



Draft Guidance on the Provision of Supported Living

As detailed in our July Healthcare Briefings^[1] from April 2010, the Care Quality Commission ("CQC") will begin phasing in the new system of registration for health and adult social care providers. To be eligible for registration providers will need to be carrying out a 'Regulated Activity' and where they are, demonstrate that they are meeting a range of essential standards of safety and quality, which are set out in draft Regulations^[2]. The Government have produced some additional draft Regulations setting out what 'Regulated Activities' it proposes the Commission will regulate^[3]. While the provision of care in a care home or independent hospital will remain a regulated activity requiring registration, of particular interest to those providing supported living services^[4] will be the proposed introduction of stand-alone registration for those providing 'Personal Care'.



'Personal Care' as defined by the draft regulations is:
"(a) physical assistance given to a person in connection with-
(i) eating or drinking,
(ii) toileting (including in relation to the process of menstruation),
(iii) washing or bathing,
(iv) dressing,
(v) oral care, or
(vi) the care of skin, hair and nails; or

(b) the prompting and supervision of a person, in relation to the performance of any of the activities listed in sub-paragraph (a), where that person is unable to make a decision for themselves in relation to performing such an activity without such prompting and supervision."^[5]

The draft regulations go on to indicate that the "...provision of personal care for persons who, by reason of old age, illness or disability are unable to provide it for themselves, and which is provided in a place where those persons are, for the time being, living"^[6] will be a regulated activity that will require registration.

The proposed exceptions to that position are:
"(a) the supply of carers to a service provider for the purposes of carrying on a regulated activity by an undertaking acting as an employment agency or employment business; and
(b) the services of a carer engaged and directed by an individual in order to meet that individual's own personal care requirements."^[7]

Continued...

Due to the lack of a clear statutory definition for 'personal care', those currently providing 'Supported Living Services' have long been unclear on whether the services they provide should be registered. However, in their consultation on the draft Guidance^[8], by the Commission have indicated that 'supported living' placements are likely to fall within the registration requirements on the basis that the care provided is within the definition of 'Personal Care'.

It is noted that the Commission do not consider the accommodation aspect of the supported living will require registration, presumably because the accommodation amounts to the individual's own home^[9].

Whether a supported living facility does require registration will depend on exactly what services are provided to service users. Do the services provided actually fall within the proposed definition of 'Personal Care'? In any event it is clear that the Government's current thinking is to regulate those providing Supported Living Services. Providers running services that may be directly affected by this, should regularly check the CQC, DoH and RadcliffesLeBrasseur^[10] websites for updates on the proposed legislation.

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Footnotes

1. [http://www.rlb-law.com/health-uploads/healthcare-briefing-cqc-consultation-on-registration-\(july-2009\).pdf](http://www.rlb-law.com/health-uploads/healthcare-briefing-cqc-consultation-on-registration-(july-2009).pdf)
2. See Draft Health and Social Care Act 2008 (Registration Requirements) Regulations 2009.
3. See the Draft Health and Social Care Act 2008 (Regulated Activities) Regulations 2009
4. "A supported living service is where a person lives in their own home and receives care/or support in order to promote their independence." See page 191 of the Draft Guidance about compliance with the Health and Social Care Act 2008 (Registration Requirements) Regulations 2009 produced by the Care Quality Commission.
5. Draft Health and Social Care Act 2008 (Regulated Activities) Regulations 2009, s2.
6. Ibid s 4(1)
7. Ibid s4(2)
8. Consultation: Draft Guidance about compliance with the Health and Social Care Act 2008 (Registration Requirements) Regulations 2009. Draft Guidance Available on the CQC website
9. Ibid.
10. <http://www.dh.gov.uk/en/SocialCare/index.htm>
<http://www.cqc.org.uk/newsandevents.cfm>

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