully considered *Building the Right Support* and the model for commissioning learning disability services when designing their service and before submitting their application.

[b] This is because the vast majority of hospital places are paid for either by NHS commissioners or local authority commissioners or both jointly (e.g. see Learning Disability Census 2014 (HSCIC) which provides data on the type of organisation paying for care). The role of private fee-paying patients is exceptional and, where exceptionally a facility is proposed that is not proposed to be part of NHS or local authority commissioned services, CQC will consider such a case on an individual basis. However, there is a very limited market for privately funded learning disability services and, as a result it is vital that new services can demonstrate sustainable demand from local commissioning partnerships.

The case studies below provide examples of an application that is likely to be approved, and an application that is unlikely to be granted.

**Example of an application that is likely to be approved**

Provider A applied to vary their registration to add a new location at, or from, which to provide the regulated activity of 'assessment or medical treatment for persons detained under the Mental Health Act 1983'. The application was for a new specialist learning disability hospital for four people.

The provider's application detailed agreement from the local clinical commissioning group (CCG) and the local commissioning partnership to register this service in the area, as there were no existing learning disability assessment and treatment inpatient services locally. This was in line with their local Market Position Statement.

The application also described how the provider had access to learning disability nurses, psychiatry, occupational therapists, speech and language therapists, and behaviour analysts. They described their model of positive behaviour support as being based on functional assessments. Intervention plans involved supporting patients to meet these functions in alternative ways.

The location was a converted house in an ordinary street. The property had been made secure for people who were at risk from leaving the premises, but the security features had been carefully thought through and looked 'ordinary' to passers-by.

We reviewed the provider's current ratings for other locations and these were good. The provider had a good record of effectively discharging people between six and 18 months after admission. Their other locations were generally larger than this one. The provider commented that they were reviewing their model of provision in line with the current policy and guidance.

**Example of an application that is unlikely to be granted.**

Provider B applied to vary their registration to add a new location at, or from, which to provide the regulated activity of 'assessment or medical treatment for persons detained under the Mental Health Act 1983'. This was for a new specialist hospital for people with a learning disability.

The hospital was a 24-bed unit in secluded grounds. It was distinctly separated from the community in a rural area, with limited access to public transport.

The provider was asked at the application interview where referrals would come from. The provider said that they would accept referrals from the county the hospital was located in and from neighbouring counties. They were asked if they would accept referrals from anywhere else and the provider confirmed that they would accept these referrals if beds were available.

We contacted local commissioners from this county and neighbouring counties and found that no interest in having a specialist hospital in this area had been expressed. There was also no evidence that this was part of the plans of the local commissioning partnership.

The provider stated that they promoted discharge and had positive behaviour support practices in place across all of their services, but their policies focused on the use of restraint, seclusion and other restrictive practices. Information from the Mental Health and Learning Disabilities National Minimum Data Set showed that the average length of stay in the provider's other hospitals was significantly above the national average. The provider also had two other locations that were rated as requires improvement.

This application is unlikely to be granted and the following fundamental standards[16] may be referred to:

- Regulation 9(3)(a) – Assessments should take into account specific issues that are common in certain groups of people and can result in poor outcomes for them if not addressed. These include diseases or conditions such as continence support needs and dementia in older people, and diabetes in certain ethnic groups. (For the purpose of this statement the assessment would need to take into account the evidence that people with a learning disability in long-term hospital placements are more likely to experience abuse and the risks associated with institutionalisation.)
- Regulation 9(3)(b) – Providers should use nationally recognised evidence-based guidance when designing, delivering and reviewing care.
- Regulation 12(1) – Providers should consult nationally recognised guidance about delivering safe care and treatment and implement this as appropriate.
- Regulation 15(1)(c) – When planning the suitability of premises, providers must take into account that the size of the premises should be small-scale to ensure the easy delivery of person-centred care.
- Regulation 15(1)(f) – When planning the location of premises, providers must take into account the anticipated needs of the people who will use the service and they should ensure easy access to other relevant facilities and the local community.

**Factors that indicate the applicant is less likely to be able to satisfy CQC about their compliance**

- If it is a large hospital setting, or the provider is unable to demonstrate how they will provide person-centred care.
- If the provider has not been able to provide evidence that the service is needed in this area or that the application has the support of the local Transforming Care Partnership (for example, no written expressed intent by commissioners to place people here).

- If the hospital site is secluded or geographically isolated, and therefore creates barriers to involvement in local communities.
- If the provider has not demonstrated how they will promote independence and discharge. This includes their policies and approach being reactive and not proactive, or indicating a reliance on restrictive practices to supporting people's behavioural needs above proactive approaches, such as positive behaviour support[17].
- If the provider is unable to demonstrate how they will ensure appropriate staffing and systems to provide training, supervision and support to staff at all levels.

**Factors that indicate the applicant is more likely to be able to satisfy CQC about their compliance**

- If the hospital is small and the provider can demonstrate how it will promote person-centred care.
- If the provider has submitted evidence that NHS England or the local Transforming Care Partnerships have requested this service to be established in this area to meet the needs of people using services locally.
- If people who use the service will have easy access to local communities and services.
- If the provider clearly demonstrates how they promote independence and support discharge.
- If the provider can demonstrate how they will ensure people's timely discharge.

# Opening a new care home or location

## Applications to register from new providers or applications to vary their registration to add new locations (not hospitals) specifically for people with a learning disability and/or autism

*Building the Right Support,* and the model for commissioning learning disability services, aim to reduce the need for hospital services by improving the quality and availability of services in the community.

We will consider all applications for registration to provide services for people with a learning disability and/or autism, in new premises and variations to an existing registration to add further premises for such people, on their individual merits.

In the case of existing services, whether they are transferring to a new provider or not, CQC acknowledges that providers have to work within the physical constraints of existing buildings and locations. Subject to constraints that cannot be changed within existing arrangements, CQC expects providers to ensure that the underpinning principles and evidence-based best practice are demonstrated in their registration applications and, where appropriate, evidence that providers plan to make changes to adapt premises to meet best practice guidelines.

As part of our assessment, we will look for the following indicators arising from *Building the Right Support* and accompanying service model in making decisions as to whether any proposed premises are suitable and/or appropriately located:

- Services should be developed and designed to meet an identified local need. Providers should explain how they have worked with local commissioners to design services and have had regard to the local area plan in doing so. If services are to be provided to people who pay for their own care, the provider should provide evidence to identify that local need.
- Providers should involve people who use services, and their families and representatives, in the design of services and should explain how they have taken account of their preferences.
- Services should be developed with the intention of providing services for people who live locally or who have family members living in as close proximity as is reasonably practicable.
- Services should be developed in locations that enable people using the service to participate in their own local community or the community that their family members are already part of, where they have moved to be close to them.
- Services should be located to enable people using the service to have easy access to the health and social care services used by the local community.
- New services should not be developed as part of a campus[c,18] style development or congregate setting[d,19].

[c] Campuses: group homes clustered together on the same site and usually sharing staff and some facilities. Staff are available 24 hours a day.

This is not an exhaustive list and providers may include other examples in their application to demonstrate how they have applied the *Building the Right Support* guidance and the model for commissioning learning disability services when designing their service.

For providers of services that provide care, or that might intend to provide care in the future for people with a learning disability and/or autism who display behaviour that challenges, including those with a mental health condition, we will adopt the presumption of small services "usually accommodating six or less". This position is in line with the current statements of best practice in *Building the Right Support*.

We will not adopt 'six' as a rigid rule for providers of any service for people with a learning disability and/or autism. We may register providers who have services that are small scale, but accommodate more than six people, where providers are able to demonstrate that they follow all of the principles and values in *Building the Right Support* guidance, and meet the fundamental standards and other relevant regulations.

We know that the provision of care to people with a learning disability and/or autism is complex. There are multiple factors that affect outcomes for individuals. We therefore do not consider the size of service in isolation from other considerations, which include, but are not limited to: skills of staff; effectiveness of management; and evidence base for the proposed care model. As such, we recognise the need to have a measure of flexibility in regards to the size of services.

In line with the evidence that underpins the national model, that smaller services are better able to provide personalised care than larger services, we remain of the view that smaller units are likely to be preferable for people with a learning disability because they promote the underpinning principles set out in *Building the Right Support* (which our regulations require us to apply).

The case studies below provide examples of an application that is likely to be approved, and an application that is unlikely to be granted.

**Example of an application that is likely to be approved.**

Provider C applied to CQC to vary their registration to add a new location at, or from, which to provide the regulated activity of 'accommodation for persons who require nursing or personal care'. This was a new specialist learning disability residential home for up to six residents.

Information in the application showed that the provider aimed to support residents to increase independence, and promote discharge to supported living settings. Their team training included positive behaviour support, and they described effective approaches to supporting people at times of crisis. The service is located near community facilities and the provider was able to describe how people will be supported to be part of the local community. The design of the building had been

[d] Congregate settings are separate from communities and without access to the options, choices, dignity and independence that most people take for granted in their lives.

carefully considered to fit in with the local area and look and feel like any other home in the street.

Before the inspection, the provider was asked to give us information about where residents would come from. They were able to demonstrate that they had four referrals from one of the local authorities already, which was in line with local Market Position Statements. They were also able to show how their service reflected the local autism strategy, and provided evidence of positive engagement with family carers.

**Example of an application that is unlikely to be granted.**

Provider D applied to CQC to vary their registration to add a new location at, or from, which to provide the regulated activity of 'accommodation for persons who require nursing or personal care'. This was a new specialist learning disability residential home for up to 15 people with a learning disability and /or autism and behaviour that challenges. The home was described as being divided into three self-contained units, with some shared communal areas.

On inspection, it was difficult to see how the separation into smaller units would be achieved. There were conjoining doors and plans for permanent shared staffing arrangements. The communal areas within each unit were very limited, with most communal space being shared by all three units.

Information in the application stated that the provider aimed to support people to increase their independence and promote discharge to supported living settings. However, their processes for doing this were unclear. The service was located near community facilities and the provider described how people would be supported to be part of the local community. However, on inspection of the service during a site visit, the site looked and felt distinctly like a secure place of residence. The layout of the building and grounds would clearly restrict the residents' engagement with the local community and it felt as though the people who would live there were being hidden away.

This application is unlikely to be granted and the following fundamental standards[20] may be referred to:

- Regulation 9(1) – Providers must do everything reasonably practicable to make sure that people who use the service receive person-centred care and treatment that is appropriate, meets their needs and reflects their personal preferences, whatever they might be.
- Regulation 9(3)(b) – Providers should use nationally recognised evidence-based guidance when designing, delivering and reviewing care.
- Regulation 10(2)(b) – People must be supported to be involved in their community as much or as little as they wish. Providers must actively work with people who wish to maintain their involvement in their local community as soon

as they begin to use a service. The provider must make sure that people are not left unnecessarily isolated.

- Regulation 12(1) – Providers should consult nationally recognised guidance about delivering safe care and treatment and implement this as appropriate.
- Regulation 15(1)(c) – When planning the suitability of the premises, providers must take into account that the size of the premises should be small scale to ensure the easy delivery of person-centred care.
- Regulation 15(1)(f) – When planning the location of premises, providers must take into account the anticipated needs of the people who will use the service and they should ensure easy access to other relevant facilities and the local community.

**Factors that indicate the applicant is less likely to be able to satisfy CQC about their compliance**

- If the provider is setting up services where the number of people supported will make person-centred care difficult to achieve. This will vary depending on the needs of the people that are likely to use the service, but Department of Health policy recommends small services.[21]
- If the services planned are secluded or geographically isolated, or create barriers to involvement in local communities.
- If the service planned will be on the same site as other premises that are being used to provide accommodation or other services to people with a learning disability and/or autism.
- If the provider has not been able to demonstrate how they will promote enablement, independence, choice and inclusion.
- If the provider cannot demonstrate a comprehensive understanding of the Mental Capacity Act 2005.
- If the provider cannot describe their effective service systems and staff training, plans to prevent and respond to crisis situations (including the use of positive behaviour support), and safe use of restrictive interventions.

**Factors that indicate the applicant is more likely to be able to satisfy CQC about their compliance**

- If the provider is planning small-scale service delivery, and demonstrates how they will deliver person-centred care.
- If the provider can demonstrate how they ensure easy access and inclusion to local communities.
- If the provider clearly demonstrates how they promote enablement, independence, choice and inclusion.
- If the provider has effective systems and staff training plans in place to prevent and respond to crisis situations, including training in positive behaviour support, safe use of restrictive interventions, on call processes, and learning from incidents.

# New applications for registration

## Application to change regulated activity to provide registered care home services or personal care (in a supported living environment)

As well as the development of new hospitals and care homes, we have seen a rise in new applications from existing registered providers to change the regulated activity they provide at a location. Examples include applications to change the location's service type from hospital services to care home services. We have also seen a number of applications to change the activity currently delivered from 'accommodation for persons who require nursing or personal care' (registered care homes) to 'personal care' in people's own homes (usually via supported living services). Some of these changes may have been in response to the Transforming Care delivery programme.

This section outlines suggested areas that providers should be able to address during the application and assessment process. This will support registration inspectors to identify whether the application complies with *Building the Right Support* and other nationally recognised best practice guidance, and take this into account when making a decision. If we are not satisfied that these questions are adequately addressed, we will consider whether the applicant meets the requirements and we may refuse the provider's application for registration. This would mean the provider could continue providing the regulated activity they are currently registered for.

When a provider applies to **register for the activity of 'accommodation for persons who require nursing or personal care', at locations which are or were formerly used as hospitals**, the following questions should be addressed:

- What is the location? Is it on hospital grounds?
- Will the environment and location resemble a clinical environment or a home?
- What will be done differently at the location, reflecting the change in regulated activity?
- Will the support and care for those living there feel different and, if so, how?
- If people are currently detained under the Mental Health Act as inpatients, will their Mental Health Act status change, and if so, how? (If a person is detained who no longer requires detention and should be discharged, it is **not** appropriate that this should be achieved by a change in service registration.)
- Can the provider demonstrate a comprehensive understanding of the Mental Capacity Act 2005?
- How will the provider make sure that the culture of the location changes from a hospital to a care home?
- How will staff be supported to manage this change? For example, additional training and consultation.

- Have there been any previous concerns about the safety and quality of the location, including failure to submit mandatory data?
- Have people using the service and their representatives or carers been engaged in discussions or plans to change the regulated activity provided at the service, and how?

If the evidence shows that the same people will be receiving the same care in the same place from the same staff with the same training and qualifications run by the same provider according to the same policies, there is no clear justification for applying to register to carry on a new regulated activity. The fundamental principle is that changes in the regulated activities being delivered should make a difference to the people receiving services.

The case studies below provide examples of an application that is likely to be approved, and an application that is unlikely to be granted.

**Example of an application that is likely to be approved**

Provider E applied to use its location to carry on the regulated activity of 'accommodation for persons who require nursing or personal care' instead of the activity of 'assessment or medical treatment for persons detained under the Mental Health Act'.

At the time the provider had only two detained patients resident, both of whom were due to remain detained because of their clinical needs but were being transferred to other hospitals closer to their own homes and families.

The provider gave evidence of planning approvals for redevelopments to the site and premises that would substantially change the look and feel; for example, removal of some previous permanent security measures.

The provider had also employed a new senior specialist in Positive Behaviour Support who had reviewed and amended the provider's previous policies and, although most of the previous staff would remain, the provider could evidence that a programme of new training was part-way through.

There was evidence of cultural change in the service consistent with a change in regulated activity. The provider had recently appointed a self-advocate with a learning disability to the management board responsible for running that location. And the provider had engaged with local community, self-advocacy and family groups in re-designing the site, and people with a learning disability were also involved in delivering some of the training to staff. The provider could provide evidence that they were working with local/neighbouring commissioners to develop this facility to meet locally identified needs.

**Example of an application that is unlikely to be granted.**
CQC received an application for registration from Provider F to enable it to use its location to carry on the regulated activity of 'accommodation for persons who require nursing or personal care' instead of the activity of 'assessment or medical treatment for persons detained under the Mental Health Act'.

The provider gave details of how their statement of purpose had changed. They also described how they would be reducing nursing and psychiatry time at this venue. However, there were no plans to transfer the existing patients to another hospital. All patients were planned to be discharged from their Mental Health Act sections and continue residing there under Deprivation of Liberty Safeguards.

There were no plans to redevelop, redesign or refurbish the building beyond some minor cosmetic redecoration. There was no evidence of culture change being supported for the teams, for example through new training or changes to policies and procedures. During inspection there was evidence that the care provided would remain institutional in feel.

This application is unlikely to be granted and the following fundamental standards[22] may be referred to:

- Regulation 9(1) –Providers must do everything reasonably practicable to make sure that people who use the service receive person-centred care and treatment that is appropriate, meets their needs and reflects their personal preferences, whatever they might be.
- Regulation 9(3)(b) – A person's care and treatment must be designed to make sure it meets all their needs. There may be times when a person's needs and preferences can't be met. In these instances, providers must explain the impact of this to them and explore alternatives so that the person can make informed decisions about their care and treatment.
- Regulation 9(3)(b) – Providers should use nationally recognised evidence-based guidance when designing, delivering and reviewing care.
- Regulation 10(2)(b) – People who use services must be offered support to maintain their autonomy and independence in line with their needs and stated preferences. When offering support, staff should respect people's expressed wishes to act independently but also identify and mitigate risks in order to support their continued independence as safely as possible.
- Regulation 12(1) – Providers should consult nationally recognised guidance about delivering safe care and treatment and implement this as appropriate.
- Regulation 15(1)(c) – People who use services must be accommodated in premises that are suitably designed to meet their needs.

## Supported living

In 2015, we published guidance on regulated activities for providers of supported living.[23] **All providers seeking to register to provide personal care as part of supported living services should refer to this guidance**. Registration inspectors and managers will take this guidance into account in assessing applications to provide personal care in a supported living environment.

Inspectors will also consider how the model of care for any proposed supported living scheme for people with a learning disability and/or autism demonstrates that their model is underpinned by the principles in *Building the Right Support* and *Building the Right Home*.

**Applications to register for personal care to be provided to people in premises that are currently being, or were formerly used as, care homes.** In these cases, the following questions should be addressed:

- Are the personal care and accommodation arrangements provided under separate legal agreements for the provision of care and accommodation? If accommodation and personal care are being provided together as a single package under one agreement, the regulated activity should remain as 'accommodation for persons who require nursing or personal care'.
- Does the supported person have a genuine choice about who provides their personal care?
- Do the arrangements meet the Reach Standards and the Real Tenancy test?[24,25]
- Does the person have exclusive possession of at least part of the accommodation? This means their own private space over which they decide who can enter and when they can enter (that is, they have control over their own front door) and they have unrestricted access to every part of their home, apart from any co-tenants' private space.
- What part of the accommodation will people have 'exclusive possession' of?
- Has the person chosen to live there and who they live with?
- Does the environment feel like the person's own home?
- Can the provider demonstrate a comprehensive understanding of the Mental Capacity Act 2005?
- What will be done differently to ensure the culture changes from residential care to supported living?
- Will the support and care for those living there feel different and, if so, how?
- How will staff be supported to manage this change. For example, will there be additional training and staff consultation?
- Have the tenants/residents and their representatives or families been involved in discussions about changing the regulated activity, and how?

- Is the provider intending to provide a personal care service in a large congregate or campus setting to people with a learning disability and/or autism?

The case studies below provide examples of an application that is likely to be approved, and an application that is unlikely to be granted.

**Example of an application that is likely to be approved**

Provider G applied to CQC to register for the activity of 'personal care' to be provided to people in premises that are currently used as a care home, as it plans to run a supported living service from this address.

This was a very small setting based in a residential house on a residential street with four bedrooms. There were two existing residents and two new residents who had plans to move in within the next few months. All the residents knew each other from school and were friends who had chosen to live together.

All residents had copies of easy read tenancy agreements. In one case, there was a plan for the tenancy to be signed by a relative who had been appointed by the Court of Protection to be a Deputy for the person using the service.

The organisations providing the personal care and the housing are linked organisations but are managed separately and covered under separate agreements with the residents. The personal care provider has known and worked with the current and planned residents for an extended period of time. There was clear evidence that those who were due to move in shortly had made a real choice of that particular personal care provider, but could have lived there in the same house with their friends had they chosen a different provider of personal care. The discussions with these individuals were part of the prompt for the provider to decide to apply to vary the registration.

The provider had a good regulatory track record in CQC inspections and there were no concerns in the last inspection, which related to the safety of the premises.

**Example of an application that is unlikely to be granted.**

Provider H has applied to register for the activity of 'personal care' to be provided to people in premises that are currently used as a care home, as it plans to run a supported living service from this address. The supported living service would be overseen by a registered manager in the regional office.

There would no longer be the presence of a registered manager in this setting as there currently is, and the supported living service provided in that premises would now be directly managed by a senior support worker.

The home environment would remain the same. There were no plans to redevelop, redesign, or refurbish. The kitchen would remain a largely staff only area with staff buying provisions and cooking the meals. The provider did not understand that people who lived there would have exclusive possession of their part of the building.

The residents have been given easy read tenancy agreements. Only two of the five residents can understand these. The provider has reviewed the tenancies with all residents' care managers and there are plans for the majority of tenancies to be signed by relatives with legal power of attorney or court deputies.

The tenancies are with the organisation that is providing personal care, although under separate agreements. The residents and their families have concerns that if they wanted to change support they would have to move out. Provider H could not provide evidence of how the persons living there would be able to arrange for an alternative provider of personal care without affecting their arrangements to live at the home.

This application is unlikely to be granted, as the provider cannot provide evidence that they are not intending to continue to provide the activity of 'accommodation for persons who require nursing or personal care'. The following fundamental standards[26] may also be referred to:

- Regulation 9(1) – Providers must do everything reasonably practicable to make sure that people who use the service receive person-centred care and treatment that is appropriate, meets their needs and reflects their personal preferences, whatever they might be.
- Regulation 12(1) – Providers should consult nationally recognised guidance about delivering safe care and treatment and implement this as appropriate.

## Adding beds or places

CQC also receives applications from providers to vary their conditions by increasing or reducing the number of places that may be provided in premises that are care homes.

The following questions should be answered:

- If the application is to increase the number of people who live there, how does this fit in with national policy? In particular, that smaller units are likely to be preferable for people with a learning disability.
- If the home will be in close proximity to other premises that are being used to provide accommodation and services to people with a learning disability, how does this fit in with the policy on campus style settings?
- How will they maintain appropriate staffing for the additional occupants?
- How will the provider make sure that care remains person-centred with the additional places?
- Will plans for the additional places reduce room size or impact on general living space?
- How will the plans make sure that people can maintain and increase their independence?
- How will the plans affect other people who use the service?

# Conclusion

This policy statement provides guidance on handling new applications for registration and applications to vary registration from providers of services for people with a learning disability and/or autism, and should be used with immediate effect. The policy statement complements, and does not replace, existing registration guidance. Generic risk indicators, such as the provider's regulatory track record, for example providing services that are rated as requiring improvement or inadequate, or there being a lack of a registered manager, will continue to apply to the applications described here.

Registration is one part of how we regulate health and adult social care services. The guidance in this document may also be applied to our inspection processes to make sure that providers continue to meet requirements after registration. It will also be used to make sure that providers' existing services are being delivered in line with *Building the Right Support* and other key national policy and good practice guidance.

# Appendix: Links to joint NHS England, Local Government Association and Association of Directors of Adult Social Services model for commissioning learning disability services

Underpinning the model for commissioning learning disability services are nine core principles, which will be considered during registration applications:

1. a good and meaningful life
2. care and support is person-centred, planned, proactive and coordinated
3. choice and control regarding how health and care needs are met
4. support for family and paid carers
5. choice regarding where I live and who I live with
6. access to care and support from mainstream services
7. access to specialist health and social care support
8. appropriate support if needed when in contact with Criminal Justice Services
9. access to high quality hospital admissions if required, for the shortest possible time.

While not all of these principles may be related to registration, we expect providers to detail how the provider's model of support applies to these principles.

The following points are from the model for commissioning learning disability services.[27] These will be taken into consideration when we are reviewing applications to register or change registration:

- Quality of life – people should be treated with dignity and respect. Care and support should be personalised, enabling the person to achieve their hopes, goals and aspirations; it should be about maximising the person's quality of life regardless of the nature of their behaviours that challenge. There should be a focus on supporting people to live in their own homes within the community, supported by local services.
- Support and interventions should always be provided in the least restrictive way. Where an individual needs to be restrained in any way – either for their own protection or the protection of others restrictive interventions should be for the shortest time possible and using the least restrictive means possible, in line with Positive and Proactive Care.
- Local authorities should develop Market Position Statements with an explicit focus on this group.
- People should be offered a choice of housing, including small-scale supported living. Small scale is defined by NICE guidance as no more than six people and with well supported single person accommodation.

- Everyone who is admitted to a hospital setting for assessment and treatment should expect this to be integrated into their broader care and support pathway, with hospitals working closely with community mental health, learning disability/autism and other services, including those providing intensive community and/or forensic support.
- When people are admitted for assessment and treatment in a hospital setting, they should expect support to focus on proactively encouraging independence and recovery. Services should seek to minimise patients' length of stay and any admissions should be supported by a clear rationale of planned assessment and treatment with measurable outcomes.

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