

# Congress of the United States

Washington, DC 20515

June 25, 2020

The Honorable Gurbir Singh Grewal  
Attorney General of New Jersey  
Office of the Attorney General  
RJ Hughes Justice Complex  
25 Market Street, Box 080  
Trenton, NJ. 08625

Dear Attorney General Singh Grewal:

The ongoing COVID-19 pandemic has disproportionately affected the elderly, especially those living in nursing homes and other long-term care facilities. On April 11, 2020, you announced that you were investigating nursing homes and long-term care facilities in the state.<sup>1</sup> We understand that your investigation will not cover Governor Murphy's March 31, 2020 directive for nursing homes to readmit COVID-19 positive residents, thereby recklessly reintroducing the disease into the most vulnerable population.<sup>2</sup> Therefore, we write requesting that you formally review the impact of this deadly policy and make your findings available to the citizens of New Jersey 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."<sup>3</sup> 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.<sup>4</sup>

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<sup>1</sup> Press Release, Office of the Attorney Gen., Statement of Attorney General Gurbir S. Grewal Regarding Deaths at Nursing Homes and Other Long-Term Care Facilities in New Jersey (Apr. 16, 2020), <https://www.nj.gov/oag/newsreleases20/pr20200416c.html>.

<sup>2</sup> Press Release, Insider NJ, Pennacchio: State Imposed 'No Test Order' for Admission to Nursing Homes (May, 8, 2020), <https://www.insidernj.com/press-release/pennacchio-state-imposed-no-test-order-admission-nursing-homes/>.

<sup>3</sup> 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).

<sup>4</sup> *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.”<sup>5</sup> 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 31, 2020, the New Jersey Department of Health issued a directive that mirrored New York’s, sending COVID-19 positive nursing home residents back to their residences.<sup>6</sup> This guidance said “[n]o patient/resident *shall be denied* re-admission or admission to the post-acute care setting solely based on a confirmed diagnosis of COVID-19” and “[p]ost-acute care facilities are *prohibited* from requiring a hospitalized patient/resident who is determined medically stable to be tested for COVID-19 prior to admission or re-admission.”<sup>7</sup> For clarity, this advisory mandated nursing homes accept known COVID-19 positive patients and, further, mandated that nursing homes not even test patients for COVID-19 prior to admission

On June 15, 2020, the Select Subcommittee on the Coronavirus Crisis wrote Governor Murphy seeking information regarding his decision to mandate nursing homes and long-term cares facilities admit untested and contagious COVID-19 patients from hospitals.<sup>8</sup> This decision likely contributed to the thousands of elderly deaths in New Jersey. According to the most recent available data, New Jersey has suffered 6,571 nursing home deaths related to COVID-19.<sup>9</sup> That is more than 50% of the State’s total COVID-19 deaths and more than 10% of the State’s entire nursing home population.<sup>10</sup>

In your current review of New Jersey 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 other types of assisted living facilities which adversely affected the nursing homes’ efforts to contain or respond to the pandemic; and

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<sup>5</sup> 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>.

<sup>6</sup> Press Release *supra* note 2.

<sup>7</sup> *Id.*; (emphasis added).

<sup>8</sup> Letter from Steve J. Scalise, et. al., to Phil Murphy, Governor, State of New Jersey (June 15, 2020).

<sup>9</sup> 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#).

<sup>10</sup> *Id.*

3. The data collection practices of the State including:
  - a. the total number of COVID-19 infected patients who were admitted or readmitted to nursing homes or other types of assisted living facilities each day between January 1, 2020 and present;
  - b. 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.

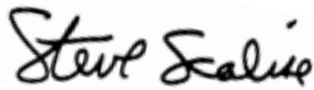
In addition to the above topics for your review, we respectfully request the following documents and information:

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

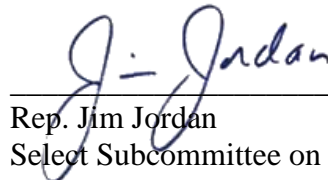
In addition to these documents, we request that you provide a written commitment to investigate this deadly policy by July 2, 2020.

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."<sup>11</sup> Thank you in advance for your cooperation with this inquiry.

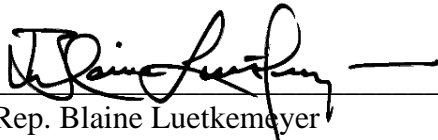
Sincerely,



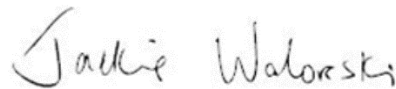
Rep. Steve Scalise  
Ranking Member  
Select Subcommittee on the  
Coronavirus Crisis



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

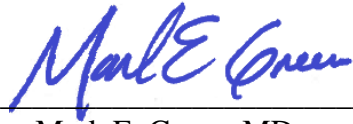
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<sup>11</sup> H. Res. 935 § 3(a)(4) (2020).

The Honorable Gurbir Singh Grewal

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

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

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