

STATEMENT OF EMERGENCY

902 KAR 20:460E.

This new emergency administrative regulation is necessary to immediately allow long-term care facilities to implement essential visitor programs during the COVID-19 pandemic. This new emergency administrative regulation is deemed to be an emergency pursuant to KRS 13A.190(1)(a)3. in order to meet an imminent deadline for promulgation of an administrative regulation as required by 2021 Ky. Acts chapter 3, sec. 1, subsections (4) and (5), and Senate Bill 2, sec. 1 from the 2021 Special Session of the General Assembly. This new emergency administrative regulation will expire on January 31, 2022, in accordance with the sunset provision established by 2021 Ky. Acts chapter 3, sec. 1 and Senate Bill 2, sec. 1 from the 2021 Special Session of the General Assembly. This new emergency administrative regulation will not be replaced by an ordinary administrative regulation.

ANDY BESHEAR, Governor

ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(New Emergency Administrative Regulation)

902 KAR 20:460E. Essential visitor programs; visitation guidelines for long-term care facilities.

RELATES TO: KRS 216.510(1)

STATUTORY AUTHORITY: 2021 Ky. Acts chapter 3, sec. 1, subsection (4), (5), Senate Bill 2, sec. 1 (2021 Special Session)

NECESSITY, FUNCTION, AND CONFORMITY: 2021 Ky. Acts chapter 3, sec. 1, subsection (4) requires the cabinet to develop administrative regulations and guidelines authorizing and regulating visitation by family members or legal guardians, or outside caregivers, friends, or volunteers who provided regular care and support to the resident prior to the pandemic, and who are designated as being important to the mental, physical, or social well-being of the resident in a long-term care facility. 2021 Ky. Acts chapter 3, sec. 1, subsection (5) and Senate Bill 2, sec. 1 (2021 Special Session) require the cabinet to develop administrative regulations and guidelines authorizing and regulating visitation by family members or legal guardians, or outside caregivers, friends, or volunteers who provided regular care and support to the resident prior to the pandemic, and who are designated as being important to the mental, physical, or social well-being of a resident in critical situations such as end of life, or in the instance of significant mental or social decline of the resident, or when exigent circumstances exist regarding a resident in a long-term care facility. In accordance with 2021 Ky. Acts chapter 3, sec. 1(4)(i) and 2021 Special Session Senate Bill 2, sec. 1(2)(g), long-term care facilities shall not be required to accept visitors except in limited situations as set out in Section 4 of this regulation and as allowed under guidance issued by the Centers for Medicare and Medicaid Services for federally certified nursing facilities. This new emergency administrative regulation establishes the process for long-term care facilities to follow if a facility voluntarily implements an essential personal care visitor program through January 31, 2022. Essential compassionate care and end of life visitation shall be allowed at all times regardless of a resident's vaccination status, the county's COVID-19 positivity rate, or an outbreak in the facility.

Section 1. Definitions.

- (1) "Essential personal care visitor" means a family member, legal guardian, outside caregiver, friend, or volunteer who:
 - (a) Is eighteen (18) years of age or older;
 - (b) Provided regular care and support to a long-term care facility resident prior to the COVID-19 pandemic;
 - (c) Is designated as being important to the mental, physical, or social well-being of the resident; and
 - (d) Meets an essential need of the resident, including companionship, assisting with personal care, or positively influencing the behavior of the resident.
- (2) "Facility-onset" means a COVID-19 case that originates in a long-term care facility.
- (3) "Long-term care facility" is defined by KRS 216.510(1).
- (4) "Outbreak" means one (1) new COVID-19 case among facility staff or one (1) new facility-onset case among residents. A resident who is admitted with a COVID-19 diagnosis or who is confirmed COVID-positive within fourteen (14) days of admission shall not be:
 - (a) Considered a facility-onset case; or
 - (b) Constitute an outbreak.

(5) "Personal care" means assisting a long-term care facility resident with essential everyday activities, which may include grooming, dressing, and eating.

Section 2. Essential personal care visitation.

(1) A long-term care facility that implements an essential personal care visitor program shall:

- (a) Allow essential personal care visitation as an exception from any prohibition against general visitation during the COVID-19 pandemic; and
- (b) Establish policies and procedures for the designation of an essential personal care visitor, including a process for changing the designation.

(2) A long-term care facility's designation of an essential personal care visitor shall:

- (a) Be made in consultation with, and upon agreement by the:
 - 1. Resident; and
 - 2. Resident's representative, if applicable; and
- (b) Ensure that there is no more than one (1) essential personal care visitor per resident.

(3) A long-term care facility:

- (a) May require a written agreement with an essential personal care visitor; and
- (b) Shall determine when to suspend essential personal care visitation based on a clinical or safety factor, including:
 - 1. The county's COVID-19 positivity rate;
 - 2. An outbreak in the facility;
 - 3. The resident's COVID-19 status; or
 - 4. Noncompliance by the essential personal care visitor with:
 - a. Safety protocols or other requirements established by this emergency administrative regulation; or
 - b. Any policies and procedures the facility deems necessary to keep staff and residents safe.

(4) An essential personal care visitor shall:

- (a) Assume the risk of exposure to COVID-19 and other viruses;
- (b) Limit visitation to the resident's room or a facility-designated room within the building; and
- (c) Limit his or her movement within the facility.

(5) If the resident has a roommate, an essential personal care visitor shall:

- (a) Not enter the resident's room if the roommate is there; and
- (b) Be prohibited from staying in the room for more than fifteen (15) minutes unless otherwise approved by the roommate or roommate's representative.

(6) An essential personal care visitor shall follow the same safety protocols required for long-term care facility staff, including:

- (a) Testing for communicable disease, which may be the responsibility of the essential personal care visitor. If testing is provided by the facility, essential personal care visitors shall be tested on the same schedule as staff;
- (b) Health screens, including screening for signs and symptoms of COVID-19 and denial of entry of any individual with signs and symptoms;
- (c) Wearing a face mask and using any other appropriate personal protective equipment (PPE);
- (d) Washing or sanitizing hands regularly;
- (e) Maintaining a distance of six (6) feet from staff and other residents at all times. Social distancing from the resident receiving an essential personal care visit may be relaxed for a short period of time under certain circumstances, e.g., providing assistance with a personal care activity; and
- (f) Adhering to any other requirement the facility deems appropriate in accordance with guidance from the Centers for Disease Control and Prevention (CDC).

- (7) A long-term care facility shall:
 - (a) Be responsible for verifying and tracking the testing status of each essential personal care visitor;
 - (b) Schedule essential personal care visits in advance or in accordance with a written agreement;
 - (c) Consider the number of other essential visitors who will be in the building at the same time when developing a visitation schedule;
 - (d) Establish limitations on the visitation frequency and length of the visits to keep staff and residents safe; and
 - (e) Sanitize the area's high-frequency touched surfaces after the visit.
- (8) An essential personal care visitor shall inform the facility if he or she develops COVID-19 symptoms within fourteen (14) days of the visit.

Section 3. Training.

- (1) Each essential personal care visitor shall complete facility-designated training.
- (2) Training shall include information on the core principles of COVID-19 infection prevention, including adherence to the following:
 - (a) Screening of all who enter the facility for signs and symptoms of COVID-19;
 - (b) Regular testing for COVID-19 in the same manner as required for staff;
 - (c) Wearing a face mask covering mouth, nose, and chin;
 - (d) Proper hand hygiene;
 - (e) Social distancing; and
 - (f) How to put on and take off necessary PPE.
- (3) A long-term care facility may post signage throughout the facility that demonstrate key instructions to reinforce safe practices.

Section 4. Essential compassionate care visitation and end of life visitation.

- (1) A long-term care facility shall allow essential compassionate care visitation and end of life visitation:
 - (a) As an exception from any prohibition against general visitation during the COVID-19 pandemic; and
 - (b) At all times regardless of:
 1. A resident's vaccination status;
 2. The county's COVID-19 positivity rate; or
 3. An outbreak in the facility.
- (2) A compassionate care situation refers to any of the following scenarios, which is not an exhaustive list as there may be other compassionate care scenarios:
 - (a) A resident is newly admitted to a long-term care facility and is struggling with the change in environment;
 - (b) A resident has a change in status to palliative care as determined by an order from the clinician;
 - (c) The emergence of a condition or disease, or a failure to thrive situation in which a resident's health is declining;
 - (d) Emotional distress; or
 - (e) Significant mental or social decline of the resident.
- (3) End of life visitation refers to visitation with a resident who:
 - (a) Has a terminal condition or dementia-related disorder that has become advanced, progressive, or incurable; and
 - (b) Is in the active stages of dying, terminal within thirty (30) days.
- (4) Essential compassionate care visitation and end of life visitation shall be:
 - (a) Scheduled in advance unless a resident's rapid decline makes advance scheduling impossible; and
 - (b) Conducted in the resident's room or a facility-designated room in the building.

- (5) If a private room is not available and essential compassionate care visitation or end of life visitation occurs in the resident's room with a roommate present, a partition shall be in place between the living areas of the resident and the resident's roommate.
- (6) Before an essential compassionate care visit or end of life visit takes place, a long-term care facility shall document the following:
- (a) The resident's status related to the need for an essential compassionate care visit or end of life visit;
 - (b) Any interventions employed to improve the resident's status and the outcome; and
 - (c)
 - 1. Verification that the resident has never been COVID-19 positive; or
 - 2. If the resident has been COVID-19 positive, verification that the resident no longer requires transmission-based precautions as outlined by the CDC.
- (7) A resident receiving an essential compassionate care visit or end of life visit shall:
- (a) Wear a face mask covering mouth, nose, and chin if medically feasible; and
 - (b) Practice appropriate hand hygiene before and after the visit.
- (8) The long-term care facility shall:
- (a) Screen each essential compassionate care visitor or end of life visitor for signs and symptoms of COVID-19 in the same manner as for facility staff, but testing of compassionate care or end of life visitors shall not be required pursuant to CMS Memorandum QSO-20-39-NH Revised, which may be downloaded from the following Web address: <https://www.cms.gov/files/document/qso-20-39-nh-revised.pdf>;
 - (b) Provide alcohol-based hand sanitizer to each essential compassionate care visitor or end of life visitor and demonstrate how to use it appropriately; and
 - (c) Sanitize the area's high-frequency touched surfaces after the visit.
- (9) An essential compassionate care visitor or end of life visitor shall:
- (a) Be eighteen (18) years of age or older;
 - (b) Submit to screening for signs and symptoms of COVID-19 as required by subsection (8)(a) of this section and be denied entry if the individual has signs and symptoms;
 - (c) Be escorted to and from the visitation area and agree not to leave the designated visitation area;
 - (d) Wear a face mask covering mouth, nose, and chin during the entire visit;
 - (e) Perform appropriate hand hygiene immediately before and after the visit;
 - (f) Maintain a distance of six (6) feet from staff and other residents at all times. Social distancing from a resident receiving essential compassionate care visitation may be relaxed for a short period of time;
 - (g) Meet any other condition of visitation the facility deems necessary to protect resident health and safety;
 - (h) Assume the risk of exposure to COVID-19 and other viruses; and
 - (i) Not be permitted entry into the facility or otherwise asked to leave if the visitor is not able to meet all of the conditions of this subsection.
- (10) An essential compassionate care visitor or end of life visitor shall inform the facility if he or she develops COVID-19 symptoms within fourteen (14) days of the visit.

Section 5. Temporary Implementation of Essential Visitor Programs. In accordance with 2021 Ky. Acts chapter 3, sec. 1 and Senate Bill 2, sec. 1 from the 2021 Special Session, this new emergency administrative regulation shall remain in effect until January 31, 2022.

ADAM MATHER, Inspector General
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 26, 2021

FILED WITH LRC: October 1, 2021 at 10:03 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this hearing shall notify this agency in writing by November 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.