

United States Senate

WASHINGTON, DC 20510

July 1, 2020

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

Seema Verma
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Secretary Azar and Administrator Verma:

We write to express serious concerns about recent reports that thousands of nursing home residents across the United States have been evicted during the COVID-19 pandemic.¹ Such evictions have been of great concern for many years, but they are particularly troubling at a time when seniors and people who experience disabilities are among the most vulnerable to a disease that is spiraling out of control in many states.²

We seek assurances that you will use your existing authority to ensure that nursing homes are prevented from, and held accountable for, inappropriate discharges and evictions. The Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) must enforce existing regulations that define proper discharge procedures, and include a prohibition on evictions in the terms and conditions for eligibility to receive funding through the CARES Act Provider Relief Fund. To protect vulnerable residents from the acute risks to health and safety posed by improper evictions, the administration must make clear to nursing facilities that they will be ineligible for taxpayer relief if they engage in these inhumane practices at any point during this public health emergency.

Nursing homes and other long-term care facilities have been particularly hard hit by the COVID-19 pandemic, with residents and workers accounting for more than 54,000 COVID-19-related deaths in the United States to date, or more than 43 percent of deaths nationwide.³ Nursing home residents are especially vulnerable to COVID-19, with notable disparities across race, ethnicity, and socio-economic status. For example, recent data released by CMS illustrate that very low-income seniors and people

¹ Jessica Silver-Greenberg & Amy Julia Harris. "They Just Dumped Him Like Trash': Nursing Homes Evict Vulnerable Residents". New York Times. Accessed June 22, 2020. Available at:

<https://www.nytimes.com/2020/06/21/business/nursing-homes-evictions-discharges-coronavirus.html?action=click&module=Top%20Stories&pgtype=Homepage>

² Chris Canipe and Lisa Shumaker. "New U.S. COVID-19 cases surge 25% last week; Arizona, Florida and Texas set records". Reuters. Accessed June 23, 2020. Available at <https://mobile.reuters.com/article/amp/idUSKBN23U1L7>.

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

who experience disabilities are more likely to face hospitalizations due to COVID-19.⁴ These data clearly indicate that these low-income beneficiaries are more at-risk of serious complications from the virus, making the possibility that some nursing homes are targeting low-income residents with Medicaid for eviction all the more troubling.

According to the *New York Times*, more than 6,400 evictions have occurred across 18 states since the start of the pandemic. Nursing home residents often experience disabilities or struggle with complex health care needs. Under the best of circumstances, being transferred to another medical facility can be stressful for the patient and their family. It is simply egregious to forcibly evict a resident and place them in a non-medical facility without access to essential medical care, supportive services, and protections against COVID-19 infection. The consequences of housing insecurity during the COVID-19 pandemic are devastating for individuals and families. To rectify this, many states have taken critical steps to protect renters and homeowners from evictions and foreclosures for the duration of the public health emergency. Nursing home residents deserve protections too.

As you know, CMS regulations already prohibit nursing homes from making inappropriate discharges. A nursing home may only discharge a resident in certain circumstances, such as when the resident no longer needs services provided by the home, the resident's needs cannot be met by the home, or due to closure of the home.⁵ However, due to the COVID-19 emergency, visits from state Long-Term Care (LTC) Ombudsmen and residents' families have been limited, decreasing the scrutiny of facilities' discharge and eviction practices and heightening the need for proactive action from HHS and CMS.

Sadly, inappropriate evictions of nursing home residents is not a new practice.⁶ In both 2017 and 2018, more than 10,000 complaints related to discharges and evictions were filed with LTC Ombudsmen.⁷ Such complaints have been the most frequent type handled by LTC Ombudsman programs each year since 2011.⁸ It appears the unique circumstances of the COVID-19 pandemic have heightened evictions among low-income residents, and at the same time increased their risk of severe illness or death due to COVID-19. Despite existing regulations prohibiting nursing homes from improperly discharging residents, it is clear that this issue persists, and that the administration must act swiftly to curtail these deplorable practices.⁹

We strongly urge you to use your existing authority to stop this disturbing practice by enforcing existing regulations on discharge, and by adding similar prohibitions to the terms and conditions for eligibility to receive funding through the CARES Act Provider Relief Fund. We appreciate your prompt attention to

⁴ <https://www.cms.gov/research-statistics-data-systems/preliminary-medicare-covid-19-data-snapshot>

⁵ 42 CFR §483.15(c)(1)(i)

⁶ <https://www.modernhealthcare.com/article/20160505/NEWS/160509940/nursing-homes-turn-to-eviction-to-drop-difficult-patients>

⁷ Administration for Community Living. *National Ombudsman Reporting System, Complaints regarding discharge/eviction-planning, notice, procedure, implementation*. Accessed June 23, 2020. Available at: <https://bit.ly/3dv1A6N>

⁸ The National Long-Term Care Ombudsman. "Enhancing Your Advocacy Tool Box: Protecting Residents from Nursing Facility-Initiated Discharges". Available at: <https://ltcombudsman.org/uploads/files/support/omb-collaborative.pdf>, "Complaints about discharges have been the most common nursing home complaint received by Ombudsman programs for the last 7 years. In 2017, 10,610 of the 144,003 nursing home complaints were about discharges."

⁹ <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-18-08.pdf>

this important matter, and request that you provide an update by July 10, 2020 regarding the steps HHS and CMS plan to take in order to ensure that seniors and people with disabilities are protected from inappropriate discharges and evictions for the duration of the COVID-19 public health emergency and beyond.

Sincerely,

/s/ Margaret Wood Hassan

Margaret Wood Hassan
United States Senator

/s/ Robert P. Casey, Jr.

Robert P. Casey, Jr.
United States Senator

/s/ Sherrod Brown

Sherrod Brown
United States Senator

/s/ Bernard Sanders

Bernard Sanders
United States Senator

/s/ Elizabeth Warren

Elizabeth Warren
United States Senator

/s/ Tina Smith

Tina Smith
United States Senator

/s/ Jeanne Shaheen

Jeanne Shaheen
United States Senator

/s/ Thomas R. Carper

Thomas R. Carper
United States Senator

/s/ Richard Blumenthal

Richard Blumenthal
United States Senator

/s/ Cory A. Booker

Cory A. Booker
United States Senator

/s/ Ron Wyden

Ron Wyden
United States Senator

/s/ Amy Klobuchar

Amy Klobuchar
United States Senator