

California Long-Term Care Facility Access Policy Workgroup

Summary of Workgroup Feedback on Draft Recommendations Report

The California State Legislature in 2022 commissioned a working group to “develop recommendations regarding best policies and practices for long-term care facilities during public health emergencies, including, but not limited to, visitation policies” ([AB 178, Ting, Chapter 45, Statutes of 2022](#)). This report reflects a summary of the discussions and recommendations of this working group, known as the Long-Term Care Facility Access (LTCFA) Policy Workgroup. The California Department of Aging (CDA) will submit report to the fiscal and appropriate policy committees of the Legislature. The Legislature is expected to consider these recommendations in its policy making.

Following the LTCFA Policy Workgroup meeting #4 on August 22nd, workgroup members were encouraged to review and submit comments to [a draft](#) of the Recommendations Report for State Legislature. Thirteen workgroup member organizations provided feedback and recommended edits for CDA to consider before finalizing the report.

Below is a summary of feedback received—in the form of individual comments offered via email, direct edits, or via comment letters — that was incorporated into the final LTCFA Policy Workgroup Recommendations Report. All feedback that was provided via a comment letter is included at the end of this document.

Report Section	Feedback	Workgroup Member Providing Feedback	Edit
About the Workgroup	“I recommend adding a statement of how radical the visitation limitations were. Decades-old federal and state laws guarantee robust access for long term care facility residents to receive visitation. The laws were completely set aside in favor of significant restrictions on access, including prolonged periods of 24/7 visitation lockouts. “	Tony Chicotel, CANHR	The report was edited to add: “These unprecedented limitations” and “including some prolonged periods where nearly no visitation was able to occur.”
Scope and Definitions	LTCF: “I am not familiar with these other (facility types) – maybe give an example of what these are.”	Ellen Schmeding, CCoA	The report was edited to add examples of Other Adult Assisted Living Facilities

			Regulated by CDSS, and Other Senior Assisted Living Facilities Regulated by CDSS.
Scope and Definitions	“What is the definition of ‘chosen family’? this feels very open ended to me. Chosen family is not included in ‘resident representative.’”	Ellen Schmeding, CCoA	The report was edited to add the following definition of Chosen Family: “This refers to individuals who a resident consider a family but with whom they may not have a legal or biological relationship.”
1. LTCF Access and Visitation for Resident-Designated Support Persons	“I recommend adding a reference to rates of malnutrition in nursing homes during the pandemic. The rates show that the visitation lockouts precipitated an unprecedented nutrition crisis in long term care facilities. Data reported to CMS by the nursing homes themselves showed the rate of resident malnutrition went from 5.38% in 2019 to 11.68% in 2020 to 16.57% in 2021 to 19.99% in 2022. Resident malnutrition rose nearly four-fold during the lockouts! This is certainly due to the exclusion of essential caregivers who had performed routine feeding assistance for residents. The data comes from the Minimum Data Set and can be verified here: https://data.cms.gov/quality-of-care/minimum-data-set-frequency We think this deserves mention in the report.”	Tony Chicotel, CANHR	Background section was edited to include findings from a study cited in LTCFA Policy Workgroup Research Summary that reflects similar findings.
1. LTCF Access and Visitation for Resident-Designated Support Persons	“The number of RDSPs per resident in total during an emergency may need to be limited.”	Anissa Davis, CCLHO	The background section was edited to add: “In reviewing a draft of this report, some public health officials indicated that there may also be situations where it is infeasible to allow an unlimited total number of RDSPs

			for a given resident over a period of time in a state of emergency.”
1.1 Background <i>3. Parity and Safety protocols</i>	“Who's going to determine if they meet or exceed standards required by the LTCF? The LTCF?”	Anissa Davis, CCLHO	The report was edited to clarify that determinations related to appropriate use and standards of PPE and emergency supplies would be “in accordance with public health orders and guidance.”
1.1 Background <i>4. Hours of visitation</i>	“The federal regs apply to a federally certified facility, whether through Medicare, Medicaid (Medi-Cal in CA) or both.”	Eric Carlson, Justice in Aging	The report was edited to add: “In Title 42 of the Code of Federal Regulations, CFR 483.10(f)(4) states that a resident of a SNF participating in Medicare and/or Medicaid ...”
1.2 Principles	Suggested adding “Consistent with federal law, nursing facilities should allow visits at any time, subject to the resident’s decision whether to see the visitor.”	Eric Carlson, Justice in Aging	The report was edited to include a sentence about existing federal/state laws, and then referred readers to the background section for details.
1.3 Recommendation	“We are concerned, however, that the language in section 2 a vi could be interpreted as prohibiting in-person visits by an RDSP Language suggests that it could be appropriate to require visits be conducted by “window visits,” phone, or virtual platforms such as Zoom.”	Darrick Lam, Alzheimer's Disease and Related Disorders Advisory Committee	The report was edited to remove modalities in the following section of the recommendations: “ vi. A limitation in the locations or modalities for interactions with resident.”
5.1 Background	“CDPH and the Ombudsman Program already have a detailed process for grievances and appeals which should be utilized instead of creating alternate processes.”	DeAnn Walters, CAHF	The report edited to clarify that the workgroup is agnostic on if the process for grievances and appeals is “new” or a modification of an existing process.

5.3 Recommendation	Suggested edit “in their preferred language” within policies to promote clear communications	Darrick Lam, Alzheimer's Disease and Related Disorders Advisory Committee	Edited was incorporated
5.3 Recommendation	In reference to using the term “threshold languages”: “This is a potential burden, especially if there are frequent visiting requirement changes as seen in the pandemic. San Diego has 8 threshold languages and Los Angeles has 12. Notices are typically required in English and the resident or families primary or preferred language. It doesn’t make sense to require a facility to have notices in 8 languages if only three are represented in their facility. The language should be updated throughout the recommendation document.”	DeAnn Walters, CAHF	Use the term was edited from “threshold languages” to “languages accessible to all how need the information”
5.3 Recommendation	<ol style="list-style-type: none"> 1. “The Ombudsman Program already manages situation around residents’ rights and it would be appropriate to notify the Ombudsman to determine if resident rights are being met in this situation.” 2. “There’s nothing to appeal. It’s at a resident’s discretion.” 	<ol style="list-style-type: none"> 1. DeAnn Walters, CAHF 2. Eric Carlson, Justice in Aging 	The report was edited to remove: “A separate state entity should be assigned to address specific situations where a resident’s loved ones seek to appeal a resident representative’s decision to not identify them as a RDSP or a situation in which there is no representative able to make these designations” recommendation.”
6.3 Recommendation	“Missing from this list are experts in gerontology, geriatrics, and long-term care medicine.”	K.J. Page, CALTCM	The report was edited to add: “A representative group of stakeholders would at least include residents, resident

			<p>representatives, resident advocates, Long-Term Care Ombudsman, LTCF operators and staff, select experts from the fields of gerontology, geriatrics, and long-term care medicine, the California Department of Public Health (CDPH), local public health departments, and the California Department of Social Services (CDSS).”</p>
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September 21, 2023

The Honorable Susan DeMarois, Director
California Department of Aging
2880 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833

Re: Long-Term Facility Access Policy Work Group – Draft Recommendations Report Comments

Dear Director DeMarois,

LeadingAge California was pleased to participate in the California Department of Aging's Long-Term Facility Access Policy Workgroup, which is tasked with developing policy recommendations for the legislature to consider regarding access and visitation to long-term care facilities during a state of emergency. We appreciate the opportunity to provide additional comments on the Workgroup's draft recommendations report.

LeadingAge California is the state's leading advocate for quality, nonprofit senior living, and care. Our almost 700 members across the state include providers of affordable senior housing, residential care facilities for the elderly (assisted living), life plan communities, skilled nursing care, home and community-based services, home health and hospice care.

We fully support the goals of the Workgroup. To that point, we encourage the removal of bullet point 1 of Recommendation 1.3 that requires residents to designate specific individuals as Resident-Designated Support Persons (RDSPs). This requirement limits resident rights and places an unnecessary administrative burden on long-term care facility staff, especially during a state of emergency. We instead recommend allowing residents to choose their visitors without limitation to an RDSP list, as long as those visitors are following the required protocols in place per bullet point 2 in Recommendation 1.3.

Further, we recommend striking bullet point 3 within Recommendation 5.3, which recommends tasking a separate state entity with addressing issues that arise regarding resident RDSP designations.

We appreciate the dedication of the Department's staff for facilitating this important Workgroup and for considering our feedback on the draft recommendations report. If you have any questions, please do not hesitate to contact me directly at (916) 469-3376 or aking@leadingageca.org.

Sincerely,

A handwritten signature in black ink that reads "Amber King".

Amber King
Vice President, Legislative Affairs

Cc: LTCFA Policy Workgroup Staff



6Beds, Inc.

Advocating for Safe, Quality and Affordable Residential Care

September 22, 2023

Susan DeMarois
 Director
 California Department of Aging 2880
 Gateway Oaks Drive, Suite 200
 Sacramento, CA 95833

RE: Long-Term Care Facility Access Policy Workgroup Draft Recommendations Report

Dear Director DeMarois:

6Beds, Inc. is an association of more than 2,000 Residential Care Facilities for the Elderly (RCFEs) and Adult Residential Facilities (ARFs).

The Long-Term Care Facility Access (LTCFA) Policy Workgroup has engaged in important discussions towards the development of recommendations regarding best policies and practices as it pertains to access and visitation to long-term care facilities (LTCFs) during states of emergencies, recognizing the impact that restricted access has on the mental health of residents, families, chosen family and friends, as well as on the physical health and safety of residents. We are grateful for the opportunity to participate in this workgroup and to provide comments on the draft recommendations report for the state legislature.

We strongly support the workgroup's position that a resident or their representative be able to designate any number of Resident-Designated Support Persons (RDSPs) and that a resident or their representative may change who their RDSPs are at any time. Importantly, it is our understanding that RDSPs may even be modified verbally at the time of a potential visitation. Essentially, under the draft recommendations, residents or their representatives would be able to modify their RDSPs on-demand and even in a rather informal manner. As such, while we support the flexibility in how persons can be designated as RDSPs, this flexibility necessitates that it be made unequivocally clear that LTCFs should not be held responsible for any format or processes associated with establishing, screening, or tracking RDSPs at the facility level. While we recognize that the draft recommendations make considerable effort to make clear that the recommendations are not intended to establish specific requirements for LTCFs, we feel that there are portions of the draft recommendations that are incongruent with the overall sentiment. For example, the discussion at Section 1.1 (2) *Designating Visitors* on pg. 8 states as follows:

“Representatives of LTCF administrators did raise concerns about the administrative burden of establishing and maintaining records of RDSP designations; however, the workgroup noted that it would be important during a state of emergency for a facility to know who to let in the building. Balancing this, the workgroup noted that it did not recommend a specific requirement for how LTCFs track designations as long as LTCF could *systematically* (emphasis added) honor resident choice in visitation.”

We strongly recommend the removal of the word “systematically” as this is suggestive of a format or process that could be misconstrued as a specific requirement, which creates confusion.

In addition, Section 1.3 (Recommendation) (1) (b) on pg. 13 states the following:

“Facilities may not limit the number of individuals who may be designated as RDSPs, and residents may add or remove RDSPs at any time.”

We believe the use of the words “add” and “remove” connote the existence or requirement of a physical list, which runs counter to the position that there be no specific requirements on LTCFs regarding the format or processes associated with establishing, screening, or tracking RDSPs. We suggest replacing the words “add” and “remove” with “increase” and “decrease”.

Finally, Section 1.3 (Recommendation) 1 (c) on pg. 13 states the following:

“This recommendation is not intended to establish specific requirements on the format of processes associated with establishing, screening, or tracking RDSPs at the facility level;...”

We recommend further clarifying the intent of this section by modifying as follows:

“This recommendation is not intended to establish specific requirements on the format or processes, *written or otherwise*, associated with establishing, screening, or tracking RDSPs at the facility level;...”

We appreciate the opportunity to provide comments and thank you for your consideration of our suggestions. If you have any questions about our comments, please contact me at gkutnerian@6beds.org.

Sincerely,



George K. Kutnerian
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*The Voice of
Assisted
Living*

September 22, 2023

Susan DeMarois
Director, California Department of Aging
2880 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833

RE: LTCFA Policy Workgroup: Response to Draft Recommendations Report

Dear Director DeMarois:

The California Assisted Living Association (CALA), representing licensed Residential Care Facilities for the Elderly (RCFEs) and Continuing Care Retirement Communities (CCRCs) throughout the state, appreciates the opportunity to be part of the Long-Term Care Facility Access Policy Workgroup and to submit comments on the September 12, 2023 draft recommendations.

CALA members strongly support the right of older adults to see their loved ones and have in-person visits with people of their choosing. During the pandemic, our members felt the distress first-hand that the government-ordered restrictions on visitation had on residents, families, and friends. We agree that California can do better in future states of emergency and appreciate being part of this collaborative effort.

As we support the shared goal of allowing residents to continue to have in-person visits with those they desire to visit with, as long as those visitors follow the same safety protocols as staff, we urge that this be done without creating additional administrative burdens that would complicate rather than facilitate visitation.

The LTCFA Policy Workgroup draft Recommendation 1.3 provides:

In a state of emergency in which a local or state order may curtail visitation due to a legitimate public health or safety risk, the workgroup recommends that Resident-Designated Support Persons (RDSP) be able to conduct in-person visits with LTCF residents subject to the same safety protocol as staff.

Subsection 1a-c goes on to state that LTCF residents or their representatives can designate any individuals as RDSPs, an unlimited number of RDSPs, and that residents may add or remove RDSPs at any time. Since this recommendation poses no restrictions on who can visit as long as safety protocols are met, requiring residents to name future visitors and requiring providers to maintain lists that can be added to or amended at any time, poses an administrative burden that would complicate rather than facilitate visitation. While a specific list made sense during the early workgroup discussions that envisioned 1 or 2 RDSPs, the current proposal of an open, unlimited, and dynamic number of RDSPs negates the need for a list.

Recommendation:

To best align with the goals of facilitating visits, we suggest that subsection 1a-c of Recommendation 1.3 is unnecessary and should be removed. Instead, we should rely on Recommendation 1.3 that provides that visitors be allowed during future states of emergency with the requirement that those visitors meet the same safety protocols as staff. This would simplify the recommendations and place greater emphasis on residents' rights.

In addition, removing subsection 1a-c under Recommendation 1.3 would also prevent the situations contemplated in Recommendation 5.3, subsection 3 and eliminate the need for the creation of a separate state entity to address situations where a resident's representative refuses to designate another loved one as a RDSP. With our suggestion, since visitors adhering to the same safety protocols as staff would be allowed, loved ones would be able to visit regardless of names on a list.

We appreciate the collaborative process to improve the response in future states of emergency, keeping residents and their experiences at the center of consideration. We look forward to continued conversations and opportunities to work together toward this end. If you have any questions, please contact me at heather@CAassistedliving.org.

Sincerely,

A handwritten signature in black ink that reads "Heather Harrison". The signature is written in a cursive, flowing style.

Heather Harrison
Senior Vice President of Public Policy & Public Affairs



*Supporting People,
Health and
Quality of Life*

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August 31, 2023

Susan DeMarois
Director
California Department of Aging
2880 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833

SUBJECT: Long-Term Facility Access Policy – Comments

Dear Director DeMarois:

On behalf of the California Association of Health Facilities (CAHF), we are writing to provide comments on the Long-Term Care Facility Access (LTCFA) policy being developed by the LTCFA policy workgroup convened by the California Department of Aging (CDA). Commissioned by the California Legislature, the workgroup is developing recommendations for policies and practices regarding access and visitation to long-term care facilities (LTCFs) during states of emergency, with consideration for the impact that restricted access has on the mental health of residents, families, and friends and on the physical health and safety of residents.

As the largest trade organization representing long-term care facilities in California, CAHF appreciates the opportunity to participate in the LTCFA. Our sector has seen firsthand the impact of restricted access during the COVID-19 pandemic. The workgroup recommendations, most recently updated on August 4, 2023, are advancing with broad influence and feedback.

Recommendation A

CAHF would like to provide the following input regarding Recommendation A, Subsection A, which states:

In a state of emergency in which that emergency has created a legitimate public health or safety risk that may impact visitation, the workgroup recommends that local or state orders not curtail LTCF visitation for the following types of Visitors and as follows.

- a) *LTCF residents or their representatives can designate any individuals as “Resident-Designated Support Persons” (RDSPs) who have access to the facility for in-person visits subject to the safety protocols and visiting parameters in this framework.*
 - i. *RDSPs may include but are not limited to, any of the following individuals if designated by the resident or their representative: friends, family, or chosen family.*
 - ii. *As a standard, facilities may not limit the number of individuals who may be designated as RDSPs, and residents may add or change their RDSPs at any time.*
 - iii. *LTCF may limit simultaneous RDSPs in the case of a legitimate public health or safety risk, with simultaneously defined as occurring at the same moment in time. This recommendation is not intended to limit a resident’s ability to have multiple RDSPs over a period of time (i.e., in a given day), understanding that those RDSPs may not be able to visit simultaneously in the case of a legitimate public health or safety risk.*
 - iv. *This recommendation is not intended to establish specific requirements on the format or processes associated with establishing or tracking RDSPs at the facility level. It is intended to emphasize resident choice.*

Recommendation A, Subsection A is redundant to existing regulation [CFR 483.10(f) of Title 42 of the Code of Federal Regulations] which requires that every resident “has a right to receive visitors of their choosing at the time of their 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.” In effect, nursing facilities are prohibited from imposing “visitation hours” on any residents.

During previous LTCFA workgroup discussions there continued to be a leaning towards requiring the creation and designation of RDSPs. Operationally, LTCF residents already have the right to receive visitors of their choosing at the time of their choosing [CFR 483.10(f) of Title 42 of the Code of Federal Regulations]. Requiring LTCF staff to create and maintain a list of RDSPs, especially during a state of emergency, becomes an unnecessary administrative burden which will take critical facility staff away from resident care.

CAHF recommends striking Recommendation A, Subsection A, to remove the unnecessary administrative burden and refer to the existing code and language requiring visitor access. The workgroup should instead recommend in addition to CFR 483.10(f) that all visitors, in order to visit LTCF residents, must adhere to the required safety protocols addressed in the LTCFA workgroup Recommendation C.

Recommendation F

Recommendation F states:

The workgroup recommends that state LTCF licensing agencies provide clear communication on LTCF visitation standards and an accessible process for submitting appeals and grievances in situations where visitation is not made available as outlined by this framework.

Recommendation F, Subsection B, which states:

- a) To promote equitable implementation of those policies the state LTCF licensing agencies shall develop a detailed process for grievances and appeals, and they shall release the proposal for public comment prior to finalizing it.*
- b) That process will include specific timelines for responding to grievances and appeals.*
- c) The process also should include a method for a resident's loved ones to appeal a situation in which a resident representative did not identify them as an RDSP or for a situation in which there is no representation able to make these designations.*
- d) This process should include a method for rapidly responding to a situation in which an RDSP was not able to visit a resident in accordance with the policies posted on the State LTCF licensing agencies' websites.*

If the RDSP process in Recommendation A is removed, Recommendation F, Subsection B will not be needed.

If the RDSP process is retained, CAHF recommends removing the appeals from the LTCF licensing agencies and moving that service to the State Long-Term Care Ombudsman Program (CLTCO). The CLTCO could easily shift to aid in authorizing an RDSP when the residents cannot designate one for themselves. The CLTCO already must provide witness to Power of Attorney documents within LTC facilities, therefore this task would be in alignment, to verify an RDSP to ensure residents' rights and access to visitors. Also, for the grievance process, CAHF suggests that the current complaint process to CDPH supported additionally by complaints filed through the State Long-Term Care Ombudsman Program would be sufficient to address visitor access concerns. The need would be to make a recommendation for a response timeframe specific to visitor access concerns, for which CDPH will be held accountable.

We thank you in advance for consideration of our concerns.

If you have questions or for more information, please contact DeAnn Walters at dwalters@cahf.org.

Sincerely,

DeAnn Walters
Director of Clinical Affairs & Quality Improvement
California Association of Health Facilities

CC: <LTCFA Workgroup staff contact>

From: [Castro, Blanca@CDA](mailto:Castro.Blanca@CDA)
To: [LTCFAPolicyWorkgroup](#)
Cc: [Welch, Lesley@CDA](mailto:Welch.Lesley@CDA); [Devall, Brandie@CDA](mailto:Devall.Brandie@CDA)
Subject: Comments from the State Long-Term Care Ombudsman RE: Long-Term Care Facility Access Proposed Recommendations Dated September 14, 2023
Date: Tuesday, September 26, 2023 5:28:58 PM

Dear LTCFA Policy Workgroup:

It has been a tremendous honor to be part of the transparent, democratic, and inclusive process led by the California Department of Aging, through the co-chairs Mark Beckley, Chief Deputy and Brandie Devall, Attorney III. The facilitation for this large stakeholder workgroup was expertly handled by Manatt Consulting, and it allowed for open, direct, and respectful discussions and debates on very critical issues. As the State Long-Term Care Ombudsman, representing the 35 local LTC Ombudsman Programs, and the over 300,000 residents in long-term care facilities on any given day, in California, I submit our strong support for the recommendations proposed by the LTCFA Policy Workgroup as they were published on September 14, 2023. One of the most important recommendations is Recommendation 1.3 which states **“In a state of emergency in which a local or state order may curtail visitation due to a legitimate public health or safety risk, the workgroup recommends that Resident-Designated Support Persons (RDSP) be able to conduct in-person visits with LTCF residents subject to the same safety protocol as LTCF staff”**.

We look forward to working with the legislature, and all the stakeholders in the LTCFA Policy Workgroup to move the recommendations from ideas, to policies, to regulations.

Thank you for this opportunity to comment on these very important policy recommendations.

Sincerely,

Blanca E. Castro
State Long-Term Care Ombudsman

Blanca E. Castro

State Long-Term Care Ombudsman

Office of the State Long-Term Care Ombudsman

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https://www.aging.ca.gov/Programs_and_Services/Long-Term_Care_Ombudsman/

