

## CMS and CDC Release Updated Nursing Home Visitation Recommendations

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On March 10, 2021, the Centers for Medicare & Medicaid Services (CMS), in collaboration with the Centers for Disease Control and Prevention (CDC), issued updated [guidance](#) for nursing homes to safely expand visitation during the COVID-19 pandemic.

By way of background, in March 2020, CMS issued [guidance](#) to facilities on restricting visitation of all visitors and non-essential health care personnel, except for certain compassionate care situations, such as an end-of-life situation. In May 2020, CMS released [Nursing Home Reopening Recommendations](#), which provided guidance on visitation for nursing homes as their communities progressed through the phases of reopening. In June 2020, CMS released a Frequently Asked Questions document on visitation, which discussed outdoor visits, compassionate care situations, and communal activities. Then, in September 2020, CMS issued [revised guidance](#) encouraging nursing homes to facilitate outdoor visitation and allowed for indoor visitation if there had been no new COVID-19 cases in the past 14 days and the facility was not conducting outbreak testing per CMS guidelines.

This new guidance, released after more than three million doses of vaccines have been administered within nursing homes, encourages an increase in visitation. While CMS encourages vaccination by visitors, the guidance specifies that visitors should not be required to be tested or vaccinated (or show proof of such) as a condition of visitation. Under the updated guidance, facilities are to allow responsible indoor visitation at all times and for all residents, regardless of vaccination status of the resident, or visitor, unless certain scenarios arise that would limit visitation for:

- Unvaccinated residents, if the COVID-19 county positivity rate is greater than 10 percent and less than 70 percent of residents in the facility are fully vaccinated;
- Residents with confirmed COVID-19 infection, whether vaccinated or unvaccinated, until they have met the criteria to discontinue transmission-based precautions; or

- Residents in quarantine, whether vaccinated or unvaccinated, until they have met criteria for release from quarantine.

While outbreaks increase the risk of COVID-19 transmission, a facility should not restrict visitation for all residents as long as there is evidence that the transmission of COVID-19 is contained to a single area of the facility. Facilities should continue 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 and suspend all visitation until at least one round of facility-wide testing is completed. Visitation can resume based on the following criteria:

- If the first round of outbreak testing reveals no additional COVID-19 cases in other areas of the facility, then visitation can resume for residents in areas with no COVID-19 cases. However, the facility should suspend visitation in the affected area until the facility meets the criteria to discontinue outbreak testing.
- If the first round of outbreak testing reveals one or more additional COVID-19 cases in other areas of the facility (e.g., new cases in two or more areas), then facilities should suspend visitation for all residents (vaccinated and unvaccinated), until the facility meets the criteria to discontinue outbreak testing.

The new guidance also emphasizes that “compassionate care” visits should be allowed at all times, regardless of a resident’s vaccination status, the county’s COVID-19 positivity rate, or an outbreak. Compassionate care visits include visits for a resident whose health has sharply declined or is experiencing a significant change in circumstances.

If you have questions about this new guidance, please contact Suzanne Scrutton, Robin Amicon, Nita Garg, or your regular Vorys attorney.

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Vorys is actively monitoring these developments and will continue to analyze the situation and provide updates. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines in which we have been and expect to continue receiving questions. [Learn more and see the latest updates from the Task Force.](#) If you have questions regarding this news, please contact your Vorys attorney or a member of our [Coronavirus Task Force](#).