

DUTY OF CANDOUR

Name: Access Your Care Ltd.

Policy statement

This is a requirement under the Fundamental Standards Regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. Put simply, candour means the quality of being open and honest. Candour can only work when it is part of a wider commitment to safety, listening and learning, with an organisational commitment to continual improvement. Care and treatment is not risk free and evidence heard at the Dalton review confirmed what was already known.

When things go wrong in health or care settings, families want to know three things,

- To be told honestly what happened
- What can be done to deal with any harm caused
- To know what will be done to prevent a recurrence to someone else.

The Duty of Candour applies to all Health and Social Care providers registered with the Care Quality Commission.

The Duty applies to all cases of “significant harm” This new composite classification would cover the requirements of the reporting duty for NHS and Social Care Providers currently in place with the Care Quality Commission. These are:

- National Reporting and Learning System (NHS)
- Statutory Notifications (Social Care)

In Social Care this is the “Harm threshold”, which is breached when a statutory notification is required to CQC.

Compassion humanity and candour

The obligations and challenges of candour serve to remind us that for all its technological and forensic advances health and social care are still a deeply human activity. Systems and processes are necessary supports to good compassionate care, but they can never serve as its substitute.

It follows from this that making our duty of Candour a reality is a matter of hearts and minds more than it is a matter of systems and processes, important as they may be. A compliance focused approach will fail. Organisations need to start from the simple recognition that candour is the right thing to do. The commitment to candour has to be about values, rooted in the genuine engagement of staff, building on their own professional duties and personal commitment to Clients.

It is right to be clear about thresholds and enforcement but nothing will be gained if we lose sight of the fundamental purpose of candour, which is to do the right thing for all users of health and social care services.

Hence, the government’s choice of a statutory duty sends an equivocal signal to the health and social care sector that this matters.

“Moderate harm” means harm that requires a moderate increase in treatment, and, significant but not permanent harm, moderate increase in treatment “means an unplanned return to surgery, an unplanned readmission, prolonged episode of care, extra time in hospital or as an outpatient, cancelling of treatment Care transfer to another treatment area (such as intensive care).

A “Notifiable safety incident” means any unintended or unexpected incident that occurred in respect of a Client during the provision of a regulated activity that, in the reasonable opinion of a health care professional, could result in, or appears to have resulted in:

- The death of the Client, where the death relates directly of the incident rather than to the natural course of the Client’s illness or underlying condition, or
- Severe harm, moderate harm, or prolonged psychological harm to the Client; “prolonged psychological harm” means psychological harm which a Client has experienced or is likely to experience for a continuous period of at least 28 days;
- “relevant person” means the Client or in the following circumstances, a person lawfully acting on their behalf
 - on the death of the Client;
 - where they are under 16 and not competent to make a decision in relation to their care or treatment, or where the Client is 16 or over and lack capacity (as determined by the Mental Capacity Act 2005) in relation to the matter;
 - “severe harm” means a permanent lessening of bodily, sensory, motor, physiologic or intellectual functions including removal of the wrong limb or brain damage, which is related directly to the incident and not related to the natural course of the Client’s illness or underlying condition.

The Guidance set out below should be followed in order to fulfil our duty as a provider.

As soon as reasonably practicable:

- Notify the relevant people that the incident has occurred e.g. family, next of kin, advocate etc
- Provide support to the relevant person, where appropriate, including when informing them of the incident.
- The information should be given in person, when possible
- An account of the incident should be provided, which is factual and true at the date of the notification.
- Advise them of the relevant steps or actions are to be taken
- Include an apology
- Record the incident and the steps and actions taken
- The notification must be followed up in writing, confirming all of the above points.

If the relevant person declines to engage in the process, this should be recorded and include the attempts to engage with them.

In this regulation:

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"Relevant person" means the service user or in the following circumstances, a person lawfully acting on their behalf [this would only be someone with a lasting power of attorney or a court appointed deputy]--

(a) On the death of the service user,

(b) Where the service user is under 16 and not competent to make a decision in relation to their care or treatment, or

(c) Where the service user is 16 or over and lacks capacity in relation to the matter.

“Apology” means an expression of sorrow or regret in respect of a Notifiable safety incident.

“Notifiable” means to an external regulator e.g. Care Quality Commission, Health and Safety Executive.

Separate guidance is to be issued with regard to this Regulation and this policy will be reviewed and amended in publication of further guidance.

Please Note

Next of Kin (NoK)

This term is commonly used and there is a presumption that the person identified has certain rights and duties.

Health and Social Care colleagues should always consult the people closest to a person who lacks capacity to understand that person's wishes and feelings to help them make a decision in that person's best interest.

However, the person identified as NoK should not be asked to sign and/or consent to certain interventions unless they have a legal basis for doing so such as an EPA or the appropriate LPA.

Related Policies

Accessible Information and Communication

Dignity and Respect

Good Governance

Notifications

Training Statement

The management need to be fully aware of this legal duty and it will be incorporated in to Induction and a separate briefing will be in place for all managers involved in good governance within their job role. All staff will be made aware of this policy and understand that it will lead to disciplinary actions where a culture of openness and accountability is circumvented by intent.