United States Senate
WASHINGTON, DC 20510

March 12, 2020

The Honorable Mike Pence
Vice President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Vice President Pence:

We write on behalf of the millions of Americans who live and work in our nation's nursing homes as well as the families who have entrusted a facility to care for their loved ones. We were alarmed to learn that one of the earliest reported outbreaks of the novel coronavirus (COVID-19) in the U.S. occurred at a nursing home in Washington State, leading to the deaths of multiple residents.[1] We request information on your efforts to protect nursing home residents, workers and their families from COVID-19—an emergent responsibility that must be balanced alongside your obligation to ensure all Americans who reside in a nursing home receive the highest quality care.

While the threat to most Americans being exposed to the virus is thought to remain low, early indications suggest that older adults, people with disabilities and other individuals with underlying health conditions are most at risk of mortality or other serious complications if infected with COVID-19. According to a recent analysis, deaths linked to the virus were more pronounced among older adults, reaching as high as almost 15 percent among those ages 80 and older.[2] Another study found severe pneumonia was more likely to occur among people ages 60 and older afflicted with COVID-19.[3]

The Centers for Disease Control and Prevention (CDC) recently issued guidance to health care facilities, and specifically to long-term care facilities, on strategies to prevent the spread of COVID-19.[4] This guidance stresses the importance of limiting facility exposure to individuals with specific symptoms, regular monitoring of residents and employees and relying on hand

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[1] M Baker and K. Weise, "Coronavirus Deaths Tied to Nursing Center Came Earlier Than Anyone Knew" *The New York Times* (March 3, 2020) https://www.nytimes.com/2020/03/03/us/coronavirus-washington-death.html; J. Aleccia, "Nursing Home Outbreak Spotlights Coronavirus Risk In Elder Care Facilities" *Kaiser Health News* (March 1, 2020) https://khn.org/news/nursing-home-outbreak-spotlights-coronavirus-risk-in-elder-care-facilities/.

[2] W. Zunyou, J. McGoogan, "Characteristics of and Important Lessons From the Coronavirus Disease 2019 (COVID-19) Outbreak in China: Summary of a Report of 72 314 Cases From the Chinese Center for Disease Control and Prevention" *JAMA* (February 24, 2020) https://jamanetwork.com/journals/jama/fullarticle/2762130.

[3] *ibid.*

[4] Centers for Disease Control and Prevention, "Strategies to Prevent the Spread of COVID-19 in Long-Term Care Facilities (LTCF)" (March 1, 2020) https://www.cdc.gov/coronavirus/2019-ncov/healthcare-facilities/prevent-spread-in-long-term-care-facilities.html.

hygiene, among other strategies. By necessity, however, residents, workers and families closely and intimately interact, presenting a particularly challenging setting in which to prevent the spread of COVID-19. Further, health care workers and other low-wage employees without access to paid sick leave are particularly disadvantaged when advised to remain at home when sick.

During a recent hearing in the Health, Education, Labor & Pensions (HELP) Committee, senior officials from the CDC and the Office of the Assistant Secretary for Preparedness and Response noted that the Administration is conducting outreach to long-term care facilities and other health care providers to respond to COVID-19.[5] Soon thereafter, the Centers for Medicare & Medicaid Services (CMS) outlined a targeted surveying strategy in nursing facilities and hospitals focused on infection control, altogether halting most other surveying and inspection activities.

The Administration has taken action to divert resources towards infection control in nursing homes and other health care facilities. However, the federal government must maintain its commitment to routine oversight concerning residents' safety and care. In order to better understand what actions the federal government is taking, or planning to take, to adequately protect nursing home residents, workers and families, please provide responses to the following questions:

1. While senior officials within the Administration have noted ongoing communication with and guidance to long-term care facilities, what steps is the Administration taking to reach out directly to nursing home residents, their families and their advocates?[6]
    a. In particular, please note if the Administration plans to provide information on Nursing Home Compare or other public facing websites.
    b. Please provide copies of all guidance and educational content the Administration has provided to nursing homes and other long-term care settings on COVID-19.

2. To what extent is the Administration leveraging the expertise and on-the-ground experience of the State Long-Term Care Ombudsman? And, how is the Administration working to support and protect these employees and volunteers?

3. Nursing home employees and contract workers, like certified nursing assistants, nurses, social workers and others, play a central role in preventing the spread of COVID-19. What steps is the Administration taking to adequately train and protect this workforce?
    a. Please describe the steps taken to ensure that nursing home employees have access to any personal protective equipment (PPE) they may need.
    b. Please describe the steps taken to ensure that nursing home employees receive training on the proper use of PPE.

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[5] United States Senate Committee on Health, Education, Labor & Pensions, "An Emerging Disease Threat: How the U.S. Is Responding to COVID-19, the Novel Coronavirus" (March 3, 2020) https://www.help.senate.gov/hearings/an-emerging-disease-threat-how-the-us-is-responding-to-covid-19-the-novel-coronavirus.

[6] *ibid.*

c. Please provide a copy of all educational materials furnished to nursing home employees to help them identify possible COVID-19 symptoms and minimize the possibility of transmission among residents, visitors and fellow employees.

4. Guidance issued to State Survey Agencies (SAs) on March 4, 2020 notes that CMS will largely suspend surveying activities unrelated to infection control or complaints involving immediate harms, abuse and neglect. After prioritizing complaints, CMS notes that State SAs will inspect nursing homes with prior deficiencies related to infection control.
   a. Please provide additional detail on how CMS intends to prioritize surveys with respect to this criteria, noting prior deficiencies, enforcement actions or timeframes the agency is taking into account.
   b. To what extent is the agency targeting nursing homes that persistently underperform, including candidates for and participants in the Special Focus Facility (SFF) program? Is the agency suspending surveying of SFF participants (i.e., to any frequency other than the statutory requirement of at least once every six months)?
   c. For surveys unrelated to a complaints, what surveying schedule will CMS require SAs to employ and will that schedule rely on a protocol that involves "unannounced" surveys?
   d. The guidance issued by CMS provides limited information on enforcement. Please provide additional detail on the enforcement actions CMS intends to utilize when deficiencies are uncovered during targeted surveying on infection control. Will CMS recommend the use of certain enforcement actions over others?
   e. How will CMS ensure that nursing homes continue to meet the requirements of participation under Medicare and Medicaid unrelated to infection control during the suspension?
   f. How does CMS plan to support State SAs during and after the suspension?
   g. Under what circumstances (and using what data and information) will CMS opt to end the suspension and resume standard surveying and inspection practices?
   h. Please indicate to what extent CMS is coordinating with other federal agencies on nursing home oversight pertaining to COVID-19, including the Department of Veterans Affairs with respect to veteran's homes.

5. Under current regulations, a nursing home must identify an individual with specific expertise and training as the Infection Prevention (IP) designee; however, CMS noted in a memo issued on November 22, 2019 that surveying of this requirement would be limited until additional guidance was provided.[7] How does CMS plan to address this given the guidance issued on March 4, 2020 pertaining to infection control?

6. Please provide us with all written information that comes out of the White House Coronavirus Task Force on nursing homes and other health care facilities.

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[7] Centers for Medicare & Medicaid Services, "Updates and Initiatives to Ensure Safety and Quality in Nursing Homes" (November 22, 2019) https://www.cms.gov/files/document/qso-20-03-nh.pdf.

Please provide this information no later than April 3, 2020. We also request a staff briefing no later than April 3, 2020. Thank you for your assistance in this matter.

Sincerely,

Robert P. Casey, Jr.
United States Senator

Charles E. Schumer
United States Senator

Jack Reed
United States Senator

Sherrod Brown
United States Senator

Tammy Baldwin
United States Senator

Sheldon Whitehouse
United States Senator

Edward J. Markey
United States Senator

Catherine Cortez Masto
United States Senator

Chris Van Hollen
United States Senator

Bernard Sanders
United States Senator

Benjamin L. Cardin
United States Senator

Richard Blumenthal
United States Senator

Jon Tester
United States Senator

Patrick Leahy
United States Senator

Martin Heinrich
United States Senator

Jeanne Shaheen
United States Senator

Jacky Rosen
United States Senator

Kirsten Gillibrand
United States Senator

Tina Smith
United States Senator

Elizabeth Warren
United States Senator

Tim Kaine
United States Senator

Amy Klobuchar
United States Senator

Jeffrey A. Merkley
United States Senator

Brian Schatz
United States Senator

Gary C. Peters
United States Senator

Cory A. Booker
United States Senator

Tom Udall
United States Senator

Christopher S. Murphy
United States Senator

Kamala D. Harris
United States Senator

Margaret Wood Hassan
United States Senator

Debbie Stabenow
United States Senator

Patty Murray
United States Senator

Robert Menendez
United States Senator

Thomas R. Carper
United States Senator

Joe Manchin III
United States Senator

Tammy Duckworth
United States Senator

Mark R. Warner
United States Senator

Christopher A. Coons
United States Senator

Richard J. Durbin
United States Senator

cc:
Dr. Deborah L. Birx
Coronavirus Response Coordinator
White House Coronavirus Task Force

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services