



## Frequently Asked Questions by Guardians about the COVID-19 Pandemic

The National Guardianship Association, along with the American Bar Association [Commission on Law and Aging](#) and the [National Center for State Courts](#), recognizes that guardians have many questions about how the COVID-19 pandemic is impacting their responsibilities. Together we have developed some answers to questions we are hearing from guardians. Throughout this FAQ we provide suggestions and resources to help you navigate through this pandemic.

This is a living document so we will be adding questions and answers as circumstances continue to change. If you have additional questions, do not hesitate to send them to [info@guardianship.org](mailto:info@guardianship.org). We will try to answer them as best we can. You will find additional COVID-19 resources at [guardianship.org](http://guardianship.org).

### Top Take-aways

- Access to My Clients or Loved One in Nursing Homes – While federal guidance restricts in-person visits to residents in nursing homes, you have a responsibility to maintain contact and monitor well-being through remote access.
- Access to My Clients or Loved One in Residential Groups Settings and Hospitals -- State requirements may restrict in-person visits to residents in residential group settings, and federal guidance sets limits on visits to hospital patients, but you have a responsibility to maintain contact and monitor well-being through remote access.
- Access to Courts – Each state determines its own procedures during the pandemic. While many are placing a priority on keeping courts open for cases involving the protection of vulnerable individuals, hearings may be delayed or conducted remotely, and there may be changes in requirements for timelines, notices and the submission of reports.
- Protecting My Clients' or Loved One's Rights and Well-Being – The rights of your client or loved one have not changed, but the pandemic makes it more difficult to exercise certain rights. Take actions to ensure the person receives fair health care treatment, facilities follow safety protocols, and support the individual during this difficult time.

### Contact with My Client or Loved One

**Do I have a legal or professional duty to continue in-person visitation with my client? If not, what are my responsibilities regarding maintaining contact?**

You have an ongoing duty to maintain contact with your clients, even if face-to-face visits are restricted. Nothing about the current pandemic decreases your responsibilities to oversee the well-being of those you are appointed to serve. The current conditions just make your job harder.

The National Center for State Courts is recommending that, in addition to regular annual reports, all guardians conduct an immediate well-being assessment of each client's circumstances including the following:

- Current living arrangement
- Stability of living arrangement
- Health risks due to COVID-19 in current living arrangement, including to any caregivers
- Plans for backup guardian
- Current contact information for you, your client or loved one, including the backup or standby guardian
- Continuing availability of necessary in-home services when applicable
- Appropriateness of current services or need for services
- Education continuity and enrichment for children with guardianships who are currently out of school.

## **Access to My Clients or Loved One in Nursing Homes**

### **What federal restrictions on visiting nursing home residents apply to guardians?**

The Centers for Medicare & Medicaid Services (CMS) released [Guidance for Infection Control and Prevention of Coronavirus Disease 2019 in Nursing Homes](#) (Federal Guidance). According to the Federal Guidance, facilities should restrict “all visitors and non-essential health care personnel” with very limited exceptions as described below. While not mentioned specifically, the limitation applies to guardians and family members. If a state has stricter requirements for nursing homes beyond the federal guidance, such as allowing no exceptions, guardians must follow the state law.

### **Can I ask for a court order exempting me from the federal restrictions on visiting a nursing home resident?**

Because nursing homes are regulated by federal as well as state law, the court may not have authority to order access in contradiction to the Federal Guidance. Nursing homes may jeopardize their federal certification if they do so.

### **Are there any exceptions to the federal restrictions on visiting residents in nursing homes?**

Under the Federal Guidance, access to a nursing home is allowed only for essential health care workers and government surveyors. “Essential” is interpreted very narrowly, given the risk to residents, and does not include guardians.

However, visits are allowed for “compassionate situations,” which include but are not limited to end-of-life care. Facility decisions about these visits are to be made on a case-by-case basis, with careful screening for COVID-19 symptoms.

### **What are the recommended safety precautions for entering a nursing home in a “compassionate care” situation?**

Facilities should require you to wash your hands frequently, use Personal Protective Equipment (PPE) such as facemasks, and should restrict your visit to the resident's room or other designated location.

## **What are the nursing home’s duties to facilitate communication with residents?**

The Federal Guidance encourages nursing homes to facilitate contact with residents through alternative means of communication. Nursing homes “need to facilitate resident communication” with the ombudsman and other [patient representatives](#) important in safeguarding resident rights, including guardians, conservators, agents with a power of attorney, and representative payees. If a nursing home is slow to assist you, refer staff to the Federal Guidance.

## **In lieu of in-person visits, what are my legal responsibilities regarding maintaining contact with clients or loved one?**

If you cannot visit your client or loved one in person, you still have a duty to maintain contact and be as up to date as possible on his or her condition, needs, and concerns. Check with your court to see if it has issued any guidance for guardians on alternative means of maintaining contact.

- **Remote Access Technology.** Try all possible modes of remote communication: phone calls, texts, video chats or email. Does the resident have access to a landline, cell phone, computer or tablet? Adjust the number and length of contacts when necessary. For example, 3-4 short phone calls may take the place of one longer in person visit.
- **Facility Staff and Records.** Talk with facility staff including nurses, aides, social workers, activity directors, or anyone with direct access to the person. Be sure to participate by phone or video in care planning meetings. Inquire frequently about COVID-19 screenings and symptoms. If facility records are available electronically, ask to review them periodically.
- **“Through the window.”** Plan ahead with staff to arrange a meeting with the person through a window, door or other reasonable barrier. Your physical presence may provide some measure of comfort, and you will be able to at least see the individual in person.

## **What are the confidentiality concerns in communicating via technology?**

Having nursing home staff help in your contact with a client or loved one may be necessary but can compromise confidentiality. Ask for some private time to talk with your client or loved one alone – which may or may not be possible, given hearing or vision loss, physical impairments and dementia, unfamiliarity with technology, and uneven Internet connections. It is a challenge, but making the effort to protect your client’s or loved one’s privacy during your communications is important.

The National Consumer Voice for Quality Long Term Care (Consumer Voice) has more ideas on maintaining contact from a distance at [COVID-19 and Nursing Homes, What Residents and Families Need to Know](#).

## **My client or loved one has dementia, is non-verbal, or is non-English speaking. How can I use technology to communicate and monitor well-being?**

Any audio or visual device can help you to gauge the person’s condition and well-being. Your presence, even by phone or video, may be comforting and centering for the person. But for communication about the person’s needs and wishes, consider these basic suggestions:

- For residents with dementia, speak slowly and clearly, use plain language; cover only one topic at a time; ask yes or no questions. Take time to listen. If the person can speak, confirm your understanding of what was said by paraphrasing. See [communication tips](#) from the Alzheimer's Association.
- For non-verbal individuals, video can allow them to use gestures or signs to express needs. Some software allows the user to point to pictures to indicate emotions and needs.
- For non-English speaking residents, facility staff may be able to translate or use a [language line](#) interpretation service by phone or video.

### **Can my client or loved one still contact the long-term care ombudsman?**

Yes, the long-term care ombudsman program continues to operate in every state, even though ombudsman staff cannot make in-person visits (except in the limited situations described above). Be sure you and your client or loved one have the state or local ombudsman's contact information.

### **Do I have to notify the court in order to move my client or loved one from a nursing home to another location?**

Some state laws require advance notice to the court if your client or loved one moves. Contact the court to see if your state or your court has issued any guidance about COVID-related changes in required notices, including timelines, when a client or loved one moves. In any case, you must inform the court of any change of address for you and your client or loved one.

Additionally, be aware that CMS has announced the [waiver](#) of several federal nursing home regulations, including waivers of notice for resident transfers. The waivers allow the facility to move residents without advance notice to another facility in specific situations related to the pandemic risks. In these cases, the notice must be provided to the resident and to you as guardian "as soon as practicable." See Justice in Aging's [COVID-18 Analysis on CMS Guidance to Nursing Facilities](#).

## **Access to My Clients or Loved One in Residential Group Settings and Hospitals**

### **What are the restrictions on visiting an individual in an adult residential group setting?**

Unlike nursing homes, there is no federal regulation of residential housing and care settings such as adult foster homes, assisted living, group homes, or other similar models. Check with your state agency on disability, aging and/or health and human services for state- specific pandemic restrictions.

Unfortunately, COVID-19 appears to spread quickly, with tragic results, in group residential settings for older persons or people with disabilities. [Recent media accounts](#) across the country describe challenging conditions, diminishing available staff, and lack of resources as contributing to high rates of infection and death comparable to nursing homes. If visits are not possible, check in with your clients or loved one as frequently as possible via remote access.

### **What are the restrictions in access to clients or loved one in other health care institutions, including hospitals, psychiatric hospitals, and critical access hospitals?**

[Federal guidance](#) by the Centers for Medicare and Medicaid Services (CMS) says hospitals should set limits on visits to patients. Hospitals should use the same screening protocol for visitors that they use for patients, such as asking about the visitor's symptoms, travel, and contact with someone with known or suspected COVID-19. Limitations may include restricting the number of visitors per patient, limiting visitors to only those who provide assistance to the patient, or limiting the visitor's movement within the facility. CMS's guidance suggests that health care facilities take measures to increase communicating with families via phone or social media. Some states and hospitals have provided exceptions to "no visitor" policies when necessary for people with disabilities.

### **In lieu of in-person visits, what are other means of fulfilling my duty to maintain contact with clients or loved one?**

If you cannot visit your client or loved one in person, you still have a duty to maintain contact monitor the resident's condition, needs, and concerns. Try scheduling a regular time to communicate with your client or loved one, either through facility staff or directly with the person.

- **Remote Access Technology.** Try all possible modes of remote communication: phone calls, texts, video chats or email. Does the resident have access to a landline, cell phone, computer or tablet? Adjust number and length of visits when necessary. For example, 3-4 short phone calls may take the place of one longer in person visit.
- **Facility Staff and Records.** Talk with facility staff including nurses, aides, the social workers, activity director, or anyone with direct access to the person. Be sure to attend in care planning meetings. Inquire frequently about COVID-19 screenings and symptoms. If facility records are available electronically, ask to review them periodically.
- **"Through the window."** Plan ahead with staff to arrange a meeting with the person though a window, door or other reasonable barrier. Your physical presence may provide some measure of comfort, and you will be able to at least see the individual in person.

The National Consumer Voice for Quality Long Term Care (Conserver Voice) has more ideas on maintaining contact from a distance at [COVID-19 and Nursing Homes, What Residents and Families Need to Know](#).

## **Medical Decisions**

### **I have been supporting my client or loved one to make his or her own health care decisions. How can I continue to do so effectively during this pandemic?**

- Continue to talk with your client or loved one about health care choices, and what is most important to him or her if faced with serious illness.
- Make sure they understand the seriousness, risks, and course of COVID-19, particularly in light of their current health status.
- Explain the treatment options when one becomes infected with COVID-19 and the possible outcomes.
- Explain what social isolation means and why it is important to practice safety. Explain what quarantine means if the person may be subject to quarantine.

- Talk to your client or loved one about end of life preferences, particularly in light of the current pandemic. One's wishes during the pandemic may be specific to the pandemic and may not apply in "normal" times.
- Does your client or loved one have a living will, health care power of attorney, or other documentation of what he or she would want? Don't wait to address this until he or she becomes sick. If executing a witnessed or notarized formal document is not feasible under the circumstances, any thoughtful documentation or recording will likely still be honored.
- If your client or loved one gets sick, without having the opportunity to discuss this issue, let his or her known health care values guide decisions. Think about past patterns and decisions in shaping choices you are called on to make.

**How do I establish contact with and respect for my health care decision making authority with nursing home and hospital personnel?**

- Assuming your court order gives you authority to make health care decisions, including end-of-life decisions, give a copy of the court order appointing you as guardian to every health care provider currently treating your client. Each new health care provider or health care setting may need a copy of the court order.
- If you are the health care decision-maker, politely explain to health care providers and the client's family the decisions for which you are responsible and accountable.
- When a treatment decision is needed, seek as much information as possible from treating health care providers about the nature of your client's or loved one's condition, the treatment options with their risks and benefits, the prognosis, and likely outcomes of treatment.
- If your client or loved one has a valid health care power of attorney appointing someone else as health care agent, discuss his or her situation and wishes with the agent in light of the pandemic. Seek consistency in communicating with your client according to the recommendations above.
- If it is unclear who has authority to make health care decisions, or you have a conflict with the health care agent selected by your client, consider seeking guidance and clarification from your lawyer or the court.
- Health care providers are likely to listen to everyone who has a relationship with their patient. If there is disagreement, the health care providers may try to find common ground, if not to reach agreement, at least to reach understanding by everyone of the choices that are made and why. Even when you have the final decision-making authority, remember that your client's or loved one's situation affects others and seek consensus and mutual respect.

**How do I make sure my client's or loved one's end-of life preferences are honored?**

- Make sure your client's or loved one's wishes are documented and included in the medical record. In addition, be present in person, by phone, or video and make sure that your client's wishes are known to every health care provider.
- If your client would prefer hospice or palliative care, and you believe it is appropriate, ask the health care providers if it is time to consider hospice or palliative care. Ask the health care providers if they think it is appropriate to consider POLST or MOLST orders (physicians orders on life sustaining treatment, or medical orders on life sustaining treatment). These are portable medical orders for persons with advanced illness or frailty to ensure that their critical care wishes are known and respected across care settings.

- Explain to family and friends the wishes of the person, the current health care conditions and options with a goal of avoiding opposition to the choice being made.

**I have heard that some hospitals are considering DNRs for anyone with COVID-19 who is elderly and/or has a comorbid condition. What can I do about this?**

- In some states a DNR order cannot be entered without consent from the patient or the patient's representative. Ask what is being done and be a part of the decision.
- Clarify what your client or loved one would want and what is consistent with his or her health care values and priorities. If not known, their best interest should guide your decisions, taking into account everything you do know about their values and priorities.
- Blanket policies on DNRs based on age are ethically and morally wrong. Where a scarcity of resources requires rationing, criteria should be based on the odds of survival with treatment for that individual.

**If my client or loved one needs to be quarantined or confined in a separate facility or wing of a facility, what should I do?**

- Try to explain to your client or loved one the necessity of the quarantine and seek to communicate as often as possible during the quarantine to reassure them that their welfare is your primary concern.
- If you have a choice of placement, review the health care facility's policy when choosing a placement (some facilities are creating policies that differ based on age, others are grouping all adults in the same category).
- Appeal or seek transfer to another facility.
- If appropriate file objections to these policies with state and federal regulators.
- The [ARC of the United States](#) and the [Consumer Voice for Quality Long Term Care](#) have advocacy tips.

## **Access to Courts**

**Can I file a petition or motion in a guardianship case? Is the court holding hearings? How will I be notified of a hearing?**

The [National Center for State Courts](#) has an interactive link to state court websites with information related to the pandemic (click on state profiles). Check that website for information about what is required in your state. Sometimes, finding out what is required in your specific case will require following instructions or links from the statewide level to the local court's website. Although each state must decide on its own priorities and procedures in this difficult time, many states are placing a high priority on keeping the courts open for cases involving the protection of vulnerable people, including elders, children, and individuals with disabilities.

**Should I submit a guardian report if I cannot visit my client or loved one in person? How should I file the report?**

Check your state and local court procedures as noted above for current requirements, including any changes in the submission and filing of guardian reports and conservator accountings. Procedures may

change frequently during this time. Many courts are continuing to require well-being, accounting, and other reporting even if they are delaying hearings. Even if your deadline for filing a report is extended, prepare the report to ensure you are up to date on important information and to document your contacts with your client or loved one.

### **What precautions are courts taking to protect my clients or loved one and me from being exposed to COVID-19 if we need to appear in court?**

Most courts are using technology to conduct hearings remotely and/or enforcing social distancing and other precautions. Again, check your state and/or local court website for up-to-date information. (State court administrative orders can be accessed through the [National Center for State Courts](#) website).

### **Is the court continuing to require that I make face-to-face visits with my client or loved one?**

Whether or not you can have face-to-face visits with your client or loved one, your duty to continue contact remains. Some state courts have issued specific guidance on guardian visits and reporting requirements. Check your state or local court's website. For example, see the [District of Columbia's guidance](#) and [Florida's order](#).

### **Can I ask for a court order exempting me from state restrictions on visits to residents in an assisted living facility or similar congregate setting? Can I ask for a court order exempting family members, friends or clergy from such restrictions?**

You can ask for a court order, but these factors are important to consider:

- Is the court hearing non-emergency matters?
- Does the court have jurisdiction? For example, a state court may not have authority over visitation in a federally regulated facility such as a nursing home.
- Are there other ways to maintain contact? Courts may consider what alternatives (e.g., videoconferencing, telephone, etc.) are available.

## **Protecting my Client's or Loved One's Rights and Well-being**

### **Does COVID-19 affect my client's or loved one's rights as a person with a guardian?**

NO. The rights your client or loved one has as a person with a guardian have NOT changed. But the COVID-19 pandemic will make it more difficult to exercise certain rights. For example, it will be difficult, if not impossible, to arrange for visits with friends and family (see next question). Or, if your client or loved one wants to ask the judge for a change in the court order or termination of the guardianship, an in-person hearing may be delayed, and remote access to court may not be an option.

### **Should I stop my client or loved one from interacting with others?**

While every situation is unique, yes, if the interaction puts the individual and others at risk. This is a hard question, because your client or loved one may suffer without person-to-person contact. You can try to explain that you did not decide to enforce this separation, you are following the state's social distancing rules. Share a plain language resource such as [COVID-19 Information By and For People with Disabilities](#) from the Self-Advocacy Resource and Technical Assistance Center (SARTAC). If your client or loved one

continues to see others, or other individuals insist on visiting, consider contacting the court for an order restricting visitation.

**I am concerned my client or loved one won't receive fair health care treatment because she or he has a disability. What can I do?**

Your client or loved one's civil rights, including the right to fair medical treatment, have NOT changed. The U.S. Department of Health and Human Services (HHS) Office for Civil Rights has released [guidance](#) for states and health care providers on avoiding disability-based discrimination during COVID-19. Health care professionals must provide effective communication to the patient to ensure the patient maintains autonomy and ability to participate in treatment decisions. The hospital should allow for accommodations that involve the support of another individual if safety precautions are in place. For more information see The ARC's [Applying HHS'S Guidance For States and Healthcare Providers on Avoiding Disability-Based Discrimination in Treatment Rationing](#). For a briefer summary, see [Safeguard Against Disability Discrimination during COVID-19](#) by the Center for Dignity in Healthcare for People with Disabilities.

**How can I check if a residential facility or a nursing home is following practices and protocols to protect my client or loved one?**

Ask the facility to share memos or documentation on plans for preventing and controlling COVID-19. The facility should have a plan for frequent communication with residents and family about conditions and individual updates. Contact your client or loved one and staff as often as you can. If possible, request that your client or loved one has a private place to talk to you. Ideally request video conferences so you can observe your client or loved one.

**What can I do if I am concerned about a nursing home's infection control practices or other issues?**

Nursing home residents still have the right to receive necessary care and services, participate in developing and implementing a person-centered plan of care, be free from abuse and neglect, and voice grievances without fear of retaliation. Assisted living residents may have similar rights under state law.

Share concerns with the director of nursing or administrator and request a response. File a complaint with your state survey agency. For more information, see [COVID-19 and Nursing Homes, What Residents and Family Need to Know](#) from Consumer Voice.

Contact the long-term care ombudsman program for assistance. Under the Federal Guidance, ombudsmen are not permitted to visit nursing homes, and are likely restricted from making other visits under state policies. However, you can still file a complaint with the ombudsman program, which can access the resident's clinical records. Consumer Voice has more information at [Supporting Coronavirus Prevention in LTC Facilities](#).

**What can I do if I am concerned my client or loved one is being abused, neglected, or exploited by a housing or service provider, individual, or facility?**

Every state has different COVID-19 protocols in place for adult protective services (APS) and law enforcement. Report concerns as you would have prior to COVID-19 and inquire whether you should expect a delay or change in the agency's or officer's response. See [Adult Protective Services and Covid-19](#) from HHS's Administration for Community Living.

**My client or loved one is demonstrating anxiety, depression, and other concerning behaviors. What can I do?**

If your client or loved one receives mental health, substance abuse, or any other kind of therapy, check whether you can make a virtual appointment with their mental health treatment provider. If your client or loved one resides in a supervised living arrangement, such as a nursing home, assisted living or other congregate setting, confirm that he or she continues to receive any previously prescribed psychotropic medications. The [Substance Abuse and Mental Health Services Administration \(SAMSHA\)](#) offers several COVID-19 related resources.

**My client or loved one does not understand why life has changed in response to COVID-19. How can I explain current events?**

Consistent and clear communication is important. Try different forms of communication, including phone calls, videoconferencing, pictures, and letters. Be prepared to repeat this explanation multiple times. Share a plain language resource such as [COVID-19 Information By and For People with Disabilities](#) from the Self-Advocacy Resource and Technical Assistance Center (SARTAC). For a client or loved one with dementia, see [Coronavirus \(COVID-19\): Tips for Dementia Caregivers](#) by the Alzheimer's Association.

**How can I address my client or loved one's feelings of isolation and loneliness?**

There are many resources for connecting individuals during a time when people may feel terribly disconnected. However, often these suggestions -- from virtual museum tours to telehealth appointments -- require Internet access. Many individuals with guardians may not have Internet access or may not know how to use a computer or smart phone.

Ask facility staff to assist your client or loved one in setting up a videoconference call. If your client or loved one lives alone, can you drive by their house at an arranged time and talk to them from a distance? Are there friends and family who could arrange a similar check while following social distancing rules? Consumer Voice has ideas on maintaining contact from a distance at [COVID-19 and Nursing Homes, What Residents and Families Need to Know](#).

**I have been appointed guardian for a new client or for a family member. How can I fulfill my duties?**

Even if you are unable to visit the person for whom you are a guardian, there are many things you can and should do. Refer to [The Fundamentals of Guardianship: What Every Guardian Should Know](#), as well as the [National Guardianship Association Standards of Practice](#).

For guardians of the person:

- Conduct a needs assessment through phone and/or videoconference conversations with your client or loved one and service providers, caretakers, family members and any other individuals who may be able to assist. Review medical or service providers' records. Topics to inquire about include:
  - Current living arrangement
  - Stability of living arrangements
  - Potential health risks due to COVID-19 in the current living arrangement, including risks to any caretakers
  - Plans for a backup guardian

- Current contact information, including alternate contacts and contact information for a backup or standby guardian
- Continuing availability of necessary in-home services (if applicable)
- Appropriateness of current services/need for services
- For children, educational continuity and enrichment
- Conduct a functional assessment by talking to the person for whom you are guardian and the caretakers by whatever means are available. Topics to inquire about include:
  - Ability to perform activities of self-care, with support
  - Ability to make decisions, with support
  - Existence of advance planning documents
- Monitor medical status.
- Ensure that there is a care plan and monitor it.
- Maintain regular communication by video chat or phone, if possible.
- Make an immediate report to the court if you discover urgent or critical issues that the court needs to consider.

For guardians of the estate/conservators:

- Develop an inventory of assets.
- Have mail forwarded to you.
- Apply to be appointed representative payee (Social Security Administration) or federal fiduciary (VA) if the person is receiving benefits.
- Make an immediate report to the court if you discover urgent or critical issues that the court needs to consider.

**Do I need to have a back-up plan if I should need to self-quarantine, become ill, or otherwise temporarily unable to carry out my responsibilities?**

- Yes, you should have in place a backup plan for who is going to take over your guardianship responsibilities if you should become unable to do so. The steps you need to take depends on your state's laws. Some states provide for the court's appointment of a "stand-by" guardian to step in when a guardian can no longer serve. For example, see the [Florida](#) statutory provision for appointing a standby guardian and [Maine's](#) provision for appointing a successor guardian.
- If you don't have a plan in place and suddenly become unable to carry out your responsibilities, notify the court promptly, so the judge can order a temporary substitute.