Resident Rights During the COVID Onslaught

by Tony
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- Fall 2020: visitation and voting rights
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  - http://canhr.org/bnbform.html

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Voting during COVID-19 For Nursing Facility and Assisted Living Residents

Posted on Friday, October 2nd, 2020

There’s a big election coming up in November. If you live in an assisted living or nursing facility, you should be aware that you do not lose your right to vote just because you move into long-term care. However, you might face a number of practical barriers to exercising your right to vote, and many of these barriers will be exacerbated in the context of COVID-19.

CLICK HERE for guidance for residents planning to exercise their right to vote this November.

See More CANHR Alerts

CANHR Zoom Town Halls

Senior Scams During the Pandemic
# Nursing Homes

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<td>MUST be available in all facilities. CMS &quot;encourages creative means of connecting residents and family members&quot; and facilities urged &quot;to take strong efforts to facilitate connections with residents, families, friends, and loved ones.&quot; CDPH encourages frequent video and phone call visits. While the guidelines merely encourage virtual visitation, CANHR believes that anti-disability discrimination law REQUIRES all reasonable accommodations to visitation, including ROBUST virtual visitation opportunities. Accommodating virtual visitation is a core function of facilities while residents' in-person visitation rights are restricted.</td>
<td>All facilities MUST permit outdoor visitation. There is no limit on how many visitors can visit in this way, although this may not all be at the same time.</td>
<td>Facilities MUST permit indoor visitation if they have 1. no COVID-19 outbreak, 2. a decline in cases in the community, 3. no new COVID-19 cases in the facility for the past 14 days, 4. no staffing shortages and not using a COVID-19 staffing waiver, 5. a testing plan per AFL 20-53, and 6. an approved COVID-19 Mitigation Plan. Only one designated visitor allowed per resident per visit (more than one visitor may visit, just not at the same time). Additionally, indoor visitation required when outdoor visitation is unavailable (weather) and there is: 1. no COVID-19 outbreak, 2. no new COVID-19 cases in the facility for the past 14 days, and 3. community positivity rate is &lt;10%</td>
<td>Surveyors MUST be permitted. Ombudsman MUST be permitted if they are screened for symptoms and wearing PPE. Health care workers, and nursing students SHOULD be permitted.</td>
<td>MUST be permitted to visit. Per CMS compassionate care does not exclusively refer to end-of-life situations. Compassionate care is not defined but examples include: 1. help a new resident transition to a facility, 2. comfort a grieving resident after the death of a loved one, 3. cue a resident with malnutrition or dehydration to eat or drink, and 4. assist a resident experiencing emotional distress. Facilities may confine these visits to &quot;safe spaces&quot; within the facility or outdoor visits. Facilities may limit the number of visitors to two per resident per visit.</td>
<td>1. Visits must be scheduled in advance; 2. visitors screened for fever or COVID-19 symptoms; 3. social distancing (6 feet or more physical distancing) 4. residents and visitor wear facial coverings; 5. staff monitor to ensure compliance with infection control guidelines.</td>
<td>Support person visitors are encouraged (but not mandated), regardless of COVID-19 outbreaks or other conditions, for residents with physical, intellectual, developmental disabilities and/or cognitive impairments. No touching between visitors and residents or proximity less than 6 feet is permitted except perhaps in compassionate care visitation.</td>
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Source: CA DPH AFLs 20-22.4, 20-38.4; CMS Memos QSO-20-14-NH, QSO-20-28-NH, and QSO 20-39-NH; CMS Frequently Asked Questions (re Visitation, 6-26-20)
Indoor Visits Mandated

- [https://www.cdph.ca.gov/Programs/ICID/DCDC/Pages/COVID-19/SNFsCOVID_19.aspx](https://www.cdph.ca.gov/Programs/ICID/DCDC/Pages/COVID-19/SNFsCOVID_19.aspx)
- “SNF Data Dashboard”
- “Indoor Visitation List”
# Residential Care Facilities for the Elderly

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<td>Facilities REQUIRED to permit and assist in arranging alternate means of communication for visitors such as phone calls, video calls, and online communications.</td>
<td>Facilities MUST provide scheduled outdoor visits, weather permitting, on the facility premises where there is 6 feet or more physical distancing, all residents and visitors wear face coverings, and staff screen visitors and clean and disinfect surfaces.</td>
<td>Facilities MUST permit indoor visitation when three criteria are satisfied: 1. There have been no new transmissions of COVID-19 at the facility for 14 days; 2. Facility is not experiencing staff shortages, 3. Facility has adequate supplies of PPE and essential cleaning supplies.</td>
<td>Professionals MUST be permitted to visit: 1. when there are health or legal matters that cannot be postponed, 2. social workers who are legally responsible for a person’s care to carry out their duties, 3. APS and Ombudsman workers, and 4. CDSS, CDPH, local health department officials, healthcare providers, and essential government authorities needing to enter or conduct investigations at the facility.</td>
<td>End-of-life visits are characterized as an example of &quot;Medically Necessary Visits&quot; and MUST be permitted.</td>
<td>1. Visits should be scheduled in advance; 2. 6 feet or more physical distancing, 3. both residents and visitors wear face coverings, 4. staff monitoring infection control guidelines (e.g. large communal spaces, outdoor visits, space close to facility entrance to reduce traffic in facility). 5. to the extent possible, visits should take place outside (where appropriate, designate an outdoor area, such as the yard, patio, open porches, parking lot, or driveway for visits, weather permitting), 6. limit the number of visitors at any one time to avoid having large groups congregate, 7. screen all visitors for symptoms, including temperature screenings. *more best practices listed in CA DSS PIN 20-38-ASC</td>
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Source: CA DSS Provider Information Notices (PINs) 20-09-CCL (April 2, 2020), 20-23-ASC (June 26, 2020), 20-38-ASC (October 6, 2020)
Enforcing Visitation Mandates

- Letter to lock facility into its position
- 1. DPH / DSS complaint; 2. District Office / Regional Office manager; 3. Sacramento – CANHR
- Local Public Health Authority
Coming and Going

● Obtain written policies regarding outings
● Balance safety and autonomy?
● Work it out in advance - don’t go rogue
● Asking more of residents than staff
Your right to vote
In Long Term Care
What’s at Stake?

- Widespread disenfranchisement for those who have borne the brunt of public health response to COVID-19

- Potentially hundreds of thousands of voters:
  - Approx. 1,200 Skilled Nursing Facilities in CA
  - Approx. 7,800 licensed Residential Care Facilities for the Elderly (RCFE)
Voting: General Guidance

- **Register to Vote** at current (facility) address by **October 19** – that’s Monday
  - [https://registertovote.ca.gov](https://registertovote.ca.gov)
  - (800) 345-VOTE (8683) for paper registration

- **Vote by Mail** – everyone in CA gets absentee ballot.
  - Residents entitled to assistance **by a person of the voter’s choice** 52 U.S.C. § 10508
  - Facilities **required** to support residents with registering, completing, casting and tracking ballots.

- **Voting in person?** Many challenges. Talk to facility in advance about policies for coming and going.
Nursing Facilities: CMS Memo

- Nursing homes must have a plan to support residents right to vote - §483.10(b)(2)
- Should provide residents with assistance completing a ballot **with an agent of the Resident’s choosing, including family representative, LTC Ombudsman, or nursing home staff.**
Nursing Facilities: AFL 20-78

- **All Facilities Letter (AFL) 20-78: Resident Rights and Voting:**
  
  [https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/AFL-20-78.aspx](https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/AFL-20-78.aspx)

- **Staff should** help with registration, completing, casting, and tracking ballot.

- **Staff may not** influence a resident’s vote, tell anyone how the resident voted, or determine a resident is mentally incompetent to vote, or vote by proxy.
Residential Care Facilities for the Elderly - RCFEs (AKA Assisted Living and Board and Care)


- Staff **should** help with registration, completing, casting, and tracking a resident’s ballot.

- Staff **may not** influence a resident’s vote, tell anyone how the resident voted, determine a resident is mentally incompetent to vote, or vote by proxy.
Voting and Cognitive Impairment

✓ In California only a court can determine you are not competent to vote. You do not lose the right to vote based on a diagnosis of dementia or other impairment.

✓ Voters who are under conservatorship are presumptively eligible to vote (Elections Code 2208)

✓ Staff have no authority to make improper and arbitrary judgments about who can and cannot vote.

Voting: Practical Tips

- **Talk to the Administrator or Social Services Director** in advance about voting plan

- **Contact LTC Ombudsman** for additional assistance:
  https://www.aging.ca.gov/Programs_and_Services/Long-Term_Care_Ombudsman/

- **File a complaint** if facility fails to support your voting plan:
  - For Nursing Facilities, Department of Public Health:
    http://www.canhr.org/factsheets/nh_fs/PDFs/FS_NH_Complaint.pdf
  - For RCFEs: Community Care Licensing:
FILING COMPLAINTS
Against Nursing Homes and Assisted Living Facilities
Why File a Complaint?

- Health and Safety Concerns
- Transfers and Discharges
- Lack of Communication
- Visitation
- Resident Rights Violations
- Other COVID-19 Concerns
Who can file a complaint?

- Residents
- Friends
- Ombudsman
- Family Members
- Basically-- ANYONE
FIND YOUR REGULATOR

1. Nursing Homes? Licensed by California Department of Public Health

2. Assisted Living Facilities? Licensed by Department of Social Services, Community Care Licensing Division

3. Continuing Care Retirement Communities? Licensed by Department of Social Services, Community Care Licensing Division
What goes in a good complaint?

1. Name and address of the facility
2. Your name, address, phone number, and relation to the resident
3. Name of the resident on whose behalf the complaint is made
4. Date(s) and time(s) of incidents
5. Specific complaints—focusing on harm
6. Names of witnesses (including other health care providers, such as hospital personnel or paramedics)
7. Names of staff, if relevant to the complaint
8. Records that should be examined
How to send your complaint

Complaints can be made by mail, phone, or e-mail.

Rights of Complainants and Follow-Up

**DPH/ Nursing Homes**

- DPH must notify you of the name of the assigned investigator within two working days of receipt of your complaint.
- DPH must begin an onsite investigation of your complaint within ten working days of receipt. If the complaint involves a threat of imminent danger of death or serious bodily harm, DPH must investigate onsite within 24 hours of receipt of the complaint.
- You have the right to be free from retaliation for a complaint.
- You have the right to remain anonymous.
- You have the right to a response. At the completion of its investigation, DPH must notify you in writing of its findings and of your right to appeal.

**DSS CCL / Assisted Living Facilities**

- The complainant has the right to be free from threats or retaliation by the facility.
- The complainant has a right to have his/her name held in confidence and not disclosed to the facility. The complainant even has the right to remain anonymous to either CCL or the Ombudsman Program, although this is not helpful in conducting a thorough investigation.
- CCL is responsible to inform the complainant of its proposed “plan of action” and to share with the complainant a written report of the findings of its investigation.
Appeals

DPH / Nursing Homes

If you are dissatisfied with DPH’s findings, you have the right to an informal conference. To request the informal conference, write to the DPH district office manager within 30 calendar days of receipt of the findings.

If you are dissatisfied with the results of the informal conference, you may appeal to the Deputy Director at: California Department of Public Health, Center for Healthcare Quality, P.O. Box 997377, Sacramento, CA 95899–7377. To file this appeal, you have 15 days from receipt of the findings of the informal conference.

DSS CCLD / Assisted Living

If you are dissatisfied with the timing, thoroughness or results of the investigation, call or write the investigator’s supervisor or district manager at CCL.

If you are dissatisfied with the response you receive from the investigator’s supervisor or regional manager at CCL, you should appeal to the appropriate Assistant Program Administrator. Here is a link to an organizational chart showing relevant personnel: https://cdss.ca.gov/Portals/9/CCLD/ASC.pdf.

Finally, you can make your dissatisfaction known to the California State Legislators who represent your district.