

CMS and CDC Update Nursing Home Visitation Guidance to Reflect Vaccine Rollout

WRITTEN BY

Erin S. Whaley | Avrohom C. Einhorn | Jan P. Levine | Callan G. Stein | Matthew F. Smith

Who Needs to Know

Skilled nursing facility and nursing home operators.

Why It Matters

The guidance relaxes and quells confusion around visitation guidelines created by the increasing prevalence and availability of vaccines for COVID-19.

After issuing initial guidance almost one year ago, on March 10, the Centers for Medicare & Medicaid Services (CMS) in conjunction with the Centers for Disease Control and Prevention (CDC) updated the [Nursing Home Visitation – COVID-19 Guidance](#). After issuing initial, restrictive guidance on March 13, 2020, CMS updated the guidance on September 17, 2020 to recognize the value of the physical, emotional, and spiritual support nursing home residents receive through visitation from family and friends. The latest update further relaxes visitation guidance in light of the increasing number of residents and visitors who have been vaccinated against COVID-19.

The updated guidance states that indoor visitation should be allowed at all times except for certain situations that create heightened risks to residents. CMS and CDC advise that the situations where indoor visitation should continue to be limited include: (1) visits to unvaccinated residents, if the nursing home's COVID-19 county positivity rate is greater than 10% and less than 70% of the facility's residents are fully vaccinated; (2) visits to residents with confirmed COVID-19 infection, regardless of vaccination status; and (3) visits to residents in quarantine, again regardless of vaccination status. CMS and CDC also recommend that when a facility detects a new COVID-19 case among its residents or staff (*i.e.*, an "outbreak"), it suspend visitation at least until it completes one round of facility-wide testing. If such testing reveals that the new cases are confined to a single area of the facility (*e.g.*, a particular unit), visitation can resume in the other areas of the facility. If such testing reveals additional COVID-19 cases in other areas of the facility, then all visitation to the facility should remain suspended until outbreak testing reveals no new cases among staff or residents for at least 14 days.

Fully vaccinated residents who properly wear masks and practice hand hygiene may choose to engage in close contact and touching with visitors. While CDC guidance for non-health care settings characterizes social visits between fully vaccinated people without masks or physical distancing as low risk, guidance for nursing homes continues to recommend masks for visitors and residents. While CMS and CDC encourage visitors to be vaccinated and tested, they advise that facilities should not require visitors to be vaccinated or tested. They emphasize that surveyors are not required to be vaccinated, and surveyors may not be refused entry into a facility based on vaccination status.

These updates relax the visitation guidance in many respects, and facilities may interpret the updates as an important step toward resuming pre-pandemic visitation practices. But facilities should remember that this is just the first step. Much of the CMS and CDC guidance remains unchanged. Outdoor visits remain preferable, regardless of visitors' or residents' vaccination status. The guidance stresses that compassionate care visits and visits required under federal disability rights laws should be allowed at all times, including during an outbreak. The guidance with respect to communal activities and dining remains unchanged, and CMS continues to recommend face coverings and physical distancing when residents congregate (regardless of vaccination status). Facilities should continue to follow the "Core Principles of COVID-19 Infection Prevention," which are outlined in the updated guidance and remain largely unchanged.

Troutman Pepper has developed a tracking tool that follows operational guidance, immunity provisions, and whistleblower laws in 17 jurisdictions. We closely track and monitor executive and legislative developments bearing on immunity for nursing homes and other health care providers. We also have assembled a dedicated team focused on advising health care entities through the COVID-19 crisis and its aftermath.

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