Regulation 9A: Visiting and accompanying in care homes, hospitals and hospices

Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 9A

This regulation aims to make sure:

- people staying in a care home, hospital or hospice can receive visits from people they want to see
- people living in a care home are not discouraged from taking visits outside the home
- people attending appointments in a hospital or hospice, that do not require an overnight stay, can be accompanied by a family member, friend or advocate if they want someone with them.

The regulation explains what providers must do to make sure they respect the right of each person to receive visits and to be accompanied, following an assessment of their needs and preferences.

Everyone should work on the assumption that in-person visiting and accompaniment to appointments are possible. Providers must put in place any measures or precautions necessary and proportionate to ensure that visiting and accompaniment can continue to happen safely. These must be the least restrictive options and must be decided with the person using the service, and their family, friends or advocates where appropriate. The provider must help people to understand their options and make informed decisions, making reasonable adjustments where necessary. The provider, in partnership with people involved in the decision, should regularly review any precautions that have been implemented and should remove them as soon as possible. It is important that information is communicated clearly to the person using the service and those restricted from visiting throughout the process. The provider should also be clear with those involved who they can contact within the service if they have questions or concerns about any restrictions in place.

Very occasionally, there may be exceptional circumstances where, despite any precautions put in place, a visit or accompaniment may still pose a significant risk to the health, safety or welfare of a person using the service or on the premises. This risk will mean that, despite considering all possible actions and precautions, an in-person visit or accompaniment cannot be safely facilitated and there is no alternative but to restrict visiting or accompaniment at that time. If this is the case, the provider should put in place the necessary restriction and review arrangements regularly. As soon as circumstances change, the provider should remove the restriction and allow in-person visiting or accompaniment again.

A human rights-based approach to decision making can support providers in enabling visiting and accompaniment and when considering restrictions in complex situations. This includes considering the appropriate balance between a person's right to private and family life, independence, choice and control, risk and safety. Providers must consider whether restrictions are lawful, legitimate and proportionate.

Providers must make sure they take people's mental capacity into account. They must make sure that either the person, or someone lawfully acting on their behalf, is involved in planning, managing and reviewing their care and treatment. This includes their right to having visitors and being accompanied to appointments. Providers must make sure decisions are made by those with the legal authority or responsibility to do so. They must work within the requirements of the Mental Capacity Act 2005. The Act includes a duty to consult others, such as families, unpaid carers and advocates, where practicable and appropriate.

Providers must also work within the requirements of the Human Rights Act 1998 and the Equality Act 2010, including the Public Sector Equality Duty, where applicable, and make reasonable adjustments.

See the glossary for clarification of the terms 'needs' and 'preferences'.

CQC cannot prosecute for a breach of this regulation or any of its parts, but we can take regulatory action, including civil enforcement action where this is appropriate.

CQC must refuse registration if providers cannot satisfy us that they can and will continue to comply with this regulation.

Registered persons maintain overall responsibility for ensuring that all regulations are met.

Guidance

This sets out the guidance providers must have regard to against the relevant component of the regulation.

9A(1) This regulation applies to a registered person in respect of a relevant regulated activity carried on in a care home, hospital or hospice.

Guidance on 9A(1)

Regulation 9A(6)(a) defines 'regulated activity' for these purposes as **all regulated activities except**:

- personal care
- accommodation for persons who require treatment for substance misuse, and any detoxification services for substance misuse
- management of supply of blood and blood derived products
- transport services, triage and medical advice provided remotely

This regulation does not apply to anyone who is detained in a prison or similar institution to which the Prison Act applies. This regulation also does not apply to anyone detained under the Immigration Acts. However, the requirements of this regulation do apply if someone detained in a prison or under the Immigration Acts is transferred to hospital and detained in that hospital under the Mental Health Act 1983.

'Care home' and 'hospice' are as defined in Regulation 9A(6). Hospital is defined in Regulation 2.

9A(2) Unless there are exceptional circumstances, service users—

(a) whose care or treatment involves an overnight stay or the provision of accommodation in a care home, hospital or hospice, must be facilitated to receive visits at those premises;

(b) who are provided with accommodation in a care home, must not be discouraged from taking visits out of that care home;

(c) who attend a hospital or hospice for the provision of care or treatment which does not involve an overnight stay, must be enabled to be accompanied at those premises by a family member, friend or a person who is otherwise providing support to the service user.

Guidance on 9A(2)(a)

- Providers must support people who use their service to receive visits in person from people they want to see, when they want to see them, unless there are exceptional circumstances that prevent this from being possible. Staff should do all they can to make this possible and easy to arrange. This might look different for different people using different types of service, and providers may need to consider different issues depending on their individual situation and environment. This is why individual risk assessments are important.

Guidance on 9A(2)(b)

- This part of the regulation aims to support people's social contact, to maintain community connections and help them have different experiences.
- Providers must not discourage visits out of the care home or impose unreasonable rules that could effectively act as a restriction when people return after leaving the care home premises for any reason, unless there are exceptional circumstances. For example, unreasonably long periods of isolation which may discourage a resident from deciding to go out.
- Providers should not make the process for taking a visit out difficult by, for example, requiring people to complete lengthy administrative processes before and after visits out.

- Providers should monitor and review visiting policies/arrangements to ensure they are working well for everyone.
- If providers already have contractual arrangements that involve paying for additional staff to support care home residents to go out, this regulation does not change these arrangements.
- Discussions and decisions about visits out should be supported by individual risk assessments and good care planning. This regulation is not about the provider resourcing visits out but ensuring these discussions and decisions do not inhibit or discourage people from going out with their family, friends or advocates.

Guidance on 9A(2)(c)

- If someone attends a hospital or hospice for care or treatment that does not need them to stay in overnight, that service must let the person bring someone with them to those premises and support them. This includes day care treatment and outpatient appointments. This is so people do not have to attend the appointment alone and can help them feel more comfortable and safer when they attend their appointment. It may also help with communication and sharing information where this might otherwise be difficult.
- This regulation does not create any new requirements on transport or other services to physically take friends, family or advocates to an appointment with the person, over or beyond arrangements that may already be in place.

Guidance on 9A(2)(a)(b)(c)

- Providers must (unless there are exceptional circumstances):
    - support people using their service to receive visits
    - not discourage people from taking visits outside the care home
    - support people using their service to be accompanied at the premises when attending appointments.
- 'Visit' means seeing someone in person. The provider should assume visits and accompaniment are possible unless they are confident there are exceptional circumstances. Where a risk has been identified we expect providers to implement appropriate precautions to enable a visit to happen safely, rather than prevent visiting altogether. For example, this may include a visit where the visitors wear a face mask if there is a significant risk of infection.
- If providers are considering taking any precautions or making restrictions to visiting or accompaniment they should continue to apply human rights-based decision making and risk assessment to the individual situation. This should always follow the preferences of the person using the service, wherever possible, and their assessed needs. Providers must consider that any restriction to a person's right to receive visitors is lawful, has a legitimate aim and is proportionate. Proportionate means that there is the least restriction possible to achieve the aim.
- Providers must work in partnership with the person using the service, and should involve those who wish to visit or accompany them, to determine if there is an exceptional circumstance that justifies restricting visiting, discouraging visits out, or restricting accompaniment to an appointment. This could be to protect the person using the service, other people using the service, staff or people visiting, where there is a significant risk to their health, safety or welfare.

- When determining whether there are exceptional circumstances, providers should base their assessment on the health, safety and welfare of people using the service or other people involved. This should include giving consideration to the appropriate balance of a person's rights, the needs of people using their service and any identified risks, including the risk to the person's health and wellbeing resulting from restricting visiting.
- If there is a need for additional precautions or a restriction to be put in place, the provider should apply the most proportionate and least restrictive option. This should be the option least likely to interfere with the person's right to see their visitors when and how they want. For example, if there is a legitimate reason for restricting visits in person because of a significant risk to people's health, safety or welfare, providers should consider ways to mitigate those risks. This could be by implementing additional health and safety measures, or using technology such as video or phone calls to maintain contact until visits in person can be resumed. Options such as these should not be used as alternatives to in-person visiting, where the person wants in-person visits.
- Providers should consider every individual decision as a separate case. Providers should not apply blanket decisions or long-term restrictions. They should review decisions to restrict visiting regularly by working together with the people involved. They should also review these decisions when the circumstances change.

- Providers must keep a record of any assessment and decisions on visiting. They should be able to demonstrate:
    - what are the stated preferences of the person
    - how they have made these decisions and who has been involved
    - how the balance of the person's rights has been considered
    - whether restrictions are lawful, legitimate and proportionate
    - whether they have implemented any mitigations to make sure they have used the least restrictive, most reasonable option when they have reviewed the restrictions.
- As part of this, providers should consider any requirements under Regulation 17: Good governance.

- Providers should always support visits in person to someone who is receiving care at the end of their life. This applies to all types of premises covered by this regulation, including care homes, hospitals and hospices. This guidance is based on the NHS definition of 'end of life care'. "People are considered to be approaching the end of life when they are likely to die within the next 12 months, although this is not always possible to predict. This includes people whose death is imminent, as well as people who:
    - have an advanced incurable condition, such as cancer, dementia or motor neurone disease
    - are generally frail and have co-existing conditions that mean they are expected to die within 12 months
    - have existing conditions if they are at risk of dying from a sudden crisis in their condition
    - have a life-threatening acute condition caused by a sudden catastrophic event, such as an accident or stroke."

9A(3) Without limiting paragraph (2), the things which a registered person must do to comply with that paragraph include—

(a) in relation to paragraph (2)(a), securing that service users are facilitated to receive visits in a way that is appropriate, meets the service user's needs and, so far as reasonably practicable, reflects their preferences;

(b) in relation to paragraph (2)(a) and (c), taking such action, or putting in place such precautions, as is necessary and proportionate to ensure that service users may receive visits or be accompanied safely;

(c) securing that, when making arrangements or decisions in respect of a service user for the purposes of paragraph (2), regard is given to any care or treatment plan for the service user;

(d) involving relevant persons when making any arrangements or decisions in respect of a service user for the purposes of paragraph (2).

Guidance on 9A(3)(a)

- Providers should enable a person using their service to receive visitors in a way that meets their preferences, so far as reasonably practicable.

Guidance on 9A(3)(b)

- Providers must put in place any measures or precautions necessary and proportionate to ensure that visiting and accompaniment can continue to happen safely.

Guidance on 9A(3)(c)

- Any existing care or treatment plans should be considered when making an assessment or decision about visits or accompaniment to appointments.

Guidance on 9A(3)(d)

- If providers cannot meet the person's preferences for a visit, they should consult with the person and their family, friends or advocates and offer them as many options as possible. This is so the person can have as much control as possible over the arrangements.

9A(4) Nothing in this regulation—

(a) requires a service user to receive a visit, take a visit out of a care home or be accompanied—

(i) without the relevant person's consent, or

(ii) where the service user lacks the capacity to give consent, where it would not be in the service user's best interests;

(b) requires or enables a registered person to do anything which would not be in accordance with any court or tribunal order or with any provision (including any direction, power or authorisation) contained in, or made by virtue of, any of the legislation listed in paragraph (5) (including by virtue of any instrument made under that legislation).

Guidance on 9A(4)

- Providers should take all reasonable steps to support people using their service to receive visits, go on visits or to be accompanied when attending appointments that do not require an overnight stay, unless this is against the person's wishes or, if they lack mental capacity to make the relevant decision, it is not in their best interests.
- There may be times when the wishes of the person with the relevant capacity using the service are not the same as those of people who want to visit them. In those circumstances, providers should always give priority to the wishes of people using their service.
- Where a person lacks the relevant capacity, it is important to be aware of legal considerations for that particular circumstance and it may be appropriate to take legal advice. Providers registered with CQC should also be mindful of any considerations under Regulation 11: need for consent

9A(5) The legislation referred to in paragraph (4) is -

(a) the 1983 Act;

(b) the 2005 Act;

(c) so far as relating to high security psychiatric services, the 2006 Act.

Guidance on 9A(5)

- (a) is the Mental Health Act 1983
- (b) is the Mental Capacity Act 2005
- (c) is the National Health Services Act 2006

9A(6)

(a) In this regulation—

"care home" has the meaning given in section 3 (care homes in England) of the Care Standards Act 2000

"hospice" means an establishment other than a hospital whose primary function is the provision of palliative care to persons who attend or are resident there, who are suffering from a progressive disease in its final stages;

"relevant regulated activity" means an activity prescribed in regulation 3 as a regulated activity for the purposes of section 8(1) of the Act, except it does not include -

(i) the regulated activities in paragraphs 1, 3, 8 and 9 of Schedule 1

(ii) any detoxification services for substance misuse provided in the course of carrying on a regulated activity;

(iii) any services provided to a service user (other than a service user who is in receipt of services provided in the carrying on of a regulated activity in paragraph 5 of Schedule 1) who -

(aa) is, or is required to be, detained in a prison or other institution to which the Prison Act 1952 applies,

(bb) is detained under the Immigration Acts,

(cc) is required to be detained in a prison or other institution to which equivalent legislation to that referred to in sub-paragraph (aa) applies in Scotland and Northern Ireland;

"visit", (except in the context of the taking of a visit out of a care home), means a visit from—

(i) a family member of the service user,

(ii) a friend of the service user,

(iii) a person visiting to provide support or companionship to the service user;

(b) in the definition of 'relevant regulated activity' in sub-paragraph (a), "prison" has the same meaning as in section 53(1) of the Prison Act 1952;

(c) a reference to having or lacking capacity, or to a person's best interests, in this regulation is to be interpreted in accordance with the 2005 Act.