Financial viability guidance
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The Strategy and Performance Committee of the Care Inspectorate Board agreed in June 2011 to introduce the following elements to regulatory practice:

1. Maintaining an up-to-date contingency plan

We require all care services, except childminders, to maintain an up-to-date contingency plan to be implemented in the event of closure of the service, including closure at short notice.

2. New notifiable events and disclosure of information requirements

Under the Public Services reform (Scotland) Act 2010 we can require care service providers, except childminders, to notify us of the events detailed below. We will also require them to tell us about these in the annual return.

- A breach in banking covenants for registered services.
- Annual accounts not being prepared on a “going concern” basis.

This guidance sets out what we expect of operational staff when dealing with the above elements and sets them within an overall framework of identifying and responding to financial viability risks. While we have a responsibility to identify and respond to financial viability concerns, it is important to remember that this is a shared responsibility for the wider care sector. Other agencies are likely to have an interest, including COSLA, the individual local authority or Health Board, Audit Scotland, other UK care regulators and organisations representing providers. [Further work on wider contingency issue and management of financial viability is going on in partnership with these agencies]

Maintaining an up-to-date contingency plan

We will reinforce the requirement that providers of care services must maintain an up-to-date contingency plan to be implemented in the event of closure of the service, including closure at short notice.

We now expect all care service providers and particularly those with proposed and current 24 hour services to have a contingency plan in place to deal with all emergencies, including short notice closures.

Inspectors should make a requirement if a service does not have an appropriate contingency plan

Contingency plans should include:

- arrangements for service users and their families to be given a minimum of 3 months' notice and to be consulted on arranging alternative placements.
- plans to update personal/ care plans
- arrangements for notifying the Care Inspectorate and the local authority/health board at the earliest opportunity
- awareness of sources of advice and good practice regarding closures.

Providers will be notified through the eform system that there is a requirement to have an appropriate contingency plan under the Public Services Reform (Scotland) Act 2010 s53(6). [This section provides that we "may at any time require a person providing any social service to supply it with any information relating to the service which it considers necessary or expedient to have for the purposes of its functions"] .

In the event of a closure of a care home, the following good practice list, produced by Woolham in 2001, is a particularly helpful reminder for providers, commissioners and regulators alike.

- Consultation and discussion to improve people's sense of autonomy.
- Visits to new accommodation before transfer.
- The ability to select a new home in a "calm, panic-free manner".
- Allowing "the maximum possible time" for this (with a minimum of at least 3-months' notice).
- Emphasising potentially positive outcomes.
- Trying to reduce the amount of environmental change (moving people to physically similar places or services with a similar atmosphere).
- Providing "relevant, robust and detailed information about each relocated person".
- Moving staff and residents together (to minimise disruption).
- Supporting staff affected by relocation (to limit the risk of a loss of morale).
- Allocating a key worker to be responsible for each person's care (with scope to visit the person in their old home, get to know them, talk to staff and greet the resident as they arrive in their new home).
- Providing additional support for particularly vulnerable residents.
- Moving as much as possible of residents' familiar furniture with them.
- Providing particular support on the transfer day itself (for example, with familiar staff, family and close friends accompanying the person, a key worker to greet the person as they arrive, new staff knowledgeable in advance of the person's routines, encouraging residents to unpack themselves or seeing where everything is put and encouraging residents to talk about how they are feeling).
- Monitoring the adjustment process after relocation (ideally on a weekly basis at first and then at 6 weeks, 3 months, 6 months and 12 months).
- Robust care planning and communication to support people's preferred lifestyles in the new home.
- Care planning and goal setting for care staff to help residents adjust (including spending as much time as possible with a new resident).

New notifiable events and disclosure requirements

The notifiable events detailed below will also be a disclosure requirement on the annual return:

- A breach in banking covenants for registered services
- Annual accounts not being prepared on a ‘going concern’ basis.

Any information from the annual return must be assessed as part of the Regulatory Support Assessment and where necessary a record kept in PMS/RMS.

Information to providers about our notification expectations has been updated accordingly and the annual returns will include additional questions regarding breaches in covenant and annual accounts from 2012/13 onwards.

Identifying risks

All service providers except childminders must notify us of breaches of banking covenants and annual accounts not being prepared on a ‘going concern’ basis. Inspectors receiving such notifications or annual return disclosure should alert the Professional Adviser (Finance), who will assess the risk and give advice on responding.

Annual accounts not being prepared on a ‘going concern’ basis means that the independent accountant has made a statement of concern as part of their auditor’s report.

You should assess financial viability risks within the current inspection methodology, and update the RSA accordingly. The Risk Assessment Document will be updated, but meanwhile you should note these on the RSA under ‘Other issues’. 24 hour services, including care at home and housing support services should receive a higher risk assessment score than other services. Do not assume that care homes carry higher risk than agencies for example providing care and support in people’s own homes. Inspectors should consult their inspector manager and the Professional Adviser (Finance) when making this professional judgement. The overall size of the provider organisation regarding numbers of services and service users is also relevant. The impact of closure will be greater in respect of large multiple providers and will have wider implications and so communicating this to contact managers and ensuing engagement with wider stakeholders is vital.

Other indications of financial viability risk that you should note on the RSA and which should trigger a response can include:

- occupancy rates reducing significantly
- staffing levels or other resources being reduced significantly
- premises not being maintained
- wages or bills not being paid
- complaints about amounts or quality of food.

Responding to risks

Inspectors should consult their inspector manager about how to respond to the identified risk. As well as triggering a request to the Professional Adviser (Finance) to carry out an assessment of current financial viability, you should consider the following options and act proportionately to the risk presented:

- bring forward and/or carry out additional inspections
- communicate with the provider, involving the contact manager as necessary for corporate providers and local authorities
- alert other agencies with duties, including local authorities and health boards.

Your internal notifications and communication should be done by email to ensure a clear audit trail. Such communication must be recorded and attached to the PMS (pending development of the RMS) under a specific heading for audit.

Inspector managers should also follow the internal communications procedure to ensure the appropriate operations staff, directors and Holyrood PR are made aware of the situation. This will allow a communication plan for the regulator to be considered.

Unsubstantiated concerns must not be shared externally. This could precipitate the closure of a service and potentially leave the Care Inspectorate vulnerable to a future civil claim for damages.

Liaison with local authorities

We will continue to use our existing link inspector/contact manager arrangements in seeking assurance from local authorities that they also have effective contingency plans in place to deal with registered care services ceasing at short notice due to poor performance and/or financial viability.

Where we report substantiated financial viability concerns to local authorities and NHS boards, we will expect them to work together to develop a joint contingency plan and we and other agencies will be involved as appropriate.

The present guidance is included in appendix a but will be made available as a link in due course. [This guidance is being reviewed and developed further into a partnership document between the range of stakeholders].

Liaison with other UK regulators

If the provider also operates within other parts of the UK then it is essential that we contact other regulators to coordinate any scrutiny activity. It is the responsibility of the contact manager to coordinate any initial response on behalf of the Care Inspectorate.

New registrations

The Care Inspectorate national registration team will manage the cancellation and registration procedures.

Additional regulatory activity should ensure that the needs of service users are met during the transition period. Communications between respective teams is also vital to ensure no duplications or gaps emerge.

Commonly used terms

A provider **'going into administration'** means that an administrator has been appointed to manage the affairs of the provider and secure the sale of the business or its assets. The provider remains registered and legally responsible, but decision making has been taken out of their hands.

'Bankruptcy' is where a person or organisation has been declared in law as unable to pay their debts. **'Sequestration'** is another legal term for bankruptcy in Scotland.

A **'banking covenant'** (or debt covenant) is an agreement between a company and its lenders that the company should operate within certain limits. A breach of banking covenant can allow lenders to demand immediate repayment.

Future developments

This guidance reflects new arrangements which will apply across all areas of Care Inspectorate activity.
As we continue to share responsibility for this with other scrutiny bodies, local authorities and NHS Boards we will update you as and when future shared arrangements are agreed.

Sources of advice and good practice

Local authority commissioning teams are key sources of advice and have statutory duties of care that may be relevant for a closure at short notice.

The Directors of Adult Social Services in England (ADASS) published a good practice guide 'Achieving Closure' to support older people during residential care closures in June 2011 Link to 'Achieving Closure'. This includes Woolham's (2001) list from 'Good practice in the involuntary relocation of people living in residential care'.

In 2011 the Social Care Association updated a 1992 guide on 'Managing Care Home Closure'. This guide is available for £5 via their website at: www.socialcareassociation.co.uk.

Appendix A also provides COSLA's "Guidance on the Planned Closure of a Care Home"