

New Care Quality Commission regulations

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New regulations come into force on 1 April 2015 to amend the current set of regulations made under the Health and Social Care Act 2008 for regulating those involved in, or connected to, the provision of health and social care.

On 1 April 2015, all the current regulations of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 come into force and new regulations amend a number of them. Broadly, the new regulations extend the more exacting requirements of the current regulations beyond NHS trusts (including foundation trusts) and special health authorities (to which they apply at present), to providers of all health and social care registered with the Care Quality Commission ('CQC'), and so, for instance, to charities which operate care homes. Five key changes to the current regulations achieve this outcome.

Firstly, a 'competence' requirement is included for those with responsibility for the provision of health or social care, to bolster the current requirements for relevant qualifications, skill and experience. Secondly, when assessing the 'good character' of such people, assessors will also have to take into account criminal convictions and the removal from related professional registers. Previously these two features applied more narrowly to those responsible for directing NHS trusts and special health authorities.

The 'fit and proper persons' test, which also currently only applies in this context to directors (and their equivalents) of NHS trusts and special health authorities, will also apply more broadly to providers of health and social care registered with the CQC – other than individuals and partnerships. This will affect directors (and their equivalents) who have

- been involved in any serious misconduct or mismanagement relating to the provision of health and social care;
- had bankruptcy-related issues;
- featured on registers relating to the safeguarding of vulnerable people; or
- been barred from undertaking their role in relation to providing health and social care.

Health and social care employees will also be subject to a fit and proper persons test when current regulation 19 comes into force on 1 April 2015.

Similarly, the new regulations will extend the duty of candour beyond NHS trusts and special health authorities to providers of health and social care registered with the CQC. The duty of candour is triggered when a notifiable safety incident occurs and the new regulations insert examples of these type of incidents to add clarity.

Also introduced into the regulations is a new section, 20A. These provisions will require providers of health and social care to display their CQC rating at their premises and on their websites. The websites must also display the website address of the CQC and the web page where the public may access the relevant rating assessment. Non-compliance with regulation 20A will be an offence.

The CQC published, and has consulted on, general guidance that will supplement the new regulations. It also intends to publish more detailed guidance later this month on specific aspects, such as the fit and proper persons test, the duty of candour and the section 20A display requirement.

A practical point:

Charities that operate in the health and social care sector may wish to look to tailor their recruitment policies and procedures – for their trustees and senior employees – so that they can be clear that they can satisfy the 'fit and proper persons' test under the regulations and to comply, at the same time, with the similarly named requirements imposed by HM Revenue and Customs in relation to charities' tax status.

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