Information on visiting rights in care homes

In October 2019, we updated the October 2016 version of this document by adding information about new guidance on consumer law.

Contents

1. What is this information about?

This document gives information about certain regulations that protect care home residents and those who visit them, such as their partners, family and friends. It also highlights issues for care home providers to consider about meeting the needs of those who use their services.

2. Why is it important that residents in care homes should be able to receive visitors if they want to?

Care homes are people's homes, and residents should be able to welcome family and friends as they did before they became a resident. Residents also have consumer rights, which help to ensure that they are treated fairly and protected if things go wrong. They have these rights, whether they pay all the costs of their care, or whether some or all of the costs are paid for by their local authority, NHS or health and social care trust.

It is important that people's family and loved ones are able to help plan their care and support as much as they want them to[1]. This sort of involvement is an essential characteristic of person-centred care. Clearly, such involvement is better enabled by family, friends and carers being able to visit relatives in their home, talk to the staff who care for them, and give their feedback – both positive and negative – to the provider.

3. What rights does a resident have to be visited by a relative or friend?

Care home providers should enable a resident to see their family and friends if the resident wants to. Staff should respect residents' relationships and give them as much privacy as possible. If they do not do this, it may mean that the care provider is in breach of a number of regulations in the Health and Social Care Act 2008, against which CQC can take action (see 13 and 15 below).

If a service that is fully or partly funded by the local authority or NHS stops a resident from receiving visitors, this may be a breach of the resident's rights under Article 8 of the European Convention on Human Rights, incorporated into the Human Rights Act 1998 (this is everyone's right to respect for their private and family life, home and correspondence). However, rights under Article 8 are not absolute – they need to be balanced against other rights and the rights of other people. This means there may be a small number of very specific circumstances where care providers can restrict, or even refuse visitors (see 10 and 11 below).

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[1] CQC, *Better care in my hands,* 2016

4. What if the resident lacks the mental capacity to make decisions about who visits them?

Visits should be enabled, unless there are compelling reasons to say they are not in the person's best interest. These reasons should be agreed through a Mental Capacity Act decision making process. More information about the Mental Capacity Act can be found on our website at www.cqc.org.uk/mca

5. What rights does a visitor have if they have a lasting power of attorney?

If the resident does not have the capacity to make decisions about their care and treatment themselves, then someone who has a lasting power of attorney (see glossary) for health and welfare (the attorney) can decide this on their behalf. When they do this, attorneys should decide what is in the person's best interests, considering their past and present wishes and feelings, beliefs and values. The care provider should therefore allow the attorney to visit the service to consult with the person and anyone involved in caring for them.

Attorneys with powers to make financial and property decisions should also be consulted by any professionals making best interests decisions about the person under the Mental Capacity Act if there is nobody with lasting power of attorney for health and welfare.

6. If somebody has a concern about a care provider how can they report it?

Visiting someone in a care home lets family and friends see how they are being cared for. Most care is good, but problems do occur. If somebody thinks that a crime has been committed or someone is in danger, they should contact the police.

Otherwise, they should contact the care home provider. All health and social care service providers must have a procedure for dealing with feedback and complaints, which anybody can ask to look at (see 7 below). This will explain how to make a complaint. People can also complain to their council if it funds their care, or their clinical commissioning group (CCG) if it funds their NHS continuing care. If they are unhappy with their response from the provider, council or CCG, or the way their complaint has been dealt with, they can ask the Local Government and Social Care Ombudsman (see glossary) to get involved. The Ombudsman can be contacted at 0300 061 0614 or through their website at www.lgo.org.uk. Also go to our website for more information about organisations that provide support in making a complaint – www.cqc.org.uk/content/complain-about-service-or-provider. CQC's research[1] has highlighted that people regret not raising concerns about their care – but those who do raise concerns see improvements.

7. What rights does someone have if they want to complain about a care provider?

Regulations require that all care providers must have an effective and accessible system for identifying, receiving, handling and responding to complaints from people using the service or people acting on their behalf. All complaints must be investigated thoroughly and any necessary action taken where failures have been identified. CQC asks care homes how they listen and learn from people's complaints. We also ask them how they check whether their feedback processes are effective.

There are also consumer law obligations that specify providers should never discourage, pressure or intimidate someone from making a complaint. These rights strengthen any feedback that people might want to give to the provider or to anyone else such as CQC. Staff must not threaten to restrict or ban any visitors, or ask them to leave if they make a complaint. If a provider misleads, behaves aggressively, or acts unfairly towards someone using a service or their visitors, they are likely to breach consumer law. If that happens, they should contact the local government and social care ombudsman straight away. They can also share with us through the 'Tell us about your care' on the CQC website, which will be shared with the local inspector.

8. How can people be assured that making a complaint will not cause problems for them or the resident?

People should feel confident that complaining will not cause problems for them or the resident. For example, it should not affect the visitor's ability to see their relative or friend, and it should not lead to the resident being asked to move to a different home.

Care homes must follow regulations that prevent people who complain being discriminated against or victimised. Our guidance says: "People's care and treatment must not be affected if they make a complaint, or if somebody complains on their behalf." As part of our inspection and monitoring we check that people feel comfortable sharing concerns and complaints, and we are keen to hear from people about this (see 9 below). We take action if we find that providers are in breach of the regulations (see 15 below).

9. How does CQC use people's feedback to help prevent poor care?

People can also contact CQC about concerns, including single issues, about any care service, including where they think they are not following the regulations mentioned in this document. This information helps us decide when, where and what to inspect and therefore prevent others experiencing poor care in the future (see 15 below). However, CQC cannot make complaints for people or take them up on somebody's behalf because we do not have powers to investigate or resolve them.

The only exception to this is for people whose rights are restricted under the Mental Health Act.

How to contact CQC:

Telephone our National Customer Service Centre in Newcastle: 03000 616161

Or write to us:
CQC National Customer Service Centre
Citygate
Gallowgate
Newcastle upon Tyne NE1 4PA

Or visit our website: www.cqc.org.uk/share-your-experience

10. What can a care provider do if it thinks a visitor poses a risk to a resident's safety?

In the first instance the provider should talk to the visitor, who may not realise that what they are doing poses a risk. If this continues the provider would need to assess the level of risk and the impact on the person and, in extreme cases, refer the matter to the local authority's safeguarding team to provide oversight of the situation and to consider investigating the case under their safeguarding procedures. If the visitor has a lasting power of attorney then, again in extreme cases, the care provider can raise a complaint with the Office of the Public Guardian (see glossary).

11. Can a care provider remove someone's lasting power of attorney?

No. Powers given under a lasting power of attorney can only be removed by the Court of Protection (COP) (see glossary). If a care provider, or someone else, has concerns about the actions of an attorney (such as misuse of money), then they should contact the Office of the Public Guardian, who will investigate and, if necessary, apply to the COP to remove the attorney's lasting power of attorney.

If the attorney and care provider cannot agree about what is in the person's best interests, they could apply to the COP to determine the issue.

12. What can a care provider do if it believes that a visitor poses a risk to other residents, staff or the running of the service?

Seeing a loved one in a care home can be distressing, especially in the beginning or as they become more dependent because of frailty, illness or decreasing capacity. Bearing this in mind, if issues or conflict develops, the care provider should first meet with the visitor and try to resolve them. Conflict between the provider and a family member or friend may be detrimental to the wellbeing of the resident. If the visitor has concerns about a resident’s care, these should be acknowledged, understood and acted on.

Care homes have a duty to protect people using their services. If issues cannot be resolved, as an extreme measure the provider may consider placing some conditions that restrict the visitor’s ability to enter the premises if, for example, they believe (having sought advice from others, like the safeguarding team) that the visitor poses a risk to other people using the service and staff, or to the running of the service. For example, the provider could limit visits to take place in the resident’s room only. Any conditions should be proportionate to the risks to other people or staff and kept under review. The provider must be able to demonstrate that any conditions are not a response to the visitor raising concerns about the service as this would be a breach of the regulations. If the resident lacks capacity to decide who should visit them, the provider must make decisions as described in Section 4 of the Mental Capacity Act (best interests). This includes the requirement to identify the option that restricts the resident’s rights the least, while meeting a specific need.

13. What guidance from CQC on the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 is relevant to this issue?

- Regulation 9(3)(b) – Person-centred care: “When planning how to meet a person's preferences, providers should take into account, and make provision for, any impact this may have on other people using the service.”
- Regulation 9(3)(e) – Person-centred care: “People using the service and/or those lawfully acting on their behalf must be given opportunities to manage as much of their care and treatment as they wish and are able to, and should be actively encouraged to do so.”
- Regulation 9(3)(f) – Person-centred care: “Providers must actively seek the views of people who use their service and those lawfully acting on their behalf, about how care and treatment meets their needs. Providers must be able to demonstrate that they took action in response to any feedback.”
- Regulation 10(2)(a) – Dignity and respect: “People’s relationships with their visitors, carer, friends, family or relevant other persons should be respected and privacy maintained as far as reasonably practicable during visits.”
- Regulation 10(2)(b) – Dignity and respect: “People must be supported to maintain relationships that are important to them while they are receiving care and treatment.”
- Regulation 11(1) – Need for consent: When a person using a service or a person acting lawfully on their behalf refuses to give consent or withdraws it, all people providing care and treatment must respect this.
- Regulation 13 – Safeguarding service users from abuse and improper treatment: Providers must have robust procedures and processes to prevent people using the service from being abused by staff or other people they may have contact with when using the service, including visitors.

- Regulation 16(1) – Receiving and acting on complaints: “People must be able to make a complaint to any member of staff, either verbally or in writing. Complainants must not be discriminated against or victimised. In particular, people's care and treatment must not be affected if they make a complaint, or if somebody complains on their behalf.”

14. What questions (key lines of enquiry) does CQC ask about this issue when inspecting services and what does CQC expect to see?

The questions we ask:

- How are people supported to maintain good health, have access to healthcare services and receive ongoing healthcare support? *[Is the service effective?]*
- How is people’s privacy and dignity respected and promoted? Are people’s relatives and friends able to visit without being unnecessarily restricted? *[Is the service caring?]*
- How do people receive personalised care that is responsive to their needs? How are people encouraged and supported to develop and maintain relationships with people that matter to them and avoid social isolation? *[Is the service responsive?]*
- How does the service routinely listen and learn from people’s experiences, concerns and complaints? *[Is the service responsive?]*

We expect to see that:

- Where people do not have the capacity to make decisions about their care, treatment and support, their friends and family are involved, where appropriate.
- Staff are proactive, and make sure that people are able to keep relationships that matter to them, such as family, community and other social links.
- Concerns and complaints are always taken seriously, explored thoroughly and responded to in good time.
- People’s rights, including their consumer rights, are respected regardless of whether they pay all the costs of their care or whether some or all of the costs are paid for by their local authority, NHS or health and social care trust.

15. What action can CQC take if a provider is not meeting these regulations?

If our inspectors have any concerns when following these key lines of enquiry, they can judge whether the regulations have been breached, and apply our enforcement powers as appropriate. We may issue a Notice to the provider that sets out what improvements they must make and by when. Or we can change the provider's registration to limit what they are allowed to do for a certain period, and as a last resort we can close the service.

Before a service starts to operate they must register with CQC. We will refuse to register a provider if they cannot satisfy us that they can and will continue to comply with these regulations.

CQC can also refer these concerns to the local Citizens Advice Bureau or Trading Standards branch, who can also take enforcement action.

Acknowledgements

CQC has developed this information in response to concerns raised by a number of organisations who had been contacted by people whose visiting rights had been restricted. We are grateful to Action on Elder Abuse, Carers UK, Independent Age and Your Voice Matters for raising these issues with us and for their subsequent advice. CQC would also like to thank those who helped develop this document through their contribution in the external adult social care co-production group, adult social care trade association group and CQC's public and provider online communities. These groups included members of the public and their representative bodies, care providers, trade associations, key partners and other key stakeholders.

Glossary

1. A **lasting power of attorney** (LPA) is a legal document that lets someone appoint one or more people ('attorneys') to help them make decisions or to make decisions on their behalf. There are two types of LPA: health and welfare (for decisions about medical care, moving into a care home, etc) and property and financial affairs (for decisions about money and property, etc).

2. The **Local Government and Social Care Ombudsman** is a free service. They are the final stage for complaints about councils and some other organisations providing local public services. This includes adult social care providers that are funded both publicly and privately.

3. The **Office of the Public Guardian** is an executive agency of the Ministry of Justice that protects people in England and Wales who may not have the mental capacity to make certain decisions for themselves, such as about their health and finance. Their responsibilities include taking action where there are concerns about an attorney and registering lasting powers of attorney.

4. The **Court of Protection** makes decisions on financial or welfare matters for people who can't make decisions at the time they need to be made (they 'lack mental capacity'). Their responsibilities include considering any objections to the registration of a lasting power of attorney (LPA), removing (where necessary) the powers from LPAs, making welfare decisions for someone who may lack mental

capacity, making decisions about when someone in a community setting can be deprived of their liberty under the Mental Capacity Act 2005, and deciding challenges against authorisations given under the Deprivation of Liberty Safeguards.