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NURSING HOME VISITATION



DISABILITY RIGHTS
NEW JERSEY

FAQS



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ABOUT NURSING HOME VISITATION GUIDELINES IN NEW JERSEY

The Centers for Medicaid and Medicare Services (CMS) is a federal agency that makes rules that nursing homes must follow in order to receive Medicare or Medicaid payments. Nursing homes are also licensed by the New Jersey Department of Health (NJDOH) and must follow NJDOH regulations to keep their licenses.

Recently, both CMS and NJDOH released new guidance on visitation in nursing homes. On certain topics, one agency's guidelines may be stricter than the others.' In these instances, nursing homes may choose to follow the stricter of the two to comply with both sets of policies.

This FAQ provides advocacy advice for situations where the stricter policy may infringe on a resident's rights. This FAQ is intended to help you navigate the latest rules and regulations that govern nursing home visits.



Q: CAN I VISIT SOMEONE IN A NURSING HOME?

A: IT DEPENDS.

There are two types of visits, indoor and outdoor. Outdoor visits are generally allowed by both NJDOH and CMS while indoor visits are generally not allowed by both agencies. More specifically:

1. Outdoor visits: NJDOH permitted nursing homes to begin allowing outdoor visits to residents as of June 21st if the nursing home certifies to the state in writing that it has met these requirements:

- *It has a designated area for visits;*
- *It has enough staff to allow visits;*
- *It has a way for visitors to make appointments for visits; and*
- *It has enough personal protective equipment or PPE (i.e. facemasks) to make visits safe.*

If a nursing home lacks the staff, PPE or space for outdoor visits, the NJDOH says that the nursing home cannot allow visits until these issues are addressed.

NJDOH advised nursing homes that they should honor each resident's right to have and choose visitors.

Similarly, CMS encourages nursing homes to allow outdoor visits as a “creative” way to connect residents and their loved ones. CMS does not officially require the nursing home to do anything before visits begin.

Q: CAN I VISIT SOMEONE IN A NURSING HOME? CONT'D

2. Indoor visits: Until recently, NJDOH and CMS have only allowed indoor visits for compassionate care situations. NJDOH and CMS define compassionate care differently, as explained in the next question. As of July 15th, NJDOH has announced that nursing homes must extend indoor visitation for pediatric residents, residents with developmental disabilities and residents with intellectual disabilities. These residents must be allowed to have visits from parents, family members, guardians, or support persons.

Indoor visitation for these residents will be allowed so long as:

- a. New Jersey does not return to the Maximum Restrictions stage in the state's reopening plan (The Road Back: Restoring Economic Health through Public Health).
- b. The nursing home has not had any outbreaks of COVID-19 for 28 days.
- c. The nursing home has certified to the state in writing that:
 - *They have implemented all requirements from NJDOH's July 15th guidance*
 - *They are not experiencing an outbreak*
 - *They have locations set aside for visitation*
 - *They have enough staff members*
 - *They have a way to schedule appointments*
 - *They have enough PPE to keep visits safe*

Q: WHAT IS COMPASSIONATE CARE?

Compassionate care situations are usually those where a resident is nearing the end of their life. The NJDOH has not expanded compassionate care beyond end-of-life situations. Recently, CMS extended its definition of compassionate care to include the following situations:

- *Where a resident recently moved to a nursing home from living with family.*
- *Where a grieving resident recently lost a friend or family member.*

CMS has advised nursing homes to make determinations on allowing compassionate care visits on a case by case basis after consulting with state leadership, families and the state Ombudsman. While CMS has expanded the definition of compassionate care situations, nursing homes have been advised that visits are not to become routine and should be allowed on a limited basis as an exception to visitor restrictions.

Q: HOW WILL I KNOW IF A NURSING HOME ALLOWS OUTDOOR VISITS?

You should hear about outdoor visits from the nursing home directly. NJDOH guidance suggests that nursing homes should clearly communicate their visitation policies to residents, their visitors, staff and others as needed. This message should be communicated in writing through whatever means the nursing home typically uses to provide updates on policy changes. Staff should communicate with the resident to explain how visitation works and what to expect. Staff should consult with every resident to determine who the resident would like to visit.

CMS does not mention how information about outdoor visits should be communicated.

Q: WHAT SHOULD NURSING HOMES DO TO MAKE SURE VISITORS DON'T HAVE COVID-19?

For both outdoor and indoor visits, CMS suggests that facilities take all actions to prevent the spread of COVID-19, but does not list specific requirement.

On the other hand, NJDOH requires that facilities **must** actively screen and restrict visitors to prevent the spread of any disease including COVID-19, and specifically prohibits nursing homes from allowing visits from anyone who:

- *Has symptoms or exhibits signs of an infectious communicable disease including COVID-19. NJDOH requires nursing homes to take a visitor's temperature before visiting;*
- *Has had contact with someone with a confirmed diagnosis of COVID-19, who is under investigation for COVID-19 or who is ill with a respiratory illness in the past 14 days; or*
- *Has returned from a designated state under the quarantine travel advisory within the last 14 days (as of 7/14 there are 22 states on this list, the full list can be found [here](#)); or*
- *Has been diagnosed with COVID-19 and has not yet met the requirements to stop self-isolating as outlined by NJDOH [here](#).*

Nursing homes should not allow anyone in any of those categories to visit a resident at all, even outdoors.

NJDOH also requires nursing homes to get a signed statement from each visitor and resident acknowledging that:

- *they are aware of the risk of COVID-19 during the visit;*
- *they will follow the nursing home's rules during the visit; and*
- *visitors will notify the nursing home if they test positive for COVID or have any symptoms of COVID-19 within 14 days of the visit.*

Q: WHAT ARE THE SAFETY RULES FOR VISITORS DURING VISITS?

CMS suggests (*but does not require*) that to make outdoor visits safe, nursing homes should limit the number and size of simultaneous visits, screen visitors and ask residents and visitors to wear face masks.

NJDOH requires that nursing homes have rules for visitors including:

- *Visitors must schedule outdoor visits with the nursing home in advance;*
- *No more than two visitors at a time may visit a resident at one time;*
- *Visitors must remain at least 6 feet from the resident and staff members at all times during the visit;*
- *Whenever possible, visitors should wait in a vehicle until visitation time;*
- *If a visitor does not have a car, the visitor should wait in an outdoor space and stay six feet away from other people; and*
- *Visitors must wear a face covering or mask for the whole visit.*

NJDOH allows nursing homes to cancel visits due to bad or unsafe weather conditions, and may limit the length of any visit, the hours or days of visits and the number of times during a day or week a resident may have visitors.

Q: ARE ALL RESIDENTS ALLOWED TO HAVE OUTDOOR VISITS?

A: NO.

CMS suggests that all residents in isolation for observation, who have COVID-19 symptoms or who are confirmed to have COVID-19 should not have in-person visits.

NJDOH has stated that residents who have tested positive for COVID-19, who have symptoms of COVID-19 or who are being quarantined for exposure to COVID-19 cannot have visitors except in end-of-life situations. A resident who tests positive for COVID-19 may have visitors only after meeting the requirements to stop self-isolating linked above.

Q: CAN A NURSING HOME PREVENT ME FROM VISITING A RESIDENT WHO DOES HAVE COVID-19?

A: NO.

Nursing homes usually must allow residents to have visitors, although nursing homes may make rules about those visits. Nothing like the COVID-19 pandemic has ever happened before. In order to stop the spread of the virus, the government put many important safety measures in place. This has created gray areas where the law is not completely clear.

Q: CAN A NURSING HOME PREVENT ME FROM VISITING A RESIDENT WHO DOES HAVE COVID-19? (CONT'D)

Normally, when there is no pandemic, nursing homes are legally obligated to allow residents to meet with any visitors of the resident's choosing. While federal regulations were updated in 2016 to allow residents to meet with visitors at any time they so choose, New Jersey has not updated their regulations to reflect the federal requirements. Presently, NJ law allows residents to have visitors between 8am and 8pm. If the resident is critically ill, they may receive visits at any time from next of kin or a guardian unless a medical professional finds that this would be harmful to the resident's health. These state and federal laws remain in effect.

To protect vulnerable residents, on March 16th, NJDOH temporarily restricted nursing home visits to end of life situations. On June 19th, NJDOH issued safety guidance allowing outdoor visits with the safety precautions described above.

CMS guidance from March 13th advised nursing homes to restrict visitation to compassionate care situations. On May 18th, CMS provided guidelines for nursing homes to reopen in phases which correspond with the state's reopening phase under the Opening up America Again guidelines. On June 23rd, CMS updated their reopening guidance to allow outdoor visits for residents who are not in compassionate care situations. While NJDOH and CMS have both allowed nursing homes to resume visitation through outdoor visits, NJDOH provides mandatory requirements while CMS guidance provides suggestions.

Our advocacy position at Disability Rights New Jersey is that as a result of CMS's June 23rd guidance and DOH's June 19th guidance, nursing homes can comply with the law requiring visits by following the DOH's safety guidance. The safety requirements are not intended to give nursing homes free reign to prohibit all visits. The visits are required by law. The NJDOH rules merely allow visits to resume safely.

Q: IS THERE A DATE SET FOR WHEN NURSING HOMES WILL REOPEN FOR INDOOR VISITS?

A: NO.

CMS has advised nursing homes against reopening to visitors until facilities have met the requirements for Phase Three of the Opening up America Again guidelines, with an exception for compassionate care situations. Phase Three requires nursing homes have:

- *no new onset COVID-19 cases for 28 days;*
- *no staff shortages;*
- *adequate supplies of personal protective equipment (PPE) and essential cleaning and disinfection supplies;*
- *adequate access to testing for COVID-19 and that referral hospital(s) have bed capacity on wards and intensive care units.*

Presently, the NJDOH has expanded indoor visits beyond end of life situations to allow pediatric residents, developmentally disabled residents and intellectually disabled residents to have visits from their parents, family members, guardians, or support persons. However, nursing homes must meet the requirements listed above before they begin expanding indoor visitation. NJDOH has not made an announcement on when nursing homes can expand visitation further.

Q: WHAT SHOULD I EXPECT IN A COMPASSIONATE CARE INDOOR VISIT?

CMS guidance only suggests steps that **should** be taken to help prevent the spread of COVID-19 in compassionate care visits.

NJDOH has established mandatory measures which **must** be taken. They are:

- Visitors must schedule indoor visits with the nursing home in advance.
- Visitors and residents must wear a face covering (surgical mask if available) for the duration of the visit. The facility may require visitors use additional forms of PPE.
- Visitors will be instructed on methods to minimize the risk of infection and will be informed of hand-washing station locations.
- Visitors' movement within the facility will be limited to a designated visitation area. If the resident is in a single room, the nursing home may allow visitation in the resident's room. Visitors are advised to restrict physical contact with anyone other than the resident while in the facility.
- Visitors who are unable to demonstrate proper use of infection prevention and control techniques will not be allowed to enter the facility
- Visitors are to monitor for signs and symptoms of COVID-19 for a minimum of 14 days after exiting the facility. If symptoms arise, visitors are advised to immediately notify the facility of the date they visited, who they were in contact with, and which locations within the facility they were in.

Nursing homes may limit the length of any visit, the hours and days on which visits will be permitted and the number of times during a day or week a resident may be visited.

Q: CAN A RESIDENT BE DISCHARGED OR TRANSFERRED INVOLUNTARILY?

A: NO.

Under CMS regulations, a nursing home *may not* discharge or transfer a resident involuntarily without a 30-day written notice notifying residents and their representatives of the transfer or discharge, the reason for transfer or discharge, and of the resident's right to a hearing. CMS waived these requirements in only one situation: where a nursing home must transfer or discharge a resident from one facility to another for COVID-19 cohorting purposes to prevent the spread of the virus. Specifically, nursing homes may transfer residents without a 30-day notice only if:

- *transferring residents with symptoms of COVID-19 to a facility dedicated to the care of such residents;*
- *transferring residents confirmed to not have COVID-19 to another facility to prevent them from acquiring COVID-19; or*
- *transferring residents without symptoms to another facility to observe the resident for signs and symptoms of a respiratory infection over 14 days.*

Otherwise, CMS requires nursing homes to follow all discharge laws. CMS has made it clear that any facility which does not comply with all the requirements for non-cohorting discharge or transfer are subject to deficiency citations and enforcement actions.

Q: CAN A RESIDENT BE DISCHARGED OR TRANSFERRED INVOLUNTARILY? (CONT'D)

The NJDOH guidance is broader. The NJDOH waived the state law requiring 30-days written notice. Nevertheless, the vast majority of nursing homes must still follow CMS federal regulations for the transfer or discharge of any resident or face CMS deficiency citations and enforcement actions.

While most nursing homes must follow both CMS and NJDOH guidance, seven nursing homes in New Jersey do not accept Medicaid or Medicare and are only subject to guidance from the NJDOH. For residents in one of the seven nursing homes which do not accept Medicaid or Medicare, resident transfer and discharge is regulated by NJDOH alone. These nursing homes are: Little Nursing Home, Francis E Parker Memorial Home (New Brunswick and Piscataway), Parker at Monroe, Garden Terrace Nursing Home, New Jersey Firemen's Home and Holland Christian Home.

Disability Rights New Jersey believes that residents of one of the seven nursing homes solely under NJDOH guidance are still entitled to mandatory resident rights regardless of the NJDOH's waiver.

Q: WHO CAN I CONTACT IF I AM HAVING TROUBLE GETTING IN TOUCH WITH A RESIDENT OR IF A RESIDENT HAS A PROBLEM WITH A NURSING HOME THAT THEY CANNOT RESOLVE?

Nursing homes are required by law to facilitate communication between residents and any representative of a protection and advocacy organization like Disability Rights New Jersey. Disability Rights New Jersey intake can be reached at **1-800-922-7233**.

Nursing homes must also facilitate communication between the resident and a representative of the Office of the State Long Term Care Ombudsman. The Ombudsman's office can be reached at **1-877-582-6995** or via email at ombudsman@ltco.nj.gov.

Nursing homes must also facilitate communication between the resident and any representative of the Secretary of the Department of Health and Human Services, any representative of the state of New Jersey, the resident's individual physician, or the resident's representative.