



CAPITAL HEALTH  
CONSULTING

136 State St. | Suite 501  
Albany, NY 12207  
518.724.2480  
[www.capitalhealthconsulting.com](http://www.capitalhealthconsulting.com)

**Lisa M. Wickens-Alteri**  
President  
[lwickens-alteri@chcalbany.com](mailto:lwickens-alteri@chcalbany.com)

## I. Visitation & Communal Activities in Nursing Homes

On July 8, 2021, DOH issued a revised health advisory regarding visitation in nursing homes, which supersedes all previously issued guidance and recommendations and is consistent with the U.S. Centers for Medicare and Medicaid Services memorandum QSO-20-39-NH and Centers for Disease Control and Prevention. Per the advisory, “Each facility is required to have appropriate policies and procedures in place to address infection control and prevention during and after visits and outings.” The document can be accessed via the link at the end of this section. CHC encourages you to read the document in its entirety to assure compliance.

The general visitation guidance indicates nursing homes should adhere to the following core principles of infection control:

- “Screening of all who enter the facility for signs and symptoms of COVID-19 (e.g., 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);
- The use of face coverings or masks (covering mouth and nose) in accordance with CDC guidance;
- Social distancing of at least six feet between persons, in accordance with CDC guidance;
- Instructional signage throughout the facility and proper visitor education on COVID-19 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 at 42 CFR § 483.80(h) (see QSO-20-38-NH).”

The guidance states visitors that are “unable” to adhere to the above core principles should not be permitted to visit or asked to leave. The DOH document goes on to provide guidance for outdoor visitation and indoor visitation, with outdoor being preferable given lower risk of transmission and increased space and air flow.

The DOH document also outlines the procedures to follow when there is a new outbreak of COVID-19 in the facility, visitor testing and vaccination, and scheduling of visits.

On personal caregiving visitors, facilities are required by legislation enacted earlier this year and regulations (see section III of this memo) to have policies and procedures in place, which must only be implemented if there is a declared Statewide public health emergency. At this time, there is no Statewide

public health emergency. Nursing homes must permit compassionate care visits at all times and follow certain safeguards including:

- “Screening for signs and symptoms of COVID-19 and exposure to COVID-19 prior to entering the facility;
- Considerations for appropriate infection control and prevention measures if physical contact is necessary (i.e., contact would be beneficial for the resident's mental or psychosocial wellbeing), including appropriate use of personal protective equipment and adherence to hand hygiene protocols; and
- Method(s) to determine the compassionate caregiver's appropriate donning of PPE and compliance with acceptable infection control and prevention measures.”

Regarding communal dining DOH guidance states it may occur “...while adhering to the core principles of COVID-19 infection prevention. Communal dining may occur without the use of face coverings or physical distancing, if all residents are fully vaccinated. If there are unvaccinated residents also dining in the communal dining area, all residents must wear face coverings when not eating and unvaccinated residents should physically distance from others.”

Health Advisory: Revised Skilled Nursing Facility Visitation	<a href="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</a>
---	---

## II. Visitation & Communal Activities in Adult Care Facilities

On July 8, 2021, DOH issued an updated health advisory regarding visitation and communal dining and activities in adult care facilities. CHC encourages you to read the document in its entirety to assure compliance. The document can be accessed via the link at the end of this section.

Adult care facilities are required to adhere to the following general principles for visitation:

- “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 or 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).
- 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.”

The guidance requires adult care facilities to follow certain core principles and best practices while allowing for visitation and in accordance with CDC.

On personal caregiving visitors, adult care facilities are required by legislation enacted earlier this year and regulations (see section III of this memo) to have policies and procedures in place, which must only be implemented if there is a declared Statewide public health emergency. At this time, there is no Statewide public health emergency.

The advisory indicates adult care facilities are authorized to restart communal activities including dining and resident council meetings; however, each 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."

On requirements for masks, the advisory notes staff in health care facilities, which includes nursing homes, enhanced living residences, and assisted living programs, must continue to wear masks. The advisory goes on to state, "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."

<p><b>Health Advisory: Updated Adult Care Facility Visitation, Communal Dining and Activities and Construction Projects</b></p>	<p><a href="https://coronavirus.health.ny.gov/system/files/documents/2021/07/acf_visitation_guidance_07.08.2021.pdf">https://coronavirus.health.ny.gov/system/files/documents/2021/07/acf_visitation_guidance_07.08.2021.pdf</a></p>
---	--

### **III. NY DOH's Emergency Regulations for Personal/Compassionate Care Giving Visitation in Nursing Homes & Adult Care Facilities Effective June 1<sup>st</sup>**

Pursuant to the passage and enactment of Chapter 108 of the Laws of 2021 (A6966), the New York State Department of Health (NYSDOH) has issued emergency regulations effective June 1, 2021 to require nursing homes and adult care facilities to have policies and procedures in place to permit personal and compassionate caregiving visitations during a declared State or local public health emergency, including COVID-19. As of June 25, 2021, New York's public health emergency has been rescinded.

Some key definitions from Chapter 108 of the Laws of 2021:

- personal caregiving visitor means a family member, close friend, or legal guardian of a resident designated by the resident or the resident's lawful representative to assist with personal caregiving or compassionate caregiving for the resident;
- personal caregiving means care and support of a resident by a personal caregiving visitor that is provided to benefit such resident's mental, physical, or social well-being; and
- compassionate caregiving means personal caregiving that is provided in anticipation of the end of a resident's life or in the instance of significant mental, physical, or social decline or crisis of a resident.

Summary of key aspects of this emergency regulations as it relates to personal caregiving visitation:

- During an emergency, the facility must continue to allow residents to access their designated personal caregiving visitors subject to the following restrictions:
  - If the facility has reasonable cause to believe that the resident will not benefit from visitation, the facility can require a health or mental health professional to provide a written statement on the benefits of such visitation, which must be maintained in the resident's comprehensive plan of care.

- A facility can temporarily suspend or limit personal caregiving visits if DOH determines that local infection rates are at a level that presents serious risk of transmission of communicable diseases within the facility, the facility is experiencing inadequate staffing and such shortage has been reported to DOH or a federal agency as required, or an acute emergency exists such as loss of heat, elevator service, or temporary loss of an essential service. If a facility suspends visitations for any of the aforementioned reasons, the applicable DOH regional office must be notified within 24 hours and each day of suspension must be documented. During suspension, the facility must provide “a means for all residents to engage in remote visitation with their personal caregiving visitor(s), including but not limited to phone or video or calls...”
- A facility can prohibit a visit if it has reasonable cause to believe permitting such visitation “...is likely to pose a threat of serious physical, mental or psychological harm to such resident.” The reason for refusal must be documented.
- A facility shall develop written policies and procedures to ask each resident or designated representative in the event of a resident's lack of capacity at time of admission or readmission, which individuals the resident designates to serve as personal caregiving visitor. A resident may designate at least two personal caregiving visitors at one time.
- Each facility shall maintain a written record of each resident's designated personal caregiving visitors in the resident's individualized care plan and document when a visit is provided.
- A facility shall inquire no less frequently than quarterly and upon a change in a resident's condition whether a resident's current record of their designated caregiving remains accurate. DOH is authorized to review the facility to provide documentation that the resident's record remains accurate. For adult care facilities this inquiry shall occur no less than every six months and upon a change in a resident's condition.
- Each facility must assure all personal caregiving visitors adhere to all infection control measures established by DOH or, in the absence of applicable Department guidance, consistent with CDC guidance including testing for communicable diseases (rapid or negative test no more than 7 days prior to visit), checking body temperature, requiring visitor to wear all necessary PPE.
- Each facility is required to establish policies and procedures regarding the frequency and duration of personal caregiving visits and limitations on the total number of visitors allowed, which must address and respect resident privacy and take into account in the event a resident occupies a shared room. Any restrictions and limitations on the desired frequency and duration must be based on at least one of the following: (a) attributable to the resident's clinical or personal care needs; (b) necessary to ensure the resident's roommate has adequate privacy and space to receive their own designated personal caregiving visitors; or (c) because the desired visitation frequency or duration would impair the effective implementation of applicable infection control measures, including social distancing of at least six feet between the visitors and others in the facility, having sufficient staff to effectively screen all personal caregiving visitors and monitor visits to ensure infection control protocols are being followed throughout, and having a sufficient supply of necessary personal protective equipment for all personal caregiving visitors.

Summary of key aspects of this emergency regulations as it relates to compassionate caregiving:

- Compassionate caregiving is authorized in the event a resident experiences a long-term or acute physical, mental, psychosocial health condition for which, in the opinion of the resident, their representative or a health care professional, including physician, registered nurse, licensed clinical social worker, psychologist, a compassionate caregiving visitor would improve resident's quality of life.
- A resident can designate at least two compassionate caregiving visitors at one time, which must be recorded in resident's individualized comprehensive plan of care.
- A resident's designated personal caregiving visitor may also provide compassionate caregiving.
- Situations under which compassionate caregiving visitation is eligible includes but is not limited to:

- 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;
- 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 must be permitted at all times despite any general restrictions on visitation.
- Compassionate caregivers must be screened by the facility for communicable diseases, such as COVID-19, prior to entering and follow DOH or CDC guidance for social distancing.
- DOH maintains discretion to review and require modifications to a facility's personal caregiving visitation and compassionate caregiving visitation policies and procedures to ensure conformity with the regulations and any applicable visitation guidance issued by DOH or CMS.

Text of the emergency regulation can be accessed at:

[https://regs.health.ny.gov/sites/default/files/pdf/emergency\\_regulations/Personal%20Caregiving%20and%20Compassionate%20Caregiving%20Visitors%20in%20Nursing%20Homes%20and%20Adult%20Care%20Facilities\\_0.pdf](https://regs.health.ny.gov/sites/default/files/pdf/emergency_regulations/Personal%20Caregiving%20and%20Compassionate%20Caregiving%20Visitors%20in%20Nursing%20Homes%20and%20Adult%20Care%20Facilities_0.pdf)