

June 24, 2020

Commissioner Judith Persichilli
New Jersey Department of Health
369 South Warren Street
Trenton, New Jersey 08608

Via email to [REDACTED]

Re: Nursing Home Visitation Policies for Individuals with Disabilities

Dear Commissioner Persichilli:

I write to you on behalf of Disability Rights New Jersey (DRNJ), New Jersey's designated protection and advocacy system for individuals with disabilities. I would like to thank the Department of Health for its May 12 updated memorandum requiring hospitals to permit a designated support person for individuals with disabilities who require such assistance. New Jersey has shown true leadership on this issue, and its policy has served as a model for other states. Disability Rights NJ now asks that you extend this policy to recognize protections afforded by state and federal law to people with disabilities residing in state long-term care facilities, more commonly known as nursing homes.

As the state entity with licensing authority over nursing homes, it is the responsibility of the Department of Health to ensure the protections enshrined in Title II of the Americans with Disabilities Act (ADA) are upheld in licensed facilities.¹ Nursing homes, like hospitals, must make reasonable modifications to their policies and provide the auxiliary aids needed to ensure effective communication to patients with disabilities.² Nursing homes are further obligated to ensure individuals with disabilities are afforded equitable care by Section 504 of the Rehabilitation Act³ and Section 1557 of the Affordable Care Act.⁴

Residents in nursing homes with disabilities have the same need for accessible health care as patients in a hospital. Without support persons, many residents in nursing homes with disabilities are not able to fully access, understand, and benefit from the care they are

¹ 28 C.F.R. § 35.130(b)(7)

² 28 C.F.R. § 35.160

³ 29 U.S.C. § 794, 45 C.F.R. § 84.4, 45 C.F.R. § 84.52

⁴ 42 U.S.C. § 18116, 45 C.F.R. § 92.205

receiving. Excluding these individuals denies residents with disabilities the ability to express their concerns or desires to the healthcare professionals managing their treatment. Patients who require support persons to effectively provide informed consent in a hospital need the same accommodations to do so in a nursing home.

Other states have already taken action to address the needs of individuals with disabilities in nursing homes through guidelines which extend visitor policy exceptions beyond hospital environments. In its March 20 Safer at Home Order, Alabama included exceptions for support persons in all hospitals, nursing homes and long term care facilities, including assisted living and specialty care facilities.⁵ California's Department of Public Health has advised all health care facilities, including skilled nursing facilities, to allow a support person to be present for patients with disabilities.⁶ The Illinois Department of Public Health put out a statement clarifying that all health care facilities should allow patients with disabilities to be accompanied by a support person.⁷ North Carolina's special bulletin stated that all Medicaid providers in the state are required to comply with the ADA and Section 504.⁸

Having reviewed the aforementioned federal statutes and policies implemented by other states, there is a need for guidance from the state to ensure the rights of people with disabilities are upheld. DRNJ proposes that New Jersey follows the example of Alabama, California, Illinois, and North Carolina and clearly recognize the required exceptions to policies that limit visitation in nursing homes, just as it did with acute care hospitals.

DRNJ also asks that the state modify its policy on PPE availability to these support persons. Rather than restrict their presence altogether, the state should allow support persons to provide their own PPE should the health care facility face a shortage. States like Connecticut⁹ and California¹⁰ have addressed global PPE shortages in this manner, allowing support persons to bring their own supplies provided that the PPE is considered adequate by the health care facility administering the visit. Not only would this modification enable more robust provision of support, it also relieves the burden on licensed providers to draw on their own limited supplies of PPE.

Disability Rights New Jersey thanks the Department of Health once again for its guidance, responsiveness, and support during this pandemic. If you have any questions or concerns

⁵ <https://governor.alabama.gov/assets/2020/04/Safer-At-Home-Order-Signed-4.28.20.pdf>

⁶ <https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/AFL-20-38.aspx>

⁷ <https://www.dhs.state.il.us/page.aspx?item=125019>

⁸ <https://medicaid.ncdhhs.gov/blog/2020/05/06/special-bulletin-covid-19-83-title-ii-americans-disabilities-act-ada-and-section-504>

⁹ <https://portal.ct.gov/-/media/Coronavirus/20200609-DPH-Order-regarding-patients-with-disabilities-in-health-care-facilities.pdf>

¹⁰ <https://www.disabilityrightsca.org/post/coronavirus-hospital-visitation>

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regarding this matter or would like any additional information, please do not hesitate to contact me at gorlowski@drnj.org or (609) 292-9742. Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Gwen Orlowski". The signature is fluid and cursive, with a large initial "G" and "O".

Gwen Orlowski
Executive Director

GO/md

CC: Governor Phil Murphy
Commissioner Carole Johnson
Deputy Commissioner Sarah Adelman
Assistant Commissioner Jonathan Seifried