

Congress of the United States

Washington, DC 20515

June 25, 2020

The Honorable Xavier Becerra
Attorney General of California
Attorney General's Office
California Department of Justice
P.O. Box 944255
Sacramento, CA. 94244

Dear Attorney General Becerra:

The ongoing COVID-19 pandemic has disproportionately affected the elderly, especially those living in nursing homes and other long-term care facilities. According to reports as early as April 15, 2020 you began investigating numerous nursing homes for neglect and abuse during the coronavirus pandemic.¹ We understand that your investigation is ignoring Governor Newsom's March 30, 2020 guidance for nursing homes to readmit COVID-19 positive residents, thereby recklessly reintroducing the disease into the most vulnerable population.² Therefore, we write requesting that you formally review the impact of this deadly policy and make your findings available to the citizens of California and the families of those who lost loved ones as a result of this deadly policy.

On March 13, 2020, the Center for Medicare and Medicaid Services (CMS) issued guidance titled "For Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in Nursing Homes."³ This guidance is a blueprint for individual states to follow when determining how to best control outbreaks of COVID-19 in nursing homes and long term care facilities. This guidance does not direct any nursing home to accept a COVID-19 positive patient, if they are unable to do so safely. In fact, it says "nursing homes should admit any individual *that they would normally admit to their facility*, including individuals from hospitals where a case of COVID-19 was/is present" *only if* the nursing home can follow Centers for Disease Control (CDC) quarantining guidance.⁴

¹ Tony Kurzweil & Ellina Abovian, *Dozens of nursing home residents moved after Pasadena facility gets license pulled*, KTLA5 (Jun. 12, 2020), <https://ktla.com/news/local-news/dozens-of-residents-moved-after-attorney-general-pulls-license-from-pasadena-nursing-home/>; *See also* Annie Sciacca, et. al., *State DOJ, local DA probing Bay Area nursing home in COVID-19 outbreak*, EAST BAY TIMES (May 21, 2020), <https://www.eastbaytimes.com/2020/05/21/coronavirus-state-doj-and-local-da-probing-bay-area-nursing-home-that-had-large-covid-outbreak/>.

² Memorandum from California Department of Public Health to Skilled Nursing Facilities (Mar. 30, 2020) *available at* <https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/AFL-20-32.aspx>.

³ Memorandum from David R. Wright, Director, Quality, Safety & Oversight Group, U.S. Centers for Medicare & Medicaid Services, to State Survey Agency Directors (Mar. 13, 2020) (on file with Comm. Staff).

⁴ *Id.*; (*emphasis added*).

CMS Administrator Seema Verma said, “[u]nder no circumstances should a hospital discharge a patient to a nursing home that is not prepared to take care of those patient’s needs.”⁵ CMS did not mandate COVID-19 positive patients back to nursing homes but, instead, stated that a COVID-19 case at a hospital does not preclude the nursing home from accepting a COVID-19 negative patient.

Nonetheless, on March 30, 2020, the California Department of Health and Human Services issued guidance mandating nursing homes not use COVID-19 positivity as a reason to block admission.⁶ The guidance mandated nursing homes accept COVID-19 positive patients stating, “[nursing homes] *shall not refuse* to admit or readmit a resident based on their status as a suspected or confirmed COVID-19 case.”⁷ According to the California Association of Long-Term Care Medicine, this move “ma[de] no sense.”⁸

The Select Subcommittee on the Coronavirus Crisis wrote Governor Newsom on June 15, 2020 seeking information regarding his decision to mandate nursing homes and long-term cares facilities admit untested and contagious COVID-19 patients from hospitals.⁹ This decision likely contributed to the thousands of elderly deaths in California. According to the most recent available data, California has suffered 2,812 nursing home deaths related to COVID-19.¹⁰ That is more than 50% of the State’s total COVID-19 deaths and more than 1% of the State’s entire nursing home population.¹¹

In your current review of California nursing homes’ actions during the coronavirus pandemic we request that you include in your investigation the following topics:

1. The deliberative process of all State-issued guidance, directives, advisories, and executive orders regarding hospital discharges to nursing homes or any and all other types of assisted living facilities, including the orders subsequently superseded;
2. An analysis of if any State-issued guidance, directives, advisories, or executive orders regarding hospital discharges to nursing homes or any and all other types of assisted living facilities adversely affected the nursing homes’ efforts to contain or respond to the pandemic; and

⁵ Charles Creitz, *Medicare chief Verma blasts Cuomo for trying to deflect blame onto White House fo NY nursing home deaths*, FOX NEWS (May 28, 2020), <https://www.foxnews.com/media/seema-verma-andrew-cuomo-nursing-home-deaths>.

⁶ Memorandum from California Department of Public Health *supra* note 2.

⁷ *Id.*; (*emphasis added*).

⁸ Jaxon Van Derbeken, *Critics Call \$1,000-a-Day State Offer a ‘Bounty’ to House COVID-Positive Residents*, NBC BAY AREA (May 7, 2020), <https://www.nbcbayarea.com/investigations/critics-call-1000-a-day-state-offer-to-care-homes-a-bounty-to-house-covid-19-patients/2285862/>.

⁹ Letter from Steve J. Scalise, et. al., to Gavin Newsom, Governor, State of California (June 15, 2020).

¹⁰ State by state nursing home data collected via open source research by the Committee to Unleash Prosperity *available at* https://docs.google.com/spreadsheets/d/e/2PACX-1vRQztYJ5rdGLdKqNi7_7SGGciugkgwscN3judtUw2hoimsfH-t_NYXKMPONJkrA4jtJNMsuR7jkQite/pubhtml#.

¹¹ *Id.*

3. The data collection practices of the State including the total number of patients infected with COVID-19 who were admitted or readmitted to nursing homes each day between January 1, 2020 and present, including the name of the facility of admittance or readmittance, and the number of nursing home or long term care deaths that occurred in either the patient's place of residence or in a medical setting.

In addition to the above topics for your review, we respectfully request the following documents and information:

1. All information, documents, and communications between your office, the Office of the Governor, and the California Department of Health and Human Services regarding the investigation of nursing homes between January 1, 2020 and present.

In addition to these documents, we request that you provide a written commitment to investigate this deadly policy by July 2, 2020.

The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. Further, the Select Subcommittee on the Coronavirus Crisis is empowered to investigate "preparedness for and response to the coronavirus crisis, including the planning for and implementation of testing, containment, mitigation, and surveillance activities."¹² Thank you in advance for your cooperation with this inquiry.

Sincerely,



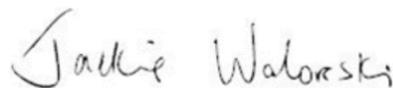
Rep. Steve Scalise
Ranking Member
Select Subcommittee on the
Coronavirus Crisis



Rep. Jim Jordan
Select Subcommittee on the
Coronavirus Crisis



Rep. Blaine Luetkemeyer
Select Subcommittee on the
Coronavirus Crisis



Rep. Jackie Walorski
Select Subcommittee on the
Coronavirus Crisis

¹² H. Res. 935 § 3(a)(4) (2020).

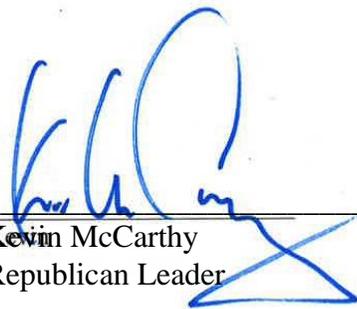
The Honorable Xavier Becerra

June 25, 2020

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Rep. Mark E. Green, MD
Select Subcommittee on the
Coronavirus Crisis



Kevin McCarthy
Republican Leader



Ken Calvert
Member of Congress



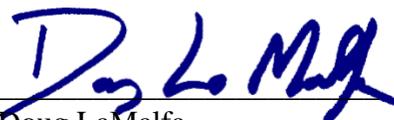
Devin Nunes
Member of Congress



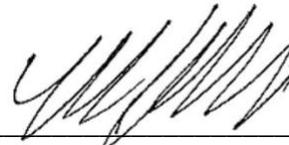
Tom McClintock
Member of Congress



Paul Cook
Member of Congress



Doug LaMalfa
Member of Congress



Mike Garcia
Member of Congress

cc: The Honorable James E. Clyburn, Chairman
Select Subcommittee on the Coronavirus Crisis

The Honorable Carolyn B. Maloney, Chairwoman
Committee on Oversight and Reform