



## Frequently Asked Questions by Guardians

### About the COVID-19 Pandemic

As of June 16, 2020

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.

For all questions you might have be certain to refer to your state laws, local resources, and specific court orders. Nothing in this document is to be considered as the rendering of legal advice for specific questions. Consult with your attorney and other professionals as necessary and use the NGA Standards of Practice for further guidance when faced with difficult decisions.

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

Use these hyperlinks to get quickly and directly to the section that most interests you.

- [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.
- [Protections and Services for My Clients or Loved One in the Community](#) – Maintain contact with your client or loved one in the community, and make sure he or she gets services and supports to maintain health and well-being.
- [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 submission of reports.

- Protecting the Rights and Well-Being of My Clients or Loved One – 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.
- Protecting the Medical Decisions for My Clients or Loved One – Work with health care providers to ensure that the health care choices and values of your client or loved one are respected.
- Protecting the Finances of My Clients or Loved One – As guardian of the estate, ensure that your client receives all COVID-19 and other benefits for which he or she is eligible; develop and implement a financial plan that is flexible enough to accommodate demands due to COVID-19; and manage investments and financial affairs with increased vigilance during the pandemic.
- Safety Precautions – Take steps to make sure you are not exposed to or transmitting illness, and to respond if your client or loved one is exposed to COVID-10, shows symptoms, or is hospitalized. Be alert to COVID-19 frauds or scams.

## **Contact with My Clients 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 guidance 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. Some states are beginning to loosen restrictions on visitation, so check with local authorities for new policies.

### **Can I ask for a court order exempting me from the 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 guidance 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 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](#) who have a role 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 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 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. You can find

the [contact information](#) for each state's long-term care ombudsman's office on the Consumer Voice for Quality Long-Term Care website.

### **How can I find out whether the nursing home has confirmed or suspected cases of COVID-19?**

CMS has issued an [interim final rule](#) (May 1, 2020) requiring nursing homes to inform residents, their representatives (including guardians), and families by 5:00 PM the next calendar day following the occurrence of a confirmed COVID-10 infection or if three or more residents or staff exhibit new symptoms within 72 hours of each other. This communication must not include personally identifying information. It must include actions the facility is taking to prevent or reduce the risk of transmission and be updated at least weekly. The facility need not make individual contacts to you as guardian -- it may use general means of communication such as websites and recorded phone messages. Check out pages 180-181 in the interim final rule for the details.

In addition to the federal requirements, some states have policies requiring nursing homes to report COVID-19 outbreak information. Consumer Voice for Quality Long-Term Care has an [interactive map](#) showing state policies on reporting, testing, and immunity.

### **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 to a new residence. 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.

When considering whether to move your client or loved one, keep in mind the guidance in [NGA Standard of Practice 12.1.A.5](#): the goal of such a decision should be to minimize the risk of substantial harm to the person, to obtain the most appropriate placement possible, and to secure the best treatment for the person.

### **Can a nursing home move my client or loved one to a different room or a different part of the facility?**

If the nursing home moves your client or loved one for the sole purpose of separating COVID-positive from COVID-negative residents, CMS guidance waives the resident's rights to:

- Share a room with the consent of both parties
- Receive advance notice of the transfer
- Refuse the transfer.

### **Can a nursing home transfer my client or loved one to a different facility?**

Federal nursing home regulations provide specific protections when a facility proposes to transfer a resident to a different facility or discharge the resident. Under the regulations, residents have the right to written notice (usually 30 days in advance), the right to request an appeal, and other protections. Guardians should be aware of those rules. For more information, see Consumer Voice's [resources on nursing home transitions](#).

However, due to COVID-19, CMS has now waived those requirements in the following situations:

- Transferring residents with COVID-19 or respiratory infection symptoms to a facility dedicated to the care of individuals who test positive or have symptoms.
- Transferring residents without diagnosis or symptoms to a facility dedicated to the care of those residents.
- Transferring residents without symptoms of a respiratory infection to another facility for 14-day observation.

In those three situations, the facility must give you notice “as soon as practicable.” However, without advance notice, it may be difficult for you to challenge the transfer even if you have concerns about its impact on your client or loved one. See Consumer Voice’s summary of CMS guidance.

Keeping open the lines of communication with the nursing home and with the local long-term care ombudsman can help minimize surprise changes and disruptions to the care of your client or loved one.

**My state or local government is lifting restrictions that were imposed due to COVID-19. Can I visit my client or loved one?**

Many states and localities are lifting restrictions on commercial and interpersonal activities, usually in stages. Often the first steps include allowing certain businesses and facilities to open, such as outdoor restaurants, barbers and hair salons, parks, and beaches, but these measures vary widely. While there are no federal mandates or regulations regarding reopening, the White House has issued Guidelines for Opening Up America Again.

You will need to ask the facility where your client or loved one lives and/or your state or local officials whether the facility is able to welcome visitors. CMS published Nursing Home Reopening Recommendations for State and Local Officials and FAQS on reopening on May 18. CMS suggested that state and local governments use a phased approach to lifting restrictions in nursing homes. Nursing homes should not relax any restrictions and cautionary measures during Phase I of a community’s reopening and should lag behind changes for other types of entities by at least 14 days. CMS recommended that nursing home visits (beyond compassionate care situations) not begin until Phase 3 of a state or community’s reopening plan. Visits should not start until there have been no new nursing home onset COVID-19 cases for 28 days.

Once visitation is allowed, CMS recommended that visitors be required to take safety measures including wearing masks and undergoing health screening before entering. CMS also made recommendations about testing of staff and residents. Learn more about visiting nursing homes in a recent AARP article.

**Once the nursing home permits visits, how should I decide whether to see my client or loved one face-to-face?**

Guardians should still make individualized decisions about in-person visits to clients and loved ones. You might consider issues such as:

- How much of an infection risk would your visit pose to your client or loved one? Is he or she particularly at risk for infection due to underlying conditions?

- Can you visit your client or loved one without posing too much risk to your own health? This may depend on your health status and whether the facility has active cases. If a visit would be too risky for you, can someone else visit or provide services on your behalf?
- Are there things you can do to make an in-person visit safer? For example, does the facility have an outdoor space where you can spend time with your client or loved one?

In making decisions about visitation, refer to the NGA Standards of Practice, especially Standard 13.IV regarding visitation and Standard 14 regarding medical treatment decisions.

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

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.

Residential group settings include licensed assisted living, retirement communities, group homes, foster care homes, senior independent housing, shared housing, and other similar models.

### **Are there restrictions on visiting an individual in a licensed assisted living facility?**

Unlike nursing homes, assisted living is regulated at the state level. States use different terms for licensed assisted living, such as residential care or shared housing. To find out about restrictions on visits, as well as other COVID-19 prevention and control requirements, contact the state agency that regulates assisted living. For the agency and contact in your state, see NCAL 2019 Assisted Living Regulatory Review. While there are no federal COVID-19 assisted living requirements, federal CDC assisted living guidance recommends that assisted living facilities promptly notify the local health department about any outbreaks, develop plans for notifying residents and family members, and limit or restrict outside visitors.

### **Are there restrictions on visiting an individual in other residential group settings?**

Various state agencies may regulate residential group settings and may have requirements for COVID-19 prevention and control. While there is no federal regulation, federal CDC guidance for retirement communities recommends owners and operators of such residential settings encourage personal protective measures, limit visitors, screen workers, inform residents and visitors about outbreaks, and establish a “buddy” system for residents to ensure they stay connected.

### **How can I find out whether a residential group setting has confirmed or suspected cases of COVID-19?**

Start by asking the facility administrator for the information directly. In addition, check with your state public health department. Some states are posting facility-specific lists on the number of residents and staff with COVID-19 infections and the number of fatalities. If your state is not currently posting this information, ask the public health department whether it is available, or contact the long-term care ombudsman program. Consumer Voice for Quality Long-Term Care has

an [interactive map](#) on state long-term care policies on COVID-19 that includes information on state reporting requirements for assisted living.

### **How should I decide whether to visit my client or loved one when restrictions on visitations are lifted?**

Once states and localities begin lifting restrictions, ask the facility administrator and your local public health department whether you may visit your client or loved one. Then make a determination based on the risk to the individual, as well as to you (see nursing home section above).

### **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 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 a client or loved one?**

If you cannot visit your client or loved one in person, you still have a duty to maintain contact and 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, social workers, activity directors, or anyone with direct access to the person. Be sure to attend 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 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 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](#).

## **Protections and Services for Your Clients or Loved One in the Community**

### **What can I do to make sure my client/loved one continues to receive the services and supports necessary to maintain health and well-being?**

The challenge is communication and oversight while maintaining social distancing. If possible, communicate by phone or video conferencing with your client often. Also communicate with service providers, asking them to let you know if there are any breaks in services, and whether they see or hear anything unusual when delivering services. Ask neighbors to confirm whether service providers are coming as documented, and whether deliveries of food, medication, and other items are actually received.

Contact your Area Agency on Aging, Center for Independent Living, or your county or city department of human services to find out how services have been reconfigured due to COVID-19. For example, some localities are delivering meals or groceries to individuals who normally get a congregate meal at a senior center. Some are providing additional rental assistance, pharmacy delivery, transport to doctors' offices, and connections to prevent isolation.

### **How can I best maintain contact with my client in the community while maintaining social distancing?**

Phone calls, simple video conferencing apps, text messages, instant messaging, and email are critical contact points. Some find it helpful to set regular times for check-ins such as just after lunch, or just after "Wheel of Fortune." Social distancing does not mean we can't see and talk to one another, but when we do, we need to maintain safe distance, and take precautions. Some meetings are taking place through a window, or on park benches 10 feet apart.

### **What steps/actions should I take to make sure my client is practicing social distancing and other health safety precautions?**

Explain what is needed and why it is important. Lead by example – wash your hands, stay six feet away, wear protective gloves and/or a face mask as appropriate and explain what you are doing and why it is important for everyone to do the same. Provide gloves and facemasks. Ask your client or loved one about what they have been doing and remind them why careful practices are important. Check with neighbors, family members, and others if good practices are observed when you are not around. Facilitate safe social interaction such as video meet ups, or online group gaming.

### **How can I make sure my client remains connected to friends, family, and community?**

- Phone, video chat, text messages, instant messaging are all social interaction tools without physical contact. Encourage family and friends to send cards, photos, video clips, or short notes.
- There has been an increase in social media interaction such as Facebook, Twitter, and Instagram.
- Facilitate safe social interaction at appropriate distances (a gathering with everyone sitting ten feet apart to talk.)
- Organize a video chat game night, or virtual brunch (or happy hour if appropriate.)

## 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, links to webinars and other resources, and sample orders. 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 determine 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. The [Center for Elders and the Courts](#) has additional resources specific to guardianships, conservatorships, and other issues specifically affecting elders. As pandemic conditions are localized and fluid, court policies also are subject to change. As state and local restrictions begin to be lifted, many courts are planning for safely reopening courthouses and determining what cases should continue to be heard remotely on either a mandatory or optional basis.

### **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 waiver of mandatory guardianship in person visits](#), [Maryland's statement from the judiciary](#), 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?

- Are there other ways to maintain contact? Courts may consider what alternatives (e.g., videoconferencing, telephone, etc.) are available.  
Current CMS guidance prohibits guardians from visiting individuals in nursing homes, with few exceptions. 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.

## **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?**

If the interaction puts the individual and others at risk and it is not possible to facilitate interaction according to social distancing regulations, you may have to seek a court order restricting visitation. You must also be aware of whether other individuals are visiting your client or loved one against their wishes. This is a hard question because your client or loved one may suffer without person-to-person contact. You can try to explain that enforcing this separation was not your decision; 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).

### **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. If you are concerned about disability discrimination in health care treatment, including rationing of health care resources, contact the hospital patient advocate, hospital counsel, or ethics committee. For more information see [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. Nursing homes are required to inform residents and their representatives (including guardians) about COVID -19 infections and steps they are taking to prevent or reduce the risk. 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 should 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. See the CMS 2019 Directory of State Survey Agencies. 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 visits to other facilities under state policies. However, you can file a complaint with the ombudsman program, and the program can at a minimum access the resident’s clinical record. 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 with staff that he or she is regularly receiving 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 in 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 [NGA 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
  
- 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 property/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.
- See the section on Protecting My Clients' or Loved One's Finances.

**My client or loved one has died from COVID-19. What are my responsibilities as the guardian?**

- Immediately inform all family and friends who are entitled to know of the death.
- Share with the family all information about any pre-need plans you have arranged.
- Check your state laws for guidance as to your authority or responsibilities concerning the disposition of the body and carrying out any funeral arrangements. Check for any directives from the individual.
- Follow state requirements for promptly notifying the court of the person's death, such as providing a copy of the death certificate.
- File your final personal status report and/or final accounting. The court will not discharge you until you have filed them.
- Petition the court to terminate the guardianship. Your guardianship is not terminated until the court has entered an order ending it.
- Consult with your attorney about the proper way to disburse any guardianship funds to the personal representative.

**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.

## Protecting my Clients' or Loved One's 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.
- Explain what social distancing means and why it is important to practice safety in the face of this serious illness. 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 this particular coronavirus and may not apply in "normal" times. The discussion of end of life preferences could include interventions such as ventilators and dialysis, and their benefits and burdens in the context of COVID-19 and your client or loved one's health status.
- 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. Depending on your state's laws and executive orders, your client or loved one may be able to fulfill any requirements for witnesses or notarization remotely. 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 these issues, let his or her known health care statements, actions, values and preferences guide your decisions. Think about past patterns and decisions when making choices.
- Refer to the NGA *Standards of Practice* for further guidance in making health care decisions.

**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.
- 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, seek guidance and clarification from your lawyer or the court.
- Health care providers are likely to listen to input from everyone who has a relationship with their patient. Providers often work to understand all points of view and to seek common ground. 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, reach out in person, by phone, or video to make sure that your client's wishes are known to every health care provider.
- You may need to seek a court order authorizing you to make end-of-life decisions on behalf of your client or loved one. Check state law and the order naming you as guardian to see whether you need additional court action.
- If your client would prefer hospice or palliative care, and you believe it is appropriate, explain those preferences to health care providers and consider their input.
- POLST orders (Physician Orders for Life Sustaining Treatment, known by different names and acronyms in different states) 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. If your client or loved one is seriously ill, discuss with health care providers if it is appropriate to consider these orders and how to create them in your state.
- Explain to family and friends the wishes of the person, the current health care conditions and options with a goal of building consensus.
- In some circumstances, you may consent to the withholding or withdrawal of medical treatment from your client or loved one. While the presumption is always in favor of continuing treatment, the NGA *Standard of Practice 15* states that guardians shall honor the expressed wishes of the person regarding withholding or withdrawing treatment. If your client or loved one has previously expressed preferences that differ from current statements, consult an ethics committee and, if necessary, seek direction from the court.

### **I have heard that some hospitals are considering entering DNRs for anyone with COVID-19 who is elderly and/or has a chronic 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 the provider is planning 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 interests should guide your decisions, taking into account everything you do know about their values and priorities.
- If you become aware of imposition of DNR orders against the known wishes of your client or loved one -- or any other disability discrimination in medical treatment -- object to hospital counsel, ethics committee, or patient ombudsman. 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. For more information, see Applying HHS's Guidance For States and Healthcare Providers on [Avoiding Disability-Based Discrimination in Treatment Rationing](#).

### **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).
- CMS has issued guidance on transfers within and between nursing facilities during the pandemic. The guidance may impact your client or loved one's ability to challenge a transfer.
- The ARC of the United States and the Consumer Voice for Quality Long Term Care have advocacy tips.

### **Can I consent if a doctor offers experimental medical treatment for my client?**

- Your client or loved one may be a candidate for a new and experimental treatment for COVID-19. In some states, a guardian cannot consent to experimental medical treatment without a court order.
- If your client's doctor recommends or suggests experimental treatment, consider the factors outlined in NGA Standard of Practice 14, Decision-Making about Medical Treatment, and review the following questions: would such treatment align with your client's known wishes and preferences? Does your client's advance directive or medical power of attorney contain directions regarding experimental treatment? If you cannot ascertain your client or loved one's wishes, would consenting to the treatment be in his or her best interests?
- If you conclude that your client should have treatment and you do not have the authority to consent, **immediately seek a court order and emergency hearing if necessary**, seeking authorization of treatment.

## **Protecting My Clients' or Loved One's Finances**

### **What are my duties as guardian of the estate concerning COVID-19 economic programs for my client or loved one?**

As the guardian of an estate, you have a duty to take all steps reasonably necessary to obtain all public and insurance benefits for which the person may be eligible. Ensure that you submit all applications for such benefit packages promptly if you believe that your client or loved one qualifies. One new federal benefit is the Economic Impact Payment ("stimulus check"). The National Consumer Law Center answers many questions concerning who is entitled to the stimulus benefit, the amount of payments, when checks are to be paid, and the ability of creditors to garnish the funds.

In addition to these programs, certain financial institutions offer short-term debt relief. The Consumer Financial Protection Bureau has detailed information on seeking forbearance on making mortgage payments or paying rent for a limited time. As guardian of the estate, you have an obligation to take reasonable steps to request forbearance on his or her behalf.

### **What are my duties as guardian of the estate in planning for the financial impact of COVID-19?**

You have a duty to develop and implement a financial plan for your client or loved one which corresponds with the person's care plan and meets his or her needs. If a separate guardian of the person has been appointed, you should be in close communication and work together to budget and pay for extraordinary care costs which might be caused by COVID-19.

### **What are my duties as guardian of the estate concerning my client's investments?**

We are living in financially difficult times with historic levels of unemployment and damage to many sectors of our economy. COVID-19 has caused significant disruption in financial markets globally and large declines in the value of investment portfolios for millions of investors.

As guardian of an estate, you are not expected to safeguard the person's investments from all losses, but you need to take reasonably necessary steps to protect the person's property. Current global economic uncertainty requires increased vigilance. You must continue to monitor the investments of your client or loved one carefully. Consult with his or her investment advisor to conduct a review to make sure the investments remain suitable for the person's current needs and investment goals.

Be sure also to review your appointment order and your state laws to determine whether you are restricted from making changes to the portfolio. If a review shows an unsuitable investment plan, you should consider getting competent professional advice, getting any necessary court approval, and restructuring the person's investments. Document all discussions and correspondence with the investment advisor.

The CARES Act waives required minimum distributions (RMDs) from retirement savings accounts for 2020. This means individuals aged 70-1/2 and older may skip the 2020 distribution, avoiding withdrawing from their pre-tax retirement portfolio when the market is down and giving their account balance time to recover. Individuals ages 70-1/2 or older do not have to take RMDs until after they reach age 72. This new age requirement to start taking RMDs was imposed by the SECURE Act. Those born before July 1, 1949, are still subject to the old rule of age 70-1/2.

### **What are my duties as guardian of the estate for handling the stimulus payment?**

As guardian of the estate, after taking steps to be sure the individual receives the stimulus payment if he or she qualifies, you should manage the payment according to fiduciary standards and NGA Standard #17. Talk with the person about how he or she wants to use the funds, and give priority to his or her goals, needs, and preferences. Consider the current wishes, past practices, and evidence of past choices. If substantial harm would result from the choice, or if there is no reliable evidence of a likely choice, consider the person's best interests.

### **What if I am guardian of the person and there is no guardian of the estate?**

Talk with the person about how he or she wants to use the funds, and recognize his or her goals, needs, and preferences. If you have concerns about use of the funds, consult the court order appointing you to see if the court granted any authority for the management of funds that are too small to require a guardian of the estate. Consult your state guardianship law for any provisions allowing a guardian of the person to receive funds payable to the individual and use the funds for the person's care and support. Absent such provisions, follow the individual's wishes, but if necessary, check with the court as to who has decision-making authority.

### **How should a representative payee handle the stimulus payment?**

The stimulus payment is not an SSA benefit. The payee should discuss with the beneficiary what he or she would like to do with the money, and if needed, assist with developing a plan. An allegation that a payee

misused a stimulus payment may prompt SSA to investigate the payee's handling of the beneficiary's SSA funds. For more information, including where the IRS will send payments to beneficiaries with payees, see NCLER's [Stimulus Payments and Representative Payees: What You Need to Know](#).

### **Can a nursing home or assisted living take a resident's stimulus check?**

NO. Alarmingly, the Federal Trade Commission (FTC) reports that state attorney generals have been investigating reports of facilities trying to take the stimulus payments of residents who receive Medicaid benefits. These facilities are claiming they are entitled to stimulus checks because the person is a Medicaid recipient. This is an illegal claim under federal tax law: the stimulus payments are a tax credit, not a federal benefit like Medicaid, and therefore cannot be seized by the government. CMS has [explicitly stated](#) that nursing homes cannot take the funds. For more information on how to report concerns to your state attorney general's office, file a complaint with the FTC, and links to the relevant sections of the federal tax law, see the FTC's blog post, "[Did a nursing home or assisted living facility take your stimulus check?](#)"

### **Does a stimulus payment count as a resource for the purposes of determining eligibility for Medicaid benefits and other federal programs?**

No, this payment does not count a resource or income for twelve months after receipt. In other words, the recipient has twelve months to spend the money before it would place him or her over the asset limit for Medicaid benefits. See [IRS Alert: Economic Impact Payments belong to recipient, not nursing homes or care facilities](#).

## **Safety Precautions**

### **What steps should I take to make sure I am safe, my staff or employees are safe, and that we are not transmitting any illness to my clients or loved one?**

All guardians, whether professional or family guardians, should adhere to the Center for Disease Control (CDC) COVID-19 guidance and recommendations on how to prevent the spread of the virus. You should know the recommended [steps to take](#) protect yourself, your client or loved one from any unnecessary exposure, especially if any are in a high risk category. Additionally, you should monitor all services being provided to your client or loved one to be sure he or she is receiving proper care and living in an appropriate and safe setting. Your state and local government may also have additional guidance and restrictions.

Guardians may have further requirements outlined in your state and local court procedures. The [National Center for State Courts](#) has an interactive website with links to each state court COVID-19 response. Additionally, the [National Guardianship Association](#) has state resources to help guardians.

For guardianship agencies, the CDC developed an [Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019](#) to help you respond to COVID issues for your work place. If you are a professional guardian with employees interacting with your client, you should take reasonable steps to ensure your staff does not spread COVID 19 to your client. It's a good idea to have written protocols for your employees and documentation of how you adhered to those safety precautions. Additionally, the Better Business Bureau has a COVID-19 resource page with a handy two-page [business toolkit](#).

These websites are updated frequently, so it is important to check them regularly to protect yourself, employees, clients, and loved ones.

### **What should I do if my client or loved one shows signs of respiratory illness?**

Check the CDC website and know the [symptoms of COVID-19](#), including fever and a cough. If anyone shows signs of illness, keep track of their symptoms and contact their medical provider. If your client or loved one is experiencing trouble breathing, call 911 immediately. Let the operator know your client or loved one may have or is experiencing COVID-19 symptoms and follow their safety instructions.

### **What should I do if my client or loved one is in a facility with known positive tests?**

Familiarize yourself with [CDC guidance on nursing homes and long-term care facilities](#) and contact the facility regarding your client's or loved one's well-being and the steps you can take to keep informed of her or her well-being. A recent AARP blog, [6 Questions to Ask if Your Loved One is in a Quarantined Facility](#), provides tips to family caregivers that are also useful for guardians – for example, ask how the staff is cleaning the facility and keeping the risk of infection low. Be sure to provide the facility with up-to-date contact information in case they need to reach you.

### **What should I do if my client or loved one is hospitalized with a confirmed diagnosis?**

Follow CDC guidelines and contact your client or loved one's medical provider and hospital for updates. You may be able to set up virtual visits. Also, check your state and local court procedures to see if you need to notify the court that your client or loved one is in the hospital.

Review your client's or loved one's health insurance to see if there are any updates pertaining to COVID-19 patients. AARP has information and resources to help answer questions about [Medicare and the Coronavirus](#).

Lastly, be sure the hospital and health care providers have copies of your client's or loved one's advance directives.

### **Are there any COVID-19 fraud or scams I should know about?**

Unfortunately, fraudsters are on the loose, even during the COVID-19 pandemic. From January 1 to June 1, the [Federal Trade Commission](#) received 91,808 COVID-19 related reports with people reported losing \$59.27 million to these frauds. The top complaints relate to travel, text messages, and a variety of imposters. The [AARP Fraud Watch Network](#) created a page to provide resources and information about COVID-19 related fraud and scams. These pages are updated frequently, so check them regularly. You can also sign up for AARP Fraud Watch Network's free "[watchdog alerts](#), check out their [scam-tracking map](#), or call their toll-free [fraud helpline](#) at 877-908-3360 if you, your client or a loved one suspect you've been a victim.