



Department of Health

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DATE: July 8, 2021
TO: Adult Care Facility Operators and Administrators
FROM: New York State Department of Health

Health Advisory: Updated Adult Care Facility Visitation, Communal Dining and Activities and Construction Projects

Please distribute immediately to: Adult Care Facility Operators, Administrators, Case Managers

Purpose

The information contained in this guidance supersedes and replaces all previously issued Adult Care Facility (ACF) visitation guidance and recommendations.

General Visitation Guidance for ACFs

For all visitation while COVID-19 is still present in New York State, regardless whether there is a declared public health emergency, ACFs must also follow these general visitation guidelines and core principles.

A. General Visitation Principles for ACFs

- Subject to the resident's right to deny or withdraw consent at any time, and to the rules set forth in this health advisory, all ACFs must provide immediate access to any resident of visitors of their choice, including but not limited to immediate family or other relatives of the resident and any others who are visiting with the consent of the resident.
- Each ACF is required to have appropriate policies and procedures in place that respect residents' rights and address infection control and prevention when residents leave the facility for outings.
- The ACF must document visitation refusals made by the facility in accordance with 18 NYCRR § 485.14(h).

ACFs should consider how the number of visitors per resident at any one time and the total number of visitors in the facility at any one time may affect the staff's ability to perform regulatory-required supervision services.

Principles of regulatorily required supervision should be the central component of plans to restart communal activities.

- When there is a confirmed positive case of a communicable disease in an ACF, the ACF must notify the local health department (LHD) if not already involved and follow all recommendations from the LHD.

Please be advised that nothing in this directive absolves the ACF of responsibility to perform regulatory-required supervision services and to ensure that resident and family communication is ongoing. Based on residents' needs and consistent with the ACF staffing and physical plant, visitation can be conducted through a variety of means including in resident rooms, dedicated visitation spaces, and outdoors (weather permitting); and should always be person-centered with consideration of the individual residents' physical, mental, and psychosocial well-being, and support their individual quality of life.

B. Personal Caregiving and Compassionate Caregiving Visitation Regulations

The Personal Caregiving and Compassionate Caregiving Visitation Regulations, which implement the Essential Caregiver Act, are in effect; however, visitation under these regulations must be implemented only when there is a declared State or local public health emergency. Even when no emergency has been declared, ACFs are still required to develop and implement policies and procedures to effectuate the provisions of the personal and compassionate caregiving visitor regulations, as more fully described below.

In the event that an emergency is declared, personal and compassionate caregiving visitors are permitted to visit residents pursuant to 18 NYCRR § 485.18(c). In some cases, visits by a personal caregiving visitor can be limited, as set forth in this guidance and 18 NYCRR § 485.18(c)(1). However, compassionate caregiving visitors shall be permitted at all times during the declared emergency, regardless of any general visitation or personal caregiving restrictions currently in effect at a facility. Compassionate care situations must be considered by the ACF on a resident-specific, individualized basis.

At a minimum, policies and procedures must include:

- The process to ask residents, or their designated representatives in the event the resident lacks capacity, which individual/s the resident elects to serve as their personal caregiving visitor (may designate at least two) during declared public health emergencies.
- Maintaining a record in the resident's case management record on who the designated personal caregiving visitors are, the fact that such designation must be updated at least every 6 months and with any change in condition, and that documentation of the date residents are asked if they wish to change their designation must appear in the case management record, along with any change in the designation.
- The frequency and duration of personal caregiving visits and limitations on the total number of personal caregiving visitors allowed to visit the resident and the facility at any one time. Policies shall not be construed to limit access by other visitors that would otherwise be permitted under state or federal law or regulation.
- Respect for resident privacy, including privacy of a roommate, if applicable.

- Consideration that residents may receive their designated personal caregiving visitors for the resident's desired frequency and length of time, and any restrictions on that desired frequency and duration must be:
 - attributable to the resident's clinical or personal care needs;
 - necessary to ensure the resident's roommate has adequate privacy and space to receive their own designated personal caregiving visitors; or
 - because the desired visitation frequency or duration would impair the effective implementation of applicable infection control measures.

ACFs must also have policies and procedures outlining when personal caregiving visits cannot occur or when temporary suspension or limitation of visits is warranted under the regulations. Policies must comport with the following acceptable restrictions:

Permissible restrictions relating to individual residents:

- The ACF has reasonable cause to believe that a resident will not benefit from accessing their designated personal caregiving visitors, and such reasoning has been documented in the resident's case management record; in such cases, the facility may require a written medical statement that the personal caregiving will substantially benefit the resident's quality of life.
- The ACF has reasonable cause to believe that permitting the personal caregiving visitor to meet with the resident is likely to pose a threat of serious physical, mental, or psychological harm to such resident.
- The personal caregiving visitor is causing or reasonably likely to cause physical injury to any facility resident or personnel if the visit is not restricted.

Permissible restrictions relating to facility operations and resident safety.

In any of the following three situations, the ACF is required to notify residents, all designated personal caregiving visitors, and the applicable Department regional office, within 24 hours of implementing the visitation suspension or limitation and the cause for the suspension or limitation. In addition, the specific reason for the suspension or limitation should also be documented in the facility's administrative records:

- The Department has determined that local infection rates are at a level that presents a serious risk of transmission of such communicable disease within local facilities.
- The ACF is experiencing temporary inadequate staffing and has reported such staffing shortage to the Department of Health and any other State agencies as required by law, regulation, or other directive.
- An acute emergency situation exists at the ACF (e.g., loss of heat, loss of elevator or other essential service).

Visitation of Residents During an Outbreak

Personal caregiving visitors are not permitted to visit a resident who is on [Transmission Based Precautions](#) until the resident is removed from such precautions; however, if the personal

caregiving visitor is providing compassionate care, as defined in the new 18 NYCRR § 485.18(d), or is otherwise an authorized visitor under the federal disability rights law, such visitor must be permitted into the facility provided they meet the screening standards set forth at 18 NYCRR § 485.18(d)(3).

Please be reminded that the Department may review and require changes to a facility's policies and procedures regarding personal caregiving and/or compassionate care visitation based on complaints received and/or as a result of a routine inspection of the adult care facility.

C. Core Principles and Transmission Prevention

Regardless of how visits are conducted, (e.g. compassionate care or general visitation) there are certain core principles and best practices that reduce the risk of disease transmission and as such must be followed. ACFs must develop their own policies and procedures relating to visitation with consideration of how to safely permit visitation in accordance with the standard infection control precautions as related by the [Centers for Disease Control and Prevention \(CDC\)](#). Facilities are obligated to protect the health and safety of residents in concert with meeting regulatory, supervisory, and infection control requirements. Generally in New York State (NYS), unvaccinated individuals are responsible for wearing face coverings or masks and vaccinated individuals are not required to wear masks. However, healthcare facilities, including nursing homes, enhanced assisted living residences (EALRs), and assisted living programs (ALPs), must continue to follow NYS and CDC COVID-19 guidance as they are considered healthcare settings.

ALL OTHER ACFs should adhere to the core principles of infection control to protect the health and safety of both fully vaccinated and unvaccinated residents, but do not have to follow the mask rules that apply to healthcare settings. For more information, please refer to [Dear Administrator Letter #21-16](#), online at https://health.ny.gov/facilities/adult_care/dear_administrator_letters/, and CDC guidance at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>.

Please note, visitors, including representatives of the Office of the State Long-Term Care Ombudsman and Settlement Providers (as defined under "Required Visitation") should neither be required to be tested nor vaccinated (or show proof of such) as a condition of visitation.

Residents who are on [transmission-based precautions](#) should only receive visits that are virtual, through windows, or in-person for compassionate care situations. This restriction should be lifted once transmission-based precautions are no longer required per applicable guidelines and other visits must be allowed to occur as described above.

D. Visitation by State Representatives and Settlement Providers

Facilities must ensure that representatives of the Office of the State Long-Term Care Ombudsman, peer bridgers, housing contractors, care managers and other similar providers (collectively, "Settlement Providers") are able to access residents absent reasonable cause such visitation would directly endanger the safety of residents. Such representatives are required to subject themselves to the facility's standard health screening and adhere to core principles.

Please be reminded that the Department has the authority to investigate any reports of a violation of supervision, resident rights, or other regulatory requirements under Title 18 of the NYCRR and may cite facilities accordingly. Consistent with 18 NYCRR §§ 485.14 and 485.18, an ACF shall not restrict visitation absent reasonable cause such would directly endanger the safety of

residents. Accordingly, an ACF must facilitate in-person visitation consistent with the applicable regulations and within the parameters of this guidance. Failure to facilitate visitation without adequate cause will result in an investigation and possible enforcement action.

E. Communal Activities and Dining

Effective immediately, facilities may restart communal activities including, but not limited to a program of activities under 18 NYCRR §487.7(h) or 488.7(f), dining and resident council meetings; provided, however, that before resumption of such activities, the facility must first develop comprehensive policies and procedures for monitoring such communal activities to ensure adherence to the Core Principles of infection control (outlined above) as well as regulatory supervision requirements. These policies must be consistent with then-current CDC recommendations for assisted living or, where no such guidance exists, with guidance for similar congregate settings.

At the time this Health Advisory is issued, CDC recommendations allow for residents to have close contact and not wear masks if all residents participating in the activity are fully vaccinated. Likewise, under current CDC recommendations, fully vaccinated residents can participate in communal dining without social distancing or masks. Unvaccinated residents must maintain six feet of distance from others, and all other residents must wear masks when not dining (e.g., when coming to and leaving the dining room).

F. Staff Mask Requirements

Staff in healthcare facilities, including nursing homes, enhanced assisted living residences (EALRs), and assisted living programs (ALPs), must continue to follow NYS and CDC COVID-19 guidance and wear masks as they are considered healthcare settings.

Staff in all other ACFs should adhere to core principles of infection control to protect the health and safety of both fully vaccinated and unvaccinated residents, but do not have to follow the mask rules that apply to healthcare settings. UNVACCINATED STAFF MUST WEAR MASKS.

G. Construction Projects

ACFs may resume interior and exterior construction projects based on approval of a Resident Safety Plan (RSP) by the applicable regional office of the Department. ACFs considering submission of a RSP must outreach the applicable regional office of the Department. ACFs are responsible for ensuring compliance with existing regulations, guidance, and requirements.

Questions may be directed to covidadultcareinfo@health.ny.gov.