

Medication in care homes – the regulatory risk

Inspections of hospitals, care homes and home care agencies by the CQC are usually unannounced and take place at least once a year. When a health care provider is registered, the CQC will monitor their compliance against sixteen essential standards of quality and safety.

There are a range of enforcement powers available to the CQC if the provider is non-compliant, depending on the nature of the non-compliance. Civil enforcement can include suspension or cancellation of registration. Criminal enforcement can include prosecution, for example, under section 10 of the Health and Social Care Act 2008. This provides that any person who carries on a regulated activity without being registered is guilty of an offence.

One key area of potential non-compliance is the administration and storage of medication.

Providers only registered under 'personal care' should review their position if they are administering or storing medication, as the definition of this activity does not cover this. The definition of 'personal care' under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 only includes physical assistance (and supervision) with:

- i. Eating or drinking (including the administration of parenteral nutrition),
- ii. Toileting (including in relation to the process of menstruation),
- iii. Washing or bathing,
- iv. Dressing,
- v. Oral care, and/or
- vi. The care of skin, hair and nails (except nail care provided by a chiropodist or podiatrist).

Medication is covered by other regulated activities: "*treatment for a disease, disorder or injury*" and "*diagnostic and screening procedures*" ("TDDI"). There is therefore a risk that providers who are registered only for personal care, but who store medication and/or administer this to their clients, could be considered to be performing a regulated activity without having the necessary registration.

However, the CQC's guidance has left some providers confused. It states that care homes without nursing, for example, "*should not register for TDDI and diagnostics. This is because, if they are carrying out these treatments, it will be likely to be by delegation from a health professional already registered under another provider*".

It therefore seems possible that the CQC may be willing to treat the administration of medication as ancillary to the provision of personal care, or accommodation with personal care, at least where other healthcare providers have been involved in prescribing this.

Nevertheless, the guidance is not clear and as such this remains an area of risk of some providers.

The correct approach to take will very much depend on the individual practice of the provider. Russell-Cooke can assist providers in managing legal risk effectively with the assistance of a mock inspection by an expert consultant, correcting the scope of registration where necessary and highlighting areas of weakness under the sixteen essential standards. Where possible, practical steps will be identified by Russell-Cooke to allow providers to resolve problems and minimise the risks posed to them and their clients.

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