

**Congress of the United States**  
Washington, DC 20515

June 17, 2020

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

Dear Secretary Azar,

We write to express our concern about the Administration's efforts to prevent and respond to the disproportionate impact of the 2019 novel coronavirus (COVID-19) on our nation's nursing home residents and staff. As evidence has mounted since at least early April that the approximately 15,500 nursing homes nationwide are especially vulnerable to the virus, the Department, through its Centers for Medicare and Medicaid Services (CMS), has been slow to provide clear guidance, oversight and resources to state agencies on the frontlines. Families across the country are depending on you to take swift action to protect their loved ones at nursing homes that have been hit especially by COVID-19. Now is the time for swift action to save lives, not a slow, burdensome, business-as-usual approach.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provided CMS an additional \$200 million to prevent, prepare for, and respond to coronavirus, with the requirement that at least \$100 million of the total be used to support increased state and federal oversight of nursing homes. Congress expected CMS would use these funds to ensure nursing homes are adhering to standards for quality of care, infection control, and maintaining sufficient staffing to minimize the spread of the virus and protect patients and staff. Yet with nursing homes at the epicenter of the pandemic, as of the beginning of June, only \$1.5 million of these funds had been provided to a handful of state oversight agencies. We are concerned that very little of this funding has gone out to states since CMS opted, after waiting more than a month, to require states to apply for the funding. Given the emergency, we do not understand why CMS opted for a slow, burdensome process – or why it took so long to decide on this business-as-usual approach – when it could have quickly released funding to states and territories in need by using an expedited process.

The Kaiser Family Foundation recently estimated that nursing homes account for 41 percent of U.S. deaths from COVID-19, while data from other developed countries suggests that the nation could see 50 percent or more of all deaths from nursing home patients. Despite the known vulnerability of nursing home residents and staff, CMS waited until April 19 to require that nursing homes report COVID-19 cases of patients and staff to the CDC and that families are notified. Even with the heavy death toll, CMS has only opted to make approximately \$80 million of the \$200 million provided in the CARES Act available to states. While the CARES Act provided CMS with this flexibility, we do not understand why agency leadership did not respond more aggressively to the emergency by increasing the amount of funding to strengthen and expand state oversight. As we see an increase in cases in many states and prepare for a possible

second wave of the virus in the fall, CMS needs to be far more proactive in efforts to protect the highly vulnerable patients in our nursing homes.

As we continue considering what steps Congress can take to address the consequences of the COVID-19, we request information from the Department on the decisions CMS has made to date. Please provide responses to the questions below by July 2, 2020:

- On what date did CMS first become aware that nursing homes were particularly vulnerable to COVID-19?
- When CMS became aware of the heightened risk to patients and staff, what steps did it take to mitigate these risks (please provide both specific dates and any documentary evidence)?
- After the CARES Act became law on March 27, 2020, why did CMS wait until April 30 to notify states that \$80 million would be made available to expand and strengthen local oversight efforts?
- Why did HHS decide on a competitive application process rather than quickly releasing the funding to states through a formula grant or another expedited mechanism?
- What are the Department's and CMS' plans for the remaining funding that has not been allocated to program management activities or made available for states to submit competitive applications?
- Does CMS believe its process for making CARES Act funding available to states has helped to efficiently mitigate the risks that nursing home patients and staff face?
- Please provide a list of the states that have submitted applications and have been in communication with CMS about submitting applications for funding.
- What is the total amount of Personal Protective Equipment (PPE) that has been provided to nursing homes to address the COVID-19 pandemic response? How many nursing homes have received this PPE? Please provide the selection criteria for how facilities were chosen to receive PPE shipments and an update on PPE shipments that FEMA coordinated to Medicaid- and Medicare-certified nursing homes in May and June, 2020. What steps are HHS, FEMA and CMS taking to help secure additional PPE for nursing home staff? Please provide any information HHS has regarding the aggregate requests for PPE from nursing homes since May 1, 2020?
- Please describe CMS' efforts to prepare for a second wave of COVID-19 in the fall and the specific steps it is taking to prepare nursing homes for such a possibility.

Sincerely,



Rosa DeLauro  
Chair  
Subcommittee on Labor, Health  
and Human Services, Education,  
and Related Agencies  
Committee on Appropriations  
U.S. House of Representatives



Patty Murray  
Ranking Member  
Subcommittee on Labor, Health  
and Human Services, Education,  
and Related Agencies  
Committee on Appropriations  
United States Senate