



May 29, 2020

Mr. David Kostroun  
Deputy Executive Commissioner, Regulatory Services  
Texas Health and Human Services Commission  
4900 N. Lamar Blvd  
Austin, TX 78751

Dear DEC Kostroun,

We would greatly appreciate a reexamination of the visitation rules for assisted living facilities (ALFs). When ALFs have inquired about the regulatory guidance regarding activities on the facility's extended property (parking lots and lawns in front of the building), they have been told that the emergency rules adopted into the Texas Administrative Code §553.45 prohibits "non-essential visitation" and that CMS has prohibited such activities for nursing homes in QSO-20-28. We believe the current emergency rule can allow flexibility for residents to be able to see their families outside and from a safe distance. Residents should be allowed to engage in visits on ALF property that are not conducted in the building and where proper precautions are taken. These visits could include, socially distant individual visits, car parades and drive-by visits.

We believe that the emergency rule promulgated by HHC, which expires on July 31, 2020, can be interpreted to allow these types of visits. Rule §553.45 prohibits visitation, however, it allows for the entry of providers of essential services. It is the "entry" language that is key. The visitation we would like to see allowed for assisted living facilities would occur without "entry" into the actual facility.

On April 28<sup>th</sup>, CMS released QSO-20-28 and includes a Frequently Asked Questions sheet. One of the questions in the FAQ sheet states:

Q: Can residents leave the nursing home for an appointment or outside activity?

Facilities should consider the necessity of the appointment to the resident's health, and whether it is critical for the resident to attend the appointment. If the appointment is not critical, it is recommended that the appointment be deferred to a later date or be accomplished virtually, if the resident agrees. Decisions and any concerns about keeping or postponing the appointment should be discussed with the resident, resident representative, and the resident's physician. If attending the appointment is necessary, the facility should help arrange for the resident to attend the appointment by taking precautions to minimize the risk of transmission of COVID-19 (e.g., giving the resident a surgical mask to wear while attending the appointment). Also, the facility should monitor the resident upon return for fever and signs and symptoms of respiratory infection for 14 days after the outside appointment (preferably in a space dedicated for observation of asymptomatic residents).

With regard to outside activities, the CMS memorandum (QSO-20-14-NH (Revised)) states that facilities should cancel "all group activities such as internal and external group activities." This

means there should be no group activities occurring outside or inside of the building, due to the risk of transmission.

Setting aside whether guidance intended for nursing homes should be applied to assisted living communities, the question in the April 28<sup>th</sup> document combines “leaving the nursing home for an appointment”, which implies an off-site appointment, and an “outside activity”. The guidance does not prohibit residents from ever exiting the building to sit on the walkway in front or walk around the property; however, current interpretation is disallowing families to drive by under these circumstances. This outside activity is not an excursion, although it is being considered non-essential visitation. This distinction between an “outside activity” and an outing or excursion makes a world of difference to residents who have been effectively cut-off from their social circles, familial supports, and frequently kept in quarantine.

A second question of interpretation involves the use of “group activity”. HHSC is currently interpreting the phrase “group activity” to apply to any activity in which two or more residents are doing the same thing in a shared space outside of their rooms. We would argue that two residents outside of their rooms, sitting on separate benches at least six feet apart, both wearing face coverings, and not interacting with each other should not constitute a “group activity”. If residents maintain appropriate social distance from each other, wear suggested face coverings, and keep to themselves, the risk to each other is minimal.

As the pandemic moves into its third month, ALs should be encouraged to organize low risk, high impact activities which prompt residents to venture out of their rooms and start making human connections from a distance. As far as we know, Texas and Illinois are the only states currently prohibiting car parades and drive-by visits from families and friends. Other states, with the exact same guidance from CMS, have decided that the ban on visitation by non-essential individuals applies to entering the inside of the building.

We appreciate your team’s willingness to accept our comments regarding a more generally applied re-opening strategy for assisted living communities in Texas, but this small shift in interpretation can and should be made immediately. Father’s Day is around the corner, families are growing increasingly frustrated by being cutoff from their loved ones, and the stress of confinement on residents is beginning to deteriorate their physical and mental health.

Thank you for your consideration; we look forward to your response.

Sincerely,



Diana Martinez, President  
Texas Assisted Living Association



George Linial, President  
LeadingAge Texas



Kevin Warren, President  
Texas Health Care Association