

Registration under the Health and Social Care Act 2008

Personal care: 'ongoing direction or control of the service'

Guidance for providers

September 2012

Contents

Summary	2
Registration for personal care	2
1. Where is the definition of the regulated activity of personal care?	2
2. Which parts of the definition are relevant for this guidance?	2
3. When does this 'ongoing role' mean a provider must register for personal care?	3
4. When does this 'ongoing role' mean a provider may not need to register for personal care?	3
5. Does this guidance apply to other situations?	5
6. Can I get further advice?	5

Summary

The regulated activity of ‘personal care’ has an exemption for people who introduce a carer to an individual, but who then have no “ongoing role in the direction or control of the service provided”.

This guidance clarifies the meaning of this ‘ongoing direction or control of the service’.

Registration for personal care

1. Where is the definition of the regulated activity of personal care?

The definition of the regulated activity of personal care is in [Schedule 1 of the Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2010](#).

2. Which parts of the definition are relevant for this guidance?

The relevant parts are:

“Personal care

1. (1) Subject to sub-paragraphs (2) and (3), 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 living at the time the care is provided.

...

(3) The following types of provision are excepted from sub-paragraph (1)—

...

(b) the introduction of carers to an individual (other than a service provider) by a person (including an employment agency or an employment business) having no ongoing role in the direction or control of the service provided to that individual;

....”

3. When does this 'ongoing role' mean that a provider must register for personal care?

The regulated activity of personal care **APPLIES** in the following circumstances:

- A person, an employment agency or employment business (referred to as the 'provider'), introduces a care worker to an individual, and
- The provider does ANY of the following:
 - Monitors the service provided to the individual and, as a result of this monitoring, takes responsibility for replacing the care worker for any reason.
 - Seeks the views of the person receiving the service or acts as their advocate and, as a result, advises or directs changes to the activity of the care worker (such as changes to the frequency of visits, or the type of care provided, or the way in which the care worker performs the agreed tasks).
 - Arranges a rota of care workers so that visits and care are provided when required by the individual.
 - Continues to charge the individual for the service being provided by the care worker, excluding where arrangements have been made to enable a one-off introduction fee to be paid by instalments.
 - Agrees to organise cover for any sickness or leave that may arise – other than when the individual makes an independent request to the provider to introduce another care worker to cover leave or sickness.
 - Reviews the care plan, including making changes as necessary, in consultation with the individual.

4. When does this 'ongoing role' mean a provider may not need to register for personal care?

The regulated activity of personal care **DOES NOT APPLY** in the following circumstances:

- A person, employment agency or employment business (the provider), introduces a care worker to an individual and has no further involvement at all, or
- In addition to the introduction, any activity by the provider is restricted to the following:

- Introducing an additional or replacement care worker if the person receiving care is not satisfied with the existing care worker and asks for an additional or replacement care worker. This further introduction is because the person receiving care has requested an additional or replacement care worker and is not as a result of monitoring by the provider who may have identified a need for a change.
- Providing a range of practice guidance (usually referred to as 'procedures') as an extra service to the person receiving care. The care worker can follow these procedures once employed if the person directs them to do so. The provider who introduced the care worker does not monitor the performance of that worker in respect of these procedures.
- Making an assessment of the needs of the individual, but only in order to determine the type of care worker required or the most suitable worker. Or the provider might arrange for someone (usually referred to as a case worker or assessor) to carry out an assessment of needs. This is not the same as writing a care plan detailing the activities needed to deliver the personal care required.

For example, this type of assessment might determine such things as the person's needs for help using the toilet in the morning, preparing their breakfast, although they can eat independently, and help with a mid-morning shower and getting dressed. Such an assessment may be carried out only to enable the provider to recruit and introduce a care worker who can be available for the time required and who has the skills needed. The assessment is not ongoing.

- Charging a 'one-off' fee for the introduction – even though part or all of the fee may be reimbursed by the provider if either the care worker or the person receiving care terminates their agreement with each other. The fee may be paid in instalments and may or may not be related to the length of the contract.
- Contacting the person receiving care to make sure that they are satisfied with the service of making the introduction. This contact is only for the purpose of quality assuring the introduction process, not for monitoring or controlling or directing the service being provided by the care worker.

- Agreeing to carry out a payroll function for the person who is employing the worker. This function must have no influence on the direction and control of the service being provided. There should be a clear separation between the introduction and the provision of the payroll service. Ideally, such an arrangement will be under a separate contract from the one of introduction, to emphasise the separate nature of the provider's activities.

5. Does this guidance apply to other situations?

This guidance relates only to the interpretation of the phrase "ongoing role in the direction or control of the service provided" in the context of Schedule 1, 1(3)(b) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010.

6. Can I get further advice?

If you are unsure whether or not you need to register for the regulated activity of 'personal care', you may wish to take your own professional or legal advice.

You can also contact our National Customer Service Centre by telephoning 03000 616161 or contacting us through our website at: www.cqc.org.uk/contact-us