

本期企劃

疫情期間長照機構 探視管制之分析 —以美國法為鑑

Regulation over Long-Term Care Facility
Visitation During COVID-19: An
Analysis Centering on the US Law

張兆恬 Chao-Tien Chang*



摘要

長照機構是最為受到疫情影響之處，對於長照機構探視進行嚴格的限制，似為有效防疫的措施之一，但這也使得住民與家屬分離以及社會孤立，而造成生理與心理的損害。在美國聯邦之規範上，對於長照機構探視從疫情初始時的全面禁止，逐步進行放寬，乃至於以得探視為原則，而最新的規範則更是明文所有住民有隨時接受探視的權利，然而如何與防疫進行權衡，仍為發展中的議題。我國防疫政策對於長照機構探視採取高度限制，且給予主管機關與長照機構相當的裁量權限，美國法之發展，似有助於對我國法進行省思，以落實保障住民權利及福祉。

*臺灣大學國家發展研究所副教授 (Associate Professor, Graduate Institute of National Development, Taiwan University)

關鍵詞：COVID-19、住民權利 (residential rights)、長照機構 (long-term care facility)、疫情 (pandemic)、探視權 (right of visitation)

DOI：10.53106/241553062022030065004

Long-term care facilities (LTCFs) are the institutes suffering most significant impacts brought by COVID-19. Imposing strict restrictions on visitation to LTCFs is likely to be one of the essential pandemic control measures. However, the measure also leads to separation of residents from their families and residents' social isolation, which harms residents both physically and mentally. The US federal regulation over LTCF visitation evolves. Starting from all prohibition at the beginning of the pandemic, restrictions were later relieved gradually. The regulation then turned to be allowing visitation as the principle, and the latest version of the regulation even recognizes the right of visitation of all residents at any time. Nevertheless, how to balance the right with pandemic prevention or control remains to be debated. Taiwan has strictly restrained visitation of LTCFs and gives the authority and the LTCFs broad discretions. The experience of the US regulation may shed some lights to reexamine the Taiwanese law that helps the protection of residents' rights and welfare.

壹、前言

COVID-19疫情對於全球帶來健康與社會的全面性影響，其中之一在於引發照顧危機（caregiving crisis）：學校、托幼及公共設施的關閉，使得許多過去可以尋求外援的照顧工作必須回歸家庭，使得家庭中的照顧者（女性又占其中多數）須承擔更多照顧工作，因此必須請假甚或離職；專業照顧者亦面臨更為嚴苛的勞動條件，照顧本質上需要密切的人際接觸，這也意味著較高的染疫風險，而在低薪以及未獲得足夠防疫物資的情況下，專業照顧的勞力供給更為不足。高齡照顧的既有

議題浮現或更為加劇，其中長照機構是最為受到疫情衝擊的場域，統計顯示，在歐洲有30%~60%死亡案例為長照機構的住民¹，另在美國統計數據也顯示，有32%死亡案例來自於護理之家²。再者，疫情也加劇機構照顧人力短缺，諸如美國在2020年春季第一波疫情時，便有許多護理之家發生多數員工缺勤，因此住民必須疏散的狀況；而即便疫情趨緩後，遲至2021年底，根據美國勞動統計局（U.S. Bureau of Labor Statistics）估計，過去近兩年以來護理之家（nursing home）已有425000名員工離職，其中多數是具有照服員資格但是低薪者，且並未隨著解封而有所改善³。

就長照機構住民的權利而言，生理上免於染疫的利益固然重要，然而受到好的照顧、維持其生活品質及尊嚴的權利亦同樣重要。疫情期間高齡族群除了有較高的健康風險以外，也面臨較高的「社會衰退」（social recession）危機——社交距離管制造成的社會孤立、缺乏與外界的連結，此也會提高各種疾病的風險。然而法律與政策所著重的面向，多在於保護其降低染疫的風險，但對於高齡者所面臨的社會衰退問題，卻較少被顧及，甚至許多以保護之名的手段，係對於高齡者自由權利的限制。本文以下將聚焦於長照機構探視的管制，並且以美國法

1 *Surveillance of COVID-19 in Long-Term Care Facilities in the EU/EEA*, EU. CTR. FOR DISEASE PREVENTION AND CONTROL, Nov. 29, 2021, <https://www.ecdc.europa.eu/en/publications-data/surveillance-covid-19-long-term-care-facilities-EU-EEA> (last visited Feb. 14, 2022).

2 Priya Chidambaram, *Over 200,000 Residents and Staff in Long-Term Care Facilities Have Died From COVID-19*, KFF, Feb. 3, 2022, <https://www.kff.org/policy-watch/over-200000-residents-and-staff-in-long-term-care-facilities-have-died-from-covid-19/> (last visited Feb. 14, 2022).

3 Lenny Bernstein & Andrew Van Dam, *Nursing Home Staff Shortages Are Worsening Problems at Overwhelmed Hospitals*, WASH. POST, Dec. 28, 2021, <https://www.washingtonpost.com/health/2021/12/28/nursing-home-hospital-staff-shortages/> (last visited Feb. 14, 2022).