

COVID-19

CMS EASES NURSING HOME VISITATION GUIDELINES TO ADDRESS COVID-19 VACCINATIONS AND SLOWING INFECTIONS

March 16, 2021

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Foulston has produced a series of issue alerts as we continue to monitor the evolving COVID-19 situation and provide additional guidance. Please find all updates and our latest resources available [here](#).

One year after the Centers for Medicare and Medicaid Services (“CMS”) directed nursing homes to begin discouraging visitors, CMS released updated visitation guidance. On March 10, 2021, CMS substantially relaxed nursing home visitation guidelines, citing high vaccination rates in the nursing home population and a slowing of COVID-19 infections. The March 2021 guidance provides new direction, while upholding the central tenets of the September 2020 guidance. Our previous issue alert on CMS’ September 2020 nursing home guidance can be found [here](#).

CORE PRINCIPLES OF COVID-19 INFECTION PREVENTION

CMS continues its recommendation that nursing homes adhere to the Core Principles of COVID-19 Infection Prevention as outlined in the September 2020 guidance. CMS expects nursing homes to conduct visitation with adherence to core precautions and facilitate visitation using a variety of means depending on a facility’s structure and its residents’ needs. CMS emphasizes the importance of maintaining infection prevention practices.

OUTDOOR VISITS REMAIN PREFERRED, BUT INDOOR VISITS SHOULD BE ALLOWED

Outdoor visits are still preferred, even when the resident and visitor are fully vaccinated. “Fully vaccinated” means it has either been at least two weeks since the individual received the second dose of a two-dose COVID-19 vaccine, or it has been at least two weeks since the individual received one dose of a single-dose COVID-19 vaccine.

CMS directs facilities to allow indoor visitation “at all times and for all residents” regardless of vaccination status, except for a few limited circumstances. Facilities may limit indoor visitation in the following circumstances:

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- For unvaccinated residents, if the nursing home's COVID-19 county positivity rate is greater than 10 percent, and less than 70 percent of the residents in the facility are fully vaccinated;
- For residents with confirmed COVID-19 infection, whether vaccinated or unvaccinated, until they have met the criteria to discontinue Transmission-Based Precautions; or
- For residents in quarantine, whether vaccinated or unvaccinated, until they have met criteria for release from quarantine.

CMS and the Centers for Disease Control and Prevention ("CDC") recommend that facilities, residents, and families continue to maintain six feet of physical separation between people. CMS, however, is empowering fully vaccinated residents to exercise their freedom of choice. A fully vaccinated resident may choose to have close contact, including touch, with his/her visitor while wearing a well-fitting face mask and performing hand-hygiene before and after. The visitor should socially distance from all other residents and staff in the facility.

INDOOR VISITATION DURING AN OUTBREAK

CMS directs that indoor visitation may still occur when there is an outbreak, i.e., a new nursing home onset of COVID-19. However, there must be evidence that the transmission of COVID-19 is contained to a single area of the facility. Facilities must adhere to CMS regulations and guidance for COVID-19 testing to swiftly detect cases. When a new case of COVID-19 among residents or staff is identified, a facility should immediately begin outbreak testing and suspend all visitation until at least one round of facility-wide testing is completed. Visitation may resume based on the following criteria:

- If the first round of outbreak testing reveals no additional COVID-19 cases in other areas of the facility, then visitation can resume for residents in areas/units with no COVID-19 cases. However, the facility should suspend visitation in the impacted unit until the facility meets the criteria to discontinue outbreak testing.
- If the first round of outbreak testing reveals one or more additional COVID-19 cases in other areas/units of the facility (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.

Compassionate care visits and visits required under federal disability rights law should be allowed at all times, for any resident regardless of the resident's vaccination status, the county's COVID-19 positivity rate, or an outbreak.

COVID-19 TESTING IS NOT REQUIRED, BUT VACCINATION IS ENCOURAGED

CMS still encourages, but does not require, visitor testing prior to entry. Likewise, CMS encourages, but does not require, visitors to get vaccinated when they have the opportunity.

The CMS guidance can be found [here](#).

KANSAS AND MISSOURI UPDATES

The Missouri Department of Health and Senior Services ("DHSS") has acknowledged the new CMS guidance and instructed facilities to utilize the CMS guidance until DHSS guidance is updated.

On March 15, 2021, the Kansas Department for Aging and Disability Services ("KDADS") conveyed new visitation guidance in response to the CMS guidance. KDADS adopted the CMS guidance and has directed facilities to have discussions with residents about their visitation preferences. KDADS has created a Resident Visitation Preferences Template to facilitate these discussions. KDADS expects visitation preference discussions with residents to occur regularly and be recorded. We recommend that Kansas facilities use KDADS' template and maintain the template as part of each resident's permanent file. Facilities should also maintain resident templates for future surveys. KDADS guidance can be found [here](#).

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FOR MORE INFORMATION

If you have questions or want more information regarding these visitation guidelines, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. Foulston's healthcare lawyers maintain a high level of knowledge regarding federal and state regulations affecting the healthcare and long-term care industries. At the same time, our healthcare practice group's relationship with Foulston's other practice groups, including the taxation, general business, labor and employment, and commercial litigation groups, enhances our ability to consider all of the legal ramifications of any situation or strategy. For more information, contact **Brooke Bennett Aziere** at 316.291.9768 or baziere@foulston.com, **Amanda Wilwert** at 913.253.2181 or awilwert@foulston.com, or **Gabriella Grause** at 316.291.9750 or ggrause@foulston.com. For more information on the firm, please visit our website at www.foulston.com.

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