



COVID-19

CORONAVIRUS: UPDATE CMS DIRECTS NURSING HOMES TO RESTRICT VISITATION NATIONWIDE

March 17, 2020

By: Brooke Bennett Aziere, Amanda M. Wilwert, and Lisa M. Bryers (Brown)

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](#).

In the rapidly evolving response to the Coronavirus Disease 2019 (“COVID-19”) pandemic, the Centers for Medicare and Medicaid Services (“CMS”) issued updated guidance to nursing homes on March 13, 2020, directing all nursing homes nationwide to **restrict all visitation** immediately. Thus, nursing homes must not permit visitors or non-essential healthcare personnel into facilities except in certain compassionate care situations, such as an end-of-life situation. Facilities need to notify potential visitors to defer visitation until further notice (through signage, calls, letters, etc.).

Individuals who are permitted in the facility for compassionate situations must be limited to a specific room only. These visitors should be required to perform hand hygiene and use Personal Protective Equipment (“PPE”), including facemasks. All decisions regarding visitation during an end-of-life situation must be made on a case-by-case basis and include careful screening of the visitor for fever or respiratory symptoms. Any individual exhibiting symptoms of a respiratory infection (fever, cough, shortness of breath, or sore throat) must not enter the facility **at any time**.

Healthcare workers who provide care to residents (e.g., hospice workers, EMS personnel), should be permitted entry into the facility if they meet the CDC guidelines for healthcare workers. CDC guidance for restricting access to healthcare workers is found [here](#).

If a state implements more stringent visitation requirements than CMS (e.g., a governor orders that all visitation to nursing homes should be banned), CMS will not cite a facility as out of compliance with CMS’ visitation requirements. Therefore, facilities should also regularly monitor their state agencies for any further guidance or restrictions on visitation. Missouri Department of Health and Senior Services guidance can be found [here](#), and Kansas Department of Health and Environment can be found [here](#).

FOULSTON

ATTORNEYS AT LAW

ADDITIONAL GUIDANCE

In addition to the visitation restrictions, CMS developed additional guidance to nursing homes for managing the COVID-19 threat to their vulnerable resident populations. CMS' recommendations include the following:

- Cancelling communal dining and all group activities (including internal and external group activities).
- Actively screening residents and staff for fever and respiratory symptoms.
- Reminding residents to practice social distancing and perform frequent hand hygiene.
- Screening all staff at the beginning of their shift for fever and respiratory symptoms, including:
 - Actively taking temperature;
 - Documenting the absence of shortness of breath, new or change in cough, and sore throats;
 - If a staff member is ill, directing them to put on a facemask and self-isolate at home; and
 - Identifying staff members who work at multiple locations and actively screening and restricting them appropriately.
- Instructing those individuals who are permitted to visit on limiting physical contact with residents (e.g., no hugging or handshaking); proper hand hygiene; limiting surfaces touched; and using PPE where available.
- **Communicating through multiple** means to inform individuals and non-essential healthcare personnel of visitation restrictions (e.g., through signage, letters, e-mails, recorded messages).
- Permitting residents to access the Ombudsman program. Such access should be restricted as set forth above, and facilities should facilitate resident communication through other means.
- Advising any individual who has entered the facility to monitor for signs and symptoms of respiratory infection for at least 14 days after exiting the facility and to self-quarantine and immediately notify the facility if symptoms develop. Facilities then should immediately screen any individuals who had reported contact with the visitor.

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

Foulston Siefkin would like to take this opportunity to recognize and thank our healthcare providers and partners for the work they are doing in these unique circumstances and the work they do every day. We are proud to support you in your efforts to respond to this challenging situation and will continue to monitor and provide updates as soon as new information is available. Thank you.

FOR MORE INFORMATION

If you have questions or want more information regarding monitoring and managing COVID-19, 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 expertise 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, **Lisa Brown** at 785.354.9414 or lbrown@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.

Established in 1919, Foulston Siefkin is the largest law firm in Kansas. With offices in Wichita, Kansas City, and Topeka, Foulston provides a full range of legal services to clients in the areas of administrative & regulatory; antitrust & trade regulation; appellate law; banking & financial services; business & corporate; construction; creditors' rights & bankruptcy; e-commerce; education & public entity; elder law; emerging small business; employee benefits & ERISA; employment & labor; energy; environmental; ERISA litigation; estate

FOULSTON

ATTORNEYS AT LAW

planning & probate; family business enterprise; franchise & distribution; government investigations & white collar defense; governmental liability; government relations & public policy; healthcare; immigration; insurance regulatory; intellectual property; litigation & disputes; long-term care; mediation/dispute resolution; mergers & acquisitions; Native American law; oil, gas & minerals; OSHA; privacy & data security; private equity & venture capital; product liability; professional malpractice; real estate; securities & corporate finance; supply chain management; tax exempt organizations; taxation; trade secret & noncompete litigation; water rights; and wind & solar energy.

HEALTH LAW RESOURCES

Sign up to receive these issue alerts straight to your inbox [here](#).

This update has been prepared by Foulston Siefkin LLP for informational purposes only. It is not a legal opinion; it does not provide legal advice for any purpose; and it neither creates nor constitutes evidence of an attorney-client relationship

PRACTICE AREAS

- Long-Term Care
- Healthcare