

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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April 17, 2020

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Administrator Verma:

In light of the lessons our nation has learned—and is still learning—from the coronavirus crisis, the Committee on Oversight and Reform requests a briefing to determine whether you will now withdraw a proposed rule that would roll back existing requirements intended to protect nursing home residents across the country from infectious outbreaks and emergencies.

The coronavirus pandemic highlights the importance of America’s nursing homes having robust plans for emergency preparedness and infectious disease control. As of Wednesday, there were confirmed coronavirus cases in at least 3,466 nursing homes across 29 states, and at least 5,670 resident deaths.¹ In just one nursing home, the Life Care Center in Kirkland, Washington, the coronavirus outbreak sickened two-thirds of its residents and claimed at least 35 lives.²

Now is the time to shore up protections for nursing home residents—not eliminate them. Unfortunately, the Centers for Medicare and Medicaid Services (CMS) has proposed a rule that would degrade two key protections for nursing home residents: (1) the requirement for annual facility-wide assessments; and (2) the requirement that every nursing home have on staff at least one qualified Infection Preventionist employed by the facility at least part-time.

CMS regulations currently require nursing homes to “develop and maintain an emergency preparedness plan that must be reviewed, and updated at least annually,” be based on a “facility-based and community-based risk assessment,” and “include strategies for addressing emergency events identified by the risk assessment.”³ CMS’s proposed rule would remove the requirement to assess emergency needs and extend the period between assessments from one to two years.⁴

¹ *Coronavirus Deaths in U.S. Nursing Homes Soar to More Than 5,500*, NBC News (Apr. 15, 2020) (online at www.nbcnews.com/news/us-news/coronavirus-deaths-u-s-nursing-homes-soar-more-5-500-n1184536).

² *The Coronavirus’s Rampage Through a Suburban Nursing Home*, New York Times (Mar. 21, 2020) (online at www.nytimes.com/2020/03/21/us/coronavirus-nursing-home-kirkland-life-care.html).

³ 42 C.F.R. § 483.73.

⁴ Centers for Medicare and Medicaid Services, *Medicare and Medicaid Programs; Requirements for Long-*

This is not the first time CMS has made this proposal. In September 2018, CMS proposed ending the requirement to update emergency preparedness plans on an annual basis.⁵ After CMS received overwhelmingly negative feedback, this proposal was abandoned and dropped from the final rule.⁶

CMS regulations also currently require nursing homes to “establish and maintain an infection prevention and control program” overseen by a qualified Infection Preventionist who must “work at least part-time as the facility.”⁷ CMS’s proposed rule would remove this requirement as well.⁸ According to the Center for Medicare Advocacy, such a proposal would be problematic because “these are frail, medically compromised people, and they need to have someone focused on infection.”⁹

Unfortunately, these proposals are part of a larger trend of the Trump Administration weakening protections for nursing home residents:

- In June 2018, CMS eased civil penalties against nursing homes for violations that put residents in immediate jeopardy.¹⁰
- In July 2019, CMS proposed making it easier to sedate nursing home residents with antipsychotic drugs without a physician’s involvement, increasing the risk of death and hospitalization.¹¹

Term Care Facilities: Regulatory Provisions to Promote Efficiency, and Transparency, 84 Fed. Reg. 34737 (July 18, 2019) (proposed rule).

⁵ Centers for Medicare and Medicaid Services, *Medicare and Medicaid Programs; Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction*, 83 Fed. Reg. 47686 (Sept. 20, 2018) (proposed rule).

⁶ Centers for Medicare and Medicaid Services, *Medicare and Medicaid Programs; Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction*, 84 Fed. Reg. 51732 (Sept. 30, 2019) (final rule).

⁷ 42 C.F.R. § 483.80.

⁸ Centers for Medicare and Medicaid Services, *Medicare and Medicaid Programs; Requirements for Long-Term Care Facilities: Regulatory Provisions to Promote Efficiency, and Transparency*, 84 Fed. Reg. 34737 (July 18, 2019) (proposed rule).

⁹ *Amid Outbreak, Trump Admin’s Proposed Rollback of Nursing Home Regulations Faces Criticism*, NBC News (Mar. 3, 2020) (online at www.nbcnews.com/news/us-news/amid-coronavirus-outbreak-trump-administration-s-proposed-rollback-nursing-home-n1147661).

¹⁰ Centers for Medicare and Medicaid Services, *Final Revised Policies Regarding the Immediate Imposition of Federal Remedies* (June 15, 2018) (online at www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Policy-and-Memos-to-States-and-Regions-Items/QSO18-18-NH.html).

¹¹ Centers for Medicare and Medicaid Services, *Medicare and Medicaid Programs; Requirements for Long-Term Care Facilities: Regulatory Provisions to Promote Efficiency, and Transparency*, 84 Fed. Reg. 34737 (July 18, 2019) (proposed rule).

- In July 2019, CMS issued a final rule to make it easier for nursing homes to force elderly patients into pre-dispute arbitration, forfeiting their right to sue the facility for neglect, abuse, or death.¹²
- In its most recent budget proposal, CMS proposed eliminating annual inspections for nursing homes that passed previous inspections with high scores,¹³ despite the fact that CMS previously rated facilities as top performing even as they were cited for neglect, abuse, and resident death.¹⁴

We were encouraged to hear the Vice President explain on March 4, 2020, that the Trump Administration is committed to enhancing the protection of nursing home residents. He stated: “We have raised the bar regarding infectious disease control in our nursing homes.”¹⁵

However, the rule proposed by CMS would significantly weaken these protections, which were established precisely because infections are the leading cause of death among nursing home residents, causing more than 150,000 hospitalizations and 388,000 deaths each year.¹⁶

For these reasons, the Economic and Consumer Policy Subcommittee requests that you provide a briefing to our staff by April 24, 2020, on CMS’s oversight of nursing homes during the coronavirus pandemic and whether you will now delay, modify, or abandon the proposed rule.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.

¹² Centers for Medicare and Medicaid Services, *Medicare and Medicaid Programs; Revision of Requirements for Long-Term Care Facilities: Arbitration Agreements*, 84 Fed. Reg. 34718 (July 18, 2019) (final rule).

¹³ Centers for Medicare and Medicaid Services, *Ensuring Safety and Quality in Nursing Homes: Five-Part Strategy Deep Dive* (Aug. 28, 2019) (online at www.cms.gov/blog/ensuring-safety-and-quality-nursing-homes-five-part-strategy-deep-dive).

¹⁴ *Does Nursing Home Compare Reflect Patient Safety in Nursing Homes*, Health Affairs (Nov. 2018) (online at www.healthaffairs.org/doi/full/10.1377/hlthaff.2018.0721); *Some Nursing Homes Gaming System to Improve Medicare Star Rating*, Healthcare Finance (Jan. 22, 2018) (online at www.healthcarefinancenews.com/news/some-nursing-homes-gaming-system-improve-medicare-star-ratings).

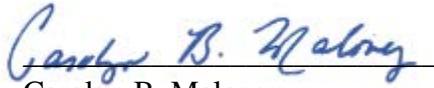
¹⁵ The White House, *Press Briefing by Vice President Pence and Members of the White House Coronavirus Task Force* (Mar. 4, 2020) (online at www.whitehouse.gov/briefings-statements/press-briefing-vice-president-pence-members-white-house-coronavirus-task-force-2/).

¹⁶ Centers for Medicare and Medicaid Services, *Medicare and Medicaid Programs; Reforms of Requirements for Long-Term Care Facilities*, 81 Fed. Reg. 68688 (Oct. 4, 2016) (final rule).

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Please contact Economic and Consumer Policy Subcommittee staff at (202) 225-5051 to schedule this briefing.

Sincerely,



Carolyn B. Maloney
Chairwoman
Committee on Oversight & Reform



Raja Krishnamoorthi
Chairman
Subcommittee on Economic and
Consumer Policy

cc: The Honorable Michael Cloud, Ranking Member