

## Long Awaited: CMS Revises Guidance on Visitation in Nursing Homes During COVID-19 Pandemic

March 12, 2021

On March 10, 2021, the Centers for Medicare and Medicaid Services (“CMS”) issued long-awaited revisions to [QSO-20-39-NH, Nursing Home Visitation – COVID-19](#) (the “Guidance”). These revisions update guidelines issued on September 17, 2020, which set forth a number of “core principles” for nursing home visitation during the COVID-19 Public Health Emergency (see Hancock Daniel’s coverage of the September 17, 2020, guidance [here](#)).

The updated Guidance focuses broadly on the impact of COVID-19 vaccinations on nursing home visitation and on how visitation should be handled during a COVID-19 outbreak, among other areas. Concerning visitation generally, the Guidance advises that outdoor visitation remains preferred over indoor visitation, even where residents and visitors have been “fully vaccinated,” defined as “a person who is  $\geq 2$  weeks following receipt of the second dose in a 2-dose series, or  $\geq 2$  weeks following receipt of one dose of a single-dose vaccine, per the CDC’s [Public Health Recommendations for Vaccinated Persons](#).” Concerning indoor visitation, the Guidance directs that “facilities should allow indoor visitation at all times and for all residents (regardless of vaccination status), except for a few circumstances” in which the risk of COVID-19 transmission is high, including those involving:

- Unvaccinated residents, if the nursing home’s COVID-19 county positivity rate is  $>10\%$  and  $<70\%$  of residents in the facility are fully vaccinated;
- Residents with confirmed COVID-19 infection, whether vaccinated or unvaccinated, until they have met the [criteria to discontinue Transmission-Based Precautions](#); or
- Residents in quarantine, whether vaccinated or unvaccinated, until they have met criteria for release from [quarantine](#).

With respect to both indoor and outdoor visitation, the Guidance emphasizes the importance of adherence to the core principles of COVID-19 infection control, including physical distancing. Nonetheless, CMS affirmatively acknowledges the emotional toll of separation on residents, clarifying that “if the resident is fully vaccinated, they can choose to have close contact (including touch) with their visitor while wearing a well-fitting face mask and performing hand-hygiene before and after. Regardless, visitors should physically distance from other residents and staff in the facility” (emphasis added).

Beyond general updates relating to indoor/outdoor visitation, the Guidance also provides more detailed discussion of how facilities should manage indoor visitation during an “outbreak,” which “exists when a new nursing home onset of COVID-19 occurs.” Specifically, the Guidance directs that “when a new case of COVID-19 among residents or staff is identified, a facility should immediately begin outbreak testing and suspend all visitation (except that required under federal disability rights law\*), until at least one round of facility-wide testing is completed.” If the first round of such outbreak testing reveals

no additional COVID-19 cases in other areas/units of the facility, visitation can resume for residents in these other areas/units. In the event additional cases are detected in more than one area/unit of the facility, visitation should remain suspended for the entire facility. Where cases are confined to a single area/unit, visitation may be reinstated in such area/unit once it meets the criteria to discontinue outbreak testing. In the event visitation has been restricted for the entire facility, visitation may be reinstated once the entire facility meets criteria to discontinue outbreak testing. Criteria for discontinuance of outbreak testing are met when testing identifies no new cases of COVID-19 infection among staff or residents for at least 14 days since the most recent positive result.

*\* The Guidance includes a section outlining visitation protections set forth under applicable Federal Disability Rights Law and which may supersede COVID-19 visitation restrictions, including, for example, ensuring those with disabilities are afforded access to certain representatives and advocates. Facilities are directed to the “HHS Office for Civil Rights, the Administration for Community Living, or other appropriate oversight agency” for further guidance.*

In addition to addressing the impact of vaccinations on indoor/outdoor visitation and proper management of visitation during an outbreak, the Guidance provides a number of other key clarifications, including:

1. That compassionate care visits and visits required under federal disability rights law should be allowed at all times, for any resident (vaccinated or unvaccinated), regardless of whether the facility is experiencing an outbreak;
2. That the Guidance is supplemental to, and does not replace, existing protocols relating to infection control, COVID-19 notification requirements for visitors and others, and visitor screening requirements, among other areas; and
3. That “visitors should not be required to be tested or vaccinated (or show proof of such) as a condition of visitation. This also applies to representatives of the Office of the State Long-Term Care Ombudsman and protection and advocacy systems” (emphasis added).

## WHAT THIS MEANS FOR PROVIDERS

Providers are encouraged to review the [Guidance](#) thoroughly, and also to review [additional guidelines issued by the Society for Post-Acute and Long-Term Care Medicine \(AMDA\) on February 25, 2021](#). Beyond updates related to visitation, those facilities considering implementing policies/procedures to ensure vaccination of residents and staff must ensure compliance with applicable law, most notably the religious practice protections set forth under Title VII of the Civil Rights Act, as well as protections for those with certain medical conditions under the Americans with Disabilities Act. Facilities should also consider whether any such policies/procedures may require the approval of facility insurance carriers (e.g., general liability and workers’ compensation coverage).

If you have any questions or need further information regarding CMS’s updated nursing home visitation guidance, please contact a member of Hancock Daniel’s [Long-Term Care & Post-Acute Care](#) team.

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