August 11, 2020

By Email

Commissioner Deidre Gifford
Department of Public Health
410 Capitol Avenue
Hartford, CT 06134-0308

Re: Request for Alteration of DPH Guidance Restricting Visitation Rights for Residents of Nursing Homes and Chronic Disease Hospitals

Dear Commissioner Gifford:

We are a coalition of advocates for older adults and people with disabilities who reside in Connecticut nursing homes and chronic disease hospitals. We write to urge you and Governor Lamont to amend the restrictive visitation rules contained in the Department of Public Health’s guidance dated June 22nd. Individuals in these facilities urgently need regular visits with close family members and other caregivers (support persons), in compliance with appropriate protocols, as required by federal and state law.

We acknowledge that 2,800 residents of Connecticut nursing homes died due to the COVID-19 infection, and the paramount need to prevent further deaths. We recognize the legitimate public health reasons for the restrictions imposed in the June 22nd guidance, in light of this tragedy. We therefore fully support infection control measures to prevent exposure of nursing home residents to COVID-19 in such facilities.¹

¹ Representatives of legal services organizations in Connecticut met, by phone, with you and members of your staff on August 5 to address concerns raised in their July 1 letter to DPH. That letter urged weekly testing of nursing home staff until there is “no or minimal community transmission,” and asked that the Governor’s Executive Order be amended to reflect that standard. We understand that DPH voiced a commitment to CDC compliance and to surveillance testing, but did not commit to changing the Executive Order.
At the same time, residents need physical, mental and psychosocial support for their overall health, something to which they are entitled under federal law. Under the Nursing Home Reform Act (NHRA), all residents of nursing facilities, regardless of level of disability, must be provided with services to allow them to “attain or maintain the highest practicable physical, mental, and psychosocial well-being.” 42 U.S.C. § 1396r(d)(1). Additionally, a resident in a nursing home has the right to “receive visitors of his or her choosing at the time of his or her choosing, subject to the resident's right to deny visitation when applicable, and in a manner that does not impose on the rights of another resident.” 42 C.F.R. § 483.10(f)(4). In Connecticut, this right exists in nursing homes as well as chronic disease hospitals. See Conn. Gen. Stat. § 19a-550 (b)(12) (residents are entitled to associate and communicate with anyone of their choosing) and Conn. Agencies Regs. § 19-13-D8t(d)(2) (nursing homes must hold visiting hours no less than eight hours per day).

These rights do not disappear during emergencies and must continue to be enforced by the Department of Public Health. In addition to overseeing the enforcement of residents’ rights under federal and state nursing home laws, DPH is a public entity under Title II of the Americans with Disabilities Act (ADA) and therefore is prohibited from excluding people with disabilities from programs, services, or activities, or denying them the benefits of those services, programs, or activities, or otherwise subjecting them to discrimination. 42 U.S.C. §§ 12131-12134. Even when providing emergency and disaster-related programs, services and activities, state and local governments must comply with Title II of the Americans with Disabilities Act (ADA).

DPH’s June 22 guidance allowing only limited outdoor visits impedes the requirements of the NHRA, infringes on the rights of residents of nursing homes and chronic disease hospitals, and unduly excludes people with disabilities from programs, services or activities to which they are entitled. Some indoor visits are essential because of mobility issues and weather-- summer heat, rain and the inevitable arrival of cold weather. We have also heard that the order is being implemented restrictively, with 20 minutes as a maximum, rather than a minimum, period to visit, as intended, in part because staff have to leave the building to supervise these visits. Residents need more contact than that.

It is apparent that, for many if not most nursing home residents, visits from close family members are the critical, and irreplaceable, component to meeting their “physical, mental and psychosocial well-being.” Life in a nursing home is isolating. When residents are further isolated by losing contact with those they love and depend on for their social and emotional

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2 Indeed, the Governor seemed to acknowledge this during his July 31st Zoom meeting with members of the statewide CT Cross Disability Lifespan Alliance, in which he recognized the need to “open things up” as much as possible for visitation and socialization at nursing facilities, whose residents are already isolated and suffering from denial of contact with close family members, while balancing these efforts against the need to keep residents, workers and their families safe.

needs, the results can be fatal. As a result of DPH’s guidance, residents are experiencing substantial and lasting harm. Below are a few examples of how people are suffering under current DPH policies:

**Gladys Tucker.** Peggy Johnson’s 94-year-old mother, Gladys Tucker, has dementia. Peggy never thought she had to worry about her mother becoming ill and dying alone, but it would be 112 days before she could see her face to face in the Newington nursing home she lives in, after the doors closed in March. Now, only one outdoor visit can be scheduled per week. All the confusion and stress since the shutdown has greatly affected her mother’s mental health. She is sad. She misses the affection she once enjoyed from her children, grandchildren and her great-grandchildren when they were able to visit her regularly. She says “nobody loves me, nobody wants me.” At the end of each visit, she cries as she is wheeled back inside, confused and feeling unloved. Peggy feels she broke a promise she made to her mother before her dementia advanced -- that she would always be there to take care of her.

**Joseph Echtman.** Joseph, 70 years old, suffers from dementia and is legally blind. Since September 2019 when he was admitted to a nursing home, his wife Sharon, has visited him twice daily to feed him lunch and dinner. Joseph’s family also visited frequently, taking him out to dinner and family visits. Since the facility closed its doors the loss of family contact and grounding has radically changed him. The extreme isolation, feeling of abandonment, anxiety and fear have prompted outbursts not seen before. His mental and physical functioning have declined. He no longer walks, has lost motor skills and is not eating regularly, having lost 18 pounds since March 10th. He now just sits in a wheelchair 12 hours a day due to his depression. While Sharon is now allowed to go into the facility once per week (with proper PPE) to visit him as a “compassionate care” exception, once a week is not enough to address his depression and feelings of abandonment.

**Timothy Lambert.** Timothy, 25 years old, received a Traumatic Brain Injury from a motorcycle accident in 2019. He has resided at the Hospital for Special Care (HSC) in New Britain (a chronic disease hospital) since January, 2020. Since his admission at HSC, Timothy had been receiving daily visits from his mother (Dana Lambert-Monaco) and his girlfriend, Nicole, seven days a week from 9:00 a.m. to 9:00 p.m. During these visits, Dana and Nicole would provide sensory stimulation (playing music and massages with essential oils); rehabilitative supports (assisting him with speech, bathroom and bathing activities); and safety supports (adjusting his posture and aligning his head to prevent choking). Starting on March 11th, Tim was denied any further in-person visits. The only communications he has now are 20

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minute video calls once per day, Monday through Friday; and two 20 minute video calls on Saturdays and Sunday. Because Tim’s optic nerves were damaged by the accident, it is not clear how much he can see on the small computer screen, and it is the reason he cannot participate in window visits.

These examples demonstrate all too clearly that reasonable modifications to DPH’s guidance are necessary to safeguard the rights of residents in nursing homes and chronic disease hospitals. On June 9th, following the complaint filed by Disability Rights Connecticut and other groups, DPH issued an order allowing hospitalized, disabled individuals the presence of support persons. The order also requires measures to protect both the support person and anyone in the hospital. This has proven to be of immeasurable benefit to both hospitalized individuals and hospital providers to ensure equal access to medical care. Residents of nursing facilities require comparable accommodations in order to access the supports they need to maintain their highest practicable physical, mental, and psychosocial well-being.

For all of the foregoing reasons, we urge you to work with Governor Lamont to issue a new executive order or guidance that adopts the following standards for allowing support persons to visit nursing home residents:

**Proposed Standards for Indoor Visitation in Nursing Homes and Chronic Disease Hospitals**

- There shall be **indoor** visiting for support persons at every nursing home in Connecticut, so long as there are no new COVID-19 positive tests in the facility in the last 14 days and the community transmission rate is low. The implementation of this can vary from facility to facility.

- Visitors shall comply with the nursing home’s safety protections, which shall include, at a minimum, PPE, social distancing, symptom screening, temperature checks, and provision of contact information from visitors which can be used for contact tracing.

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5 By way of example, other states have already stepped forward to address the needs of individuals residing in long-term care facilities through guidelines that extend the exceptions for support person visitation in acute hospitals to long-term care environments. For example, Minnesota encourages nursing facilities to allow access to essential caregivers, because of their important role in supporting and advocating for residents. [https://www.health.state.mn.us/diseases/coronavirus/hcp/ltccaregiver.pdf](https://www.health.state.mn.us/diseases/coronavirus/hcp/ltccaregiver.pdf). Many other states have adopted rules requiring nursing homes to allow visitation for such persons, including California, [https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/AFL-20-38.aspx](https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/AFL-20-38.aspx); Illinois, [https://www.dhs.state.il.us/page.aspx?item=125019](https://www.dhs.state.il.us/page.aspx?item=125019); and North Carolina, [https://medicaid.ncdhhs.gov/blog/2020/05/06/special-bulletin-covid-19-83-title-ii-americans-disabilities-act-ada-and-section-504](https://medicaid.ncdhhs.gov/blog/2020/05/06/special-bulletin-covid-19-83-title-ii-americans-disabilities-act-ada-and-section-504)

6 Support Persons are defined in the DPH order governing visitation in hospitals. However, in light of the additional obligations of the state and facilities under the Nursing Home Reform Act, this needs to be modified to include individuals who are needed to address the physical, mental, and psychosocial well-being of residents. Perhaps a different term, like “essential caregivers,” can be used for nursing home visitors to avoid confusion.
• The nursing home may impose a reasonable COVID-19 testing requirement on visitors, at the option of the nursing home, consistent with its testing of staff.

• The nursing home must provide all PPE as required for visitors.

We propose these standards to allow reasonable visitation, while minimizing the threat that visitors might present to a facility. While visitors, like staff, risk bringing in the virus, visitors present a lower risk to the facility. They do not interact with multiple residents in the facility, and their stays will be shorter than staff shifts within the facility. We nevertheless acknowledge there may be situations where a facility could require that visitors be subject to the same testing requirements as staff.

We believe that adopting these requirements will strike the right balance between protecting the public health, including the health of nursing home and chronic disease hospital residents and staff, and assuring that the state and such facilities comply with their obligations to such residents to meet the physical, mental and psychosocial needs of residents.

Thank you for your consideration of this request. If you have any questions, please contact Joelen Gates of Connecticut Legal Services at jgates@ctlegal.org or (860) 786-6372.

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