

# Visitation Guide for California Long Term Care Facilities and Hospitals



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**CANHR**  
*Long Term Care Justice and Advocacy*

# **Visitation Guide for California Long-term Care Facilities and Hospitals**

While this guide is written to help nursing home residents protect themselves, it is not intended to provide legal advice or to substitute for a consultation with an attorney. This guide is for informational purposes only. If you or a loved one is living in a nursing home and has been the victim of a rights violation, please call CANHR at (800) 474-1116 for more information.

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# Chapter I. Visitation Rights In California Health And Long Term Care Facilities

The right to visit with people is among our most sacred personal rights.<sup>1</sup> Even the U.S. Constitution guarantees a right to visit by preventing the federal or state governments from abridging our freedom to associate. Visitors to hospitals and long-term care facilities often defer to the institution’s rules about visitation, legal or not, because they seem to have implicit authority to make their own rules. However, such deference lacks the perspective that these institutions are also often the homes of the residents. Visitation rules are only enforceable if they honor the basic rights of the residents.

Visitation is extremely important to hospital patients and residents of long-term care facilities. Studies show visitation is highly correlated with improved quality of life for patients and residents. Regular visits prevent residents from feeling depressed and isolated and often enhance their initiative to rehabilitate aggressively to return home sooner. In addition, regular visitation tends to improve the quality and level of care the resident receives. Facilities tend to give more staff time to residents who have regular visitors to observe whether the care being provided is sufficient. Visitors can serve as advocates for residents who receive poor care.

## Section A. Skilled Nursing Facilities

A skilled nursing facility, commonly known as a “nursing home,” is a facility where residents stay for extended periods of time<sup>2</sup>, from a few weeks to several years. Residents of nursing homes live there because they can no longer perform one or more crucial life functions without assistance, such as walking, using the restroom, eating, and so on. Often, the focus of the residents’ stay is to receive rehabilitation and therapy to improve their independence so they can go home. In a skilled nursing facility, nurses and other staff must be present twenty-four hours a day to provide care to residents.<sup>2</sup>

Generally, residents of skilled nursing facilities have the right to receive visitors and family members have their own right to visit with residents.<sup>3</sup> Family members of the resident may visit any time. They are not bound by a facility’s visitation hours policy.<sup>4</sup> Long-term care ombudsman, the resident’s physician, the resident’s attorney, and clergy members may also visit the resident any time.<sup>5</sup> Other visitors, including friends, neighbors, etc., may visit during the facility’s visiting hours. The visiting hours restriction on non-family members does not usually apply if the resident is critically ill.<sup>6</sup>

The Centers for Medicare and Medicaid Services (CMS) have guidelines about residents’ rights in long-term care facilities. CMS explains that the resident has a right “to visit and be visited by others outside the facility.” This means that, in addition to receiving visitors at the facility, residents have the right to leave the facility temporarily to see their visitors. Thus, residents have the right to go out to lunch or dinner or some other event with their family and friends.

Residents have a right to private visits, which means they can seek a private meeting space in which to

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1 See California Assembly Bill 1085 (Gatto, 2015): “The Legislature finds and declares that every adult in this state has the right to visit with, and receive mail and telephone or electronic communication from, whomever he or she so chooses, unless a court has specifically ordered otherwise.”

2 Cal. Health & Safety Code § 1250(c)

3 42 U.S.C. § 1395i-3(c)(3)(B), 42 U.S.C. § 1396r(c)(3)(B); Cal. Health & Safety Code § 1418.3

4 22 CCR § 72527(a)(17)

5 42 CFR § 483.10(j)(1)

6 22 CCR § 72527(a)(19)

have their visits.<sup>7</sup> Residents also have the right to use telephones for making and receiving confidential calls and to send and receive unopened mail.<sup>8</sup> While these rights are not directly related to in-person visitation, having the right to private communication allows a resident or visitor to arrange for such visits. Private communication also allows family members to check with the residents themselves whether they want visitors. If a facility hampers a resident's private communications, the resident's visitation rights are endangered.

The Long-term Care Ombudsman is a free advocacy service for residents of long-term care facilities. Each county has an Ombudsman program. A list of the Ombudsman programs for each county is included in the Appendix. The programs are dedicated to advocating for long-term care residents regarding multiple issues, including their right to visitation. Ombudsman can help with visitation by 1) informing the facility about visitation rights and 2) accompanying a visitor during a visit to ensure the resident's rights are respected.

### **Section B. Residential Care Facilities for the Elderly**

A residential care facility for the elderly ("RCFE") is a type of living arrangement for people 60 years of age or over who need some help with daily living that does not rise to the level of care required by nursing home residents. RCFEs are usually considerably less institutional, many of them located in single family dwellings.

As in nursing homes, residents of RCFEs (commonly known as "*assisted living facilities*") have the right to visit privately with anyone of their choosing in the facility, including family, friends, Ombudsman, and advocates, for meetings without prior notice.<sup>9</sup> These visits are limited to reasonable hours of the day.<sup>10</sup> The facility must inform residents of its visitation hours when they are admitted.<sup>11</sup>

RCFE residents are not limited to having visitors in the facility. They can see their friends and family off-site because they have the right to leave the facility at any time. Residents cannot be locked into any room, building, or in any part of the facility unless they or a court-appointed conservator have consented. However, the facility may still establish house rules for resident safety, including the locking of doors at night and the barring of windows.<sup>12</sup>

Residents have a right to make and receive confidential telephone calls and to receive and send unopened mail promptly.<sup>13</sup> Residents also have a right to prompt answers to their family members' communications with the facility.<sup>14</sup> Though these rights do not have a direct relationship with visitation, residents' rights to private and effective communication with the facility and family members allows visitation to be arranged. For instance, a resident without proper access to telephone and mail might not be able to arrange for visits in advance.

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7 483.10(j), State Operations Manual, Appendix PP  
8 42 CFR § 483.10(k); 42 CFR § 483.10(j)  
9 Cal. Health & Safety Code § 1569.269(a)(24)  
10 22 CCR § 87468(a)(11)  
11 22 CCR § 87468(a)(10), Cal. Health & Safety Code § 1569.313  
12 22 CCR § 87468(a)(6)  
13 22 CCR § 87468(a)(14); 22 CCR § 87468(a)(15)  
14 22 CCR § 87468(a)(10)

## Section C. Continuing Care Retirement Communities

A continuing care retirement community (“CCRC”) represents the range of assisted living available to residents, from independent living to skilled nursing facilities. The services are offered by a single entity operating on a single campus. A resident may enter a CCRC living independently and requiring minimal assistance but may progress to more extensive levels of care within the community as he or she ages. CCRCs are usually characterized by expensive entrance fees in exchange for care services for the remainder of the residents’ lives.

In general, residents of CCRCs have the right to live in an environment that maintains their independence, as well as their ties to the local community.<sup>15</sup> Since a CCRC is a system of different levels of care based on the resident’s needs, ranging from independent living to skilled nursing, visitation rights at a CCRC will depend largely on what level of care the resident is receiving.

For instance, the laws regarding visitation for RCFEs govern visitation at the assisted living level of care in a retirement community. Visitation laws for skilled nursing facilities govern visitation in the nursing home level of care in a CCRC. Any other living arrangement that is not assisted living or skilled nursing is subject to basic landlord-tenant law, where the terms of the lease govern the residents’ visitation rights. The continuing care contract that a resident enters into when joining a CCRC is comparable to the lease in landlord-tenant law. Residents in these living arrangements should have the same visitation rights as any legal tenants, unless the terms of their continuing care contracts state otherwise. Residents should beware of contract terms that unfairly restrict their visitation rights. These may violate the law.

CANHR has published a comprehensive consumer’s guide on CCRCs titled “Continuing Care Retirement Communities in California – Is One Right for You?” To obtain a copy of the guide or for more information about CCRCs, go to <http://canhr.org/CCRC/>.

## Section D. Acute Care Hospitals

Acute care hospitals are facilities that provide emergency and 24-hour inpatient care and services such as surgery, nursing, radiology, pharmacy, laboratory, and so on.<sup>16</sup>

Anyone may visit a hospital patient as long as the patient agrees.<sup>17</sup> If the patient does not have the capacity to make decisions, then the person legally responsible for making decisions about the patient’s medical care has the right to choose visitors.<sup>18</sup> Even if the patient lacks decision-making capacity, however, the hospital still must consider the patient’s wishes regarding who may visit.<sup>19</sup> For instance, the hospital must at least allow anyone who lives with the patient to visit.

The hospital can reasonably restrict visitation to certain hours of the day or limit the number of visitors per day.<sup>20</sup> In certain situations, the hospital can bar visitors altogether. This may arise from a specific policy, when a certain visitor who poses a threat, or if the patient no longer wants the person to visit.<sup>21</sup>

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15 Cal. Health & Safety Code § 1771.7(c)  
16 Cal. Health & Safety Code § 1250(a)  
17 22 CCR § 70707(b)(17)  
18 22 CCR § 70707(b)(16)  
19 22 CCR § 70707(b)(18)  
20 22 CCR § 70707(b)(19)  
21 22 CCR § 70707(b)(17)

## Chapter II. Restricting Visitation

### Section A. Introduction

The resident is always at the center of visitation rights, because the resident controls those rights.<sup>22</sup> The resident's consent is a necessary prerequisite for visitation. The resident's ability to exert control depends on whether he or she has legal capacity to make decisions. Legal capacity is often an issue for long-term care residents.

Third parties may not control a resident's visitation unless the resident is unable to communicate at all or has been determined by a court of law to have lost the capacity to make decisions. A doctor's opinion regarding the resident's capacity is not legally binding. Traditional surrogate decision makers, such as agents under a Power of Attorney or close family members, may never override a resident's choices regarding visitation. The only third party who may override a resident's visitation preferences is a court-ordered conservator of the person with a special order regarding visitation.

IMPORTANT UPDATE: California Assembly Bill 937 (Wieckowski, 2013) amended Cal. Probate Code § 2351, clarifying once and for all that conservators, California's strongest form of surrogate, may not control a conservatee's visitation or other personal rights unless a specific court order is made. If conservators need special court orders, weaker forms of surrogate like agents or family members need special court orders.

### Section B. Surrogacy

Only a conservator with special powers regarding visitation can override the resident's wishes and restrict visitation. Other surrogates may not make visitation decisions unless a resident is completely unable to express preferences. Unless a court has determined that a resident has lost capacity, the resident remains in charge of his or her visitation.

Please see the following chart for more information about each type of surrogate and the level of control each has on the resident.

Type of Surrogate	Level of Control	Reasoning
<b>Conservator</b> A conservator is a surrogate decision maker appointed by the court after a finding that the conservatee lacks the capacity to make his or her own decisions.	May control most aspects of conservatee's health care, but may not override a conservatee's right to refuse treatment or control visitation unless special orders are granted by the court. <sup>22</sup>	High level of power given to conservators because court appoints them only after significant due process given to conservatee; conservator's activities are monitored by the courts during the conservatorship.

<sup>22</sup> Many of the visitation rights discussed in this chapter are diluted in the hospital context. Hospitals have more discretion to limit visitation under the law because patients are not considered long-term residents.

<sup>22</sup> California Judicial Council Form GC-341 states that conservatees keep the right to "receive visits from family and friends."

<p><b>Financial Agent</b></p> <p>Appointed in a Financial Power of Attorney form, signed by the principal.</p>	<p>Pays the principal’s bills and makes decisions regarding financial management according to the instructions and limitations in the Power of Attorney. Has no authority over principal’s visitation.</p>	<p>Agent <i>shares</i> authority with the principal. Financial Powers of Attorney are limited to financial matters. Social issues, like visitation, are outside of their scope.</p>
<p><b>Health Care Agent</b></p> <p>Appointed in a Health Care Power of Attorney form – often part of an Advance Health Care Directive - signed by the principal.</p>	<p>Makes health care decisions according to instructions and limitations in the Power of Attorney. May not override treatment refusals of principal or control visitation, even if a doctor alleged the principal has lost capacity.</p>	<p>Agent <i>shares</i> decision making authority with the principal. The principal always retains the ability to revoke the agency or override an agent’s decisions.<sup>23</sup></p>
<p><b>Oral Designee</b></p> <p>An oral designee is anyone the resident tells his or her health care provider may make decisions on his or her behalf.</p>	<p>After health care recipient tells provider whom he or she designates, oral designee may make decisions on behalf of resident but may not override a resident’s decisions or control visitation.</p>	<p>Residents should not be forced to designate surrogate decision makers in writing; however, a designee operates under the discretion of the principal.</p>
<p><b>Family Member</b></p> <p>A family member includes the resident’s spouse, domestic partner, or other extended family member.</p>	<p>In general, spouses and other family members may act as surrogates if there is no designated person. They may not override a resident’s decisions or control visitation.</p>	<p>The authority of family members to act as surrogates is subject to the expressed preferences of the resident.</p>
<p><b>Treatment Team (Available in Nursing Homes Only)</b></p> <p>Pursuant to California Health and Safety Code Section 1418.8, a group composed of nursing home staff, a physician, and a resident representative to make routine decisions on behalf of a resident with neither capacity nor a surrogate.</p>	<p>Must follow specified procedures intended to acknowledge resident’s autonomy and ensure decision made is product of rational deliberation and no personal or professional biases. The treatment team may not control a resident’s visitation.</p>	<p>The law limits treatment team decision making to on-going and day-to-day issues. The treatment team is not permitted to override a resident’s express wishes.</p>

## Section C. How a Facility Bars Visitation

### 1. Claim that a Third Party Has Denied Visitation

The most common way a facility will deny visitation is to claim that some third party, usually an agent under a Power of Attorney or a family member, has refused to allow it. As stated above, third parties generally do not have the legal authority to control a person’s visitation. The legal theory behind this fact

is relatively simple. The right to visitation and to associate with others is a basic human right. Capacity determinations, for the purpose of exercising basic human rights, may only be made by a court of law because they are so important. Thus, no third party may attempt to control another person's visitation rights unless that person has been found incapacitated by a court of law.

The only third party with sufficient legal authority to control a resident's visitation is a court-appointed conservator with special powers regarding visitation. If a resident has absolutely no ability to communicate preferences regarding visitors, a third party surrogate might be able to control visitation but must be able to articulate compelling reasons for denying a visitor.

## **2. Claim the Resident Has Denied Visitation**

Sometimes visitors will be told that the resident they want to visit does not want to see them. This situation is more complicated than the claim that a third party has denied visitation - usually third parties do not have the authority to control visitation. But residents do have the authority to control visitation.

Visitors who are told the resident does not want to see them often doubt the validity of the claim. In other words, they do not believe the resident has actually said he does not want to be visited. The facility staff is either lying or the resident has been "coached" to deny the visitation. The conundrum is the visitor cannot verify the validity of the resident's wishes without actually seeing and talking to him. Suggested resolutions to this problem are discussed in Chapter 4 of this Guide.

## **3. Visitation Hours**

Another method facilities will use to restrict visitation is by adhering to visitation hour policies that limit access. In hospitals and RCFEs, visitation hour policies may be enforced so long as they are reasonable. If a visitor's job prevents seeing a resident within the prescribed visiting hours, he or she can probably ask for and receive a special accommodation for visitation.

In skilled nursing facilities, visiting hours are unenforceable for family members, Ombudsman, and the resident's doctor and attorney. Other visitors, such as friends or neighbors have to abide by the facility's visitation hour policies, so long as they are reasonable.

## **4. Supervised Visits**

Facilities will sometimes require a visitor to be supervised by a staff person during his or her visits. The claim is usually that the visitor has been disruptive or otherwise caused problems during his or her visits in the past. A requirement of supervised visits is illegal unless the facility has a court order. Of course the visitor can comply with a request for supervised visits but if private visits are preferred, he or she can demand privacy.

## **5. Calling the Police**

If a visitor challenges a facility's attempt to restrict visitation, one outcome may be an intervention by the police. If you have read and understand this Guide, a call to the police may actually be helpful to your visitation. Although the police are generally favorable to the facility's position to restrict visitation, a resident or visitor can use the occasion to educate the police about residents' rights and the limitations of third party decisions regarding visitation. Nonetheless, *if the police side with the facility, do not defy them* – you might be arrested. For suggested approaches to police interventions, see Chapter 4.



## 6. Restraining Orders

Restraining orders are another way in which a facility or an individual can restrict a resident's visitation rights. Restraining orders utilize the courts to restrict a visitor from coming to the facility or speaking to a resident. There are four types of restraining orders, any of which could be used to limit a potential visitor.

### 1) Domestic Violence Restraining Orders (DVROs)

DVROs are filed to stop family violence. In the context of long-term care facilities and hospitals, domestic violence restraining orders are used when spouse, partner, or household member is found to be threatening or abusing the resident. The resident / victim must be the person who pursues the order.

### 2) Elder Abuse Restraining Orders (EAROs)

EAROs are filed to stop threats or abuse against a person 65 years of age or older or a dependent adult. In the context of long-term care facilities and hospitals, elder abuse restraining orders are filed by the resident /victim.

(Note: DVROs and EAROs must be filed by the alleged victim, so if a facility files these against a visitor, they are invalid.)

### 3) Workplace Violence Restraining Orders (WVROs)

WVROs are filed to stop violence between employees or between employees and non-employees. In the context of long-term care facilities and hospitals, these would be filed by the facility to protect an employee against a violent visitor.

### 4) Civil Harassment Restraining Orders

This is the most general type of restraining order. In the context of long-term facilities and hospitals, any party (visitor, staff, resident, facility) can file them against any other party involved.

Once a restraining order has been filed in court, it must be served to the person it is restraining, along with a response form. After service, the person is allowed to respond to the order. A hearing will be held to determine if the order should be granted.

In many cases, the request for a restraining order will be accompanied by a request for a temporary order. The temporary order will prevent the restrained person from visiting until the hearing is held.

If you receive a restraining order preventing your visitation, *you must abide by it*. Failure to do so will result in your arrest and incarceration. Any person served with a restraining order should immediately contact an attorney for assistance.

## 7. Quarantines / Infection Control

One last method a facility may use to control visitation is by restricting access to a particular wing or to the entire facility to limit the spread of infection. During the swine flu scare, one facility initiated a quarantine prohibiting all visitors from seeing their loved ones for several days.

Quarantine-based visitation restrictions are not legal. The visitation rights of residents are not affected by outbreaks or potential outbreaks of infection. Nonetheless, visitors should be respectful to the health of residents, staff, and other visitors and should participate in suggested infection control precautions such as wearing gloves, breathing masks, or curtailing visitation. Facilities may recommend visitors to stay away—it is up to you to decide whether or not to comply.

## Chapter III. Sample Scenarios

Below are some common situations that facility residents, hospital patients, and their visitors find themselves in and suggestions about how to assert the resident's visitation rights. The scenarios are not intended to be an exhaustive list of methods by which hospitals or long-term care facilities may deny visitation nor are their suggested remedies intended to be comprehensive or serve as legal advice.

### Scenario #1: Health Care Agent Prohibits Visitation

The resident of a long-term care facility (e.g., nursing home, RCFE, or CCRC) has a health care agent named in a health care Power of Attorney form. The health care agent does not want the resident's daughter to visit the resident, so the facility bars the daughter from visiting.

Agents under Powers of Attorney cannot control the visitation of residents of long-term care facilities, even if the principal has allegedly lost capacity. Assuming the resident has agreed to the visitation by the daughter, the facility may not prohibit her visits.

If the facility confronts the daughter and attempts to physically bar her visits, she should first submit a written grievance to the facility. She should attach a copy of this Guide to the written grievance and then demand visitation. If the grievance does not yield satisfactory results, the daughter should file a complaint with the local office of the State Department of Public Health, as well with the local Long-term Care Ombudsman. A list of offices is included at the end of this Guide. If neither of these actions resolves the problem, contact CANHR.

**NOTE:** The above scenario often occurs where the person attempting to restrict visitation is a friend or relative and has not been named as agent in a Power of Attorney form. In these situations, the attempted visitation restriction is even more lacking in justification. If named agents under Powers of Attorney cannot control visitation, then a non-legally recognized decision maker certainly cannot.

### Scenario #2 Things Get More Complicated

The basic facts from Scenario #1 remain the same: a daughter is denied visitation with her parent, who is a resident of a long-term care facility. This time however, the facility claims the resident does not want to be visited.

As mentioned several times previously, the resident almost always retains the ultimate ability to decide who will visit her and when. If the resident has actually said she does not want the daughter to visit, the visitation restriction is legitimate. The problem is verifying whether the resident really does not want to be visited.

There are a number of ways to verify the resident's true wishes regarding visitation. One is to use a telephone to call the resident and ask. Another way is to have someone else visit or call the resident and ask. If you don't have anyone else who could ask, enlist the help of the Long-term Care Ombudsman. Someone from that office can go to the facility and ask the resident about visitation directly. If the Ombudsman verifies the resident wants visitation, you can ask the Ombudsman to accompany you to your next visit to ensure the facility does not try any funny business.

If the facility calls the police to enforce an illegal visitation restriction, do not panic. If you appear emotional or unstable, the police may believe that your visit would be ill-advised. The key to a police encounter is to use it as an opportunity to educate the police about the rights of nursing home residents to receive

visitors. Bring a copy of this Guide and show them the laws included in the Appendix. Explain that neither the facility nor anyone else other than the resident, has the legal authority to control visitation.

If, despite your best efforts to persuade the police, they tell you that you may not visit, do not defy them. Instead, ask for the name of the local desk sergeant and call CANHR.

### **Scenario #3 A Doctor's Recommendation**

The same basic facts of Scenarios #1 and #2 are repeated here: a daughter is denied visitation with her parent, who is a resident of a long-term care facility. This time however, almost everyone agrees the daughter is a terrible person and severely upsets her mother after every visit. The staff, representatives of Adult Protective Services, and the Long-term Care Ombudsman all agree the daughter should not visit. Even the resident's physician has written an order to prohibit the daughter's visits because they are harmful to her mother's health.

The mother is lacking capacity to make her own health care decisions but she states that she wants her daughter to visit. Therefore, despite the consensus opinion against the daughter, she may visit unless a court order is obtained to stop her. As stated several times before, residents – even residents who allegedly lack capacity to make their own decisions – are the ultimate authority regarding visitation unless a contradictory court order is obtained. The daughter may continue to visit but it may be a good idea for her to bring a friend to act as a witness to her interactions with her mother.

### **Scenario #4 Restraining Order**

A long-term care facility has filed a civil restraining order to bar a resident's spouse from visiting. The facility requests and receives a temporary Workplace Violence Restraining Order by claiming the spouse has threatened to harm staff people for not taking good care of his wife.

The spouse is served with the restraining order while he is visiting with his wife. After reading it carefully and seeing it was signed by a judge, he learns that he may only visit his wife on Tuesdays and Thursdays for one hour and only with direct supervision by staff. Despite his outrage, he tells his wife goodbye and complies with the order. Failure to do so could have resulted in his arrest.

The spouse immediately contacts an attorney and learns he has two options for challenging the restraining order. One is to wait for the scheduled court hearing (usually a week or two after the temporary order is issued) to challenge the allegations made by the facility. If the spouse chooses this option, he will have to abide by the temporary order until the hearing. He should file a formal response to the restraining order and serve it on all of the parties prior to the hearing.

The other option is to file a petition for the immediate withdrawal of the temporary order. This is a fairly sophisticated legal process that probably requires the assistance of a lawyer.

The key to any visitation scenario involving a restraining order is to abide by it. Of course you first want to verify its validity by checking for a judge's signature but once you've verified the document is binding, you could be arrested for violating it. Restraining orders are serious business. You will have ample opportunity for challenging the order but you must do so in a court of law.

### **Scenario # 5 YOU Get the Restraining Order**

Residents or visitors that have wrongfully been refused visitation can seek their own restraining order against the facility that has prohibited visitation. Normally, the party who seeks to restrict visitation is the one who must get legal authority but sometimes, despite your best efforts, no one will follow the law

and the police will not enforce it. In these cases, one option is to seek a court order restraining the facility from restricting your visits. For more information about this option, call CANHR and see <http://www.courts.ca.gov/1058.htm>

## APPENDIX

### **Nursing Home Visitation Law:**

42 United States Code Section 13951-3(c) (3):

#### **(3) Access and visitation rights**

A skilled nursing facility must-

**(A)** permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman described in paragraph (2)(B)(iii)(II), or by the resident's individual physician;

**(B)** permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

**(C)** permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

**(D)** permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

**(E)** permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

42 Code of Federal Regulations Section 483.10:

(j) Access and visitation rights. (1) The resident has the right and the facility must provide immediate access to any resident by the following:

(i) Any representative of the Secretary;

(ii) Any representative of the State;

(iii) The resident's individual physician;

(iv) The State long term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965);

(v) The agency responsible for the protection and advocacy system for developmentally disabled individuals (established under part C of the Developmental Disabilities Assistance and Bill of Rights Act);

(vi) The agency responsible for the protection and advocacy system for mentally ill individuals (established under the Protection and Advocacy for Mentally Ill Individuals Act);

(vii) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(viii) Subject to reasonable restrictions and the resident's right to deny or

withdraw consent at any time, others who are visiting with the consent of the resident.

(2) The facility must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The facility must allow representatives of the State Ombudsman, described in paragraph (j) (1) (iv) of this section, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with State law.

(k) *Telephone*. The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.

22 California Code of Regulations Section 72527(a):

Patients shall have the right:

(17) To have daily visiting hours established.

(18) To have visits from members of the clergy at any time at the request of the patient or the patient's representative.

(19) To have visits from persons of the patient's choosing at any time if the patient is critically ill, unless medically contraindicated.

(20) To be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes.

(21) To have reasonable access to telephones and to make and receive confidential calls.

**RCFE Visitation Law:**

Health and Safety Code Section 1569.269. (a) Residents of residential care facilities for the elderly shall have all of the following rights:

(2) To be granted a reasonable level of personal privacy in accommodations, medical treatment, personal care and assistance, visits, communications, telephone conversations, use of the Internet, and meetings of resident and family groups.

(24) To consent to have relatives and other individuals of the resident's choosing visit during reasonable hours, privately and without prior notice.

Health and Safety Code Section 1569.313. Each residential care facility for the elderly shall state, on its client information form or admission agreement, and on its patient's rights form, the facility's policy concerning family visits and other communication with resident clients and shall promptly post notice of its visiting policy at a location in the facility that is accessible to residents and families.

The facility's policy concerning family visits and communication shall be designed to encourage regular family involvement with the resident client and shall provide ample opportunities for family participation in activities at the facility.

22 California Code of Regulations Section 87468:

(a) Each resident shall have personal rights which include, but are not limited to, the following:

(6) To leave or depart the facility at any time and to not be locked into any room, building, or on facility premises by day or night. This does not prohibit the establishment of house rules, such as the locking of doors at night, for the protection of residents; nor does it prohibit, with permission of the licensing agency, the barring of windows against intruders.

(10) To be informed of the facility's policy concerning family visits and other communications with residents, as specified in Health and Safety Code Section 1569.313.

(11) To have his/her visitors, including ombudspersons and advocacy representatives permitted to visit privately during reasonable hours and without prior notice, provided that the rights of other residents are not infringed upon.

(14) To have reasonable access to telephones, to both make and receive confidential calls. The licensee may require reimbursement for long distance calls.

(15) To mail and receive unopened correspondence in a prompt manner.

**CCRC Visitation Law:**

(c) All residents in residential living units shall have all of the following rights:

(2) To live in an environment that enhances personal dignity, maintains independence, and encourages self-determination.

(8) To maintain and establish ties to the local community.

**Hospital Visitation Law:**

42 CODE OF FEDERAL REGULATIONS SECTION 482.13(h)

**(h) Standard: Patient visitation rights.** A hospital must have written policies and procedures regarding the visitation rights of patients, including those setting forth any clinically necessary or reasonable restriction or limitation that the hospital may need to place on such rights and the reasons for the clinical restriction or limitation. A hospital must meet the following requirements:

**(1)** Inform each patient (or support person, where appropriate) of his or her visitation rights, including any clinical restriction or limitation on such rights, when he or she is informed of his or her other rights under this section.

**(2)** Inform each patient (or support person, where appropriate) of the right, subject to his or her consent, to receive the visitors whom he or she designates, including, but not limited to, a spouse, a domestic partner (including a same-sex domestic partner), another family member, or a friend, and his or her right to withdraw or deny such consent at any time.

**(3)** Not restrict, limit, or otherwise deny visitation privileges on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability.

**(4)** Ensure that all visitors enjoy full and equal visitation privileges consistent with patient preferences.

22 California Code of Regulations Section 70707:

(b) A list of these patients' rights shall be posted in both Spanish and English in appropriate places within the hospital so that such rights may be read by patients. This list shall include but not be limited to the patients' rights to:

(16) Have all patients' rights apply to the person who may have legal responsibility to make decisions regarding medical care on behalf of the patient.

(17) Designate visitors of his/her choosing, if the patient has decision-making capacity, whether or not the visitor is related by blood or marriage, unless:

(A) No visitors are allowed.

(B) The facility reasonably determines that the presence of a particular visitor would endanger the health or safety of a patient, a member of the health facility staff, or other visitor to the health facility, or would significantly disrupt the operations of the facility.

(C) The patient has indicated to the health facility staff that the patient no longer wants this person to visit.

(18) Have the patient's wishes considered for purposes of determining who may visit if the patient lacks decision-making capacity and to have the method of that consideration disclosed in the hospital policy on visitation. At a minimum, the hospital shall include any person living in the household.

(19) This section may not be construed to prohibit a health facility from otherwise establishing reasonable restrictions upon visitation, including restrictions upon the hours of visitation and number of visitors.