



## **Nursing Home Visitation Guidelines Cause Concern**

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In response to the coronavirus pandemic, the Centers for Medicare and Medicaid (CMS), a federal agency with responsibility for setting quality standards for nursing homes (among many other things), issued highly restrictive visitation guidelines. The agency advised long-term care facilities to limit access to essential health care personnel, except in compassionate care situations, such as end-of-life. No other visitors, the directive suggested, should be allowed. CMS also recommended that facilities suspend communal dining and group activities. Particularly worrisome is the inclusion of nursing home ombudsmen in this ban, although the memorandum indicates that their ability to visit should be subject to individual review. The guidance explicitly permits states to impose even greater restrictions.

This guidance is technically not “binding” because it wasn’t subjected to a review process. But the Supreme Court has held in the past, that an agency’s reasonable interpretation of regulations is entitled to deference.

Moreover, industry representatives have called on facilities to take “dramatic measures” and to limit entry by “non-essential” people into nursing homes and assisted living facilities. Anecdotal evidence suggests that facilities around the country are strictly enforcing the guidance documents, imposing total or near-total lockdowns and even requiring residents to stay in their own apartments or rooms.

Many advocacy groups have expressed concern about the severity of the new guidance. Those who live in nursing homes are often emotionally—as well as physically—vulnerable. Family members are often the first line of defense to ensure quality care when facilities are understaffed. Isolation has the potential to affect their health adversely in many ways. We’ve read of families speaking to loved ones on cell phones while looking through a nursing home window.

To address residents’ need for emotional support, CMS suggests that nursing homes facilitate residents’ contact with their loved ones through phone, video and other forms of “virtual visiting.” Given staff members’ increased responsibilities during this difficult time, however, it is hard to imagine that such support will be consistently available.

Although everyone wants their loved ones to be safe and healthy, the rigidity of CMS's restrictions and their apparent conflict with other guidance pertaining to the right of "resident representatives" to visit facilities are causing confusion and turmoil. A resident representative is someone chosen by the resident to help in decision-making, access medical, social or other personal information, manage financial matters, or receive notifications. Specifically included in the definition are agents under power of attorney, representative payees, guardians, conservators and attorneys.

Accordingly, organizations are seeking ways to mitigate the most concerning aspects of the new guidance. The Center for Medicare Advocacy has requested CMS to modify its visitation guidance "to recognize family caregivers as essential health care workers. Family caregivers should be subject to the same CDC guidelines for screening as essential health care workers. Those who pose minimal risk should be allowed to enter nursing homes using all of the same precautions as essential health care workers." The Long Term Care Community Coalition has asked that family members be allowed to visit, subject to the same health and safety precautions that are put in place for nursing facility employees.

[Consumer Voice](#) suggests that individuals determine how nursing homes plan to keep residents and families updated. They should also ask that nursing home staff take an active role in helping residents with the technology that will be needed to stay in touch with those who can no longer visit.

Families wishing to press their case should consider contacting the appropriate [nursing home ombudsman](#), their governor's office or other advocacy groups.

### **Evolving Situation**

The responsibility for visitation policy, for the time being, ultimately resides with the facility. Formal and informal guidance may change as families and advocates push back. This CMS guidance pertains only to nursing homes, and important questions remain concerning the rights of parents with children living in group homes for individuals with disabilities, which are largely unregulated by the federal government. There have also been reports of visitors being kept from mental health hospitals. How can balance be achieved? If the coronavirus epidemic stretches for many months, as expert say it will, lawyers will need to stay informed and continue to advocate in their clients' interests.

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