

Congress of the United States

Washington, DC 20515

June 25, 2020

The Honorable Josh Shapiro
Attorney General of Pennsylvania
Pennsylvania Office of Attorney General
Strawberry Square
Harrisburg, PA. 17120

Dear Attorney General Shapiro:

The ongoing COVID-19 pandemic has disproportionately affected the elderly, especially those living in nursing homes and other long-term care facilities. On May 12, 2020, you announced that your office has been investigating several Pennsylvania nursing homes for alleged inadequacies and negligence during the coronavirus pandemic.¹ We understand that your investigation will not cover Governor Wolf's March 18, 2020 guidance for nursing homes to readmit COVID-19 positive residents, thereby recklessly reintroducing the disease into the most vulnerable population.² Therefore, we write requesting that you formally review the impact of this deadly policy and make your findings available to the citizens of Pennsylvania 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."³ 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.⁴

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."⁵

¹ Press Release, Office of the Attorney Gen. Commonwealth of P.A., AG Shapiro: We Are Investigating Pennsylvania Nursing Homes for Criminal Neglect (May 12, 2020), <https://www.attorneygeneral.gov/taking-action/covid-19/ag-shapiro-we-are-investigating-pennsylvania-nursing-homes-for-criminal-neglect/>.

² Pa. Dep't of Health, *Interim Guidance for Nursing Facilities During COVID-19* (Mar. 18, 2020) available at https://pahomecare.memberclicks.net/assets/docs/FINAL%20FOR%20DISTRO_Interim%20Nursing%20Facility%20Guidance%2003192020%20at%201500.pdf.

³ 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).

⁴ *Id.*; (emphasis added).

⁵ 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>.

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 18, the Pennsylvania Department of Health issued guidance mandating nursing home facilities accept COVID-19 positive residents.⁶ The guidance stated “[n]ursing care facilities *must continue to accept* new admissions and receive readmissions for current residents who have been discharged from the hospital.”⁷ While you altered the guidance on May 12, the new guidance stated that “a positive test result is *not* a reason to refuse readmission to a resident.”⁸ The American Health Care Association warned that this order would “result in more people going to the hospital and more deaths.”⁹

On June 15, 2020, the Select Subcommittee on the Coronavirus Crisis wrote Governor Wolf seeking information regarding his decision to mandate nursing homes and long-term care facilities admit untested and contagious COVID-19 patients from hospitals.¹⁰ This decision likely contributed to the thousands of elderly deaths in Pennsylvania. According to the most recent available data, Pennsylvania has suffered 4,467 nursing home deaths related to COVID-19.¹¹ That is more than 68% of the State’s total COVID-19 deaths and more than 3% of the State’s entire nursing home population.¹²

In your current review of Pennsylvania 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

⁶ Pa. Dep’t of Health, *supra* note 2.

⁷ *Id.* (emphasis added)

⁸ Pa. Dep’t of Health, *Interim Guidance for Nursing Care Facilities During COVID-19* (May 12, 2020) (available at <https://www.health.pa.gov/topics/Documents/Diseases%20and%20Conditions/COVID-19%20Interim%20Nursing%20Facility%20Guidance.pdf>). (emphasis added)

⁹ David Robinson, et. al., *States orders nursing homes to take COVID-19 residents. Thousands dies. How it happened*, BUCKS COUNTY COURIER TIMES (May 1, 2020), <https://www.buckscountycouriertimes.com/news/20200501/states-ordered-nursing-homes-to-take-covid-19-residents-thousands-died-how-it-happened>.

¹⁰ Letter from Steve J. Scalise, et. al., to Tim Wolf, Governor, Commonwealth of Pennsylvania (June 15, 2020).

¹¹ 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-1vRQztYJ5rdGLdKqNi7_7SGGciugkgwscN3judtUw2hoimsfH-t_NYXKMPONJkrA4jtJNMsuR7jkQite/pubhtml#.

¹² *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 total number of nursing home or assisted living deaths that occurred in either the patient's place of residence or in a medical setting.

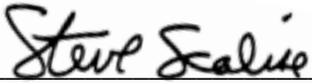
In addition to the above topics for your review, we respectfully request the following documents and information:

1. All information, documents, and communications between your office, the Office of the Governor, and the Pennsylvania 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."¹³ Thank you in advance for your cooperation with this inquiry.

Sincerely,



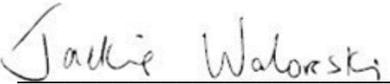
Rep. Steve Scalise
Ranking Member
Select Subcommittee on the
Coronavirus Crisis



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

¹³ H. Res. 935 § 3(a)(4) (2020).

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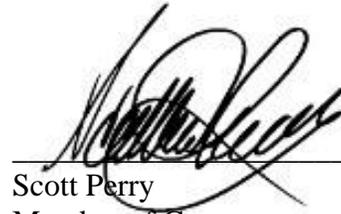
Rep. Mark E. Green, MD
Select Subcommittee on the
Coronavirus Crisis



Glenn 'GT' Thompson
Member of Congress



Mike Kelly
Member of Congress



Scott Perry
Member of Congress



Lloyd Smucker
Member of Congress



John Joyce
Member of Congress



Daniel P. Meuser
Member of Congress



Guy Reschenthaler
Member of Congress



Fred Keller
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