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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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April 17, 2020

The Honorable Alex Azar
Secretary
Department of Health and Human Services
200 Independence Ave., S.W.
Washington, DC 20201

The Honorable Seema Verma
Administrator, Centers for Medicare and Medicaid Services
Department of Health and Human Services (HHS)
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar and Administrator Verma:

I write today concerning unique challenges facing some of the health care providers that Congress has designated to receive COVID-19 relief under the Public Health and Social Services Emergency Fund, established by the CARES Act. In allocating these Federal resources, I urge that your Department respond directly and promptly to these challenges.

Specifically, I am troubled by media reports concerning the plight of older Americans who reside in skilled nursing facilities, group homes, and assisted or independent living facilities. Nursing homes became one of our nation's first so-called "hotspots" for COVID-19 last month, when the Life Care Center nursing home in Kirkland, Washington initially reported 37 deaths at the outset¹ of this public health crisis.² Since then, the number of deaths due to COVID-19 in

¹ Chris McGreal, "'We're living in fear': why US nursing homes became incubators for the coronavirus," THE GUARDIAN (Apr. 15, 2020), available at <https://www.theguardian.com/world/2020/apr/15/were-living-in-fear-why-us-nursing-homes-became-incubators-for-the-coronavirus>. See also "Nursing homes remain a frontier in the coronavirus fight," THE HILL, Apr. 14, 2020, available at <https://thehill.com/changing-america/well-being/longevity/492774-nursing-homes-remain-a-frontier-in-coronavirus-fight>.

² Ultimately, 43 people died in this facility. Candice Choi & Jim Mustian, "Feds under pressure to publicly track nursing home outbreaks" AP NEWS (Apr. 15, 2020), available at <https://apnews.com/36646afddcf74565094a6063a1e32481>.

these facilities has soared to at least 5,670.³ In at least one State, the percentage of COVID-19 related deaths in long-term care facilities is higher than that of hospitals,⁴ and in my home State of Iowa, nursing home residents account for a majority of COVID-19 related deaths.⁵

The rapid transmission of this respiratory virus in long-term care facilities is attributable to asymptomatic staff members and residents, the close quarters in which people live, and staffing shortages, among other factors.⁶ The death toll due to COVID-19 among these residents—especially those with preexisting conditions—is concerning. It is also concerning that nearly two-thirds of the nation’s nursing homes were cited for infection control failures in the recent past.⁷ Such factors underscore the importance of encouraging coronavirus testing and compliance with CDC guidelines for reducing COVID-19 transmission in these facilities. It also is important to ensure that any Medicaid- and Medicare-funded facilities accepting COVID-19 patients have adequate staffing, equipment, and other necessary safeguards in place.

A second area for concern is inconsistencies in data tracking.⁸ Media accounts suggest that the Federal government is tracking neither outbreaks nor the number of COVID-19 related deaths in long-term care facilities.⁹ This responsibility falls to the States, rather than HHS, but the lack of uniformity across States in COVID-19 data collection practices makes it difficult to

³ Laura Strickler and Suzy Khimm, “Coronavirus deaths in U.S. nursing homes soar to more than 5,500” NBC NEWS (Apr. 15, 2020) (citing State data showing that “nearly 1,000 more facilities” reported coronavirus infections in the last week”), available at <https://www.nbcnews.com/news/us-news/coronavirus-deaths-u-s-nursing-homes-soar-more-5-500-n1184536>. See also CTRS. FOR DISEASE CONTROL AND PREVENTION (CDC), “Severe Outcomes Among Patients with Coronavirus Disease 2019” MMWR MORB. MORTAL WEEKLY REP. 2020:69:343-346 (Mar. 26, 2020) (“[o]verall, 31% of cases, 45% of hospitalizations, 53% of ICU admissions, and 80% of deaths associated with COVID-19 were among adults aged ≥65 years with the highest percentage of severe outcomes among persons aged ≥85 years.”).

⁴ See “Nursing homes remain a frontier in the coronavirus fight,” *supra* note 1 (quoting New York Governor Andrew Cuomo, who “acknowledged long-term care facilities are registering a higher percentage of coronavirus-related deaths than hospitals”).

⁵ KIWA Radio, “53% Of Iowa’s COVID-19 Related Deaths Have Been Nursing Home Residents” (Apr. 14, 2020) (“Iowa Governor Kim Reynolds reported that 43 Iowans have died of COVID-19 so far this spring and 53 percent of those who’ve died of the virus were residents of a nursing home”), available at <https://kiwaradio.com/local-news/53-of-iowas-covid-19-related-deaths-have-been-nursing-home-residents>.

⁶ See, e.g., “Infected but Feeling Fine; The Unwitting Coronavirus Transmitters,” THE NEW YORK TIMES (Mar. 3, 2020) (citing CDC as indicating that up to 25 percent of the infected may not show symptoms), available at <https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html>.

⁷ Jordan Rau, “Coronavirus Stress Test: Many 5-Star Nursing Homes Have Infection-Control Lapses,” KAISER HEALTH NEWS (Mar. 4, 2020), available at <https://khn.org/news/coronavirus-preparedness-infection-control-lapses-at-top-rated-nursing-homes/>.

⁸ Justine Coleman, “State agencies report more than 2,300 long-term care facilities have been hit by coronavirus: report,” THE HILL, Apr. 13, 2020, available at <https://thehill.com/homenews/state-watch/492552-state-agencies-report-more-than-2300-long-term-care-facilities-have-been>.

⁹ See, e.g., Alexandra Kelly, “Nursing homes remain a frontier in the coronavirus fight,” THE HILL (Apr. 14, 2020), available at <https://thehill.com/changing-america/well-being/longevity/492774-nursing-homes-remain-a-frontier-in-coronavirus-fight>.

get a true picture of the full impact of this crisis.¹⁰ (To illustrate: some States, but not others, combine reported data for both residents and staff of long-term care facilities.)¹¹ Given the lack of consistently reported data, I encourage you to exercise additional leadership in this area, e.g., by issuing guidance for states to promote uniformity in the tracking and reporting of COVID-19 cases in nursing homes, assisted living facilities, and other long-term care facilities participating in the Medicaid and Medicare programs. I also encourage HHS to issue guidance, if it has not already done so, to ensure the prompt reporting, within 24 hours, of positive COVID-19 results to the family members of residents of long-term care facilities.

A third challenge is that many long-term care facilities are short on the personal protective equipment that helps prevent COVID-19 transmission among employees.¹² Indeed, in at least one nursing home, employees ceased showing up for work due to fear of contracting the coronavirus.¹³ Such incidents underscore the importance of making face masks, gowns, gloves, and other essential protective equipment available to those who are on the front lines in serving the elderly and disabled during this public health emergency.

Fourth, transparency is critically important to reassure policymakers and the public that the Public Health and Social Services Emergency Fund is fully devoted to those in need and having the capacity to effectively use such resources. I commend the Department for already doing the necessary outreach to Congress concerning its allocation of \$30 billion from this Fund; and I encourage you to expand on current practice, by reporting at least weekly to Congress with detailed information on additional Fund expenditures.

In light of the importance of swiftly responding to this public emergency, I ask that you respond to the following no later than April 23, 2020:

1. Please describe CMS plans, if any, to update its guidance or training requirements on infection control procedures, especially for personnel in nursing homes and other long-term care facilities.
 - a. What plans, if any, does HHS have to revisit and update 42 C.F.R. § 483.80, which outlines the requirements for infection control specialists in these facilities?

¹⁰ See, e.g., John Leland, Amy Julia Harris and Tracey Tully, “29 Dead at One Nursing Home From the Virus. Or More. No One Will Say,” THE NEW YORK TIMES (Apr. 16, 2020), available at <https://www.nytimes.com/2020/04/16/nyregion/new-york-nj-nursing-homes-coronavirus-deaths.html>.

¹¹ Candice Choi and Jim Mustian, “Feds under pressure to publicly track nursing home outbreaks” AP NEWS (Apr. 15, 2020), available at <https://apnews.com/36646afddcf74565094a6063a1e32481>.

¹² See, e.g., Joe Mahr, “Nursing homes put workers at risk by failing to provide enough protective gear union says,” *Chicago Tribune*, Apr. 15, 2020, available at <http://www.chicagotribune.com/coronavirus/ct-coronavirus-nursing-home-workers-20200415-04e4u3rjpfddtgdllilarg7d6zy-story.html>.

¹³ See, e.g., “A California nursing home was evacuated after its staff didn’t show up,” *CNN*, Apr. 8, 2020, available at <https://www.cnn.com/2020/04/08/us/california-nursing-home-evacuated/index.html>.

2. Does HHS have the authority necessary to promulgate regulations calling for more uniform reporting of COVID-19 infections by State public health agencies?
 - a. If not, what Federal legislation would be necessary to close such gaps in HHS's regulatory authority?
3. Please provide a detailed proposal on the planned use by HHS of the \$100 billion in the Public Health and Social Services Emergency Fund (the "Fund"). Please also include a detailed accounting of the allocation of the \$30 billion that has been distributed to date by HHS, including a discussion of the criteria used to determine which health care providers are eligible for assistance.
 - a. To what extent have long-term care facilities, including nursing homes, group homes, assisted living facilities, and independent living facilities across the United States received resources flowing from the Fund? For what purpose(s) may these funds be used by such providers?
 - b. Is the purchase of personal protective equipment a permitted use of Fund resources by all health care providers, or is participation in Federal health care programs, such as Medicare or Medicaid, a precondition for such assistance?
 - c. What additional efforts has HHS initiated to ensure that all health care providers have access to personal protective equipment?
 - d. Have some health care facilities, such as independent living facilities that do not participate in either the Medicare or Medicaid programs, been ruled ineligible for the Fund's relief assistance? If such facilities are ineligible, does HHS have other plans or recommendations to assist these facilities? Please explain.
4. Has HHS issued (or does it plan to issue) coronavirus testing protocols for employees of long-term care facilities?
5. In guidance issued on April 2, 2020, CMS embraced the idea of establishing separate wings in long-term care facilities for residents that have contracted COVID-9.¹⁴ Are there practical impediments for many of these facilities to the implementation of this approach, and to what extent have such facilities adopted it in practice?

¹⁴ U.S. DEP'T OF HEALTH AND HUMAN SERV., CTRS. FOR MEDICARE AND MEDICAID [hereinafter "CMS"], "COVID-19 Long-Term Care Facility Guidance" (Apr. 2, 2020), available at <https://www.cms.gov/files/document/4220-covid-19-long-term-care-facility-guidance.pdf>.

6. Because some employees of long-term care facilities reportedly lack expertise in management of medical emergencies, proper use of personal protective equipment, and appropriate handwashing procedures, does HHS have any plans to expand its guidance and training requirements to cover such topics?¹⁵ Please explain.
7. By law, a long-term care facility must report a positive COVID-19 case, outbreak, or related death to state or local authorities, and this information then is relayed to the CDC.¹⁶ Approximately how long, on average, does it take for the CDC to transmit such information to HHS and CMS?
 - a. A leading trade association for the nursing home industry recently encouraged its members to report every positive COVID-19 test result to the appropriate State survey agency as well as the residents, family members, and staff of each such nursing home.¹⁷ Has CMS considered imposing a similar requirement for all nursing facilities that participate in the Medicaid and Medicare programs?

Thank you for your attention to this matter. Please contact Evelyn Fortier of my staff at 202-224-4324 if you have any questions.

Sincerely,


U.S. Senator Charles E. Grassley
CHAIRMAN

Cc: Robert R. Redfield, Director, Centers for Disease Control

¹⁵ Initial results from CMS surveys indicate that “36 percent of facilities inspected in recent days did not follow proper hand washing guidelines and 25 percent failed to demonstrate proper use of personal protective equipment (PPE).” See CMS Press Release, “Trump Administration Issues Key Recommendations to Nursing Homes, State and Local Governments” (Apr. 2, 2020), available at <https://www.cms.gov/newsroom/press-releases/trump-administration-issues-key-recommendations-nursing-homes-state-and-local-governments>.

¹⁶ CTRS. FOR DISEASE CONTROL [hereinafter “CDC”], “Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings” (Apr. 13, 2020), available at https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Finfection-control%2Fcontrol-recommendations.html.

¹⁷ American Health Care Association (AHCA) and National Center for Assisted Living (NCAL), “Notification Guidelines for Confirmed COVID-19 Cases” (Apr. 11, 2020), available at https://www.ahcancal.org/facility_operations/disaster_planning/Documents/Notifications-Confirmed-Cases.pdf.