

CLIENT ALERT: Executive Order 202.77: Nursing Home Residents' Leave of Absence

FEATURED ATTORNEY



Patrick Formato

Executive Partner

By Patrick Formato

On November 23, 2020, Governor Cuomo issued Executive Order 202.77 temporarily suspending or modifying certain rules and regulations regarding admissions criteria for both nursing homes and adult care facilities through December 23, 2020. This Executive Order was issued in anticipation that certain residents might desire to temporarily leave their facilities to visit family and friends during the upcoming holiday season.

On November 24, 2020, the Commissioner of the Department of Health released a Health Advisory containing guidance concerning the celebration of the holidays.

The Centers for Medicare and Medicaid Services ("CMS") joins the Department of Health ("DOH") in recommending against residents leaving nursing homes for home or family visitation or other social gatherings during the holiday season.

For those residents who choose to leave and gather with family and friends, they must quarantine on transmission-based precautions upon return to the facility for 14 days; test negative immediately (within 24 hours) prior to return to the facility and be tested at least three (3) times during the 14-day period at the facility, including on the first day (upon return) and the last day that a resident must be quarantined.

Facilities must develop plans for the return of residents leaving for home or family visits, including having a cohorting plan with sufficient space, staff and PPE available. Families shall also be notified that residents who leave the facility shall not be permitted to return until they present a negative COVID-19 diagnostic test result within the preceding 24 hours.

Additionally, facilities must certify as required by Executive Orders 202.77 (11/23/2020) and 202.30 (6/9/2020) that they have implemented transmission-based precautions for such residents for fourteen

(14) days upon return to be in compliance with DOH guidance and CMS directives.

Finally, facilities must require that the leaving resident and a family member or friend attest in writing that they are aware of the risks in taking the resident out of the facility; that they will follow physical distancing, wear masks and follow hand hygiene practices consistent with CDC and DOH directives; notify the facility if anyone with whom the resident socialized with tested positive for COVID-19 or develop symptoms of COVID-19 or influenza within 14 days of the resident's scheduled return to the facility.

The Health Advisory further recommends that facilities find and support creative and innovative ways to celebrate the holidays such as assist with virtual visitation, virtual parties and place festive holiday decorations all while ensuring that all incoming visitors strictly adhere to all visitation guidelines and infection prevention and control measures such as physical distancing, wearing of masks or appropriate face covering and remind visitors to refrain from visiting when they do not feel well, have symptoms consistent with COVID-19 or influenza, have had contact with any who has tested positive for COVID-19 in the last 14-days or have themselves tested positive for COVID-19 in the past 14-days.

The [healthcare attorneys](#) at Abrams Fensterman, LLP are committed to providing you with the most current and accurate information and guidance. If you have any questions, please contact [Patrick Formato, Esq.](#), [Barbara Stegun Phair, Esq.](#), [Frank A. Mazzagatti, Esq.](#), [Jonathan Rogoff, Esq.](#), or any other attorney in our health law practice group.