A critical question faced by state agencies as well as owners, operators, and managers of assisted living facilities is whether to permit new admissions. States’ positions are changing rapidly and frequently multiple times a day. Legal issues with respect to admissions of assisted living residents arise as to whether the guidance issued by the states is enforceable, whether family members assisting residents who are moving in constitute “visitors,” what screening protocols apply to new residents and their family members, how to handle inconsistencies between state guidance and federal guidance that may be applicable, whether CMS guidance applies to assisted living facilities that participate in Medicaid programs, and whether newly admitted residents must remain in isolation upon admission. In this article, we review positions that states have taken or are currently taking on admissions and related issues pertaining to visitors and screening.

Colorado serves as an example of a state wholly banning admissions in certain circumstances. The state has advised that new admissions should be halted where there is a suspected or confirmed COVID-19 outbreak in an assisted living facility. The prohibition on admissions should then continue until the outbreak is over and the facility has consulted with applicable public health departments. In addition, for Colorado facilities where there has not been an outbreak, state guidance provides that there should be a plan in place for new admissions were an outbreak to occur. On the other hand, states like North Carolina expressly permit continued admissions even if there has been a COVID-19 diagnosis. A March 6, 2019 memorandum issued by the North Carolina Department of Health and Human Services provides:

- An Adult Care Home can admit any individual that it would normally admit (including individuals from hospitals where a case of COVID-19 was/is present).

- An Adult Care Home can accept a patient diagnosed with COVID-19 who is still under transmission-based precautions for COVID-19 as long as the facility can follow CDC and local health department guidance for transmission-based precautions. If an Adult Care Home cannot follow such precautions, it must wait until these precautions are discontinued. These decisions should be made on a case-by-case basis in consultation with the local health department, the resident’s clinicians, infection prevention and control specialists, and public health officials.

1 One consistent finding in AGG’s state research: state positions are changing rapidly and sometimes multiple times a day. This article provides a summary only as of the time it was written.
In addition to variations in admissions policies, states have taken different approaches to visitation at assisted living facilities. Some have followed the CMS prohibitions that pertain to nursing homes while others have retained flexibility. For example, pursuant to a March 17, 2020 Emergency Order issued by the Alabama State Health Officer: “Effective immediately, all Nursing Home/Long Term Care Facilities shall prohibit visitation of all visitors and non-essential health care personnel, except for certain compassionate care situations such as end-of-life.” Other states also ban visitation, but have more exceptions to the general ban. For example, on March 15, 2020, the Director of the Florida Division of Emergency Management issued Emergency Order DEM 20-006, which tightened restrictions for all individuals entering residential and long-term care facilities. The Order:

- Prohibits all individuals from entering assisted living facilities except for the following:
  - Family members, friends, and visiting residents in end-of-life situations;
  - Hospice or palliative care workers caring for residents in end-of-life;
  - Any individuals providing necessary health care to a resident;
  - Facility staff;
  - Facility residents;
  - Attorneys of Record for a resident in Adult Mental Health Treatment Facility; or
  - Representatives of the Federal or state government seeking entry as part of their official duties, including, but not limited to, Long-Term Care Ombudsman program, representatives of the Department of Children and Families, the Department of Health, the Department of Elderly Affairs, the Agency for Health Care Administration, the Agency for Persons with Disabilities, a protection and advocacy organization under 42 U.S.C. § 15041, the Office of the Attorney General, any law enforcement officer, and any emergency medical personnel.

Although the CDC has released extensive guidance on screening, certain states also have also implemented strict screening policies for visitors to assisted living facilities. For example, the same Florida Order mentioned above provides:

- Individuals seeking entry to the facility under the above will not be allowed to enter if they meet any of the following screening criteria:
  - Any person infected with COVID-19 who has not had two consecutive negative test results separated by 24 hours;
  - Any person showing, presenting signs or symptoms of, or disclosing the presence of a respiratory infection, including cough, fever, shortness of breath or sore throat;
  - Any person who has been in contact with any person(s) known to be infected with COVID-19, who has not yet tested negative for COVID-19 within the past 14 days;
  - Any person who traveled through any airport within the past 14 days; or
  - Any person who traveled on a cruise ship within the past 14 days.

- Individuals entering a facility subject to the screening criteria above may be screened using a
standardized questionnaire or other form of documentation.

- The facility is required to maintain documentation of all non-resident individuals entering the facility. Documentation must include:
  - Name of the individual;
  - Date and time of entry; and
  - The documentation used by the facility to screen the individual showing the individual did not meet any of the enumerated screening criteria, including the screening employee's printed name and signature.

With clients across the country owning, operating, and/or managing assisted living facilities, AGG has devoted significant attention to remaining on top on state developments. As noted above, unique legal issues have quickly materialized as assisted living facilities are in new territory. Non-compliance can, in some cases, lead to criminal penalties. We suggest that assisted living facility owners, operators, and managers check changes in applicable guidance multiple times per day in order to determine the best course of action with respect to admissions and related decision-making.

2 For example, non-compliance with a Michigan executive order related to residential care facilities is a misdemeanor.
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