

Good morning Chairman Lee and members of the Human Services Committee. My name is Bridget Weidner and I serve as the Director of the Division of Health Facilities for the North Dakota Department of Health (NDDoH). I am here to provide testimony in order to offer information related to the Centers for Medicare and Medicaid Services (CMS) current visitation guidelines in nursing homes during the COVID-19 public health emergency.

Nursing homes certified by CMS are required to follow federal requirements. These guidelines only apply to nursing homes, not basic care or assisted living facilities as these entities are not regulated by CMS. In March 2020, CMS issued a memorandum providing guidance to facilities on restricting visitation for all visitors and non-essential health care personnel, except for certain compassionate care situations. In May 2020, CMS released Nursing Home Reopening Recommendations which provided additional guidance on visitation for nursing homes as states and communities progressed through the phases of reopening from COVID-19. In September 2020, CMS issued QSO-20-39-NH Nursing Home Visitation-COVID-19. The intent of this guidance was to provide reasonable ways a nursing home could facilitate in-person visitation to address the psychosocial needs of nursing home residents.

In the September 2020 memorandum, CMS provided core principles of COVID-19 Infection Prevention, consistent with the Centers for Disease Control and Prevention (CDC) guidance, which must be adhered to during any visitation. CMS indicated all visits should be held outdoors whenever practicable as outdoor visits pose a lower risk of transmission. The memo outlined that aside from weather considerations, an individual resident's health status, or a facility's outbreak status, outdoor visitation should be facilitated routinely. Facilities were to create accessible and safe outdoor spaces for visitation.

CMS also stated facilities should accommodate and support indoor visitation when there is no new onset of COVID-19 cases in the last 14 days and the facility is not currently conducting outbreak testing. In addition, facilities are to use the COVID-19 county positivity rate to determine how to facilitate indoor visitation. If the county positivity rate is greater than ten percent, indoor visitation should only occur for compassionate care situations according to the core principles of COVID-19 infection prevention and facility policies. If a facility has had no COVID-19 cases in the last 14 days and its county positivity rate is less than 10 percent, a nursing home must facilitate in-person visitation consistent with the regulations. Failure to allow visitation, without adequate reason related to clinical necessity or resident safety, would constitute a potential violation of resident rights. Failure to adhere to infection control practices would constitute a potential violation of infection prevention and control. Unfortunately, around the time of the September 2020 memo, North Dakota (ND) began to see a rise in COVID-19 cases and most facilities had positive residents and/or staff and their county positivity rate was greater than ten percent which did not allow for regular indoor visitation. ND was also beginning with our change in seasons which made outdoor visitation difficult.

In this memo, CMS stated they do not distinguish between essential caregivers or designated caregivers and other types of visitors and that these guidelines cover all types of visitors. They also encouraged facilities to test visitors but were clear to say that visitor testing is not required.

In summary, CMS has attempted to balance infection prevention and control with resident rights regarding in-person visitation. The memo issued in September was to provide reasonable ways to facilitate in-person visitation. Nursing home facilities certified by CMS are required to follow these requirements regardless of state and local laws and regulations.

This concludes my testimony. I am happy to answer any questions you may have.