

United States Senate
WASHINGTON, DC 20510

August 13, 2020

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
200 Independence Ave, SW
Washington, DC 20201

The Honorable Dr. Robert R. Redfield
Director
Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329

Dear Secretary Azar, Administrator Verma, and Dr. Redfield:

We share a commitment to protecting seniors, people with disabilities and other at-risk populations during the public health crisis. As you know, residents of nursing homes are among the most vulnerable to succumbing to the novel coronavirus (COVID-19) by virtue of being older, having long-term health complications, or a combination of both factors. Tragically, the experiences of some nursing homes in the country highlight the devastation that can occur in this population. In Pennsylvania, for instance, nearly 70% of fatalities associated with COVID-19 have occurred within nursing homes or other long-term care settings.

We appreciate your attention to our previous calls for increased transparency into facilities that are candidates for the Special Focus Facility (SFF) program, and we believe the circumstances facing nursing homes amid the pandemic require further attention and action. Two steps we are encouraging are enhanced coordination between federal and state regulatory agencies and targeted assistance to nursing homes. Towards that end, we ask that the Department of Health and Human Services (HHS), the Centers for Medicare and Medicaid Services (CMS), and the Centers for Disease Control and Prevention (CDC) take the following actions:

Provide individualized, facility-specific technical assistance: We appreciate the individualized assistance provided by the Quality Improvement Organizations (QIOs) to nursing facilities in light of the COVID-19 pandemic. However, in order to facilitate overall quality improvement and assist nursing homes during the pandemic, we urge CMS to ensure that QIOs, or other CMS contactors, are able to perform the following actions based on an individual facility's level of need:

1. Provide direct technical assistance to a facility for purpose of cohorting patients;
2. Assist with testing needs to ensure rapid results and access to testing supplies;
3. Assist with personal protective equipment (PPE) needs to ensure facilities located in counties with a community outbreak have secure lines of supplies to respond and prevent the infection from making its way into the facility; and
4. Provide resources and guidance to facilities to address social isolation in a way that is consistent with existing infection control requirements and aims to enhance socialization and quality of life for residents and their families.

Provide monthly updates on infection control surveys and outcomes: We urge CMS to provide Congress and the public with monthly updates on infection control surveys performed by states. As part of the CARES Act, Congress provided CMS with resources to conduct infection control surveys and to otherwise mitigate infectious outbreaks and spread. It is important to know how effective these focused surveys are, both to ensure facilities remain in substantial compliance¹ and to decrease outbreaks and spread. Further, in an effort to increase timely correction of deficiencies, we request CMS encourage states to provide real-time feedback to nursing facilities regarding their deficiencies. In addition to the updated infection results² released by CMS beginning on June 1, 2020, we request the following information in future monthly updates:

1. Number of infection control deficiencies by facility and state (differentiated by severity of deficiency);
2. Number of facilities in substantial³ compliance by state;
3. List of CMS and state activities to bring non-compliant facilities into compliance and number of facilities that take advantage of such activities; and
4. Plans developed by the state and CMS to ensure facilities remain in substantial compliance with regulations.

Perform analysis of nursing homes with larger outbreaks: It is important to understand what factors contribute to a COVID-19 outbreak in a nursing home, what leads to outbreaks on a greater scale, and what strategies or factors help nursing homes best mitigate an outbreak. As such, we request CMS perform an analysis of nursing homes with COVID-19 outbreaks, taking into consideration the scale of the outbreak and the number of associated deaths among residents and workers. Results should be reported to Congress and made public by December 1, 2020.

¹ 42 CFR 488.301. Centers for Medicare and Medicaid Services State Operations Manual: Substantial compliance means a level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm. Substantial compliance constitutes compliance with participation requirements.

² Centers for Medicare and Medicaid Services. Press Release: *Trump Administration Unveils Enhanced Enforcement Actions Based on Nursing Home COVID-19 Data and Inspection Results*. Jun. 20, 2020. <https://www.cms.gov/newsroom/press-releases/trump-administration-unveils-enhanced-enforcement-actions-based-nursing-home-covid-19-data-and>

Such report will provide a complete analysis on COVID-19 outbreaks in nursing homes and their correlation with the following:

1. Prevalence of COVID-19 in the community (including number of hospital admissions);
2. Facility size, including number of occupied beds at the facility and proportion of double, triple or quadruple occupancy rooms;
3. SFF candidates and participants;
4. Infection control deficiencies over the past three years;
5. Racial, socioeconomic, and ethnic demographics in the facility;
6. Proportion of Medicaid beneficiaries in the facility;
7. Facility reporting of PPE and rapid testing shortages;
8. The facility's for-profit or non-profit status;
9. Facility receipt of a targeted infection control survey; and
10. Facility receipt of technical assistance on infection prevention and control practices.

Review all nursing home regulations and seek stakeholder input: To date, CMS has not announced a multi-stakeholder process for nursing homes, workers, residents, family caregivers, consumer advocates and the public-at-large to submit comment on challenges experienced during the pandemic. In particular, we urge CMS to publicly seek stakeholder input to resolve barriers to issues such as cohorting and visitation policies. We also ask that CMS make public the input received from stakeholders.

For example, we have been made aware of confusion caused by inconsistencies between the existing Resident Assessment Instrument/Minimum Data Set (RAI-MDS) coding manual⁴ and agency guidelines regarding isolation and cohorting of certain nursing home residents. The RAI-MDS manual requires residents in isolation to be in single rooms, whereas CMS and CDC recommend cohorting residents who have the same infection in the same room.⁵ The instructions for RAI-MDS manual need to be updated to reflect current CDC and CMS guidance on best practices. Additionally, given the health implications of prolonged isolation and loneliness in seniors, we are hearing from constituents anxious to visit loved ones and resident advocates that federal guidelines focused on allowing visitation during phased reopening are not being consistently applied. Additional specificity and measurable benchmarks could aid in this process and allow families to safely visit with residents.

Improve coordination among CDC, CMS and states for nursing homes to report COVID-19 cases and deaths: We urge CMS to improve the accuracy of facility-level COVID-19 case and death reporting and to explore opportunities to more closely align data reporting requirements at the state and federal levels. Often the timeframe and process for reporting COVID-19 data differs at both the state and federal level. Greater alignment could ensure that accurate data is reported in a timely manner. It may also allow the agencies to fill vital gaps in data collection, including reporting on COVID-19 cases and deaths prior to May 1, as well as reporting on demographic information, such as race, ethnicity, age, sex, disability status and

⁴ Centers for Medicare and Medicaid Services. *Resident Assessment Instrument*. Pg. 494-495.

https://downloads.cms.gov/files/mds-3.0-rai-manual-v1.17.1_october_2019.pdf

⁵ Centers for Disease Control and Prevention. *Responding to Coronavirus (COVID-19) in Nursing Homes*. Apr. 30, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/hcp/nursing-homes-responding.html>

other socioeconomic factors. Additionally, data being reported should be collected with the intention of informing and improving upon the national public health response (e.g. testing, PPE and staffing needs). Finally, we urge CMS to take steps to make this information accessible to the public, including updating each facility's Nursing Home Compare webpage so that families have the most up-to-date information.

To assist ongoing work on these important issues we respectfully request a response from Secretary Azar on how HHS will complete each of our recommendations by September 1, 2020.

Sincerely,

/s/ Pat Toomey

Pat Toomey
U.S. Senator

/s/ Robert P. Casey, Jr.

Robert P. Casey, Jr.
U.S. Senator

/s/ James Lankford

James Lankford
U.S. Senator

/s/ Robert Menendez

Robert Menendez
U.S. Senator

/s/ Ben Sasse

Ben Sasse
U.S. Senator

/s/ Margaret Wood Hassan

Margaret Wood Hassan
U.S. Senator