

# Congress of the United States

Washington, D.C. 20515

March 11, 2020

The Honorable Alex M. Azar II  
Secretary  
Department of Health and Human Services  
200 Independence Avenue, Southwest  
Washington, D.C. 20201

The Honorable Seema Verma  
Administrator  
U.S. Centers for Medicare & Medicaid  
Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Secretary Azar and Administrator Verma:

I write to you to ask you to immediately instate stronger nursing home facility enforcement and infection control requirements in light of the 2019 novel coronavirus (COVID-19) pandemic that has already claimed the lives of over 20 nursing home residents. Because residents are at high risk for serious illness and even death from COVID-19, the Centers for Medicare and Medicaid Services (CMS) must meet their responsibility to ensure that their standards and enforcement are adequate to protect the welfare, safety, and rights of nursing home residents

Infections cause as many as 3 million illnesses and almost 400,000 deaths in nursing homes each year, making them the leading cause of morbidity and mortality among the 1.3 million nursing home residents in the United States.<sup>1</sup> These stark statistics do not even account for COVID-19, which places nursing homes residents at a particularly high risk. Dr. Nancy Messonnier, Director of the Centers for Disease Control and Prevention (CDC) National Center for Immunization and Respiratory Diseases, has said that “people who are higher risk for severe disease and death are those who are older and with underlying health conditions.”<sup>2</sup> Over 10 nursing home facilities in the United States have confirmed COVID-19 cases to date, and hundreds more residents and health care workers are being tested or quarantined for possible exposure to COVID-19.<sup>3</sup>

As you know, the Patient Protection and Affordable Care Act (ACA) strengthened longstanding requirements around infection control in nursing home facilities. Further, CMS regulation finalized in 2016 established a mandatory position for a “part-time infection preventionist” in all nursing homes.<sup>4</sup> However, in July 2019, CMS issued a proposed rule that, if finalized, would remove the requirement that facilities maintain a part-time infection preventionist to oversee their prevention and control programs in favor of a “sufficient time” standard.<sup>5</sup> This standard will

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<sup>1</sup> <https://www.cdc.gov/longtermcare/index.html>; [National Action Plan to Prevent Health Care-Associated Infections: Road Map to Elimination, April 2013](#); [CDC Report: Long-term Care Providers and Services Users in the United States, February 2019](#).

<sup>2</sup> <https://www.cdc.gov/media/releases/2020/t0203-coronavirus-update.html>

<sup>3</sup> <https://www.kingcounty.gov/depts/health/news/2020/March/10-covid-case-updates.aspx>;  
<https://www.sacbee.com/news/local/article241080471.html>

<sup>4</sup> “Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities,” 81 Fed. Reg. (October 4, 2016).

<sup>5</sup> Medicare and Medicaid Programs; Requirements for Long-Term Care Facilities: Regulatory Provisions to Promote Efficiency, and Transparency,” 84 Fed. Reg. (July 18, 2019).

weaken CMS oversight and safety enforcement of nursing homes who interpret “sufficient” to mean a standard that does not adhere to Congressional intent as established through the ACA and Sections 1819 and 1919 of the Social Security Act.

As the world works to confront the COVID-19 pandemic, we urge you to halt the publication of this final rule and, further, immediately ensure all nursing homes are meeting the current requirements for infection control necessary to protect both nursing home residents and the workers who care for them and are also at risk. Though we are pleased that you published guidance last week aimed at limiting the spread of COVID-19, we remain concerned that your current recommendations for facilities, State Survey Agencies, State Survey Agency directors, and Accrediting Organizations are not stringent enough to protect residents.

We ask that you brief our staff on your current plans to mitigate the COVID-19 pandemic’s impact on long term care facilities and provide written responses to the following questions no later than March 16, 2020:

- 1. How will you handle enforcement during the COVID-19 outbreak? Will CMS impose specific enforcement action for violations of existing requirements?**
- 2. Your guidance indicates that surveys will prioritize facilities with a “history of infection control deficiencies at the immediate jeopardy level.” How will you determine that a facility has a “history” of immediate jeopardy level infection control deficiencies? Is a “history” one violation or more than one violation? Will facilities with a history of infection control deficiencies at the non-immediate jeopardy level be specifically targeted for a survey?**
- 3. In facilities with confirmed or suspected cases of COVID-19, how will CMS coordinate with CDC to ensure timely surveys?**
- 4. Your guidance indicates CMS is suspending non-emergency inspections. Will recertification surveys and revisits continue to be conducted in all facilities using the established CMS survey process? If not, please explain why. If so, will there be an increased focus on staffing deficiencies that can lead to infection control violations during recertification surveys?**
- 5. Will onsite surveys still be authorized for non-immediate jeopardy level abuse and neglect complaints that do not involve infection control? If not, how will complaints regarding resident rights violations and staffing requirements be tracked and addressed? Will they be investigated when the suspension is lifted?**
- 6. Which nursing home facilities are most at risk for COVID-19 based on current patterns of the outbreak? Do you plan to notify them as soon as possible?**
- 7. How will CMS respond to concerns or complaints that visitors are being denied access to facilities inappropriately?**



Further, we are concerned that nursing home workers may be at risk of unknowingly spreading COVID-19 among the vulnerable populations they care for. Because CDC has noted that this virus can be transmitted while an individual is asymptomatic, you must implement policies to identify nursing home workers who may carry the coronavirus before they are symptomatic and to ensure that those workers are allowed to self-quarantine with pay.<sup>6</sup> Workers should not be penalized when they do the right thing to protect public health. Additionally, several recent studies suggest that COVID-19 may have multiple transmission routes, including bodily fluids that these workers often contact through their daily work.<sup>7</sup> We urge you to take steps to protect health care workers from exposure to infection, including ensuring that facilities receiving CMS reimbursement are engaging in worker training around COVID-19 transmission and complying with the Bloodborne Pathogens Standard that requires employers to provide, at no cost to the employee, appropriate personal protective equipment.<sup>8</sup>

We look forward to your response and to working with CMS to ensure that we are doing everything we can to protect the older Americans and individuals with disabilities who rely on nursing homes to survive. If you have any questions about these requests, please contact Osaremen Okolo with Congresswoman Schakowsky at 202-225-2111 or Brian Steele with Senator Blumenthal at (202) 224-2823.

Sincerely,



JAN SCHAKOWSKY  
Member of Congress



RICHARD BLUMENTHAL  
United States Senator

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<sup>6</sup> <https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html>

<sup>7</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/faq.html>

<sup>8</sup> 42 U.S.C. 1395cc(a)(1)(V) and (b)(4)).