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Centers for Medicare & Medicaid Services
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Center for Clinical Standards and Quality/Survey & Certification Group

Ref: QSO-20-39-NH

DATE: **September 17, 2020** ***REVISED 03/10/2022***

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: Nursing Home Visitation - COVID-19 *(REVISED)*

Memorandum Summary

- CMS is committed to continuing to take critical steps to ensure America's healthcare facilities are prepared to respond to the Coronavirus Disease 2019 (COVID-19) Public Health Emergency (PHE).
- **Visitation Guidance:** CMS is issuing new guidance for visitation in nursing homes during the COVID-19 PHE, including the impact of COVID-19 vaccination.
- **Visitation is allowed for all residents at all times.**
- *Replaced the term "vaccinated" with "up-to-date with all recommended COVID-19 vaccine doses" and deleted "unvaccinated."*
- *Updated visitor screening and quarantine criteria.*

Background

Nursing homes have been severely impacted by COVID-19, with outbreaks causing high rates of infection, morbidity, and mortality. The vulnerable nature of the nursing home population combinedwith the inherent risks of congregate living in a healthcare setting have required aggressive efforts tolimit COVID-19 exposure and to prevent the spread of COVID-19 within nursing homes.

In March 2020, CMS issued memorandum QSO 20-14-NH providing guidance to facilities on restricting visitation of all visitors and non-essential healthcare personnel, except for certain compassionate care situations, such as an end-of-life situation.

While CMS guidance has focused on protecting nursing home residents from COVID-19, we recognize that physical separation from family and other loved ones has taken a physical and emotional toll on residents and their loved ones. Residents may feel socially isolated, leading to increased risk for depression, anxiety, and expressions of distress. Residents living with cognitive impairment or other disabilities may find visitor restrictions and other ongoing changes related to COVID-19 confusing or upsetting. CMS understands that nursing home residents derive value from the physical, emotional, and spiritual support they receive through visitation from family and friends.

In light of this, CMS is revising the guidance regarding visitation in nursing homes during the COVID-19 PHE. The information contained in this memorandum supersedes and replaces previously issued guidance and recommendations regarding visitation.

Since the release of QSO memorandum 20-39-NH on September 17, 2020, COVID-19 vaccines have received full approval and Emergency Use Authorization from the Food and Drug Administration. Millions of Vaccinations have since been administered to nursing home residents and staff, and these vaccines have been shown to help prevent symptomatic SARS-CoV-2 infection (i.e., COVID-19). In addition, CMS requires nursing homes to educate residents and staff on the risks and benefits of the vaccines, offer to administer the vaccine, and report residentand staff vaccination data to CDC's National Healthcare Safety Network. CMS now posts this information on the CMS COVID-19 Nursing Home Data website along with other COVID-19 data, such as the weekly number of COVID-19 cases and deaths. **Therefore, CMS, in conjunction with the Centers for Disease Control and Prevention (CDC), is updating its visitation guidance accordingly, but emphasizing the importance of maintaining infection prevention practices.**

We note that the reason for visitation restrictions during the COVID-19 PHE were to mitigate the opportunity for visitors to introduce COVID-19 into the nursing home. Per 42 CFR § 483.10(f)(4), aresident has the right to receive visitors of his or her choosing at the time of his or her choosing, andin a manner that does not impose on the rights of another resident, such as a clinical or safety restriction (see 42 CFR § 483.10(f)(4)(v)). In other words, while all residents have a right to visitation, fully open and unrestricted visitation posed a clinical health and safety risk to other residents during this PHE, and therefore, it was reasonable to place limits on visitation. However, current nursing home COVID-19 data shows approximately *87*% of residents and *83*% of staff are fully vaccinated *as of February 2022*.

On November 4, 2021, CMS issued a regulation requiring that all nursing home staff be vaccinated against COVID-19 as a requirement for participating in the Medicare and Medicaid programs. This requirement also applies to nearly all Medicare and Medicaid-certified providers and suppliers. CMS will continue to monitor vaccination and infection rates, including the effects of COVID-19 variants on nursing home residents, which have recently caused the number of cases to slightly increase. However, at this time, continued restrictions on this vital resident's right are no longer necessary.

We acknowledge that there are still concerns associated with visitation, such as visitation with a resident*, who is not up-to date with all recommended COVID-19 vaccine doses,* while the nursing home's county COVID-19 level of community transmission[2] is substantial or high. However, adherence to the core principles of COVID-19 infection prevention mitigates these concerns. Furthermore, we remind stakeholders that, per 42 CFR § 483.10(f)(2), theresident has the right to make choices about aspects of his or her life in the facility that are significant to the resident. We further note that residents may deny or withdraw consent for a visit at any time, per 42 CFR

[2] *Level of Community Transmission: This metric ** uses two indicators for categorization (1. Total number of new cases per 100,000 persons within the last 7 days and 2. Percentage of positive diagnostic and screening nucleic acid amplification tests (NAAT) during the last 7 days), which can be found on the CDC COVID-19 Integrated County View site at https://covid.cdc.gov/covid-data-tracker/#county-view.*

§ 483.10(f)(4)(ii) and (iii). Therefore, if a visitor, resident, or their representative is aware of the risks associated with visitation, and the visit occurs in a manner that does not place other residents at risk (e.g., in the resident's room), the resident must be allowed to receive visitors as he/she chooses.

"Up-to-date" means a person has received all recommended COVID-19 vaccines, including any booster dose(s) when eligible..

Guidance

Visitation can be conducted through different means based on a facility's structure and residents' needs, such as in resident rooms, dedicated visitation spaces, *and* outdoors. Regardless of how visits are conducted, certain core principles and best practices reduce the risk of COVID-19 transmission:

Core Principles of COVID-19 Infection Prevention

- Visitors who have a positive viral test for COVID-19, symptoms of COVID-19, or currently meet the criteria for quarantine should not enter the facility *until they meet the criteria used for residents to discontinue transmission-based precautions (quarantine)*. Facilities should screen all who enter for these visitation exclusions.
- Hand hygiene (use of alcohol-based hand rub is preferred)
- Face covering or mask (covering mouth and nose) and physical distancing at least six feet between people, in accordance with CDC guidance
- Instructional signage throughout the facility and proper visitor education on COVID-19 signs and symptoms, infection control precautions, other applicable facility practices (e.g., use of face covering or mask, specified entries, exits and routes to designated areas, hand hygiene)
- Cleaning and disinfecting high-frequency touched surfaces in the facility often, and designated visitation areas after each visit
- Appropriate staff use of Personal Protective Equipment (PPE)
- Effective cohorting of residents (e.g., separate areas dedicated to COVID-19 care)
- Resident and staff testing conducted as required at 42 CFR § 483.80(h) (see QSO-20- 38-NH)

These core principles are consistent with the Centers for Disease Control and Prevention (CDC) guidance for nursing homes, and should be **adhered to at all times**. Additionally, visitation should be person-centered, consider the residents' physical, mental, and psychosocial well-being, and support their quality of life. The risk of transmission can be further reduced through the use of physical barriers (e.g., clear Plexiglass dividers, curtains). Also, nursing homes should enable visits to be conducted with an adequate degree of privacy. Visitors who are unable to adhere to the core principles of infection prevention should not be permitted to visit or should be asked to leave. By following a person-centered approach and adhering to these core principles, visitation can occur safely based on the below guidance.

Outdoor Visitation

While taking a person-centered approach and adhering to the core principles of COVID-19 infection prevention, outdoor visitation is preferred when the resident and/or visitor are not *up-to date with all recommended COVID-19 vaccine doses*. Outdoor visits generally pose a lower risk of transmission due to increased space and airflow. For outdoor visits, facilities should create

accessible and safe outdoorspaces for visitation, such as in courtyards, patios, or parking lots, including the use of tents, if available. However, weather considerations (e.g., inclement weather, excessively hot or cold temperatures, poor air quality) or an individual resident's health status (e.g., medical condition(s), COVID-19 status, quarantine status) may hinder outdoor visits. When conducting outdoor visitation, all appropriate infection control and prevention practices should be followed.

Indoor Visitation

Facilities must allow indoor visitation at all times and for all residents as permitted under the regulations. While previously acceptable during the PHE, facilities can no longer limit the frequency and length of visits for residents, the number of visitors, or require advance scheduling of visits.

Although there is no limit on the number of visitors that a resident can have at one time, visits shouldbe conducted in a manner that adheres to the core principles of COVID-19 infection prevention and does not increase risk to other residents. Facilities should ensure that physical distancing can still be maintained during peak times of visitation (e.g., lunch time, after business hours, etc.). Also, facilities should avoid large gatherings (e.g., parties, events) where large numbers of visitors are in the same space at the same time and physical distancing cannot be maintained. During indoor visitation, facilities should limit visitor movement in the facility. For example, visitors should not walk around different halls of the facility. Rather, they should go directly to the resident's room or designated visitation area. Facilities may contact their local health authorities for guidance or direction on how to structure their visitation to reduce the risk of COVID-19 transmission.

If a resident's roommate is *not up-to-date with all recommended COVID-19 vaccine doses,* or immunocompromised (regardless of vaccination status),visits should not be conducted in the resident's room, if possible. For situations where there is a roommate and the health status of the resident prevents leaving the room, facilities should attempt to enable in-room visitation while adhering to the core principles of infection prevention.

Face coverings and physical distancing during visits

- Visitors should wear face coverings or masks *and physically distance* when around other residents or healthcare personnel, regardless of vaccination status.
- If the nursing home's county COVID-19 community level of transmission is **substantial to high**, all residents and visitors, regardless of vaccination status, should wear face coverings or masks and physically distance, at all times.
- In areas of **low to moderate** transmission, the safest practice is for residents and visitors to wear face coverings or masks and physically distance, particularly if either of them is at increased risk for severe disease or are *not up-to-date with all recommended COVID-19 vaccine doses.*
- Residents, regardless of vaccination status, can choose *not* to *wear face coverings or masks when other residents are not present and* have close contact (including touch) with their visitor.
    - Residents (or their representative) and their visitors*, who are not up-to-date with all recommended COVID-19 vaccine doses,* should be advised of the risks of physical contact prior to the visit.

- Additional information on levels of community transmission is available on the CDC's COVID-19 Integrated County View webpage.

While not recommended, residents who are on transmission-based precautions (TBP) or quarantine can still receive visitors. In these cases, visits should occur in the resident's room and the resident should wear a well-fitting facemask (if tolerated). Before visiting residents, who are on TBP or quarantine, visitors should be made aware of the potential risk of visiting and precautions necessary in order to visit the resident. Visitors should adhere to the core principles of infection prevention. Facilities may offer well-fitting facemasks or other appropriate PPE, if available; however, facilities are not required to provide PPE for visitors.

Indoor Visitation during an Outbreak Investigation

An outbreak investigation is initiated when a new nursing home-onset of COVID-19 occurs (i.e., a new COVID-19 case among residents or staff). To swiftly detect cases, we remind facilities to adhere to CMS regulations and guidance for COVID-19 testing, including routine staff testing, testing of individuals with symptoms, and outbreak testing.

When a new case of COVID-19 among residents or staff is identified, a facility should immediately begin outbreak testing in accordance with CMS QSO 20-38-NH REVISED and CDC guidelines.

While it is safer for visitors not to enter the facility during an outbreak investigation, visitors must still be allowed in the facility. Visitors should be made aware of the potential risk of visiting during an outbreak investigation and adhere to the core principles of infection prevention. If residents or their representative would like to have a visit during an outbreak investigation, they should wear face coverings or masks during visits, regardless of vaccination status, and visits should ideally occur in the resident's room. Facilities may contact their local health authorities for guidance or direction on how to structure their visitation to reduce the risk of COVID-19 transmission during an outbreak investigation.

Visitor Testing and Vaccination

While not required, we encourage facilities in counties with substantial or high levels of community transmission to offer testing to visitors, if feasible. If facilities do not offer testing, they should encourage visitors to be tested on their own before coming to the facility (e.g., within 2–3 days).

CMS strongly encourages all visitors to become vaccinated and facilities should educate and also encourage visitors to become vaccinated. Visitor testing and vaccination can help prevent the spread of COVID-19 and facilities may ask about a visitors' vaccination status, however, **visitors are not required to be tested or vaccinated** (or show proof of such) as a condition of visitation. If the visitor declines to disclose their vaccination status, the visitor should wear a face coveringor mask at all times. This also applies to representatives of the Office of the State Long-Term Care Ombudsman and protection and advocacy systems, as described below.

Compassionate Care Visits

Compassionate care visits are allowed at all times. Previously during the PHE, there were some scenarios where residents should only have compassionate care visits. However, visitation is now allowed at all times for all residents, in accordance with CMS regulations.

Therefore, we believe there are few scenarios when visitation should be limited only to compassionate care visits. In the event a scenario arises that would limit visitation for a resident (e.g., a resident is severely immunocompromised and the number of visitors the resident is exposed to needs to be kept to a minimum), compassionate care visits would still be allowed at all times. CMS expects these scenarios to be rare events.

Required Visitation

Facilities shall not restrict visitation without a reasonable clinical or safety cause, consistent with 42 CFR § 483.10(f)(4)(v). In previous nursing home visitation guidance during the PHE, CMS outlined some scenarios related to COVID-19 that would constitute a clinical or safety reason for limited visitation. However, there are no longer scenarios related to COVID-19 where visitation should be limited, except for certain situations when the visit is limited to being conducted in the resident's room or the rare event that visitation is limited to compassionate care. Therefore, a nursing home **must** facilitate in-person visitation consistent with the applicable CMS regulations, which can be done by applying the guidance stated above. Failure to facilitate visitation, per 42 CFR § 483.10(f)(4), which states "The resident has a right to receive visitors of his or her choosing at the time of his or her choosing, subject to the resident's right to deny visitation when applicable, and in a manner that does not impose on the rights of another resident," would constitute a potential violation and the facility would be subject to citation and enforcement actions.

As stated above, we acknowledge that there are still risks associated with visitation and COVID-19. However, the risks are reduced by adhering to the core principles of COVID-19 infection prevention. Furthermore, we remind facilities and all stakeholders that, per 42 CFR §483.10(f)(2), residents have the right to make choices about aspects of his or her life in the facility that are significant to the resident. Visitors, residents, or their representative should be made aware of the potential risk of visiting and necessary precautions related to COVID-19 in order to visit the resident. However, if a visitor, resident, or their representative is aware of the risks associated with visitation, and the visit occurs in a manner that does not place other residents at risk (e.g., in the resident's room), the resident must be allowed to receive visitors as he/she chooses.

Access to the Long-Term Care Ombudsman

As stated in previous CMS guidance QSO-20-28-NH (revised), regulations at 42 CFR § 483.10(f)(4)(i)(C) require that a Medicare and Medicaid-certified nursing home provide representatives of the Office of the State Long-Term Care Ombudsman with immediate access to any resident. If an ombudsman is planning to visit a resident who is in TBP or quarantine, or a resident, *who is not up-to-date with all recommended COVID-19 vaccine doses,* in a nursing home in a county where the level of community transmission is substantial or high in the past 7 days, the resident and ombudsman should be made aware of the potential risk of visiting, and the visit should take place in the resident's room. We note that representatives of the Office of the Ombudsman should adhere to the core principles of COVID- 19 infection prevention as described above. If the resident or the Ombudsman program requests alternative communication in lieu of an in-person visit, facilities must, at a minimum, facilitate alternative resident communication with the Ombudsman program, such as by phone or through the use of other technology. Nursing homes are also required under 42 CFR § 483.10(h)(3)(ii) to allow the Ombudsman to examine the resident's medical, social, and administrative records as otherwiseauthorized by State law.

Federal Disability Rights Laws and Protection & Advocacy (P&A) Programs

42 CFR § 483.10(f)(4)(i)(E) and (F) requires the facility to allow immediate access to a resident by any representative of the protection and advocacy systems, as designated by the state, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act), and of the agency responsible for the protection and advocacy system for individuals with a mental disorder (established under the Protection and Advocacy for Mentally Ill Individuals Act of 2000). P&A programs authorized under the DD Act protect the rights of individuals with developmental and other disabilities and are authorized to "investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe the incidents occurred." 42 U.S.C. § 15043(a)(2)(B). Under its federal authorities, representatives of P&A programs are permitted access to all facility residents, which includes "the opportunity to meet and communicate privately with such individuals regularly, both formally and informally, by telephone, mail and in person." 42 CFR § 51.42(c); 45 CFR § 1326.27.

If the P&A is planning to visit a resident who is in TBP or quarantine, or a resident, *who is not up-to-date with all recommended COVID-19 vaccine doses,* in a county where the level of community transmission is substantial or high in the past 7days, the resident and P&A representative should be made aware of the potential risk of visiting and the visit should take place in the resident's room.

Additionally, each facility must comply with federal disability rights laws such as Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504) and the Americans with DisabilitiesAct of 1990, 42 U.S.C. §§ 12101 et seq. (ADA).

For example, if communicating with individuals who are deaf or hard of hearing, it is recommended to use a clear mask or mask with a clear panel. Face coverings should not be placed on anyone who has trouble breathing or is unable to wear a mask due to a disability, or anyone who is unconscious, incapacitated, or otherwise unable to remove the mask without assistance.

In addition, if a resident requires assistance to ensure effective communication (e.g., a qualified interpreter or someone to facilitate communication) and the assistance is not available by onsite staff or effective communication cannot be provided without such entry (e.g., video remote interpreting), the facility must allow the individual entry into the nursing home to interpret or facilitate, with some exceptions. This would not preclude nursing homes from imposing legitimatesafety measures that are necessary for safe operations, such as requiring such individuals to adhereto the core principles of COVID-19 infection prevention. Any questions about or issues related to enforcement or oversight of the non-CMS requirements and citations referenced above under this section subject heading should be referred to the HHS Office for Civil Rights (Toll-free: 800-368-1019) (TDD toll-free: 800-537-7697), the Administration for Community Living (202-401-4634),or other appropriate oversight agency.

Entry of Healthcare Workers and Other Providers of Services

All healthcare workers must be permitted to come into the facility as long as they are not subject to a *work exclusion* or showing signs or symptoms of COVID-19. In addition to health care workers, personnel educating and assisting in resident transitions to the community should be permitted entry

consistent with this guidance. We note that EMS personnel do not need to be screened, so they can attend to an emergency without delay. We remind facilities that all staff, including individuals providing services under arrangement as well as volunteers, should adhere to the core principles of COVID-19 infection prevention and must comply with COVID-19 testing requirements.

Communal Activities, Dining and Resident Outings

While adhering to the core principles of COVID-19 infection prevention, communal activities and dining may occur. Book clubs, crafts, movies, exercise, and bingo are all activities that can be facilitated with alterations to adhere to the guidelines for preventing transmission. The safest approach is for everyone, regardless of vaccination status, to wear a face covering or mask while on in communal areas of the facility. For more information, see the Implement Source Control section of the CDC guidance "Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic."

Facilities must permit residents to leave the facility as they choose. Should a resident choose to leave, the facility should remind the resident and any individual accompanying the resident to follow all recommended infection prevention practices including wearing a face covering or mask, physical distancing, and hand hygiene and to encourage those around them to do the same.

Upon the resident's return, nursing homes should take the following actions:

- Screen residents upon return for signs or symptoms of COVID-19.
    - If the resident or family member reports possible close contact to an individual with COVID-19 while outside of the nursing home, test the resident for COVID-19, regardless of vaccination status. Place the resident on quarantine if the resident *is not up-to-date with all recommended COVID-19 vaccine doses.*
    - If the resident develops signs or symptoms of COVID-19 after the outing, test the resident for COVID-19 and place the resident on Transmission-Based Precautions, regardless of vaccination status.
- A nursing home may also opt to test residents, *who are not up-to-date with all recommended COVID-19 vaccine doses,* without signs or symptoms if they leave the nursing home frequently or for a prolonged length of time, such as over 24 hours.
- Facilities might consider quarantining residents*, who are not up-to-date with all recommended COVID-19 vaccine doses, and* leave the facility if, based on an assessment of risk, uncertainty exists about their adherence or the adherence of those around them to recommended infection prevention measures.
- Monitor residents for signs and symptoms of COVID-19 daily.

Residents who leave the facility for 24 hours or longer should generally be managed as a new admission or readmission, as recommended by the CDC's "Interim Infection Prevention and Control Recommendations to Prevent SARS-CoV-2 Spread in Nursing Homes." Please note that there are exceptions to quarantine, including for residents *who are up-to-date with all recommended COVID-19 vaccine doses*.

Survey Considerations

State survey agencies and CMS are ultimately responsible for ensuring surveyors are compliant with the applicable expectations. Therefore, LTC facilities are not permitted to restrict access to surveyors based on vaccination status, nor ask a surveyor for proof of his or her vaccination status as a

condition of entry. If facilities have questions about the process a state is using to ensure surveyors can enter a facility safely, those questions should be addressed to the State Survey Agency. Surveyors should not enter a facility if they have a positive viral test for COVID-19, signs or symptoms of COVID-19, or currently meet the criteria for *quarantine*. Surveyors should also adhere to the core principles of COVID-19 infection prevention and adhere to any COVID-19 infection prevention requirements set by federal and state agencies (including Executive Orders).

- For concerns related to resident communication with and access to persons and services inside and outside the facility, surveyors should investigate for non-compliance at 42 CFR § 483.10(b), F550.
- For concerns related to a facility limiting visitors, surveyors should investigate for non-compliance at 42 CFR § 483.10(f)(4), F563.
- For concerns related to ombudsman access to the resident and the resident's medicalrecord, surveyors should investigate for non-compliance at 42 CFR §§ 483.10(f)(4)(i)(C), F562 and 483.10(h)(3)(ii), F583.
- For concerns related to lack of adherence to infection control practices, including practices for residents and staff based on COVID-19 vaccination status, surveyorsshould investigate for non-compliance at 42 CFR § 483.80(a), F880.

Contact: Questions related to this memorandum may be submitted to: DNH_TriageTeam@cms.hhs.gov.

Effective Date: Immediately. This policy should be communicated with all survey and certification staff, their managers, and the State/CMS Locations within 30 days of this memorandum.

/s/
David R. Wright

cc: Survey Operations Group