

FACT SHEET

Right of Nursing Home or Long Term Care Facilities Patients to Visitation During COVID-19

Last Updated: October 12, 2020

Visitation rights are nearly universally recognized as a fundamental right of patients and their families. Generous or even open visitation policies have been proven in countless published studies to lead to better outcomes for patients, family members, and health care providers.

These visitation rights are so fundamental that they have been incorporated into federal law. The Centers for Medicare & Medicaid Services (CMS) published a Final Rule (81 FR 68688) on October 4, 2016 that revised the “requirements that Long-Term Care facilities (hereafter “LTCF”) must meet to participate in the Medicare and Medicaid programs.”¹

[Section 483.10](#) of the Final Rule provides for a number of “Resident Rights” that must be provided by the LTCF, including:

(f) (4) The resident has a right to receive visitors of his or her choosing at the time of his or her choosing, subject to the resident's right to deny visitation when applicable, and in a manner that does not impose on the rights of another resident.

and

(f) (4) (ii) The facility must provide immediate access to a resident by immediate family and other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time;.

The novel coronavirus has introduced a myriad of federal, state, and local rules and guidance that have led to considerable confusion, but any COVID-19 policies, rules, or restrictions, emergency or otherwise, can not trump the fundamental visitation rights of LTCF residents.

On May 18, 2020, CMS issued a memorandum on Nursing Home Reopening Recommendations for State and Local Officials. The CMS memo states that “Visitation [is] generally prohibited, except for compassionate care situations.”²

On June 23, 2020, the CMS website published Frequently Asked Questions (FAQs) on Nursing Home Visitation.³

¹ <https://www.federalregister.gov/documents/2016/10/04/2016-23503/medicare-and-medicaid-programs-reform-of-requirements-for-long-term-care-facilities>

² <https://www.cms.gov/files/document/qso-20-30-nh.pdf-0>

³ <https://www.cms.gov/files/document/covid-visitation-nursing-home-residents.pdf>

Question 2. The reopening recommendations maintain that visitation should only be allowed for “compassionate care situations.” Do compassionate care situations only refer to end-of-life situations?

Answer: While end-of-life situations were used as examples of compassionate care situations in previous CMS memoranda, the term “compassionate care situations” does not exclusively refer to end-of-life situations. *For example, for a resident who was living with their family before recently being admitted to a nursing home, the change in their environment and sudden lack of family can be a traumatic experience. Allowing a visit from a family member in this situation would be consistent with the intent of the term “compassionate care situations. [Emphasis added.]* Similarly, allowing someone to visit a resident whose friend or family member recently passed away, would also be consistent with the intent of these situations.

Recent high-profile articles and stories in outlets such as the Wall Street Journal and NPR have highlighted the numerous negative outcomes for patients and their families of blanket bans on visitations in nursing homes and LTCFs.⁴ The federal government (through the CMS guidance on “compassionate care situations”), and an increasing number of state governments, health care facilities, LTCFs, and nursing homes are properly bringing their visitation guidelines and policies back to those required by CMS.

Visitation can be done in a safe way. One example is the proposal of [California Advocates for Nursing Home Reform](#) and their attorney Tony Chicotel:

For those family members who provide more than just companionship, who really provide support to that person's quality of life in ways that the staff probably just can't, those family members should have access to residents as long as they follow the same safety protocols that the staff are following," Chicotel says. Those protocols would include wearing personal protective equipment and daily temperature checks.⁵

⁴ See Banned From Nursing Homes, Families See Shocking Decline In Their Loved Ones, <https://www.npr.org/2020/06/09/870159589/banned-from-nursing-homes-families-see-shocking-decline-in-their-loved-ones>; Isolating the Elderly Is Bad for Their Health, <https://www.wsj.com/articles/isolating-the-elderly-is-bad-for-their-health-11595261640>;

⁵ <https://www.npr.org/2020/06/09/870159589/banned-from-nursing-homes-families-see-shocking-decline-in-their-loved-ones>