

# STATE WIDE

**New York StateWide Senior Action Council, Inc.**

**VIRTUAL RESIDENT FAMILY ACTION COUNCIL**  
**August 10, 2021**

**NURSING HOME VISITATION**

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# IMPACT OF THE BAN ON VISITATION

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The wellbeing of nursing home residents was severely affected during the COVID-19 visitor bans.



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# **YOUR RIGHTS DURING THIS TIME**

# RIGHTS AND RESTRICTIONS TO THOSE RIGHTS

## RIGHTS UNDER STATE AND FEDERAL RULES

- ❑ Visits are permitted at all times for all residents – **BUT** there are restrictions.
- ❑ Outdoor visits are permitted regardless of county positivity or any outbreaks.



## RESTRICTIONS TO VISITATION

- ❑ Limited exceptions for residents who have not been vaccinated in areas where there is high community spread (more than 10 percent) and low resident vaccination rate (less than 70 percent). (Vaccinated residents can receive visitors).
- ❑ During outbreaks.
- ❑ Limits will be placed on residents who have Covid or who are in quarantine

# RIGHTS AND RESTRICTIONS TO THOSE RIGHTS

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## RIGHTS UNDER STATE AND FEDERAL RULES

- Facilities shall not restrict visitation without a reasonable clinical or safety cause.**
- Vaccinated residents with an unvaccinated visitor may hug if both wear masks.
- If both are vaccinated, may hug without masks.

## RESTRICTIONS TO VISITATION

- Facilities are permitted to consider how the number of visitors and the total number of visitors may affect their ability to **maintain core principles of infection control.**
  - Facilities can still limit frequency, numbers, etc. based upon this.

# RIGHTS AND RESTRICTIONS TO THOSE RIGHTS

## RIGHTS UNDER STATE AND FEDERAL RULES

- ❑ **Outdoor visits not suspended. Indoor visits are still permitted if case is contained to a single area of the facility.**
- ❑ Nursing homes should enable visits to be conducted with an adequate degree of privacy.

## RESTRICTIONS TO VISITATION

- ❑ Facilities must suspend visitation if a new COVID case is identified. Can resume if no new case.
- ❑ Facilities can schedule visits for a specified amount of time if they need to do so to **maintain their core infection control principles.**

# CORE PRINCIPLES OF COVID-19 INFECTION PREVENTION: CMS

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- ❑ Screening of all who enter the facility for signs and symptoms of COVID-19 (e.g., temperature checks, questions about and observations of signs or symptoms), and denial of entry of those with signs or symptoms or those who have had close contact with someone with COVID-19 infection in the prior 14 days (regardless of the visitor's vaccination status)
- ❑ Hand hygiene (use of alcohol-based hand rub is preferred)
- ❑ Face covering or mask (covering mouth and nose) and social distancing at least six feet between persons, in accordance with CDC guidance

# CORE PRINCIPLES OF COVID-19 INFECTION PREVENTION: CMS

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- ❑ Instructional signage throughout the facility and proper visitor education on COVID19 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

# TYPES OF CAREGIVING PERMITTING VISITATION EVEN DURING A PANDEMIC

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- Compassionate care giving
- Personal care giving (essential caregiver)

# COMPASSIONATE CARE GIVING

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Compassionate caregivers can always visit



# COMPASSIONATE CAREGIVING.

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Situations in which a resident is eligible for a compassionate caregiving visitor include but are not limited to the following:

- ❑ end of life;
- ❑ the resident, who was living with their family before recently being admitted to an adult care facility, is struggling with the change in environment and lack of physical family support;



# COMPASSIONATE CAREGIVING.

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- ❑ the resident is grieving after a friend or family member recently passed away;
- ❑ the resident needs cueing and encouragement with eating or drinking, and such cueing was previously provided by family and/or caregiver(s), and the resident is now experiencing weight loss or dehydration; and
- ❑ the resident, who used to talk and interact with others, is experiencing emotional distress, seldom speaking, or crying more frequently (when the resident had rarely cried in the past).

# COMPASSIONATE CAREGIVING VISITS

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- Visits permitted regardless of county positivity rate
- Visits permitted even if resident has COVID
- Frequency and length of visits based upon needs of the resident
- Personal contact is permitted if it follows infection prevention guidelines

# PERSONAL CAREGIVING VISITORS

When there is a public health emergency declared by the Governor

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- ❑ Residents must have access to their “personal caregiving visitor” (a family member, close friend, or legal guardian of a resident designated by such resident, or such resident’s lawful representative), to assist with personal caregiving or compassionate caregiving for the resident.
  
- ❑ The facility can refuse:
  - If the facility believes the resident will not benefit
  - To protect the health and safety
  - Poses a threat



# PERSONAL CAREGIVING VISITORS: YOUR RIGHTS

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- If facility determines that denying such personal caregiving visitor access to the resident is in the resident's best interests, the facility must document the date of and reason for visitation refusal in the resident's individualized comprehensive plan of care, and on the same date of the refusal the facility shall communicate its decision to the resident and their designated representative.

# PERSONAL CAREGIVERS: YOUR RIGHTS

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- ❑ Even though this does not go into effect until the Governor declares a public health emergency, residents can now designate at least two people to act as their personal caregivers so they are ready if a new emergency is declared.

# PERSONAL CAREGIVERS: YOUR RIGHTS

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- The facility has to develop written policies and procedures to ask residents, or their designated representatives in the event the resident lacks capacity, at time of admission or readmission, or for existing residents within fourteen days of the effective date of this paragraph, which individuals the resident elects to serve as their personal caregiving visitor during declared public health emergencies.

# PERSONAL CAREGIVERS: YOUR RIGHTS

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- The facility has to maintain a written record of the resident's designated personal caregiving visitors in the resident's individualized comprehensive plan of care, and has to document when personal caregiving and compassionate caregiving is provided in the resident's individualized comprehensive plan of care.

# PERSONAL CAREGIVERS

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- As part of its ongoing review of a resident's comprehensive plan of care, the facility has to regularly inquire of all current residents, or their designated representative if the resident lacks capacity, whether the facility's current record of designated personal caregiving visitors remains accurate, or whether the resident, or their designated representative if the resident lacks capacity, wishes to make any changes to their personal caregiving visitor designations.

# PERSONAL CAREGIVERS: YOUR RIGHTS

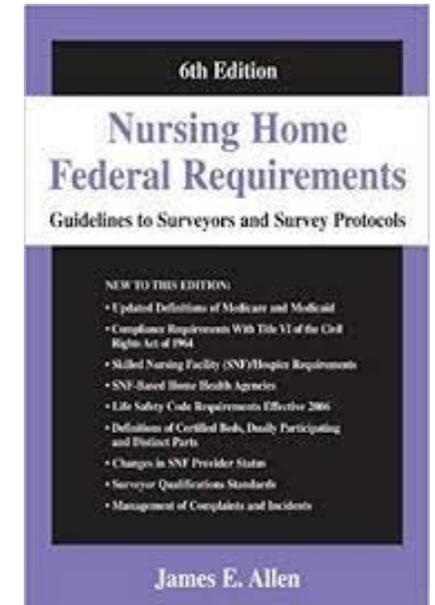
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- The facility has to update the resident's individualized comprehensive plan of care with the date the facility sought updates from the resident and indicate any changes to the resident's personal caregiving visitor designations therein. Such inquiries shall be made no less frequently than quarterly and upon a change in the resident's condition; upon review of a facility's visitation policies and procedures, the Department may also require the facility inquire of any resident whether the facility's current record of designated personal caregiving visitors remains accurate.

# WHAT CAN YOU DO IF YOU ARE DENIED VISITATION?

## KNOW YOUR RIGHTS AND NURSING HOME RULES

**415.26 of the NYS Code and Regulations for nursing homes. (<https://regs.health.ny.gov/volume-c-title-10/content/part-415-nursing-homes-minimum-standards>)**



# GENERAL STEPS TO TAKE

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- 1. Speak to staff and the administration of the facility about your issue.**

Show them a copy of the State Visitation Guidelines ([https://coronavirus.health.ny.gov/system/files/documents/2021/07/nh\\_visitation\\_guidance\\_-7-8-2021.pdf](https://coronavirus.health.ny.gov/system/files/documents/2021/07/nh_visitation_guidance_-7-8-2021.pdf))

- 2. Speak to the ombudsman in your facility if there is one**

# GENERAL STEPS TO TAKE

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**4. Call your local ombudsman**

**5. Call your state ombudsman**

**6. Make an official grievance or complaint in the facility**

**7. Speak to the Resident Council and ask the if they can make your complaint from the Council**



# GENERAL STEPS TO TAKE



New York StateWide Senior Action Council, Inc.

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8. Call StateWide HelpLine - 1-800-333-4374

9. Make a complaint to Department of Health or other governmental agency  
[Nursing Home Complaint Form | New York State Department of Health \(ny.gov\)](#)

10. Speak to the media, legislators, etc.

11. Sue

# HOW TO MAKE AN OFFICIAL GRIEVANCE OR COMPLAINT\*

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Your facility must assure that a method is implemented to promptly deal with complaints and recommendations made by residents or designated representatives which:

- enables complaints and recommendations to be made orally or put in writing;
- brings complaints and recommendations promptly to the attention of the administration for review and resolution;

\*415.26 of the NYS Code and Regulations for nursing homes. (<https://regs.health.ny.gov/volume-c-title-10/content/part-415-nursing-homes-minimum-standards>)

# MAKING AN OFFICIAL GRIEVANCE OR COMPLAINT

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- responds to all residents or designated representatives as to action taken or the reason why no action was taken, as soon as possible and except under extraordinary circumstances such as health or administrative emergencies, within 21 days after the complaint or recommendation was made;
- assure that the complaint and recommendation method is made known to:
  - all residents upon admission and their designated representatives; and
  - all nursing, social service and other appropriate personnel.

# MAKING A OFFICIAL GRIEVANCE OR COMPLAINT

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- Put your complaint in writing
- Make a copy of your complaint
- Share your complaint with the ombudsman

# IF AN EMERGENCY HAS BEEN DECLARED

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Become a Personal Caregiver

# WHAT CAN YOU DO IF YOU ARE DENIED VISITATION AS A PERSONAL CAREGIVER\*

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The nursing home says you will not be a benefit to the resident.

- The reason must be documented in the resident's individualized comprehensive plan of care, which you should ask to see or be given the reason.

\* <https://regs.health.ny.gov/volume-c-title-10/content/section-4153-residents-rights>

# PERSONAL CAREGIVING VISITORS: YOUR RIGHTS

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□ As part of the new law on Essential Caregivers, you have the right to ask a health or mental health professional duly licensed or certified in New York State under the Education Law, and who need not be associated with the nursing home, to provide a written statement that the personal caregiving will substantially benefit the resident's quality of life, including a statement from such medical provider that the personal caregiving visitation will enhance the resident's mental, physical, or psychosocial well-being, or any additional criteria evidencing a benefit to quality of life as determined by the Department. Such written statements from the medical provider shall be maintained in the resident's individualized comprehensive plan of care.

# NURSING HOMES SAYS YOU WILL NOT BENEFIT THE RESIDENT

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- You can ask health or mental health professional who need not be associated with the nursing home to provide a written statement.
- The statement should say that the personal caregiving will substantially benefit the resident's quality of life, including a statement from such medical provider that the personal caregiving visitation will enhance the resident's mental, physical, or psychosocial well-being, or any additional criteria evidencing a benefit to quality of life.
- (Although the Nursing Home Code of Rules and Regulations states that the facility will do this, the law as signed permits the Personal Caregiver to do this.)

# WHAT CAN YOU DO DURING CURRENT RESTRICTIONS?

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## **BECOME A COMPASSIONATE CAREGIVER: 415.3**

**Compassionate care visits, are allowed at all times, regardless of a resident's vaccination status, the county's COVID-19 positivity rate, or an outbreak.**

In the event a resident experiences a long-term or acute physical, mental, or psychosocial health condition for which, in the opinion of the resident, their representative, or a health care professional, a compassionate caregiving visitor would improve the resident's quality of life, the resident or their representative shall designate at least two compassionate caregiving visitors at one time, and the facility shall record such designation in the resident's individualized comprehensive plan of care. A resident's designated personal caregiving visitors may also provide compassionate caregiving.

# WHAT CAN YOU DO IF YOU ARE DENIED VISITATION AS A COMPASSIONATE CAREGIVER

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# MAKING THE CASE FOR COMPASSIONATE CARE\*

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In advocating for compassionate care visits, you should focus on two major areas: individualized, person-centered care and significant decline.

[\\*making-the-case-for-compassionate-care.pdf \(theconsumervoice.org\)](https://theconsumervoice.org/uploads/files/issues/making-the-case-for-compassionate-care.pdf)

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# MAKING THE CASE FOR COMPASSIONATE CARE\*

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Individualized person-centered care: Think about your loved one's unique characteristics, who they are as a person, what their needs are and what they are experiencing now. If they are not receiving the care required to meet their specific needs and are experiencing a decline, this is a strong argument for compassionate care visits.

Indicators of significant decline: Look for indicators of significant decline.

# IF YOU ARE DENIED COMPASSIONATE CARE VISITS

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- Ask for the reason.
- Request a care planning meeting and emphasize your loved one's need for these visits.
- Involve your long-term care ombudsman.
- Get an opinion from a health care provider as to the resident's need.
- Make complaints
- Sue
- Involve media

# WHAT CAN YOU DO IF YOU ARE REFUSED INDOOR VISITS?

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- Ask the facility why they are refusing indoor visits or in-room visits.
  - If the reason is not one of the exceptions to indoor visitation, the facility cannot deny indoor visits.
  - Is the reason related to the Core Principles of Infection Control? Ask them to explain.
  - Is the reason related to an outbreak? Ask them to explain.

# WHAT CAN YOU DO IF YOU ARE LIMITED IN THE FREQUENCY AND TIME OF YOUR VISIT?

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- Ask facility staff for a longer and more frequent visits.
- If they refuse, ask for the reasons.
- If the reasons relate to COVID-19 infection prevention, ask about alternatives to enable the person-centered visits the resident needs.

# WHAT CAN YOU DO IF VISITATION IS RESTRICTED BECAUSE OF “LOW STAFF”?

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- The criteria for restricting visits never mentions staffing as a reason.
- If a nursing home can tie “low staff” to the core principles of infection, they may be able to restrict. Ask them to explain.
- Facilities with “low staff” are in violation of the code of standards.
- Ask the facility why not having enough staff should limit visiting.

# WHAT CAN YOU DO IF OUTDOOR VISITATION IS UNCOMFORTABLE OR SEEMS UNSAFE?

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- ❑ Facilities must create accessible and safe outdoor spaces
- ❑ Nursing home staff are required to assist residents as necessary to facilitate these conversations telephone calls or video conferences.
- ❑ A facility should take steps to facilitate such outdoor visits—at a minimum, tables and chairs, and possibly also a Plexiglas divider prevent COVID transmission.



# WHAT CAN YOU DO IF OUTDOOR VISITATION IS UNCOMFORTABLE OR SEEMS UNSAFE?

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- Talk to staff about the requirements.
- Show them the guidance from CMS or New York State Department of Health.

# WHAT CAN YOU DO IF VISITATION IS RESTRICTED AFTER A OUTBREAK?

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- An outbreak is considered to be one or more new cases of COVID-19.
- If there is a new case of COVID-19, a facility has to immediately suspend indoor visitation and begin outbreak testing.

# WHAT CAN YOU DO IF VISITATION IS RESTRICTED AFTER A OUTBREAK?

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- If the outbreak testing shows no additional cases, then visitation can resume in all areas of the facility where there are no COVID-19 cases.
- If the outbreak started with a staff member, the staff member should be self-isolating and no longer present, so visitation should fully resume.
  - Ask how many cases; ask if the cases are limited to one unit; ask if the cases only involve staff.

# WHAT CAN YOU DO IF VISITATION IS RESTRICTED AFTER A OUTBREAK?

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- Indoor visits are still permitted if case is contained to a single area of the facility.

**Outdoor visits are not suspended.**

- Speak to the administration.
- Explain the rules as you know them.
- **Compassionate care visits and visits required under federal disability rights law should be allowed at all times, for any resident (vaccinated or unvaccinated).**

**ONCE THE RESTRICTIONS ARE  
REMOVED**

# FULL VISITING RIGHTS

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The facility must provide immediate access to any resident by the following:

- Ombudsmen who are duly certified and designated by the State Office for the Aging;



# FULL VISITING RIGHTS

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- immediate family or other relatives of the resident, subject to the resident's right to deny or withdraw consent at any time;
- personal caregiving visitors, including those providing compassionate caregiving, and
- others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time.

# WHAT CAN YOU DO?

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- If a nursing home claims that visits can be made only during official visiting hours, the resident or potential visitor should let the nursing home know that the rules requires that a resident can accept a visit at any time.
- You could give the nursing home a copy of the law.
- If you are denied visitation based upon the facility determination that you are likely to pose a threat of serious physical, mental, or psychological harm to the resident or others, the facility must document the reasons why. Call the StateWide Patient Rights HelpLine and make an official complaint.

# ADVOCACY ACTIVITIES TO REMOVE ALL RESTRICTIONS

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Two dozen lawmakers are demanding that Governor Cuomo lift all restrictions because of the terrible loneliness and isolation that had real impacts on physical and mental health.

# NATIONAL ACTIVITIES

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The National Consumer Voice for Quality Long Term Care, located in Washington DC, along with other advocates sent a letter to CMS in June asking that full visitation rights be restored.

- Joining the Voice were:
- California Advocates for Nursing Home Reform
- Center for Medicare Advocacy
- Justice in Aging
- Long Term Care Community Coalition
- Michigan Elder Justice Initiative



**SPEAK UP:**  
**Know Your Rights  
And How To Use Them**  
National Consumer Voice For Quality Long-Term Care

# RESOURCES: Copy links and put into your address line to open.

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- Call StateWide's Patient Care Helpline - 1-800-333-4374
- Local ombudsman - <https://aging.ny.gov/local-offices>  
(855) 582-6769
- How to complain to NYS – DOH  
<https://www.health.ny.gov/facilities/nursing/complaints.htm>  
(888) 201-4563
- How to complain of abuse, neglect and mistreatment to the Attorney General and its Medicaid Fraud Unit - <https://ag.ny.gov/nursinghomes>- (800) 771-7755 press 1, 3, 2.
- How to complain to Attorney General's nursing home hotline: 833-249-8499.

# GOVERNMENT CURRENT GUIDELINES

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## FEDERAL CURRENT GUIDELINES ON VISITATION

<https://www.cms.gov/files/document/qso-20-39-nh-revised.pdf>

## STATE CURRENT GUIDELINES ON VISITATION

[https://coronavirus.health.ny.gov/system/files/documents/2021/07/nh\\_visitation\\_guidance\\_-7-8-2021.pdf](https://coronavirus.health.ny.gov/system/files/documents/2021/07/nh_visitation_guidance_-7-8-2021.pdf)

# RESOURCES

[National Consumer Voice \(theconsumervoice.org\)](https://www.theconsumervoice.org)

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[Visitation and Quarantine FAQs](#)

[CMS Visitation Guidance](#)

[How Vaccinations Affect Visitation](#)

[Making the Case for Compassionate Care Visits](#)

[Resources to Help You Advocate for Yourself or Your Loved One](#)

[What to Do If You Are Denied Entry](#)