

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

November 3, 2021

Secretary Xavier Becerra
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Becerra:

Early in the COVID-19 pandemic some states required nursing homes to admit or re-admit COVID-19 infected residents regardless of whether the nursing homes had the necessary supplies or could comply with the relevant guidelines to keep their residents and staff safe.¹ These directives may have resulted in additional cases of COVID-19 and the death of thousands of nursing home residents.² We write today to renew our request for specific reports provided by the federal government to the states regarding COVID-19-related nursing home death data.

The Ways and Means Committee has oversight of Medicare reimbursements to skilled nursing facilities and thus has a strong interest in how nursing homes are operating, and the safety of the staff and those who are in the care of these facilities. Therefore, on February 25, 2021, Ways and Means Ranking Member Brady, Ways and Means Subcommittee on Health Ranking Member Nunes, and Representative Reed requested a briefing from the Department of Health and Human Services (HHS) regarding its role in collecting state government data related to New York nursing home deaths.³ On March 11, 2021, HHS provided a briefing to Ways and Means Committee staff in response to the request made in the February 25, 2021, letter.⁴ During the March 11, 2021, briefing, we learned that the Centers for Disease Control and Prevention (CDC) used the National Health Safety Network (NHSN) to gather COVID-19 related nursing home data directly from nursing homes across the country. As part of that data collection effort, which began in May 2020, the CDC provided monthly reports to state governments summarizing the data reported directly by nursing homes.

This briefing was helpful, but we remain concerned about the policy decisions in the early days of the COVID-19 pandemic regarding nursing homes and whether certain states may

¹ Kim Barker and Amy Julia Harris, *'Playing Russian Roulette': Nursing Homes Told to Take the Infected*, THE NEW YORK TIMES (Mar. 15, 2021), <https://www.nytimes.com/2020/04/24/us/nursing-homes-coronavirus.html>.

² U.S. Department of Justice, *Department of Justice Requesting Data From Governors of States that Issued COVID-19 Orders that May Have Resulted in Deaths of Elderly Nursing Home Residents* (Aug. 26, 2020), <https://www.justice.gov/opa/pr/departement-justice-requesting-data-governors-states-issued-covid-19-orders-may-have-resulted>.

³ Letter from H. Comm. on Ways and Means Ranking Member Brady, et al., to Norris Cochran, Act. Sec'y of the U.S. Department of Health and Human Services (Feb. 26, 2021), https://gop-waysandmeans.house.gov/wp-content/uploads/2021/02/2021.02.26-HHS-Request-for-Information_briefing_v21.pdf.

⁴ H. Comm. on Ways and Means, *Probe into Missing Nursing Home COVID Death Data Focuses on NY, PA, and Other States* (Mar. 25, 2021), <https://gop-waysandmeans.house.gov/probe-into-missing-nursing-home-covid-death-data-focuses-on-ny-pa-other-states/>.

Letter to The Honorable Xavier Becerra

November 3, 2022

Page 2

have intentionally misled the public and perhaps the federal government regarding COVID-19-related deaths in those facilities. As a result of these concerns Ways and Means Republicans sent a letter on March 24, 2021, to HHS Secretary Becerra seeking all NHSN summary reports that were provided to New York, Pennsylvania, Michigan, New Jersey, and California.⁵ The department has yet to provide those documents and we continue to expect them to be produced to the Committee.

Transparency is essential because it promotes accountability and provides information for Congress and Americans about what the federal and state governments are doing. The American people deserve a government that is accountable, which is especially critical when decisions are made that may have resulted in additional transmission of the COVID-19 virus and the loss of thousands of American lives. Therefore, we request that the Department preserve all documents and communications in its custody related to COVID-19-related nursing home data collection through NHSN and about whether certain states may have intentionally misled the public and perhaps the federal government regarding COVID-19-related deaths in those facilities.

Please provide a response to the March 24, 2021, letter and confirm that the Department has taken actions to preserve documents related to this matter by November 17, 2022. If you have any questions or wish to discuss the request, please contact Sean Clerget or Brittany Havens of the Ways and Means Committee staff at (202) 225-4021.

Sincerely,



Kevin Brady
Republican Leader
Committee on Ways and Means



Mike Kelly
Committee on Ways and Means



Lloyd Smucker
Committee on Ways and Means

⁵ Letter from H. Comm. on Ways and Means Ranking Member Brady, et al., to The Hon. Xavier Becerra, Sec'y of the U.S. Department of Health and Human Services (Mar. 24, 2021), <https://gop-waysandmeans.house.gov/wp-content/uploads/2021/03/2021.03.24-HHS-Doc-Request-on-Nursing-Homes.pdf>.