

Frequently Asked Questions: LTSS Visitation Rights & COVID-19

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This FAQ is a follow up to NCLER's training, LTSS Policy Changes in Response to COVID-19. The [webcast recording](#) and [slides](#) have more information.

What rights do nursing facility residents have to receive visitors?

Under federal nursing facility law, residents of nursing facilities that receive Medicare or Medicaid payment have the right to have family and friends visit at any time of day or night. Residents also have the right to speak privately with long-term care ombudsman program representatives.

Due to the COVID-19 public health emergency (PHE), the Centers for Medicare and Medicaid Services (CMS) issued a blanket waiver of rights that included the waiver of visitation and in-facility socialization. Beginning in March 2020, CMS permitted facilities to disallow in-person visitation and limit contact with family and friends to phone calls, video chats, and "window visits."

In September, CMS relaxed the restrictions. This current [guidance](#) resumes a resident's right to visitors under the condition that the facility has had no new COVID-19 cases from transmission in the facility within the previous 14 days. Facilities can set limits on the number of visitors and length of visits, and go back to restricted visitation if the local COVID-19 positivity rate exceeds 10% or "any other relevant factor related to the COVID-19 PHE" so long as the limit is based on a "reasonable clinical or safety cause." The right to visit with ombudsman program representatives has also resumed.

What is a compassionate care visit? Does it include a family's need to help stop the rapid decline of resident? What sorts of reasons would be valid for compassionate care visits besides end of life?

Throughout the pandemic, regardless of the restrictions discussed above, visits have been allowed in "compassionate care" situations. Although CMS has said compassionate care is not limited to end of life situations, states and individual facilities have interpreted it narrowly. In some cases, state policies are inconsistent with federal guidance.

What can you do if a facility is restricting visitation?

Assert the resident's right to visitation under 42 C.F.R. section 483.10(f) and file a complaint with the state survey agency if necessary. Remember, the facility's limitations must be reasonable. However, it's important to recognize the reality of current "surges" in COVID-19 infections and comply with all appropriate precautions.

Do patients receiving acute rehab in a nursing facility have the same rights?

Yes. Residents have the same rights regardless of their length of stay in the facility or the payor.

What about residents of assisted living facilities and group homes?

These rights and restrictions under the federal nursing home laws and regulations only apply to nursing facilities receiving Medicare and Medicaid payments and do not apply to assisted living facilities or other congregate settings. These settings are generally regulated by the state.

Can residents leave the facility to visit family or friends during the holidays?

Residents do have the right leave, but CMS has issued [guidance](#) recommending against it during the COVID-19 PHE. The guidance also explains steps facilities should take with residents who are returning to the facility, including quarantine protocols for residents who were exposed or exhibit symptoms. CMS also advised facilities that they can “consider” quarantining residents who left the facility for more than 24 hours.

Are nursing homes allow to ban or discharge residents from the nursing home if they go out for a home visit?

No. Eviction is only allowed under six conditions specified in federal regulations (42 C.F.R. 483.15(c)). Residents also have the right to appeal an eviction through administrative hearing.

However, given the COVID-19 PHE, it is recommended that residents and their family/friends talk with the nursing facility staff ahead of leaving to avoid surprises upon return.