

To Helen Whately MP, Minister of State (Minister for Social Care), the Rt Hon Andrew Stephenson CBE MP, Minister of State (Minister for Health and Secondary Care) and Maria Caulfield MP, Parliamentary Under Secretary of State (Minister for Mental Health and Women's Health Strategy)
Department of Health and Social Care

15 December 2023

Dear Ministers,

We wrote to the Department on 28 June 2023 to outline some of our concerns with the consultation 'Visiting in care homes, hospitals and hospices'. We appreciated being invited to meet on 5 December to let us know that the Government's response to the consultation was being published. Having now read the consultation response, we are following up with some of our thoughts and concerns about the proposal outlined in the response.

We welcome and support the principle of protecting 'visiting' as a fundamental standard across CQC-registered settings. This will send an important message that welcoming family and friends is a vital part of delivering good care. We hope it will help to bring about the culture shift needed to end the closed cultures which persist in some settings. Below we summarise ten suggestions about the approach outlined in the consultation response.

1. The person needing care must be central

The person needing care must be at the centre of your plans to make visiting a fundamental standard. Their autonomy must be paramount and the principle of consent protected, as it is in the other fundamental standards.

2. Definition of visiting

In protecting 'visiting' as a fundamental standard, it must be clear that this protects people's direct, unmediated access to the people they choose to have relationships with, in private if desired.

3. Protection for people's Care Supporters

Protection for the essential role of Care Supporters/Care Partners should be written into the legislation. This must ensure that even in times of exceptional difficulty (such as an infectious outbreak) the personal support from someone chosen by the person needing care should not be denied. Care Supporters/Partners must be recognised as essential to wellbeing, someone the person depends upon as their eyes, ears and voice when needed, and offered the same access as staff.

4. A purposeful and positive new standard

The new standard must be drafted in line with all the other fundamental standards, which are positive statements about how individuals must be treated and set out the minimum expectations on providers. We are very concerned about the proposal to include a reference in the legislation that visiting can be restricted in 'exceptional circumstances', and the message this will send to providers. We urge you to reconsider this approach.

5. Compliance with other laws

The new fundamental standard must ensure compliance with existing legislation, such as the Equality Act, Human Rights Act and Mental Capacity Act. It must encourage

compliance with existing legal rights rather than undermining or adding to confusion about those rights. For example, the proposal to 'encourage visits out' must be very carefully drafted to ensure it does not (even inadvertently) undermine people's legal right to liberty. We are also concerned by the reference in the consultation response to people in supported living and 'extra care' housing who "can decide who visits" – the implication being that people in other settings have somehow forfeited their right to autonomy and choice.

6. Concerns about implementation by CQC

We are concerned about the reliance on the Care Quality Commission to enforce the proposals without conferring any new powers on the regulator. At the very least, there must be a duty for providers to notify the regulator of any restrictions on visiting. The consultation response states that there was strong support for this. It will help to redress the power imbalance in health and care settings.

7. Implementation by providers

There should be a named person in each health and care institution with responsibility for ensuring compliance with the new fundamental standard, reporting to the regulator on its implementation, and dealing with any difficulties encountered by people using the service or their visitors. We were pleased that you welcomed this suggestion when we met recently. It will also help to redress the power imbalance in health and care settings.

8. Protection for end of life visiting

Proposals to protect visiting as a fundamental standard should ensure that 'end of life' is given the NHS definition of the final year of life.

9. Supported living and 'extra care' housing

We are concerned that people in supported living settings and 'extra care' housing schemes will not be in scope of the legislation. We urge you to reconsider this decision. Whilst these settings generally exercise 'exclusive possession', it is a highly complex and varied sector. During the pandemic we know that many people in these settings were prevented from receiving visitors. For the sake of clarity and consistency, these settings should be covered by the new fundamental standard.

10. Rehabilitation, substance misuse and inpatient detoxification services

We are concerned that these services are also excluded from the scope of the legislation. People in these settings rely on the support of their loved ones as they work towards rehabilitation. Individual concerns should be dealt with on an individual basis, rather than via a blanket approach which is unfair and discriminatory.

Please could you also clarify that the new fundamental standard will cover people of all ages using health and care services?

We would be pleased to meet with you to discuss any of this in more detail. We look forward to hearing from you.

Kind regards,

Diane Mayhew, Jenny Morrison, Helen Wildbore and Kate Meacock, Care Rights UK

Julia Jones and Nicci Gerrard, John's Campaign