



Washington State Long-Term Care  
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## Memo

**To:** Regional LTC Ombuds, Certified Long-Term Ombuds and Interested Parties  
**From:** Patricia Hunter, Washington State LTC Ombuds  
Washington State Long-Term Care Ombudsman Program  
**Date:** July 25, 2021  
**Re:** New Right for LTC Residents in Washington State

Effective July 25, 2021 all residents who live in licensed long-term care (LTC) facilities in Washington have the right to access by an “essential support person”. This memo provides information relevant to a very positive development for residents.

### 1. What changed?

This year, the Washington State Legislature passed HB 1218 into law. This new law contains many changes to LTC facility requirements, including the new resident right to an essential support person. This memo focuses solely on essential support persons. Additional memos will follow to explain other changes that LTC Ombuds need to know about.

### 2. What is an essential support person?

The legal requirements for an essential support person are:

1. At least 18 years of age,
2. Designated by the resident or by the resident’s representative if the resident is legally incapacitated, *and*
3. Necessary for the resident’s emotional, mental, or physical well-being during situations that include, but are *not* limited to the following circumstances:
  - a. compassionate care,
  - b. end-of-life care,
  - c. visitation will assist with important continuity of care
  - d. visitation will assist with reduction of confusion and anxiety for residents with cognitive impairments, *or*
  - e. visitation will prevent or reduce significant emotional distress to the resident.

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### **3. When does the right to an essential support person apply?**

The right applies limitations to visits due to a public health emergency or other threat to the health and safety of the residents and staff. Many COVID restrictions are still in effect for long-term care facilities, including restrictions on the right to visitation. Therefore, the right to an essential support person applies now—starting Sunday, July 25, 2021, when the new law takes effect.

### **4. What are the resident's rights regarding an essential support person?**

The facility is legally required to allow access by the essential support person. This access must be:

1. private,
2. in-person, *and*
3. in the resident's room.

### **5. What if the resident has a roommate?**

The resident's roommate must consent to the presence of the resident's essential support person.

### **6. What if the roommate does not consent?**

If the roommate does not consent, the facility is legally required to designate another location in the facility for the visit.

### **7. What if the visit cannot be conducted safely in the room?**

If the visit cannot be conducted "safely" in a resident's room, the facility is legally required to designate another location in the facility for the visit. The statute does not define the term "safely." [To be defined.]

### **8. Can a facility place conditions on access by an essential support person?**

The facility may place reasonable limitations tailored to protecting the health and safety of essential support persons, residents, and staff.

### **9. Are facilities required to have policies on this new right?**

Facilities must develop and implement reasonable conditions on access by an essential support person. These reasonable conditions must be:

1. tailored to protecting the health and safety of the essential support person, residents, and staff; *and*
2. based on the particular public health emergency or other health or safety threat.

## 10. What is required of essential support persons?

The essential support person must comply with:

1. the requirements of the new essential support person law, which are discussed throughout this memo;
2. the reasonable conditions developed and implemented by the facility, which must be: tailored to protecting the health and safety of the essential support person, residents, and staff, *and* based on the particular public health emergency or other health and safety threat.

## 11. Can a facility prevent access by the essential support person?

A facility can prevent access by the essential support person in two ways. The way access is prevented depends on the specific facts of the situation.

1. Imminent and Serious Threat / Immediate Action. A facility can take immediate action only when “necessary to prevent an imminent and serious threat to the health and safety of residents or staff.” The terms “imminent” and serious are not defined by the new law. Therefore, we look at the “plain meaning” of these words as used in a dictionary. “Imminent” means that the threat is *ready to take place or happening soon*. “Serious” means *having important or dangerous possible consequences*. For the facility to take immediate action, the threat must be both imminent and serious.
2. All Other Situations
  - a. Attempt at Resolution. If no imminent and serious threat exists, then the facility is legally required to resolve any concerns about access by the essential support person. The facility must attempt resolution with both the essential support person and the resident.
  - b. Temporary Suspension. If the concerns cannot be resolved after the facility attempts to do so by working with the essential support person and the resident, then the facility may temporarily suspend the designation of the essential support person. Refer to the next question for the legal requirements of temporary suspension.

## 12. What are the legal requirements for a facility to temporarily suspend access by an essential support person?

The following requirements apply:

1. The facility must first attempt to resolve its concerns with the essential support person and the resident. If resolution is not successful, the facility may temporarily suspend access.
2. The temporary suspension cannot last longer than 48 hours.
3. During the 48-hour period of suspension, the facility must contact the department of social and health services for guidance.
4. During the 48-hour period of suspension, the facility must provide the essential support person:
  - a. Information on the steps the essential support person must take to resume visits, such as agreeing to comply with reasonable conditions tailored to protecting the health and safety of the essential support person, residents, and staff, based upon the particular public health emergency or other health or safety threat;
  - b. Contact information for the long-term care ombuds; *and*

- c. As appropriate, contact information for the Developmental Disabilities Ombuds and Disability Rights Washington.

### 13. Where in the RCW can I find this new right?

This new right has not yet been “codified” into the Revised Code of Washington (RCW). However, HB 1218 has been signed by the governor and is effective as of Sunday, July 25, 2021.

If residents, resident representatives, families, or providers ask for a copy of the law, you may refer them to **Section 20 of the Session Law for HB 1218**, which is available here:

<http://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1218-S.SL.pdf?q=20210723154540>.