

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

July 10, 2020

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Ave., S.W.
Washington, DC 20201

Re: Increasing oversight of nursing homes through improved surveys and data

Dear Administrator Verma:

Since the early days of the COVID-19 pandemic in the United States, long-term care facilities have been the epicenter of infection and death. Data suggest that more than 55,000 residents and staff of long-term care facilities have perished from COVID-19 – representing more than 40 percent of all deaths nationwide – and that is likely an underestimate, given the paucity of adequate testing as well as reports of significant missing data.¹ Long-term care facilities have been linked to more than 50 percent of COVID-19 deaths in some states.² These data represent not only a public health emergency but also a human rights tragedy.

And yet, there are reports of insufficient survey activity and unreliable data across nursing homes – the very oversight activities necessary to keep patients safe. Even in typical times, nursing homes are hotspots for infection and disease. In the United States, one to three million serious infections occur in nursing homes each year, and more than 388,000 residents die due to these infections.^{3 4} Over 60 percent of facilities have been cited for deficiencies relating to infection control since the beginning of 2017.⁵

Therefore, I have deep concerns that the surveys the Centers for Medicare & Medicaid Services (CMS) has been overseeing since its March 4th guidance to state survey agencies are inadequate to identify deficiencies in these homes. I am also alarmed by the reports of unreliable and missing COVID-19 data the agency reported during June. The combination of inadequate surveys and unreliable data reporting will have dramatic consequences for patients and families who rely on this information to make informed decisions about their care. For example, by limiting surveys that inform the inspection domain of CMS's five star quality rating system, patients and their families will not have the tools necessary to make informed decisions about which facilities succeed at true

¹ <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>

² <https://www.nytimes.com/interactive/2020/05/09/us/coronavirus-cases-nursing-homes-us.html>

³ <https://www.cdc.gov/longtermcare/index.html>

⁴ <https://nursinghome411.org/nursing-home-infection-control-citations-march2020/>

⁵ <https://khn.org/news/COVID-19-preparedness-infection-control-lapses-at-top-rated-nursing-homes/>

infection control prevention when choosing where to send their loved one in times of need and vulnerability. I applaud the agency's June 25, 2020, announcement that it is reinstating collection of staffing data through the Payroll-Based Journal system, but this is just a first step the Administration must begin taking to restore vital nursing home oversight activities that have been reduced during the pandemic.

In March, Congress emphasized its commitment to nursing home surveys, including at least \$100 million in additional funds solely for nursing home surveys in the Coronavirus Aid, Relief, and Economic Security (CARES) Act (PL 116-136), which was signed into law on March 27, 2020.⁶

Infection control deficiencies are not new to the long-term care setting: The HHS Office of Inspector General (OIG) found that infection control was the second-highest cited problem at nursing homes, where surveyors found nursing homes had 34,000 deficiencies.⁷ The Government Accountability Office (GAO) similarly reported, "Prior to the COVID-19 pandemic, ... most nursing homes were cited for infection prevention and control deficiencies (82% of those surveyed from 2013-2017). About half of these homes had persistent problems and were cited across multiple years."⁸ Further, GAO found that only 18 percent of nursing homes were not cited for infection control deficiencies.⁹ Infection control during the COVID pandemic is certainly difficult, but it is not impossible. One nursing home in Baltimore that had focused on infection control has had zero cases of COVID-19 after putting in place distancing, masking, and infection control requirements.¹⁰

Since the pandemic, less than three percent of surveys have found infection control deficiencies, despite the long history of infection control deficiencies in facilities, raising questions about the reliability of these survey results.¹¹ A recent Center for Medicare Advocacy analysis reported a "dramatic and implausible decline in infection control deficiencies." Long-term care ombudsmen have raised similar concerns about these abbreviated surveys' inability to find deficiencies needed to protect patients.¹²

I appreciate that CMS demanded states complete all of their focused nursing home surveys by the end of July and increased penalties on deficiencies; however, I remain concerned that the "streamlined tool" CMS required in its March 23rd guidance is inadequate to robustly survey nursing homes and reliably capture infection control problems in nursing homes.^{13 14} Given the clear congressional imperative for nursing facility surveys and reliable data, as well as the concerns for families and patients around the country about long-term care facilities and COVID-19, I request that you respond to the following questions by July 24, 2020:

1. Please provide the number of nursing home surveys conducted nationally in March, April, May, and June of 2020.

⁶ CARES Act funding

⁷ <https://www.nytimes.com/2020/06/21/business/nursing-homes-evictions-discharges-coronavirus.html>

⁸ <https://www.gao.gov/assets/710/707069.pdf>

⁹ *Id.*

¹⁰ <https://www.baltimoresun.com/opinion/columnists/dan-rodricks/bs-md-rodricks-0619-20200618-re2obahhbzbd DOJazrkf65gdoq-story.html>

¹¹ <https://medicareadvocacy.org/wp-content/uploads/2020/06/Infection-Control-Surveys-Report.pdf>

¹² <https://www.kentucky.com/news/coronavirus/article243597882.html>

¹³ <https://www.cms.gov/files/document/qso-20-31-all.pdf>

¹⁴ <https://www.cms.gov/files/document/qso-20-20-all.pdf>

- a. Please categorize each of these surveys based on CMS's March 23rd guidance according to the following categories: 1) Complaint/facility-reported incident surveys, 2) Targeted Infection Control Surveys, 3) Self-assessments.¹⁵
 - b. Please provide the number of surveys conducted during these months, by state.
 - c. Please also provide the number of surveys that were conducted for this time period in 2018 and 2019.
2. Please provide detailed information on what CMS is doing to ensure that surveys continue to be robust in light of the clear safety challenges in these facilities.
- a. Please provide detailed documentation of the plans CMS has in place to reinstate standard surveys of nursing homes, including the public health protocols that will need to be incorporated to ensure safety of nursing home staff and surveyors.
3. Following the July 31, 2020, deadline outlined in CMS's June 1 memo, please provide additional follow-up data on the states that have not completed 100 percent of their focused infection control surveys.
- a. For what reasons does the agency plan to grant exceptions for states that do not submit corrective action plans and conduct 100 percent of their surveys within 30 days? Please provide detailed documentation around the ways CMS plans to enforce this guidance and the potential financial penalty associated with non-compliance.¹⁶
4. Please provide a detailed plan on the ways CMS seeks to improve the reliability of the COVID-19 nursing home data the agency publicly releases, including its approach to addressing missing data in the dataset.
- a. Please provide a *weekly* data report to Congress that includes: a) updates to the data, b) an overview of missing data and plans to remedy this, and c) a summary of methodological changes the agency is employing to address these data reliability issues.

Thank you for your attention to this important matter. If you have questions, please contact Rachel Dolin with the Ways and Means Committee Majority staff at Rachel.Dolin@mail.house.gov or 202-225-3625.

Sincerely,



Richard E. Neal
Chairman

¹⁵ *Id.*

¹⁶ <https://www.cms.gov/files/document/qso-20-31-all.pdf>