

Congress of the United States

Washington, DC 20515

June 25, 2020

The Honorable Dana Nessel
Attorney General of Michigan
G. Mennen Williams Building
525 W. Ottawa Street
P.O. Box 30212
Lansing, MI. 48909

Dear Attorney General Nessel:

The ongoing COVID-19 pandemic has disproportionately affected the elderly, especially those living in nursing homes and other long-term care facilities. We understand that your investigation will not cover the Governor's April 15, 2020 order requiring nursing homes to readmit COVID-19 positive residents, thereby recklessly reintroducing the disease into the most vulnerable population.¹ Therefore, we write requesting that you formally review the impact of this deadly policy and make your findings available to the citizens of Michigan 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 "For Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in Nursing Homes."² This guidance was 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.³

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."⁴ CMS did not mandate COVID-19 positive patients back to nursing homes but, instead, stated

¹ Executive Order No. 2020-50 (COVID-19) available at https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-525942--,00.html.

² 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).

³ *Id.*; (emphasis added).

⁴ 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>.

that a COVID-19 case at a hospital does not preclude the nursing home from accepting a COVID-19 negative patient.

Nonetheless, on April 15, 2020, Governor Whitmer issued an Executive Order mandating nursing homes accept patients regardless of COVID-19 status.⁵ The Order said that nursing homes must accept COVID-19 positive patients stating, “[a] long-term care facility *must not prohibit* admission or readmission of a resident based on COVID-19 testing requirements or results...”⁶ Michigan State Democratic Representative Leslie Love criticized your order calling it “an epic fail.”⁷

On June 15, 2020, the Select Subcommittee on the Coronavirus Crisis wrote Governor Whitmer seeking information regarding her decision to mandate nursing homes and long-term cares facilities admit untested and contagious COVID-19 patients from hospitals.⁸ This decision likely contributed to the thousands of elderly deaths in Michigan. According to the most recent available data, Michigan has suffered 2,022 nursing home deaths related to COVID-19.⁹ That is more than 34% of the State’s total COVID-19 deaths and more than 3% of the State’s entire nursing home population.¹⁰

In your current review of Michigan 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 other types of assisted living facilities, including the orders subsequently superseded;
2. An analysis of 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 which adversely affected the nursing homes’ efforts to contain or respond to the pandemic; and
3. The data collection practices of the State including:
 - a. the total number of patients infected with COVID-19 who were admitted or readmitted to nursing homes or assisted living facilities each day between January 1, 2020 and present;

⁵ Executive Order *supra* note 2.

⁶ *Id.*; (emphasis added).

⁷ Jonathan Oosting, et. al., *Michigan nursing homes linked to 1 in 4 coronavirus deaths. Tally will grow.*, BRIDGE (May 27, 2020), <https://www.bridgemi.com/michigan-health-watch/michigan-nursing-homes-linked-1-4-coronavirus-deaths-tally-will-grow>.

⁸ Letter from Steve J. Scalise, et. al., to Gretchen Whitmer, Governor, State of Michigan (June 15, 2020).

⁹ 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-](https://docs.google.com/spreadsheets/d/e/2PACX-1vRQztYJ5rdGLdKqNi7_7SGGciugkgwscN3judtUw2hoimsfH-t_NYXKMPONJkrA4jtJNMsuR7jkQite/pubhtml#)

[1vRQztYJ5rdGLdKqNi7_7SGGciugkgwscN3judtUw2hoimsfH-t_NYXKMPONJkrA4jtJNMsuR7jkQite/pubhtml#](https://docs.google.com/spreadsheets/d/e/2PACX-1vRQztYJ5rdGLdKqNi7_7SGGciugkgwscN3judtUw2hoimsfH-t_NYXKMPONJkrA4jtJNMsuR7jkQite/pubhtml#).

¹⁰ *Id.*

- b. including the name of the facility of admittance or readmittance; and
- c. the number of nursing home or assisted living deaths that occurred in either the patient's place of residence or in a medical setting.

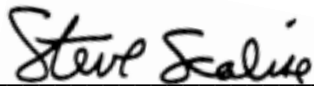
In addition to the above topics for your review, we respectfully request the following documents and information:

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

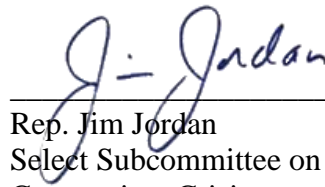
In addition to these documents, we request that you provide a written commitment to investigate this deadly policy by July 2, 2020.

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."¹¹ Thank you in advance for your cooperation with this inquiry.

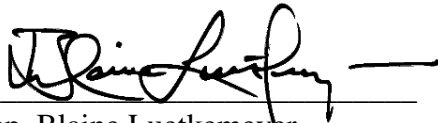
Sincerely,



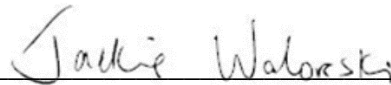
Rep. Steve Scalise
Ranking Member
Select Subcommittee on the
Coronavirus Crisis



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

¹¹ H. Res. 935 § 3(a)(4) (2020).

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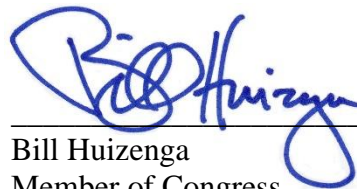
Rep. Mark E. Green, MD
Select Subcommittee on the
Coronavirus Crisis



Fred Upton
Member of Congress



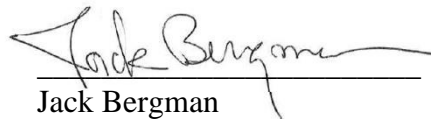
Tim Walberg
Member of Congress



Bill Huizenga
Member of Congress



John Moolenaar
Member of Congress



Jack Bergman
Member of Congress



Paul Mitchell
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