

## NCF MEMBER BRIEFING: DHSC Guidance on the Mandation of the Capacity Tracker

The DHSC has published the Formal Notice setting out what information is required by the Secretary of State for Health and Social Care from CQC-regulated adult social care providers, under section 277A of the Health and Social Care Act 2012, as inserted by section 99 of the Health and Care Act 2022.

DHSC has also published guidance on GOV.UK to support providers with this new requirement. DHSC Guidance and the Notice can be found on the GOV.UK website [here](#). See below for some of the key points that from the guidance, however please refer to the guidance for a full overview of the changes and considerations that must be made.

### Key points:

**From 31 July 2022, the DHSC are mandating a core subset of the data that providers have been submitting regularly through the Capacity Tracker. With first set of monthly data due by the end of 14 August 2022.**

- This mandated data will be gathered on a monthly basis.
- The first set of monthly data will be due by the end of 14 August 2022.
- Providers will be required to update their data by the end of the 14th day of each month, or the next working day where the 14th falls on a weekend or public holiday.
- Data must be no more than a week out of date – that is, data must be correct to no further back than the 8th of each month.
- Updates for this data will need to be made via the Capacity Tracker using the same method as at the time of the guidance's publication – by providers either updating each mandated field individually or by the bulk update functionality.
- The data must be reviewed between the 8th and 14th day (or the next working day where the 14th falls on a weekend or public holiday) of each month, and, even if there are no changes to be made, the page is 'saved' so that it is marked in the system as having been updated.
- By the time of the first mandatory collection, the department will have made visual changes to the CT so that providers can clearly see which questions are mandatory and which are not.

### Core subset of the data being mandated:

**For care home provider locations, the mandatory information will be:**

- **care home bed vacancies:**
  - maximum capacity
  - occupied or used
  - (vacant) reserved
  - (vacant) accepting admissions
  - (vacant) not available for admission – reasons bed not available (mandatory from 16 September 2022)
- **workforce resourcing including absences:**

- total headcount of directly employed registered nurses
- total headcount of directly employed care providing staff
- total headcount of directly employed non-care providing staff
- total headcount of agency or bank registered nurses
- total headcount of agency or bank care providing staff
- total headcount of agency or bank non-care providing staff
- number of directly employed registered nurses absent, COVID-19 related
- number of directly employed care providing staff absent, COVID-19 related
- number of directly employed non-care providing staff absent, COVID-19 related
- number of directly employed registered nurses absent, not COVID-19 related
- number of directly employed care providing staff absent, not COVID-19 related
- number of directly employed non-care providing staff absent, not COVID-19 related
- **COVID-19 vaccination:**
  - number of directly employed staff known to have had the first dose of the COVID-19 vaccination in the UK
  - number of directly employed staff known to have had the second dose of the COVID-19 vaccination in the UK
  - number of directly employed staff known to have had the COVID-19 vaccination booster in the UK
  - number of directly employed staff self-certifying as being fully vaccinated abroad
  - number of agency or bank staff known to have had the first dose of the COVID-19 vaccination in the UK
  - number of agency or bank staff known to have had the second dose of the COVID-19 vaccination in the UK
  - number of agency or bank staff known to have had the COVID-19 vaccination booster in the UK
  - number of agency or bank staff self-certifying as being fully vaccinated abroad
  - number of residents known to have had the first dose of the COVID-19 vaccination in the UK
  - number of residents known to have had the second dose of the COVID-19 vaccination in the UK
  - number of residents known to have had the COVID-19 vaccination booster in the UK
  - number of residents known to have had the second COVID-19 vaccination booster in the UK
- **flu vaccination (seasonal: 1 September to 31 March):**
  - number of directly employed staff known to have received this season's flu vaccination

- number of agency or bank staff known to have received this season's flu vaccination
- number of residents known to have received this season's flu vaccination
- **visiting:**
  - if residents have been able to take part in visits in and/or out of the care home
  - the visiting options currently being supported

**For domiciliary care settings, the mandatory information will be:**

- number of people using the service today
- number of staff in the organisation that have face-to-face contact with the people being supported
- number of staff delivering care that are not working because of coronavirus
- COVID-19 vaccination:
  - number of staff known to have had the first dose of the COVID-19 vaccination
  - number of staff known to have had the second dose of the COVID-19 vaccination
  - number of staff known to have had the COVID-19 vaccination booster
- flu vaccination (seasonal: 1 September to 31 March):
  - number of staff known to have received this season's flu vaccination

## **September 2022 Changes**

In addition, there will be further changes to made to COVID-19 vaccination data collection, these changes will come in from September 2022. **From September 2022, the DHSC will also be changing the COVID-19 vaccination questions asked of providers. These changes are set out below:**

Note: [the DHSC sets out how it is defining 'full courses' in Annex A, available here:](#)

**For care home providers** the COVID-19 vaccination questions will be replaced with:

- number of directly employed staff known to have received a full primary course of the COVID-19 vaccination
- number of agency or bank staff known to have received a full primary course of the COVID-19 vaccination
- number of residents known to have received a full primary course of the COVID-19 vaccination
- number of directly employed staff known to have received an autumn booster\*
- number of agency or bank staff known to have received an autumn booster\*
- number of residents staff known to have received an autumn booster\*

**For domiciliary care providers** the COVID-19 vaccination questions will be replaced with:

- number of staff known to have received a full primary course of the COVID-19 vaccination
- number of staff known to have received an autumn booster\*

*\*Please note, autumn booster questions become mandatory in October 2022*

### **Enforcement Powers:**

Specific guidance on enforcement will be published once the enforcement regulations are made and will be linked to in the guidance once published. **Although the department will be mandating data from 31 July 2022, they will not be rolling out the enforcement mechanism before November 2022.**

### **When will a financial penalty be issued:**

Financial penalties will normally be a last step, the DHSC anticipate using them where both the following apply:

- A provider continues to be, or is persistently, in breach of their data obligations
- The department's delivery partner (the NHS Business Services Authority (NHSBSA)) has reached out to offer guidance and support, but the provider is still not sharing their data, and has not made appropriate attempts to do so.

The enforcement process will happen over a period of months. Providers will be given a chance to make their case and outline why they have not supplied data and why a financial penalty should not be imposed.

Even after a final penalty notice is issued, the DHSC expect that providers may be able to avoid a fine by providing the data required.

### **How much will a fine be?**

The level of the fines will be the same as a provider's CQC registration fee.

### **Can you appeal?**

Yes, a provider who has been issued with a final penalty notice will be able to appeal to the First-tier Tribunal.

### **Important to note:**

There will be times when some of the required information cannot be updated by a provider because the provider is unable to get that information despite, or the information is not relevant to their setting.

If this the case:

- **the provider should submit the information that they do know, or submit a nil return, and 'save' the page so that it is marked in the system as having been updated, so that enforcement action is not pursued.**
- What is most important is that the provider has made a reasonable attempt to provide the data they have.

### **Where to go for help and support:**

The CT is managed by the North of England Care System Support (NECS) unit who provide a

dedicated support centre – Monday to Friday, 8am to 5pm – to support care providers and wider stakeholder users of the CT.

**Who to contact for support:**

- If providers need support completing or updating the system, accessing or using the reports and analytics, they can reach out either by phone 0191 691 3729 or via [necsu.capacitytracker@nhs.net](mailto:necsu.capacitytracker@nhs.net).
- For guidance relating to how to answer specific questions, you can email [capacitytracker-guidance@dhsc.gov.uk](mailto:capacitytracker-guidance@dhsc.gov.uk).
- For administrative amendments, account support and more, you can contact NECS directly already at: [necsu.capacitytracker@nhs.net](mailto:necsu.capacitytracker@nhs.net).

Providers will be contacted when they have not updated their CT data and will be offered support or advice on completing the return. This will be done via NECS as at present, or via other routes depending on the issue

[Refer to the guidance](#) for a more in-depth overview of the guidance and support available to providers.

**Data Use and Privacy Commitment:**

Some of the key points in relation to data use and privacy are laid out below, however providers should [refer to the guidance](#) for a more detailed overview:

- The changes will not enable data to be sold to private organisations.
- However, the intention is that data collected will be shared – where appropriate - with organisations who need the data across the ASC sector (for example, local authorities, the CQC, integrated care systems).
- The DHSC also assert that they will encourage all partners that data is shared with to look at CT data in the first instance, rather than starting separate data collections covering similar data.
- The information will be subject to the UK General Data Protection Regulation (GDPR) and statutory restrictions on disclosure. This includes not sharing commercially sensitive data without taking into account both the interests of the provider (or the person to whom that data relates) and the public.