

COVID-19



CORONAVIRUS: CMS ORDERS SIGNIFICANT MONITORING AND RESTRICTION OF NURSING HOME VISITORS

March 13, 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](#).

Older adults and those with underlying chronic or life-limiting medical conditions are presumed to be at a greater risk of poor outcomes when infected with Coronavirus Disease 2019 ("COVID-19"). On March 9, 2020, the Centers for Medicare and Medicaid Services ("CMS") updated its guidance to nursing homes, including recommendations to limit visitors.

With the first COVID-19-related death in Kansas occurring in a long-term care facility resident apparently as a result of community transmission, nursing homes must take immediate action to implement the CMS guidance and manage the COVID-19 threat to their vulnerable resident populations.

RESTRICTING AND DISCOURAGING VISITATION

CMS has directed all nursing homes to begin discouraging visitors immediately. Facilities may permit visitation but should advise visitors to postpone their visits until further notice. CMS recommends developing or increasing visible signage discouraging visitors and training staff to advise visitors that visits should be postponed, if possible.

For nursing homes located in or adjacent to a county where there has been a COVID-19 case, visitors should not be allowed into the nursing homes except for limited circumstances (e.g., end-of-life situations or when the visitor is deemed essential for the resident's emotional well-being and care).

Importantly, nursing homes should immediately begin using the following criteria to actively screen visitors:

Signs or symptoms of a respiratory infection, including fever, cough, shortness of breath, or sore throat.

- Signs or symptoms of a respiratory infection, including fever, cough, shortness of breath, or sore throat.

FOULSTON

ATTORNEYS AT LAW

- Within the last 14 days, the visitor has had contact with someone with a confirmed diagnosis of or under investigation for COVID-19 or is ill with a respiratory illness.
- International travel within the last 14 days to countries with sustained community transmission. The CDC's list of affected countries can be found [here](#).
- Residing in a community where community-based spread of COVID-19 is occurring.

Per CMS directives, any individual who meets the above criteria **should not be allowed in the nursing home at all**, until he/she no longer meets the criteria.

ALLOWING SAFE VISITATIONS

Where visitation is allowed, nursing homes must implement procedures to maintain and limit the spread of disease, including the following steps:

- Creating signage discouraging visitation.
- Requiring visitors who have taken recent trips on cruise ships or participated in events with large crowds to either postpone their visits or use personal protective equipment (PPE).
- Restricting visitor movement:
 - Visitor access and movement in public areas should be limited (e.g., do not allow visitors to walk the hallways), or
 - Where possible, it is recommended that facilities create dedicated visiting rooms near the entrance for visitations and disinfect the room between visits.
- Providing education to visitors on the best practices for limiting the spread of the disease, including:
 - Limiting physical contact with residents (e.g., no hugging or handshaking);
 - Proper hand hygiene;
 - Limiting surfaces touched; and
 - Using PPE where available.
- Reviewing and revising policies for volunteers, vendors, outside practitioners, and other outside individuals (this may include establishing an outside location for vendors to leave supplies and requiring other practitioners to observe CDC guidelines for Transmission-Based Precautions before entering the facility).

The CMS guidance for nursing homes and visitation can be found [here](#). Facilities should also regularly check the Kansas Department of Health and Environment and the Missouri Department of Health & Senior Services websites for updated state-specific guidance. Kansas information can be found [here](#) and Missouri [here](#).

FOR MORE INFORMATION

If you have questions or want more information regarding monitoring and managing COVID-19 in the nursing homes, 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

FOULSTON

ATTORNEYS AT LAW

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 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