

PUBLICATION

CMS Further Relaxes Visitation Restrictions for Nursing Facility Residents

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On Friday, November 12, 2021, the Centers for Medicare & Medicaid Services (CMS) issued a revision to QSO-20-39-NH which substantially relaxes restrictions on nursing facility visitation.

In the revised guidance, CMS acknowledges remaining concerns about unrestricted visitation where a nursing facility is in a community with high rates of COVID transmission. However, CMS believes that adherence to its core principles of COVID-19 infection prevention should mitigate these concerns. In its updated guidance, CMS has added the following principle to its previously published list of core principles of COVID-19 infection prevention:

- Screening all nursing facility visitors and **prohibiting entry** for those visitors who have a positive viral test for COVID-19, COVID-19 symptoms, or meet the criteria for quarantine.

Revised Guidance on Visitation

The revised CMS guidance continues to state that outdoor visitation is preferred when the resident, the visitor, or both are not fully vaccinated against COVID-19 because outdoor visits generally lower the risk of transmission by affording increased space and airflow.

Facilities may inquire about a visitor's vaccination status, but the facility **cannot restrict** visitation if the visitor has not been tested, vaccinated, or declines to disclose vaccination status. If the visitor declines to disclose their vaccination status, the visitor should wear a face covering or mask at all times.

Indoor Visitation

Facilities must allow **indoor visitation at all times** and **for all residents** as permitted under the regulations. Facilities should ensure that visits are conducted in adherence with the core principles of COVID-19 infection prevention and in a manner that does not increase risk to other residents.

- Facilities **cannot** limit the frequency and length of visits for residents, limit the number of visitors, or require visits to be scheduled in advance.
- Facilities should avoid large gatherings where there are a large number of visitors in the same place at the same time. Facilities should also ensure physical distancing can be maintained during peak visitation times.
- If a resident's roommate is unvaccinated or immunocompromised (vaccinated or unvaccinated) visits should not be conducted in the resident's room, if possible. In the event the health status of the resident prevents him from leaving the room, facilities should attempt to enable in-room visitation while adhering to the core principles of infection prevention.

Additionally, the revised QSO includes guidance for educating visitors on risks associated with the visit, the location of the visit, face coverings, and physical distancing in specific circumstances. The table below summarizes that guidance.

Circumstances	Guidance
Substantial to High Community Level of Transmission	<p>All residents and visitors, both vaccinated and unvaccinated, should at all times:</p> <ul style="list-style-type: none"> • Wear face coverings or masks; and • Physically distance.
Low to Moderate Community Level of Transmission	<p>If either resident or visitor is at <u>increased risk for severe disease</u> or <u>unvaccinated</u> then the resident and visitor should at all times:</p> <ul style="list-style-type: none"> • Wear face coverings or masks; and • Physically distance. <p>If the resident and all their visitor(s) are fully vaccinated <u>and</u> the resident is not moderately or severely immunocompromised, then the resident and visitor may:</p> <ul style="list-style-type: none"> • Choose not to wear face coverings or masks; and/or • May choose to have physical contact. <p>Regardless of vaccination status, <u>visitors</u> should:</p> <ul style="list-style-type: none"> • Wear face coverings or masks when around other residents or health care personnel; and • Physically distance from other residents and staff in the facility.
Unvaccinated Resident Choosing Physical Touch from a Visitor	<p>Unvaccinated residents may choose to have physical touch with visitors based on their preferences and needs. In these situations,</p> <ul style="list-style-type: none"> • The unvaccinated resident (or their representative) <u>and</u> their visitors should be advised of the risks of physical contact <u>before</u> the visit.
Indoor Visitation During an Outbreak Investigation	<ul style="list-style-type: none"> • Visitors must still be allowed in the facility. • Vaccinated and unvaccinated visitors and residents should wear face coverings or masks. • Ideally, the visit should occur in the resident's room.
Communal Activities and Dining	<p>The safest approach is for everyone, regardless of vaccination status, to wear a face covering or mask while in communal areas of the facility.</p>
Residents on Transmission-Based Precautions (TBP) or	<ul style="list-style-type: none"> • Although not recommended, these residents can still receive visitors. • Visits should occur in the resident's room.

Quarantine	<ul style="list-style-type: none"> • Resident should wear a well-fitting face mask (if tolerated). • Visitors should adhere to the core principles of infection prevention, be made aware of the potential risks of the visit, and be advised on the necessary precautions for the visit. • Facilities may but are not required to offer visitors PPE.
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Resident Outings

Facilities **are required** to permit residents to leave the facility as they choose. For any resident choosing to leave, the facility should remind both the resident and any individual accompanying them to follow all recommended infection prevention practices.

When the resident returns from an outing, CMS advises that the nursing facility should screen the resident for signs or symptoms of COVID-19 and monitor for signs and symptoms of COVID-19 daily.

- If the resident or family member reports possible close contact with an individual with COVID-19 while the resident is outside the facility, the nursing facility should:
 - Test the resident regardless of vaccination status; and
 - If the resident is not fully vaccinated, place the resident on quarantine.
- If the resident develops signs or symptoms of COVID-19 after the outing, the nursing facility should:
 - Test the resident for COVID-19; and
 - Regardless of vaccination status, place the resident on TBP.

CMS guidance does not require but suggests that a facility may choose to test asymptomatic unvaccinated residents if they leave the facility frequently or leave for a prolonged length of time and/or the facility might, based on assessing risk and whether the resident and those around him will adhere to the recommended infection prevention measures, quarantine an unvaccinated resident.

Nursing Facilities may not Restrict Access for Certain Professionals

- Surveyors: A surveyor's access to the facility cannot be restricted or conditioned on proof of the surveyor's vaccination status. However, a surveyor should not enter the facility if they have a positive viral test for COVID-19, signs or symptoms of the virus, or currently meet criteria for quarantine. The surveyor's compliance is the responsibility of the State Survey Agency and CMS, not the facility.
- Health Care Workers: All health care workers must be permitted into the facility provided they are not subject to a work exclusion or are having signs and symptoms of COVID-19. This includes those health care workers and personnel educating and assisting in resident transitions to the community.
- Ombudsmen: Nursing facilities must provide ombudsmen with immediate access to any resident. In the event an ombudsman is planning to visit a resident who is on TBP or quarantined or is an unvaccinated resident in a county that has been identified as having a substantial or high level of community transmission in the last seven days, the visit should take place in the resident's room. Additionally, the nursing facility must facilitate a visit using alternative communication – phone or other technology – instead of an in-person visit if the resident or ombudsman so requests.

- Protection & Advocacy Program (P&A): The facility must allow P&A staff immediate access to a resident. In the event that P&A staffers are planning to visit a resident who is on TBP, is quarantined or is an unvaccinated resident in a county that has been identified as having a substantial or high level of community transmission in the last seven days, the visit should take place in the resident's room.

When a Face Covering or Mask Should be Modified or not be Placed on a Resident

Nursing facilities must comply with federal disability rights laws. As such, there are times when it is recommended that deaf or hearing-impaired residents use a clear mask or one with a clear panel.

Face coverings should not be placed on anyone who has trouble breathing, is unable to wear a mask due to a disability, or is unconscious, incapacitated, or otherwise unable to remove the mask without assistance.

CMS's Rationale for Relaxing Visitation Restrictions

In issuing the revised guidance, CMS stressed that it is important to restore visitation as safety permits because a nursing facility resident has a right to have visitors of his or her choosing, at the time of his or her choosing, and in a manner that does not impose on the rights of another resident. See [42 CFR § 483.10\(f\)\(4\)\(v\)](#). The updated guidance lists the following factors that prompted CMS's relaxation of the visitation restrictions:

- Current data showing 86 percent of residents and 74 percent of staff are fully vaccinated;
- Data showing the number of COVID-19 cases each week has been dramatically reduced;
- The CMS-issued mandate that all nursing facility staff must be vaccinated against COVID-19 as a requirement for participating in the Medicare and Medicaid program; and
- CMS's ability to continue to monitor vaccination and infections rates, and the effects of emerging COVID-19 variants on nursing facility residents.

For more information or assistance with CMS regulations, please contact any member of Baker Donelson's [Long Term Care](#) Group.