

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (QUALITY ACCOUNTS)
AMENDMENT REGULATIONS 2011

2011 No. 269

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1. These Regulations amend the detail of how providers of National Health Service (NHS) services should publish annual reports - Quality Accounts - on the quality of their services. They set out amendments to the prescribed information for the accounts. The Regulations also remove the exemptions for community services.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

4. Legislative Context

4.1. The Health Act 2009¹ implemented those parts of the NHS Next Stage Review² (see section 7 of this Memorandum, below) that required primary legislation, including provisions about mandatory annual reporting by NHS healthcare providers on the quality of their services. The Review concluded that from April 2010 all healthcare providers working for or on behalf of the NHS should be placed under a legal requirement to publish an annual Quality Account. Sections 8 and 9 of the Health Act 2009 therefore place that duty on all such providers.

4.2. This duty is to publish information about the quality of services provided or sub-contracted for the period 1 April to 31 March each year as prescribed in Regulations. Sections 8 and 9 of the Health Act 2009 also give the Secretary of State a regulation-making power to determine such matters including the form, further content and timing of publication of a Quality Account.

4.3. Section 8(5) gives the Secretary of State a power to make exemptions from the duty, which enables the quality accounts obligation to be phased in for different sectors and for small providers to be exempted permanently. The programme of work to introduce statutory Quality Accounts envisaged a two stage process: creating a general duty in the primary legislation, and then working collaboratively with stakeholders to develop the detailed Regulations. This Statutory Instrument amends the National Health Service (Quality Accounts) Regulations 2010 (SI2010/279), and reflects the review of the first

¹ Health Act 2009 (c. 21) - http://www.opsi.gov.uk/acts/acts2009/ukpga_20090021_en_1

² Department of Health (2008). High Quality Care for All - NHS Next Stage Review Final Report., CM 7432 - http://www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/DH_085825

Quality Accounts. These Regulations have therefore been co-produced with stakeholders.

5. Territorial Extent and Application

5.1. This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1. The NHS Next Stage Review Final Report, “High Quality Care for All”, was published on 30 June 2008. One of the key components of the quality framework set out in that report was to encourage provider organisation towards more detailed and more transparent reporting on service quality, with a view to improving both the quality of those services³ and those organisations’ accountability to the public they serve.

7.2. The provisions in the Health Act 2009, which set out the requirement for providers of NHS services to publish Quality Accounts and a power to set out the detail in regulations, contribute towards achieving this objective by creating a statutory requirement to publish such information, which gives it at least the same prominence as financial reporting. This publication allows easier access to quality information, with the intention of promoting board level accountability within providers.

7.3. The overall objectives of Government policy in relation to Quality Accounts are to allow:

- i. the public to hold providers to account for the quality of NHS healthcare services they provide and to demand action from providers where they believe that providers are falling short on quality;
- ii. patients, and their carers, to make better informed choices;
- iii. commissioners and providers to agree priorities for improvement;
- iv. NHS Trust Boards and their non-NHS equivalents to ensure that they place quality at the heart of their planning and delivery processes; and,
- v. clinical teams to benchmark and compare their performance.

³ Marshall MN, Shekelle PG, Leatherman S and Brook RH (2000) What do we expect to gain from the public release of performance data? A review of the evidence. *Journal of the American Medical Association*; 83:1866–1874;

Shekelle PG, Yee-Wei Lim, Mattke S and Damberg C (2008) Does public release of performance results improve quality of care? A systematic review. The Health Foundation - www.health.org.uk/publications/research_reports/performance_results.html

- 7.4. The statutory route set out in the Health Act and these Regulations enables the Department to set out a framework that:
- i. ensures that the information that providers publish is accurate, reliable, comparable, and truly and fairly representative of the range and quality of services on offer;
 - ii. creates a standardised format that allows comparison between providers by patients commissioners and other stakeholders; yet is also sufficiently flexible (because the details are set out in secondary legislation) to be amended in the light of changing circumstances, policies and priorities, to reflect changes in the way in which other regulators (for example, the Care Quality Commission) play their role within the quality framework, and to accommodate lessons learned from implementation and evaluation; and,
 - iii. enables the Department to work with stakeholders in developing policy on Quality Accounts, and reflect that collaboration in both the detailed Regulations and their associated guidance (we are, for example, developing a practitioner toolkit that will draw together lessons learned from testing exercises and from actual reports, and share good practice).
- 7.5. Regulation 2 removes an exemption from producing Quality Accounts for community health services and substitutes it for a more limited exemption relating to NHS Continuing healthcare. The majority of community services are being acquired by Foundation Trusts as part of the Transforming Community Services Programme. Removing the exemption will provide a level playing field. Our pilot of community and primary care providers showed community providers were able to produce Quality Accounts to a good standard. Excluding NHS continuing care will ensure adult social care services are not captured for providing continuing care in a social care setting.
- 7.6. Regulation 3 increases the maximum statement length by other bodies to 1,000 words. This will allow greater flexibility to PCTs, LINKs and OSCs who wish to make joint statements.
- 7.7. Regulation 4 requires additional information to be given in relation to priorities for improvement. The amendment requires the provider to demonstrate their review of services has identified the priorities (if possible) and the progress made since the last priorities were identified.
- 7.8. Regulation 5 makes minor amendments the schedule that sets out the information to be contained in part 2 of the Accounts, in order to ensure it remains fit for purpose. A statement has been added around the actions a provider is taking to improve data quality.

8. Consultation outcome

- 8.1. The underlying policy details for the original Regulations were developed from a collaborative consultation involving many hundreds of stakeholders, including the Royal Colleges and other staff groups, patients and their representatives, managers, clinicians and across primary and secondary care,

- 8.2. Detailed proposals stemming from this process were set out in a consultation document that the Department of Health published on 17 September 2009. The consultation ended on 10 December 2009, and a report of the outcome was put before Parliament on 5 February by way of a Written Ministerial Statement.
- 8.3. Providers published their first Quality Accounts 30 June 2010. The Department of Health worked with stakeholders to look at how Quality Accounts could be improved. This included a survey of providers⁴, a survey of local scrutineers⁵, and work Quality Accounts stakeholder group. The Department of Health also worked with the King's Fund⁶ and Health Mandate⁷ who both published independent reports.
- 8.4. The evaluation of the 2009-10 Quality Accounts has informed our policy work and the development of these Regulations.

9. Guidance

- 9.1. As a consequence of the ongoing design work, interest and awareness amongst stakeholders has been stimulated and continues to grow. The DH website is one of a number of sources of guidance for practitioners and readers alike. Drawing this together into a comprehensive toolkit was one of the objectives that stakeholders set for the Department. The toolkit was published alongside the original Regulations⁸.
- 9.2. A revised Toolkit was published in December 2010. This included best practice examples from the 2009-10 Quality Accounts and signposted possible changes in the Regulations.

10. Impact

- 10.1. The original Impact Assessment⁹ was produced for the National Health Service (Quality Accounts) Regulations 2010 (SI2010/279). In brief, it shows that:

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<http://www.dh.gov.uk/en/Healthcare/Qualityandproductivity/Makingqualityhappen/qualityaccounts/index.htm>

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<http://www.dh.gov.uk/en/Healthcare/Qualityandproductivity/Makingqualityhappen/qualityaccounts/index.htm>

⁶ http://www.kingsfund.org.uk/publications/quality_accounts_1.html

⁷ <http://www.mhpc.com/ideas/trends-and-analysis/accounting-quality-what-extent-can-quality-accounts-deliver-information-re>

⁸ The toolkit is available on the Department's website

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http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_112461.pdf

- i. there are clear benefits to the public in increased patient choice and provider accountability;
 - ii. Quality Accounts will improve the quality of patient care;
 - iii. these benefits (which cannot yet be quantified) outweigh the costs (estimated to be £5.1-17.3 million each year).
- 10.2. The impact on the public sector is an improvement in the quality of NHS healthcare, and of provider boards' accountability to the public whom they serve. There is some additional cost from reporting and publication, but no new data collection, nor diversion from existing work.
- 10.3. A new impact assessment was not required as the changes to content do not impact on the cost of producing a Quality Account. The original impact assessment looked at the costs of benefits of all community and primary care providers producing Quality Accounts from 2010-11. Ministers have decided to pilot primary care providers for a further year. The vast majority of community providers will be moving to acute providers from 1 April 2011, the Regulations therefore create a level playing for the remaining community providers. An impact assessment will be produced following further piloting of Quality Accounts for primary care services.

11. Regulating small businesses

- 11.1. These Regulations will not apply to small businesses whose annual contract value is less than £130,000 and who employ 50 or fewer full time employees.

12. Monitoring and review

- 12.1. The process of evaluation of the 2009-10 Quality Accounts and co-production with stakeholders has successfully informed the current proposals – which form these Regulations – and we are confident that it will do so again. To help ensure that this is the case, we will continue to design our policies with stakeholders (we have a national stakeholder group that represents all relevant interests), and test them against the experiences of frontline practitioners and patients and the public.

13. Contact

- 13.1. Richard Owen at the Department of Health (tel: 0207 972 1712 or email: richard.owen@dh.gsi.gov.uk) can answer any queries regarding the instrument.