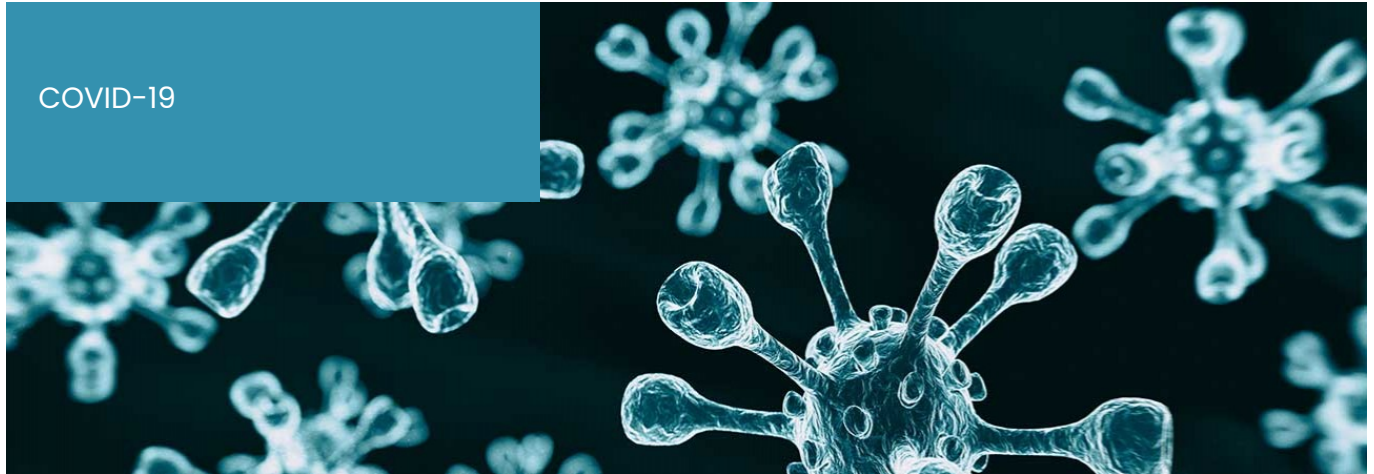


COVID-19



CORONAVIRUS UPDATE: CMS ISSUES NEW NURSING HOME VISITATION GUIDELINES

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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](#).

On Sept. 17, 2020, the Centers for Medicare and Medicaid Services (“CMS”) released new guidance *effective immediately* detailing visitation guidelines for nursing homes during the COVID-19 pandemic. This guidance supersedes and replaces CMS’ previous guidance on visitation issued in March, May, and June, which included, among other things, a nationwide restriction on all visitation. In revising its guidance, CMS acknowledged the physical and emotional toll the visitation restrictions have taken on residents and their families and the need to balance resident physical, mental, and psychosocial well-being with the risk of infection.

Under the guidance, nursing homes are instructed to conduct visitation with adherence to core precautions and to facilitate visitation using a variety of means depending on a facility’s structure and residents’ needs. This will include outdoor and indoor visitation as well as visitation in compassionate-care situations. Visitation planning should be resident-centered.

CORE PRINCIPLES OF COVID-19 INFECTION PREVENTION

CMS expects nursing homes to adhere to the following core principles and best practices in conducting all visitation:

- Screening of all visitors who enter the facility for signs and symptoms of COVID-19 (e.g., temperature checks, questions or observations about signs or symptoms);
- Using hand hygiene;
- Requiring a face covering or mask;
- Social distancing at least six feet between persons;

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- Placing instructional signage throughout the facility and educating visitors on COVID-19 signs and symptoms, infection-control precautions, and other applicable facility practices;
- Cleaning and disinfecting high-frequency touched surfaces in the facility often, and in designated visitation areas after each visit;
- Ensuring staff wear appropriate Personal Protective Equipment (“PPE”);
- Maintaining separate areas dedicated to COVID-19 care;
- Testing residents and staff for COVID-19 in accordance with 42 C.F.R. § 483.80(h).

OUTDOOR VISITS ARE PREFERRED

Outdoor visits are preferred and should be held “whenever practicable.” CMS encourages facilities to create accessible and safe outdoor spaces for visitation, such as patios, courtyards, and tents.

CMS directs nursing homes to “accommodate and support” indoor visits as long as there have been no new COVID-19 cases in the previous 14 days, and the facility is not conducting outbreak testing per CMS guidelines. Similar to CMS’ recent surveillance testing mandate, the availability of indoor visits will depend on the rate of COVID-19 infections in a given county. CMS recommends indoor visitation should only occur in areas with positivity rates of 10% or less; in counties with rates above 10%, only compassionate-care visits should be conducted indoors.

COVID-19 TESTING IS NOT REQUIRED

CMS encourages but does not require visitor testing prior to entry.

ACTION ITEMS FOR NURSING HOMES

- Review and update visitation policies and procedures to accommodate outdoor visits, indoor visits, and visits in compassionate-care situations. CMS allows nursing homes to restrict in-person visits based on various considerations, including the county infection rates, the presence of COVID-19 cases in the facility, visitor symptoms, lack of adherence to infection-control principles, and other COVID-19-related factors.
- Create designated visitation areas that can be easily accessed and allow visits to be conducted with a reasonable degree of privacy.
- Develop screening protocols for visitors, including questions regarding signs or symptoms, travel, etc.
- Develop a log or other tracking mechanism to note visitors, who they visited, staff who assisted the visit, dates of the visit, and contact information in the event of a subsequent COVID-19 outbreak among residents or staff.
- Consider preparing a visitor consent form or handout setting forth the core principles and the facility’s key infection-prevention policies and procedures.
- Decide whether the facility will require visitor COVID-19 testing prior to visitation. Outdoor and indoor visits? Indoor visits only? When the positivity rate reaches a certain percentage within the community? Availability of testing in the community? These are all factors that should be considered.
- Determine the facility’s capacity for visitors in the outdoor and indoor settings. This may require a per-resident cap on visitors as well as a facility-wide cap.
- Implement a scheduling process that allows access to visitation for residents depending on their preferences and needs.
- Develop instructional signage for visitors reinforcing infection-control practices.
- Limit visitor movement within the facility.
- Empower staff members to monitor visitors for adherence to proper use of face coverings, social distancing, and the facility’s other infection-control practices, and in cases of non-adherence, escorting the visitor from the

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premises.

- Coordinate with residents and their legal representatives to identify their visitation needs and preferences, and develop a visitation schedule that best fulfills those needs.

The CMS guidance can be found [here](#). Several state agencies have also released updated guidance on nursing home visitation. Missouri Department of Health and Senior Services guidance can be found [here](#), and Kansas Department for Aging and Disability Services can be found [here](#).

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 industry. 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, or **Amanda Wilwert** at 913.253.2181 or awilwert@foulston.com. For more information on the firm, please visit our website at www.foulston.com.

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Foulston's **Health Law Institute** webinar series begins Oct. 13. Register now and join us to discuss a variety of topics, including the impacts of final rules from the Office of the National Coordinator (ONC) and Centers for Medicare & Medicaid Services (CMS) on Information Blocking (compliance deadline November 2, 2020) and the aftermath of the COVID-19 pandemic healthcare providers are still learning to navigate. We'll also take a look at what we can learn from healthcare litigation in 2020, and what we can expect that's yet to come.

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