

Congress of the United States
Washington, DC 20515

June 5, 2020

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

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
7500 Security Blvd.
Baltimore, MD 21244

Dear Secretary Azar and Administrator Verma,

Our nation's nursing homes are at the epicenter of the 2019 novel coronavirus (COVID-19) pandemic. While the persistent shortage of testing kits and delayed reporting and disclosure of COVID-19 outbreaks in nursing homes continue to obscure the full magnitude of this crisis, recent tragedies have made it painfully clear that our nursing homes are in dire need of additional federal support and guidance. Nursing home residents are among the most vulnerable during this public health emergency, but they cannot be protected when their facilities lack testing kits, personal protective equipment (PPE), and sufficient staff. Additionally, many nursing homes do not have the resources to implement federal guidance to slow the spread of COVID-19. To avert further tragedies, we strongly urge you to address the dire needs of nursing home residents and staff as they respond to the COVID-19 pandemic.

According to the Centers for Disease Control and Prevention (CDC), more than 1.3 million Americans live in nursing homes.¹ Many nursing home residents are older and have pre-existing conditions, and thus may face higher risk for severe illness from COVID-19.² As of the writing of this letter, reports indicate that more than 9,800 nursing homes and other long-term care settings in the U.S. have had at least one COVID-19 case and more than 44,000 residents and workers in long-term care settings have died from COVID-19, accounting for more than 40% of all deaths nationwide.³

The Centers for Medicare and Medicaid Services (CMS) has issued some guidance for nursing homes to respond to the COVID-19 pandemic. As examples, on March 13, CMS instructed nursing homes to restrict visitors and shared recommendations for infection control.⁴ On April 2,

¹ <https://www.cdc.gov/nchs/fastats/nursing-home-care.htm>

² <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

³ <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>

⁴ <https://www.cms.gov/files/document/3-13-2020-nursing-home-guidance-covid-19.pdf>

CMS issued updated guidance, recommending the screening of every individual entering a facility, and the use of PPE among staff members. The updated guidance also encouraged nursing homes to use separate staff and develop or acquire separate facilities or units for residents who have tested positive for COVID-19.⁵ On April 19, CMS announced that nursing homes must inform residents and their families of COVID-19 cases in their facilities and must report COVID-19 cases directly to the CDC.⁶ Nevertheless, taken together, these piecemeal policies do not amount to the coordinated, national action plan that is necessary to save lives and combat the continued spread of COVID-19 in nursing homes.

Without access to testing kits, many nursing homes will be unable to effectively implement the CMS guidance mentioned above and COVID-19 will continue to run rampant, with tragic consequences for residents, workers, and their families. It is impossible for nursing homes to separate COVID-19 positive residents and staff if they cannot confirm who has the virus. On April 24, President Trump signed into law the Paycheck Protection Program and Health Care Enhancement Act, which included \$25 billion for the development and initial implementation of a national COVID-19 testing plan. On April 27, the Administration published its initial blueprint for a national testing plan, which did not mention nursing homes.⁷ On May 25, under Congressional deadline, the Administration issued another national report on testing, which again lacked actionable strategies on testing in nursing homes and provided minimal guidance to both states and facilities.⁸ During the cross-agency process to further develop a comprehensive, national COVID-19 testing plan, we urge the Department of Health and Human Services (HHS) and CMS to account for the dire need for testing kits in our nation's nursing homes.

We are deeply concerned that many nursing homes do not have the resources required to follow the important CMS recommendation to use separate staff and separate facilities or units for residents with COVID-19, known as cohorting. Many of our nursing homes are already struggling with staffing shortages, as their employees have fallen ill or must care for children or sick relatives at home. We urge HHS to mobilize the U.S. Public Health Service to help address existing staffing challenges and ensure that all of our nursing homes can use separate staff for residents with COVID-19. We urge CMS to create additional guidelines and supports for nursing homes to hire supplementary staff and develop separate facilities.

Many nursing homes continue to face dire PPE shortages and are struggling to acquire these supplies in a crowded and chaotic market. The Administration recently announced that over the next two months, FEMA will ship a two-week supply of PPE to more than 15,000 nursing homes nationwide.⁹ These supplies will be insufficient to meet the overwhelming need. It is distressing that CMS is still encouraging nursing home residents to use tissues to cover their noses and mouths when staff are in their room, when there should be sufficient non-medical facemasks available for this purpose.¹⁰ This situation highlights the need for a comprehensive federal plan to ensure that all types of frontline facilities, including nursing homes, have adequate PPE.

⁵ <https://www.cms.gov/files/document/4220-covid-19-long-term-care-facility-guidance.pdf>

⁶ <https://www.cms.gov/files/document/qso-20-26-nh.pdf>

⁷ <https://www.whitehouse.gov/wp-content/uploads/2020/04/Testing-Blueprint.pdf>

⁸ <https://www.democrats.senate.gov/imo/media/doc/COVID%20National%20Diagnostics%20Strategy%2005%2024%202020%20v%20FINAL.pdf>

⁹ <https://www.fema.gov/news-release/2020/05/02/coronavirus-pandemic-response-ppe-packages-nursing-homes>

¹⁰ <https://www.cms.gov/files/document/4220-covid-19-long-term-care-facility-guidance.pdf>

We are pleased that CMS heeded calls from Congress and the public to strengthen nursing home COVID-19 reporting requirements. For months, residents and their families may have had no information regarding the presence of COVID-19 in their nursing home, and therefore could not make informed decisions as the virus spread. It concerns us that CMS and CDC are not taking steps to ensure the collection of data on COVID-19 cases and deaths prior to May 1, 2020, nor is it collecting detailed demographic information, including on race, ethnicity, age, gender, or disability status. All nursing home residents, workers, and families affected by the COVID-19 pandemic deserve to be counted. We urge CMS to ensure that understaffed nursing homes have sufficient resources to complete accurate and timely reporting and to provide information and updates to families.

To better understand how HHS and CMS are protecting nursing home residents, staff, and their families, we request answers to the following questions no later than June 26, 2020:

1. What efforts are HHS and CMS undertaking to sufficiently increase COVID-19 testing in nursing homes and to ensure states and nursing homes have adequate funding to meet the guidelines set forth by the administration?
2. How will HHS and CMS ensure that states and nursing homes have sufficient resources to outfit existing facilities or acquire new space to care for and cohort residents with and without COVID-19?
3. Will HHS engage the U.S. Public Health Service to support staffing needs in nursing homes? If so, how will HHS determine where they are sent?
4. Will HHS and CMS publicly report data on race and ethnicity, age, gender and disability status alongside any reported CDC data?
5. Do HHS and CMS plan to study the relationship between race and health outcomes in nursing homes that have COVID-19 outbreaks and publicly report the findings of such a study?
6. The Administration recently announced that nursing home facilities will receive two one-week shipments of PPE from the federal government. When will these shipments be completed? Will more PPE be sent after these initial allotments?
7. Do HHS and CMS currently have sufficient resources and Congressional authority to ensure that nursing homes have sufficient PPE, can implement testing as recommended by CMS and CDC, can safely separate staff and facilities for residents with and without COVID-19, and can meet regulatory reporting requirements?
8. On May 22, HHS announced \$4.9 billion in funding for skilled nursing facilities certified by Medicare from the \$175 billion provider relief fund created through the CARES Act and the Paycheck Protection Program and Health Care Enhancement Act. Does HHS plan to make additional payments to nursing homes and other providers that rely heavily on Medicaid, and how will those allocations be determined?¹¹

We remain gravely concerned about the spread of COVID-19 in our nation's nursing homes. Today no one is safe, from the residents trapped alone in their rooms to the underpaid staff

¹¹ <https://www.cms.gov/files/document/4220-covid-19-long-term-care-facility-guidance.pdf>

members working without PPE. While many American communities are in dire need, our nation's most vulnerable individuals cannot be overlooked in our efforts to defeat COVID-19. Thank you for your prompt attention to this urgent matter.

Sincerely,

/s/ Robert Menendez
Robert Menendez
United States Senator

/s/ Robert P. Casey, Jr.
Robert P. Casey, Jr.
United States Senator

/s/ Bill Pascrell, Jr.
Bill Pascrell, Jr.
Member of Congress

/s/ Jimmy Panetta
Jimmy Panetta
Member of Congress

/s/ Charles E. Schumer
Charles E. Schumer
United States Senator

/s/ Linda T. Sánchez
Linda T. Sánchez
Member of Congress

/s/ Thomas R. Carper
Thomas R. Carper
United States Senator

/s/ Katie Porter
Katie Porter
Member of Congress

/s/ Elizabeth Warren
Elizabeth Warren
United States Senator

/s/ Sean Casten
Sean Casten
Member of Congress

/s/ Kirsten Gillibrand
Kirsten Gillibrand
United States Senator

/s/ Nanette Diaz Barragán
Nanette Diaz Barragán
Member of Congress

/s/ Benjamin L. Cardin
Benjamin L. Cardin
United States Senator

/s/ John B. Larson
John B. Larson
Member of Congress

/s/ Jeanne Shaheen
Jeanne Shaheen
United States Senator

/s/ Sanford D. Bishop, Jr.
Sanford D. Bishop, Jr.
Member of Congress

/s/ Edward J. Markey
Edward J. Markey
United States Senator

/s/ Jahana Hayes
Jahana Hayes
Member of Congress

/s/ Gary C. Peters
Gary C. Peters
United States Senator

/s/ Betty McCollum
Betty McCollum
Member of Congress

/s/ Chris Van Hollen
Chris Van Hollen
United States Senator

/s/ Cindy Axne
Cindy Axne
Member of Congress

/s/ Tammy Duckworth
Tammy Duckworth
United States Senator

/s/ André Carson
André Carson
Member of Congress

/s/ Mazie K. Hirono
Mazie K. Hirono
United States Senator

/s/ Max Rose
Max Rose
Member of Congress

/s/ Sherrod Brown
Sherrod Brown
United States Senator

/s/ Thomas R. Suozzi
Thomas R. Suozzi
Member of Congress

/s/ Richard Blumenthal
Richard Blumenthal
United States Senator

/s/ Juan Vargas
Juan Vargas
Member of Congress

/s/ Tammy Baldwin
Tammy Baldwin
United States Senator

/s/ Al Lawson
Al Lawson
Member of Congress

/s/ Cory A. Booker
Cory A. Booker
United States Senator

/s/ Susan A. Davis
Susan A. Davis
Member of Congress

/s/ Debbie Stabenow
Debbie Stabenow
United States Senator

/s/ Lois Frankel
Lois Frankel
Member of Congress

/s/ Amy Klobuchar
Amy Klobuchar
United States Senator

/s/ Donna E. Shalala
Donna E. Shalala
Member of Congress

/s/ Martin Heinrich
Martin Heinrich
United States Senator

/s/ Daniel T. Kildee
Daniel T. Kildee
Member of Congress

/s/ Tom Udall
Tom Udall
United States Senator

/s/ Jimmy Gomez
Jimmy Gomez
Member of Congress

/s/ Tina Smith
Tina Smith
United States Senator

/s/ Marcia L. Fudge
Marcia L. Fudge
Member of Congress

/s/ Michael F. Bennet
Michael F. Bennet
United States Senator

/s/ Jackie Speier
Jackie Speier
Member of Congress

/s/ Debbie Dingell
Debbie Dingell
Member of Congress

/s/ Ted Deutch
Ted Deutch
Member of Congress

/s/ Bennie G. Thomspon
Bennie G. Thomspon
Member of Congress

/s/ Tim Ryan
Tim Ryan
Member of Congress

/s/ Lucy McBath
Lucy McBath
Member of Congress

/s/ Peter A. DeFazio
Peter A. DeFazio
Member of Congress

/s/ Debbie Wasserman Schultz
Debbie Wasserman Schultz
Member of Congress

/s/ Joseph D. Morelle
Joseph D. Morelle
Member of Congress

/s/ Nydia M. Velázquez
Nydia M. Velázquez
Member of Congress

/s/ Marcy Kaptur
Marcy Kaptur
Member of Congress

/s/ Antonio Delgado
Antonio Delgado
Member of Congress

/s/ Tulsi Gabbard
Tulsi Gabbard
Member of Congress

/s/ Emanuel Cleaver, II
Emanuel Cleaver, II
Member of Congress

/s/ Val B. Demings
Val B. Demings
Member of Congress

/s/ James R. Langevin
James R. Langevin
Member of Congress

/s/ Bill Foster
Bill Foster
Member of Congress

/s/ Jason Crow
Jason Crow
Member of Congress

/s/ Bonnie Watson Coleman
Bonnie Watson Coleman
Member of Congress

/s/ Albio Sires
Albio Sires
Member of Congress

/s/ Donald M. Payne, Jr.
Donald M. Payne, Jr.
Member of Congress

/s/ Grace Meng
Grace Meng
Member of Congress

/s/ Judy Chu
Judy Chu
Member of Congress

/s/ Mikie Sherrill
Mikie Sherrill
Member of Congress

/s/ Josh Gottheimer
Josh Gottheimer
Member of Congress

/s/ Eliot L. Engel
Eliot L. Engel
Member of Congress

/s/ Mark DeSaulnier
Mark DeSaulnier
Member of Congress

/s/ Chrissy Houlahan
Chrissy Houlahan
Member of Congress

/s/ Charlie Crist
Charlie Crist
Member of Congress

/s/ Brenda L. Lawrence
Brenda L. Lawrence
Member of Congress

/s/ Adriano Espaillat
Adriano Espaillat
Member of Congress

/s/ Steve Cohen
Steve Cohen
Member of Congress

/s/ Colin Z. Allred
Colin Z. Allred
Member of Congress

/s/ Gilbert R. Cisneros, Jr.
Gilbert R. Cisneros, Jr.
Member of Congress

/s/ Angie Craig
Angie Craig
Member of Congress

/s/ Vicente Gonzalez
Vicente Gonzalez
Member of Congress

/s/ Ed Perlmutter
Ed Perlmutter
Member of Congress

/s/ Mary Gay Scanlon
Mary Gay Scanlon
Member of Congress

/s/ Dwight Evans
Dwight Evans
Member of Congress

/s/ Wm. Lacy Clay
Wm. Lacy Clay
Member of Congress

/s/ Dina Titus
Dina Titus
Member of Congress

/s/ Seth Moulton
Seth Moulton
Member of Congress

/s/ Julia Brownley
Julia Brownley
Member of Congress

/s/ Susan Wild
Susan Wild
Member of Congress

/s/ Rashida Tlaib
Rashida Tlaib
Member of Congress

/s/ Eleanor Holmes Norton
Eleanor Holmes Norton
Member of Congress

/s/ Eddie Bernice Johnson
Eddie Bernice Johnson
Member of Congress

/s/ Debbie Mucarsel-Powell
Debbie Mucarsel-Powell
Member of Congress

/s/ Ann Kirkpatrick
Ann Kirkpatrick
Member of Congress

/s/ Elaine G. Luria
Elaine G. Luria
Member of Congress

/s/ John P. Sarbanes
John P. Sarbanes
Member of Congress

/s/ Bradley S. Schneider
Bradley S. Schneider
Member of Congress

/s/ Gregory W. Meeks
Gregory W. Meeks
Member of Congress

/s/ Conor Lamb
Conor Lamb
Member of Congress

/s/ Chellie Pingree
Chellie Pingree
Member of Congress

/s/ TJ Cox
TJ Cox
Member of Congress

/s/ Alexandria Ocasio-Cortez
Alexandria Ocasio-Cortez
Member of Congress

/s/ Rosa L. DeLauro
Rosa L. DeLauro
Member of Congress

/s/ Stephen F. Lynch
Stephen F. Lynch
Member of Congress

/s/ Tom Malinowski
Tom Malinowski
Member of Congress

/s/ Ben McAdams
Ben McAdams
Member of Congress

/s/ Henry C. "Hank" Johnson, Jr.
Henry C. "Hank" Johnson, Jr.
Member of Congress

/s/ Scott Peters
Scott Peters
Member of Congress

/s/ Sharice L. Davids
Sharice L. Davids
Member of Congress

/s/ Terri A. Sewell
Terri A. Sewell
Member of Congress

/s/ Lori Trahan
Lori Trahan
Member of Congress

/s/ Brian Higgins
Brian Higgins
Member of Congress

/s/ Kathleen M. Rice
Kathleen M. Rice
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/s/ Joe Neguse
Joe Neguse
Member of Congress

/s/ Eric Swalwell
Eric Swalwell
Member of Congress

/s/ Jerry McNerney
Jerry McNerney
Member of Congress

/s/ Grace F. Napolitano
Grace F. Napolitano
Member of Congress

/s/ Alan Lowenthal
Alan Lowenthal
Member of Congress

/s/ John Yarmuth
John Yarmuth
Member of Congress

/s/ José E. Serrano
José E. Serrano
Member of Congress

/s/ Jim Cooper
Jim Cooper
Member of Congress

/s/ Jamie Raskin
Jamie Raskin
Member of Congress

/s/ Paul D. Tonko
Paul D. Tonko
Member of Congress

/s/ Donald S. Beyer Jr.
Donald S. Beyer Jr.
Member of Congress

/s/ Jesús G. "Chuy" García
Jesús G. "Chuy" García
Member of Congress

/s/ Adam B. Schiff
Adam B. Schiff
Member of Congress

/s/ Ted W. Lieu
Ted W. Lieu
Member of Congress

/s/ Bobby L. Rush
Bobby L. Rush
Member of Congress

/s/ David E. Price
David E. Price
Member of Congress

/s/ Elissa Slotkin
Elissa Slotkin
Member of Congress

/s/ Lizzie Fletcher
Lizzie Fletcher
Member of Congress

/s/ Raúl M. Grijalva
Raúl M. Grijalva
Member of Congress

/s/ Joseph P. Kennedy, III
Joseph P. Kennedy, III
Member of Congress

/s/ Rick Larsen
Rick Larsen
Member of Congress

/s/ Suzan DelBene
Suzan DelBene
Member of Congress

/s/ Henry Cuellar
Henry Cuellar
Member of Congress