

## Personal Assistant (PA) working and CQC registration requirements

### Introduction

The purpose of this note is to offer guidance in regard to personal assistant (PA) working and the need (or not) for CQC registration. It will be of use to people (individual employers) employing one or more PAs to meet their care and support needs; either via a direct payment, personal health budget (PHB), self-funding or other means. It will also be of use to organisations supporting individual employers and PAs including (though not limited to) local authorities, NHS organisations and user-led organisations (ULOs).

The information within this note serves as guidance only. Anyone unsure of whether their working arrangements or the working arrangements they oversee require CQC registration should seek their own legal advice and can contact CQC to talk through the specifics of their particular situation.

There are some scenarios at the end of this document that may help you relate this guidance to your situation

### Definition of employment

The term 'employment' can have different meanings and therefore different implications. When CQC refers to '**employment**' of a personal assistant by an individual it does not carry the same meaning as 'employment' for purpose of HMRC activities and requirements. The CQC meaning is much broader in its scope and includes both people who are directly employed by an individual and also those who are self-employed<sup>1</sup> but have an agreement to work directly for an individual and to be paid directly by them. In this document the term 'employed' is used in this wider sense as used by CQC.

### **PAs who are employed directly by an individual and self-employed PAs with an agreement to work directly for an individual and to be paid directly by them.**

PAs who are directly employed by an individual, or related third party, and self-employed PAs with an agreement to work directly for an individual do not need to be CQC registered.

This is because the current Regulated Activity<sup>2</sup> of 'personal care' sets out an exemption relating to PAs. The exemption applies in cases where a carer (PA) is employed by an

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<sup>1</sup> It should be noted that under most circumstances HMRC consider PAs to be employees and not self-employed. Anyone operating as or employing, a PA who considers themselves as self-employed should confirm this status with HMRC.

<sup>2</sup> The CQC Scope of Registration details a list of regulated activities that a person and / or provider must not carry out unless they are registered with CQC to do so. It is an offence to carry out a regulated activity without being registered with CQC.

individual or a related third party without the involvement of an employment agency or employment business and working wholly under the direction and control of that individual or related third party in order to meet the individual's own personal care requirements. There is a definition of what a 'related third party' means and this is set this out on page 14 in the CQC guidance [Scope of Registration](#)

### **(Delegated) health care tasks**

**Personal assistants (PAs)** employed by individuals or a related third party and who accept and carry out delegated health care tasks<sup>3</sup> do not need to be registered with CQC.

**Registered Nurses (RNs)** who are employed by individuals or a related third party may need to register with the CQC, dependent upon the type of care they are delivering as part of that employment. Although the CQC scope of registration provides an exemption "*...where a person, or a related third part on their behalf, makes their own arrangement for **nursing care** or **personal care**, and the nurse or carer works directly for them and under their control without an agency or employer involved in managing or directing the care provided*", there is no such exemption if the role includes tasks that relate to the regulated activity of **treatment of disease, disorder or injury**. If the RN's employment includes work of this nature, then they will need to register with the CQC as an individual provider.

All health care professionals employed directly by an individual or related third party (e.g. a PHB holder), should check whether they need to be registered as an individual provider with the [CQC](#), particularly if they are being employed in their professional capacity to carry out clinical care or treatment that could fall under "treatment of disease, disorder or injury".

### **Substitution**

Where a PA who is engaged in a contract directly with an individual or client arranges for another PA to cover their role, for example during a period of annual leave or sickness they do not need to be CQC registered. However if they were making arrangements for substitution on a regular basis with a number of individuals then this might mean they should be registered.

Where a group of PAs work with a range of individuals (in an informal partnership) and regularly swap shifts amongst themselves, they should seek their own legal advice concerning whether their model of working brings them within the scope of CQC registration. Such a group may also wish to contact CQC to discuss the full detail of the arrangement.

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<sup>3</sup> A delegated healthcare task is a task of a clinical nature which a registered healthcare professional allocates to a competent person (e.g. a PA); [this RCN publication](#) outlines roles and responsibilities.

## **PAs who are required to support the employer (including with personal care) during a temporary stay in hospital or residential settings (e.g. as part of a respite arrangement)**

There would be no requirement for the PA to be registered with CQC. The hospital or residential home would need to be satisfied as to the suitability of the person coming into the care home or hospital to undertake any type of work – just as any business, care home or hospital are required to do under current health and safety requirements. Related to this, the hospital or residential home would also need to provide any necessary training or supervision in carrying out any tasks in the hospital or care home.

## **Partnerships and agencies providing PA services**

The regulated activity of ‘personal care’ has an exemption for people who introduce a carer to an individual, but who then have no “on-going role in the direction or control of the service provided”. To determine whether a partnership, agency or collaborative should be registered consideration needs to be given as to whether there is ‘an on-going role in the direction or control of the service provided’.

## **When does this ‘ongoing role’ mean a provider must register for personal care?**

The regulated activity of personal care **APPLIES** in the following circumstances: A person, an employment agency or employment business (referred to as the provider), introduces a care worker to an individual who needs care, and the provider does **ANY** of the following:

- Monitors the service provided to the individual and, as a result of this monitoring, takes responsibility for replacing the care worker for any reason.
- Seeks the views of the individual receiving the service or acts as their advocate and, as a result, advises or directs changes to the activity of the care worker (such as changes to the frequency of visits, or the type of care provided, or the way in which the care worker performs the agreed tasks).
- Arranges a rota of care workers so that visits and care are provided when required by the individual.
- Continues to charge for the service being provided by the care worker, excluding where arrangements have been made to enable a one-off introduction fee to be paid by instalments.
- Agrees to organise cover for any sickness or leave that may arise – other than when the individual makes an independent request to the provider to introduce another care worker to cover leave or sickness.
- Reviews the care plan, including making changes as necessary, in consultation

with the individual.

### **When does this 'ongoing role' mean a provider may not need to register for personal care?**

The regulated activity of personal care **DOES NOT APPLY** in the following circumstances:

- A person, an employment agency or employment business (the provider), introduces a care worker to an individual with no further involvement at all, or
- In addition to the introduction, any activity by the provider is restricted to the following:
  - Introducing an additional or replacement care worker if the individual is not satisfied with the existing care worker and asks for an additional or replacement care worker. The further introduction is because the individual has requested an additional or replacement care worker and not as a result of monitoring by the provider who has identified a need for a change.
  - Providing a range of practice guidance (usually referred to as 'procedures') as an extra service to the person using the service. The care worker can follow these procedures once employed if the individual directs them to do so. The provider introducing the care worker does not monitor the performance of that worker in respect of these procedures.
  - Making an assessment of the needs of the person receiving care but only in order to determine the type of care worker required or the most suitable worker. Or the provider might arrange for someone (usually referred to as a case worker or assessor) to carry out an assessment of needs. This is not the same as writing a care plan that details the activities needed to deliver the personal care required. For example, this type of assessment might determine such things as the person's needs for help to use the toilet in the morning, preparing their breakfast, although they can eat independently, and help with a mid-morning shower and getting dressed. Such an assessment may be carried out only to enable the provider to recruit and introduce a care worker who can be available for the time required and who has the skills needed. The assessment is not ongoing.
  - Charging the individual a 'one-off' fee for the introduction – even though part or all of the fee may be reimbursed by the provider if either the care worker or the individual terminates their agreement with each other. The fee may be paid in instalments and may or may not be related to the length of the contract.
  - Contacting the individual to make sure that they are satisfied with the service of making the introduction. The contact is only for the purpose of quality assuring the introduction process, not for monitoring or controlling or directing

the service being provided by the care worker.

- Agreeing to carry out a payroll function for the individual who is employing the worker. This function must have no influence on the direction and control of the service being provided. There should be a clear separation between the introduction and the provision of the payroll service. Ideally, such an arrangement will be under a separate contract from the one of introduction, to emphasise the separate nature of the provider's activities.

## Scenarios

The following section presents a number of scenarios where the provision of personal care falls under CQC registration:

- An RN (active NMC registration) has set-up her own private limited company, through which she is employed as a domiciliary nurse. She is the sole employee and works for a variable number of clients in their own homes. People engage her services to provide personal care and deliver healthcare tasks. In this scenario the exemption from registration does not apply since the nurse is employed by the company not by the service user
- A mother and daughter have set up a private limited company and are both directors. They provide services to a variable number of clients. People engage their services to provide personal care and deliver healthcare tasks delegated by another healthcare professional (e.g. a community district nurse). As in the example above, the exemption from registration does not apply because the mother and daughter are employed by the company not by the service user.
- A formal partnership is set-up where each partner (e.g. a PA) takes on their own clients for personal care services. The partners do not employ any other workers under their formal business structure and agree collectively to cover each other's holiday and sickness. People engage the services of the partnership to provide personal care and deliver healthcare tasks delegated by another healthcare professional (e.g. a community district nurse). As a partnership, the exemption does not apply and they should be registered with CQC.
- Mrs. B has complex diabetes and epilepsy. Through a direct payment she employs a Registered Nurse to help with all her activities for daily living, including daily personal care and also to manage and treat her frequent episodes of epilepsy. Because the role includes treatment of disease, disorder or injury (TDDI), the nurse needs to be registered with CQC and would apply as an individual provider.

The following scenario describes an arrangement were CQC registration is not required:

- Mr. A receives a personal health budget. Through this he employs two PAs to help with all his activities for daily living, including daily personal care. They also deliver a healthcare task (Tracheostomy care) that has been delegated to them by the District Nurse and for which they have received specific training. There is no requirement to register the PAs with CQC.

Additional scenarios will be added to this advice note over time.