



# Department of Health

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**DATE:** March 25, 2021

**TO:** Nursing Home Operators and Administrators, Directors of Nursing, Medical Directors, Infection Preventionists, Social Workers, and Activities Professionals

**FROM:** New York State Department of Health (Department)

## **Health Advisory: Revised Skilled Nursing Facility Visitation**

**Please distribute immediately to:  
Operators, Administrators, Directors of Nursing, Medical Director, Infection  
Preventionists, Social Worker, Activities Professionals**

### **Purpose**

The information contained in this directive supersedes and replaces previously issued guidance and recommendations regarding general nursing home ("NH") visitation and is consistent with the U.S. Centers for Medicare & Medicaid Services ("CMS") memorandum QSO-20-39-NH and Centers for Disease Control and Prevention ("CDC") guidelines on such topics. Nothing in this directive should be construed as limiting or eliminating a NH's responsibility to ensure that resident and family communication is ongoing and supported by virtual visits, whenever possible, nor does it change the guidance previously issued relative to visitation for medically necessary or end-of life services.

While both New York State and CMS guidance have focused on protecting nursing home residents from COVID-19, we recognize that physical separation from family and other loved ones has taken a physical and emotional toll on residents and their loved ones. Additionally, since the release of prior iterations of visitation directives, several COVID-19 vaccines have received Emergency Use Authorization from the Food and Drug Administration ("FDA"). Millions of vaccinations have since been administered to NH residents and staff across the country, and these vaccines have shown pronounced efficacy in helping to prevent symptomatic spread of SARS-CoV-2 infection (i.e., COVID-19). Nursing homes in New York State should be committed to ensuring all eligible and consenting residents and staff have the opportunity to be vaccinated. As such, and aligning with CMS, the DOH is revising the guidance regarding visitation in NHs during the COVID-19 Public Health Emergency ("PHE").

The information contained in this directive supersedes and replaces previously issued guidance and recommendations regarding visitation, including the recent February 24, 2021 and the November 24<sup>th</sup> Holiday Guidance. Each facility is required to have appropriate policies and procedures in place to address infection control and prevention during and after visits and outings.

Please be advised that given the continued risk of COVID-19 transmission, the DOH continues to emphasize the importance of maintaining infection prevention practices and strongly encourages that all NHs continue testing visitors to help reduce any such risk of COVID-19 transmission.

### **Guidance**

Visitation can be conducted through different means based on a facility's structure and residents' needs, such as in resident rooms, dedicated visitation spaces, outdoors, and for circumstances beyond compassionate care situations. Regardless of how visits are conducted, there are certain core principles and best practices that reduce the risk of COVID-19 transmission including, but not limited to:

- Screening of all who enter the facility for signs and symptoms of COVID-19 (e.g., temperature checks, questions about and observations of signs or symptoms), and denial of entry of those with signs or symptoms or those who have had close contact with someone with COVID-19 infection in the prior 14 days (regardless of the visitor's vaccination status);
- Hand hygiene (use of alcohol-based hand rub is preferred);
- The use of face coverings or masks (covering mouth and nose);
- Social distancing at least six feet between persons;
- Instructional signage throughout the facility and proper visitor education on COVID-19 signs and symptoms, infection control precautions, other applicable facility practices (e.g., use of face covering or mask, specified entries, exits and routes to designated areas, hand hygiene);
- Cleaning and disinfecting high frequency touched surfaces in the facility often, and designated visitation areas after each visit;
- Appropriate staff use of Personal Protective Equipment (PPE);
- Effective cohorting of residents (e.g., separate areas dedicated to COVID-19 care);
- Resident and staff testing conducted as required at 42 CFR § 483.80(h) (see QSO-20-38-NH).

These core principles are consistent with CDC guidelines for nursing homes and should be **adhered to at all times**. Additionally, visitation should be person-centered and should consider the residents' physical, mental, and psychosocial well-being, and support their quality of life. The risk of transmission can be further reduced through the use of physical barriers (e.g., clear Plexiglass dividers, curtains). As such, the Department released a \$1 million dollar proposal to support those efforts. Also, nursing homes should enable visits to be conducted with an adequate degree of privacy. **Visitors who are unable to adhere to the core principles of COVID-19 infection prevention should not be permitted to visit or should be asked to leave.** By following a person-centered approach and adhering to these core principles, visitation can occur safely based on the below guidance.

### **Outdoor Visitation**

While taking a person-centered approach and adhering to the core principles of COVID-19 infection prevention, **outdoor visitation is preferred even when the resident and visitor are fully vaccinated\* against COVID-19.** Outdoor visits generally pose a lower risk of transmission due to increased space and airflow. Please be reminded that visits should be held outdoors whenever practicable.

However, weather considerations or an individual resident's health status (e.g., medical condition(s), COVID-19 status) may hinder outdoor visits. For outdoor visits, facilities should

create accessible and safe outdoor spaces for visitation, such as in courtyards, patios, or parking lots, including the use of tents, if available. When conducting outdoor visitation, all appropriate infection control and prevention practices should be adhered to.

*\*Note: Fully vaccinated refers to 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.*

### **Indoor Visitation**

Facilities should allow indoor visitation at all times and for all residents (regardless of vaccination status), **except** for a few circumstances when visitation should be limited due to a high risk of COVID-19 transmission (exception- compassionate care visits should be permitted at all times). These scenarios include limiting indoor visitation for:

- 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.

**Note: For county positivity rates go to: <https://data.cms.gov/stories/s/COVID-19-Nursing-Home-Data/bkwz-xpvq>**

Facilities should consider how the number of visitors per resident at one time and the total number of visitors in the facility at one time may affect the ability to maintain the core principles of infection prevention. In addition, nursing homes should:

- Consider scheduling visits for a specified length of time to help ensure all residents are able to receive visitors.
- Limit visitor movement in the facility.
- If possible, for residents who share a room, visits should not be conducted in the resident's room.
- For situations where there is a roommate and the health status of the resident prevents leaving the room, facilities should attempt to enable in- room visitation while adhering to the core principles of COVID-19 infection prevention.
- Allow for, 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.

### **Indoor Visitation During an Outbreak**

An outbreak exists when a new nursing home onset of COVID-19 occurs (i.e., a new COVID-19 case among residents or staff). With the appropriate safeguards, visitation can still occur when there is an outbreak, but there is evidence that the transmission of COVID-19 is contained to a single area (e.g., unit) of the facility. To swiftly detect cases, nursing homes are reminded to adhere to CMS regulations and guidance for COVID-19 testing including routine staff testing, testing of individuals with symptoms, and outbreak testing, including but not limited to 42 CFR 483.80(h) and QSO-20-38-NH. Nursing homes must also comply with NYS executive orders, regulations, and applicable Department guidance governing testing.

When a new case of COVID-19 among residents or staff is identified, nursing homes 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. Visitation can resume based on the following criteria:

- If the first round of outbreak testing reveals **no additional COVID-19 cases in other areas (e.g., units) of the facility**, then visitation can resume for residents in areas/units with no COVID-19 cases. However, the facility should suspend visitation on the affected unit until the facility meets the criteria to discontinue outbreak testing.
  - For example, if the first round of outbreak testing reveals two more COVID-19 cases in the same unit as the original case, but not in other units, visitation can resume for residents in areas/units with no COVID-19 cases.
- If the first round of outbreak testing **reveals one or more additional COVID-19 cases in other areas/units of the facility** (e.g., new cases in two or more units), then facilities should suspend visitation for all residents (vaccinated and unvaccinated), until the facility meets the criteria to discontinue outbreak testing.

While the above scenarios describe how visitation can continue after one round of outbreak testing, facilities should continue all necessary rounds of outbreak testing. In other words, this guidance provides information on how visitation can occur during an outbreak but does not change any expectations for testing and adherence to infection prevention and control practices. If subsequent rounds of outbreak testing identify **one or more additional COVID-19 cases in other areas/units of the facility**, then facilities should suspend visitation for all residents (vaccinated and unvaccinated), until the facility meets the criteria to discontinue outbreak testing.

**NOTE:** In all cases, visitors should be notified about the potential for COVID-19 exposure in the facility (e.g., appropriate signage regarding current outbreaks), and adhere to the core principles of COVID-19 infection prevention, including effective hand hygiene and use of face-coverings.

### **Visitor Testing and Vaccination**

DOH strongly recommends that all facilities offer testing to visitors. CMS encourages facilities in medium- or high-positivity counties to offer testing if feasible. Nursing homes should prioritize visitors that visit regularly (e.g., weekly), although any visitor can be tested. Facilities may also encourage visitors to be tested on their own prior to coming to the facility (e.g., within 2–3 days). In addition, the DOH encourages visitors to become vaccinated when eligible. While visitor testing and vaccination can help prevent the spread of COVID-19, **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, as described below.**

### **Potential Visit Related Exposures**

In addition and consistent with DOH policy, if a visitor to a nursing home tests positive for SARS-CoV-2 by a diagnostic test and the visit to the NH occurred from two days before the visitor's symptom onset (or in the 2 days before the date of collection of the positive sample for visitors who remained asymptomatic) to the end of the visitor's isolation period, there is a potential for exposure. Exposures among visitors and residents should be evaluated using community contact tracing guidelines, meaning exposure is defined by the proximity of the individuals and duration of the visit (contact within 6 feet and duration 10 minutes or more) regardless of personal protective equipment (PPE) or face covering used by the visitor or the resident.

The following should be evaluated to determine the appropriate follow-up when there is identification of a visitor who tests positive for COVID-19. If the following are confirmed by the facility:

- a. the visit was supervised by an appropriate facility staff member; and
- b. the visit was conducted in a common area or outdoor area that does not require the visitor to enter a resident unit; and
- c. the visitor complied with all COVID-19 precautions including hand hygiene and appropriate use of a face mask or face covering, and
- d. the visitor and the resident maintained at least 6 feet of distance from each other for the entire duration of the visit; and
- e. the visitor maintained at least 6 feet of distance from all other visitors, residents, and staff for the entire duration of the visit.

Then, the appropriate action should be taken with respect to residents only, if all of the above are confirmed, the resident who received the visit should be placed on a 14- day quarantine in a single room in the designated observation area using Contact plus Droplet precautions and eye protection. The resident should be monitored for symptoms and have temperature checks every shift. Testing for SARS-CoV-2 could be considered for greater assurance of the resident's COVID-19 status, every 3 to 7 days for at least 14 days.

If all of the above cannot be confirmed by the facility, NHs should proceed as they would after identification of a COVID-19 positive staff member, including conducting contact tracing to determine the extent of the exposure within the facility. On affected units (or entire facility, depending on the amount of contact), NHs should initiate testing every 3 days to 7 days until testing identifies no new cases of COVID-19 infection among staff or residents for a period of at least 14 days since the most recent positive result, use of transmission based precautions and testing for influenza (as per 10 NYCRR 415.33).

Facility staff who are exposed according to CDC HCP exposure guidance should be furloughed. See: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html>. If contacts include other visitors, those visitors should be considered exposed if contact was within 6 feet for more than 10 minutes to the COVID -19 positive visitor, regardless of PPE or face covering worn. Facility staff or visitors who identified as exposed at the facility should be reported by the facility to the local health department where the individual resides.

### **Compassionate Care Visits**

While end-of-life situations have been used as examples of compassionate care situations, the term "compassionate care situations" does not exclusively refer to end-of-life situations.

Compassionate care visits, and visits required under federal disability rights law, **should be allowed at all times**, regardless of a resident's vaccination status, the county's COVID-19 positivity rate, or an outbreak. Using a person-centered approach, nursing homes should work with residents, families, caregivers, resident representatives, and the Ombudsman program to identify the need for compassionate care visits.

Examples of other types of compassionate care situations include, but are not limited to:

- A resident, who was living with their family before recently being admitted to a nursing home, is struggling with the change in environment and lack of physical family support.
- A resident who is grieving after a friend or family member recently passed away.
- A resident who needs cueing and encouragement with eating or drinking, previously provided by family and/or caregiver(s), is experiencing weight loss or dehydration.
- A resident, who used to talk and interact with others, is experiencing emotional distress,

seldom speaking, or crying more frequently (when the resident had rarely cried in the past).

- Visits by any individual that can meet the resident's needs, such as clergy or lay persons offering religious and spiritual support.

### **Required Visitation**

Consistent with 42 CFR § 483.10(f) (4) (v) a nursing home shall not restrict visitation without a reasonable clinical or safety cause. A nursing home **must** facilitate in-person visitation consistent with the applicable CMS regulations, which can be done by applying the guidance stated above. Failure to facilitate visitation, without adequate reason related to clinical necessity or resident safety, would constitute a potential violation of 42 CFR § 483.10(f) (4), and the facility would be subject to citation and enforcement actions.

Residents who are on transmission-based precautions for COVID-19 should only receive visits that are virtual, through windows, or in-person for compassionate care situations, with adherence to transmission-based precautions as referenced throughout this guidance document. This restriction should be lifted once transmission-based precautions are no longer required per CDC guidelines and other visits may be conducted as described above.

### **Access to the Long-Term Care Ombudsman**

Nursing homes are reminded that regulations at 42 CFR § 483.10(f)(4)(i)(C) require that a Medicare and Medicaid- certified nursing home provide representatives of the Office of the State Long-Term Care Ombudsman with immediate access to any resident. During this PHE, in-person access may be limited due to infection control concerns and/or transmission of COVID-19, such as the scenarios stated above for limiting indoor visitation; however, in-person access may not be limited without reasonable cause. CMS requires representatives of the Office of the Ombudsman to adhere to the core principles of COVID-19 infection prevention as described above. If in-person access is deemed inadvisable (e.g., the Ombudsman has signs or symptoms of COVID-19), facilities must, at a minimum, facilitate alternative resident communication with the ombudsman, such as by phone or through use of other technology.

Nursing homes are also required under 42 CFR § 483.10(h)(3)(ii) to allow the Ombudsman to examine the resident's medical, social, and administrative records as otherwise authorized by State law.

### **Federal Disability Rights Laws and Protection & Advocacy (P&A) Programs**

Section 483.10(f)(4)(i)(E) and (F) requires the facility to allow **immediate access** to a resident by any representative of the protection and advocacy systems, as designated by the state, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act), and of the agency responsible for the protection and advocacy system for individuals with a mental disorder (established under the Protection and Advocacy for Mentally Ill Individuals Act of 2000).

Protection and Advocacy programs authorized under the DD Act protect the rights of individuals with developmental and other disabilities and are authorized to "investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe the incidents occurred." 42 U.S.C. § 15043(a)(2)(B). Under its federal authorities, representatives of Protection and Advocacy programs are permitted access to all facility residents, which includes "the opportunity to meet and communicate privately with such individuals regularly, both formally and informally, by telephone, mail and in person." 42 CFR § 51.42(c); 45 CFR § 1326.27.

Additionally, each facility must comply with federal disability rights laws such as **Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA)**. For example, if a resident requires assistance to ensure effective communication (e.g., a qualified interpreter or someone to facilitate communication) and the assistance is not available by onsite staff or effective communication cannot be provided without such entry (e.g., video remote interpreting), the facility must allow the individual entry into the nursing home to interpret or facilitate, with some exceptions. This would not preclude nursing homes from imposing legitimate safety measures that are necessary for safe operations, such as requiring such individuals to adhere to the core principles of COVID-19 infection prevention.

Any questions about or issues related to enforcement or oversight of the non-CMS requirements and citations referenced above under this section subject heading should be referred to the HHS Office for Civil Rights, the Administration for Community Living, or other appropriate oversight agency.

### **Survey Considerations**

Federal and state surveyors **are not required** to be vaccinated and must be permitted entry into facilities unless they exhibit signs or symptoms of COVID-19. Surveyors should also adhere to the core principles of COVID-19 infection prevention and adhere to any COVID-19 infection prevention requirements set by state law.

### **Entry of Healthcare Workers and Other Providers of Services**

Health care workers who are not employees of the facility **but provide direct care** to the facility's residents, such as hospice workers, Emergency Medical Services (EMS) personnel, dialysis technicians, laboratory technicians, radiology technicians, social workers, clergy, etc., must be permitted to come into the facility as long as they are not subject to a work exclusion due to an exposure to COVID-19 or showing signs or symptoms of COVID-19 after being screened.

EMS personnel do not need to be screened, so they can attend to an emergency without delay. Nursing homes are reminded that all staff, including individuals providing services under arrangement as well as volunteers, should adhere to the core principles of COVID-19 infection prevention and must comply with COVID-19 testing requirements.

Using a person-centered approach when applying this guidance should cover all types of visitors, including those who may have been previously categorized as "essential caregivers."

As a reminder, the resumption of existing construction projects, and specifically, those projects directly impacting the lives of nursing home residents that were previously approved by the Department may move forward with submission of and approval by the Department of a revised mitigation/prevention plan outlining at a minimum, testing, screening, PPE use, distance from residents, etc.

***Note: Under no circumstance, will the Department allow for such resumption of a renovation or construction project(s) in or adjacent to a functioning and occupied dedicated COVID unit.***

### **Communal Dining and Activities**

Communal dining and activities may occur while adhering to the core principles of COVID-19 infection prevention. Residents may eat in the same room with social distancing (**e.g., limited number of people at each table and with at least six feet between each person**). Nursing homes should consider additional limitations based on status of COVID-19 infections in the facility and the size of the room being used and the ability to socially distance residents (e.g. limit to 10 residents and staff in smaller spaces).

Additionally, group activities may also be facilitated (for residents who have fully recovered from COVID-19, and for those not in isolation for observation, or with suspected or confirmed COVID-19 status) with social distancing among residents, appropriate hand hygiene, and use of a face covering (except while eating). Nursing homes may be able to offer a variety of activities while also taking necessary precautions. For example, book clubs, crafts, movies, exercise, and bingo are all activities that can be facilitated with alterations to adhere to the guidelines for preventing transmission.

Questions related to the guidance, which is effective immediately should be forwarded in writing to [Covidnursinghomeinfo@health.ny.gov](mailto:Covidnursinghomeinfo@health.ny.gov).