



House Human Services Committee

**SB 2145**

**Nursing Home Visitation**

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Chair Weisz and members of the House Human Services Committee, my name is Janelle Moos, Advocacy Director for AARP North Dakota. I appreciate your time today and look forward to working with you on an issue that we have been working on since the start of the pandemic.

Before we get into the details of the bill I'd like to spend just a moment reminding you who we are and why we are here. AARP is a nonpartisan, nonprofit, nationwide organization with nearly 38 million members. Over 84,000 of those members live in North Dakota – a staggering number when you consider the overall population of our state.

AARP has worked with state leadership to ensure the strongest response to this pandemic possible. While the tragedy of death and illness from COVID-19 continues to plague the country's nursing homes and other long-term care (LTC) facilities, months-long visitation restrictions are also taking a serious toll<sup>1</sup> on the emotional and physical health of residents and their families.

While we support visitation for essential or designated caregivers, we are advocating for all visitation to resume for all residents in LTC facilities with proper testing, infection control protocols and PPE that ensures the greatest protection for residents and staff. Until that time, AARP continues to encourage the state and LTC facilities to ensure residents have access to the technology, devices and support to remain connected with their families until in person visitation can safely resume. In fact, AARP was one of the early advocates to call for increased virtual visitation to help bridge the gap when facilities are closed to in-person visitation (see attached press release from 2020).

Additionally, when the North Dakota Long Term Care Ombudsman reached out to us last year with a very similar proposal, wherein LTC residents could select an essential caregiver for in person visitation, AARP ND provided detailed comments and included suggestions to improve the proposal at that time. I have attached our August 11, 2020, letter to Karla Backman, State Long Term Care Ombudsman and in that letter you will see the principals we outlined regarding

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<sup>1</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7205644/>

visitation; including Minimizing Risk, Fairness/Universality, Individualized Plan, Responsibilities of LTC Facilities to Facilitate Visitation, Notification, and Residents without Visitors/Outdoor access. We stand by those principles today as well.

As you may know, in September 2020, the Centers for Medicare & Medicaid Services (CMS) issued new guidance for how nursing homes on protocols for safely facilitating visitation. This new guidance, that was issued on September 17, 2020, superseded previous CMS visitation guidance, and was effective immediately for all nursing homes that accept Medicare or Medicaid. The CMS guidance more closely reflects AARP's position that residents should drive how visitation is facilitated as long as it is in line with state protocols.

Additionally, the CMS guidance calls for visitation that is "person-centered," considering "the residents' physical, mental, and psychosocial well-being. Indoor visitation is allowed if there has been no new onset of COVID-19 cases in the past 14 days and the facility is not conducting outbreak testing per CMS guidelines. The guidance lays out certain core principles of infection prevention that should always be followed and gives other suggestions for how to best adapt visitation for the resident's situation and needs.

The new CMS guidance makes no distinction between essential caregivers and other visitors. Instead, nursing homes now must facilitate in-person visitation for all, consistent with the regulations, as long as there have been no new COVID-19 cases, the county positivity rate is sufficiently low, and there is no other clinical reason to restrict visitation. We are committed to and support movement toward visitation for all residents in LTC again.

Similarly, the CMS guidance clarifies "compassionate care situations" for which special visitation may occur, even when county positivity rates are high and other visitation is restricted. Previously, states and facilities struggled to apply standards for compassionate care and may have been overly restrictive on allowing such visits. Compassionate care visits may be appropriate in end-of-life situations, but also when residents are "struggling with the change in environment and lack of physical family support," "grieving after [a] friend or family member [who] recently passed away," need "help and encouragement with eating or drinking," or are "experiencing emotional distress".

While the CMS guidance makes important advances towards ensuring access to in person visitation, we believe some facilities have been slow to implement this guidance. While the ability of residents and families to communicate via virtual visitation has greatly improved and virtual visitation is not always ideal, we believe it would be prudent for the state to ensure families and residents have access to this when We encourage the state to consider amending this bill to also include facilitated virtual visitation as a guaranteed option residents and families can rely upon when numbers within a facility or a region preclude the possibility of in-person visitation from taking place.

On March 10, 2021, CMS issued updated nursing home [guidance](#) with revised visitation recommendations. In summary the updated guidance is as follows:

According to the updated guidance, facilities should allow responsible indoor visitation at all times and for all residents, regardless of vaccination status of the resident, or visitor, unless certain scenarios arise that would limit visitation for:

- Unvaccinated residents, if the COVID-19 county positivity rate is greater than 10 percent **and** less than 70 percent of residents in the facility are fully vaccinated;
- Residents with confirmed COVID-19 infection, whether vaccinated or unvaccinated, until they have met the criteria to discontinue transmission-based precautions; or
- Residents in quarantine, whether vaccinated or unvaccinated, until they have met criteria for release from quarantine.

The updated guidance also emphasizes that “compassionate care” visits should be allowed at all times, regardless of a resident’s vaccination status, the county’s COVID-19 positivity rate, or an outbreak. Compassionate care visits include visits for a resident whose health has sharply declined or is experiencing a significant change in circumstances.

In response, AARP released a statement from Nancy LeaMond, AARP Executive Vice President and Chief Advocacy & Engagement Officer, in response to the [guidance](#) from CMS that expands safe visitation in nursing homes:

*“AARP thanks the Centers for Medicare & Medicaid Services for providing updated guidance that allows easier in-person visitation at nursing homes while continuing to emphasize infection prevention and control practices for facilities, visitors and others. This is very positive news for residents of nursing homes and their families.*

*“In the year since the pandemic began, we have heard heartbreaking stories about the challenges families have had trying to see their relatives and the many important moments they missed. As we enter a new phase of this pandemic with the ongoing rollout of vaccines and growing knowledge about public health needs – including the safety, mental health, and social well-being of nursing home residents -- it is vital that these vulnerable seniors are able to safely visit with their loved ones. Residents must be able to exercise their rights to visitation, and facilities should be held accountable for ensuring such visits occur.*

*“AARP will continue fighting to improve the quality of care in nursing homes and other long-term care facilities during this global health crisis and into the future.”*

AARP called on CMS to review its earlier guidance in a February 23

Nursing home residents continue to bear the brunt of this pandemic, and strong visitation standards can help improve their health and quality of life. We appreciate the time to comment today.

Thank you.