

Working in Care Homes: Insights from the NMC. A webinar

*Roz Hooper Head of Legal
(Regulatory)*

Legal Services

Royal College of Nursing

Statistics: RCN NMC referrals

- Nurses in independent sector more than twice as likely to be referred to NMC as those in NHS
- Disproportionate referrals of over 45s
- Disproportionate referrals of men

Anecdotal evidence



- ➡ Typical cases involve Care Home managers and senior nurses
- ➡ Registration of Care Home Managers and NMC registration concentrates accountability upon managers
- ➡ CQC reports and Safeguarding investigations

Fit and Proper person

- CQC registers managers of regulated activities.
- The registered manager, along with the registered provider, is legally responsible and accountable for compliance with the requirements of the Health and Social Care Act 2008 and associated regulations, including the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and the Care Quality Commission (Registration) Regulations 2009.

What are the responsibilities of a Care Home Manager?

- 👉 You'll be responsible for all aspects of the day-to-day operations, including recruiting and managing staff teams, managing budgets and ensuring that the quality of the services provided meets national care standards.

What do you need to be?

- ➡ Of good character.
- ➡ Able to properly perform tasks that are intrinsic to the role.
- ➡ Have the necessary qualifications, competence, skills and experience to manage the regulated activity.
- ➡ Have documents that confirm suitability

So what may go wrong?

- 👉 Documentation
- 👉 Pressure sores
- 👉 Nutrition and Fluids

Ask yourself, have I been given sufficient resources? Have I been given sufficient time to create safe systems?

Common themes

- 👉 Failure to act upon the observations taken (eg Waterlow score)
- 👉 Difficulties in obtaining funding (mattresses, staff training)
- 👉 Care plans too infrequently reviewed
- 👉 Staffing shortages and those who cover

Response of CQC:

- ☞ *Whilst it was not in your power to provide the financial support required to fund appropriate staffing levels, suitable training and to maintain and replace unsafe equipment, you still retained the legal duty to manage the service with the necessary competence and skill.*

Steps that help

- 👉 Set up a reasonable audit system.. sufficient to expose a systemic problem, but not to oversee everything
- 👉 If unable to provide adequate service through lack of resource, put in writing
- 👉 Set up systems that prevent oversight (eg care plan reviews by surname, diarised)

Delegation

- ➡ Sufficiently expert (how do you know?)
- ➡ Sufficiently supervised



Elements of a valid consent (common law)

- Legally competent
- Suitably informed
- Freely given
- Fundamental principle: right to consent or refuse treatment

Who is competent to give consent?

- Age of capacity – presumed to be competent once 16 years – Family Law Reform Act 1969 (MCA applies to 16+)
- Under 16 years? *Gillick v West Norfolk and Wisbech AHA (1985)* - (Fraser guidelines) ‘sufficient understanding and intelligence to *understand fully what is involved*’

Mental Capacity Act 2005: Five statutory principles

- *Assume capacity* (if over 16) unless it is established capacity lacking
- Take all *practicable steps* to help a person make a decision
- An *unwise decision does not alone indicate lack of capacity*
- Any action/decision under the Act for or on behalf of a person who lacks capacity must be done in his *best interests*
- *And done in the least restrictive way*

Capacity

- *Does the person have an impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works? May be permanent or temporary*
- If so, does that impairment or disturbance mean that the person is unable to make the decision **at the time** it needs to be made?
- Who assesses? Person who is directly concerned with the individual at the time the decision needs to be made
- *Reasonable* belief of lack of capacity

Determining capacity

- Understand treatment information (nature, purpose, consequences of)
- Retain treatment information
- Use or weigh it in the balance to arrive at a decision
- Able to communicate their decision
- Remember: *lack of capacity means a person who lacks capacity to make a particular decision or take a particular action for themselves at the time the decision or action needs to be taken*

What strategies are available for those refusing care?

- ➡ With capacity
- ➡ Without capacity (forcing food and medication cases in NMC)
- ➡ Role of GP (sedation)

CPR

- ➡ Presumption of CPR/call paramedics
- ➡ Talking about advanced decisions if capacity/no capacity
- ➡ Making decision clear on records

👉 RCND: Call 020 7409 3333

👉 Thank you!