

May 11, 2020

The Honorable Lindsey Graham
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington D.C. 20510

Dear Chairman Graham and Ranking Member Feinstein:

As organizations that advocate on behalf of our country's 1.3 million nursing home residents, we write to strongly oppose granting immunity to nursing homes during the Covid-19 pandemic. As you are aware, Covid-19 is raging through nursing homes across the country. To date, at least 11,000 nursing home residents have died due to Covid-19, although we expect that number is much larger.¹ Stripping residents of their right to hold nursing homes accountable for substandard care will put more residents at risk and inevitably result in increased resident deaths. We implore you to keep this fundamental right in place and to consider other solutions to promote the safety and welfare of residents.

The needs of nursing home residents are significant. The increased prevalence of physical and cognitive impairments places residents at great risk of abuse, neglect, and poor care. As a society, we have always afforded nursing home residents access to the legal system because we understand how important it is to their health and well-being. Residents depend on the quality of care provided by nursing homes. Judicial recourse discourages current and future bad practices by nursing homes and helps bring about positive health outcomes for nursing home residents. By allowing nursing homes to operate without this important check, we sacrifice one of the most effective tools in ensuring our fellow citizens are not neglected and harmed.

Prior to Covid-19, nursing home residents were visited by their families and friends, who kept a watchful eye on the care their loved ones were receiving. Residents were assisted by the advocacy of long-term care Ombudsmen, protection and advocacy agencies, and licensing agencies conducted regular inspections and responded to complaints. Currently, none of these necessary protections are operating sufficiently to ensure resident safety. Due to lockdowns, residents are living and dying in nursing homes isolated from their families and absent any outside oversight. In truth, very few people, other than staff, know what is happening in nursing homes at this time. Essentially, the only mechanism available for a nursing home resident to hold facilities responsible for substandard care is judicial recourse. By removing this safety net, nursing homes will have little to no oversight.

As longtime advocates for nursing home residents, it is evident that this crisis in nursing homes was foreseeable. For years, nursing home owners and operators have cut corners and understaffed facilities

¹ A report issued on April 23, 2020 documented 10,378 Covid-19 related deaths in nursing homes. However, this data was only from the 23 states that were publicly reporting data as of that date.

<https://www.kff.org/medicaid/issue-brief/state-reporting-of-cases-and-deaths-due-to-covid-19-in-long-term-care-facilities/>

to maximize profits. A recent New York Times article directly ties profit seeking in nursing homes to a steep decline in quality of care.² Infection control, disease prevention, and disaster planning are at the core of any quality nursing home's mission. We have always known how devastating illnesses like the flu can be to nursing home residents, who live in close quarters and have pre-existing conditions that make even the common cold deadly. Yet, year after year nursing homes have been cited for poor infection control procedures and substandard care. Unfortunately, Covid-19 has exposed just how deadly inadequate preparation, poor care, and striving for ever increasing profits can be to nursing home residents.

For instance:

- Life Care Center of Kirkland, Washington became the center of the state's coronavirus outbreak, with 35 patients eventually dying. The facility held a Mardi Gras party in late February, even though staff had noticed respiratory illnesses in residents weeks earlier. Two residents died that same day.³ The Centers for Medicare and Medicaid Services subsequently fined the nursing home for failing to report an outbreak of respiratory illness in a timely way; providing inadequate care; and failing to provide 24-hour emergency doctor services.⁴
- New Jersey police found 18 bodies stacked up in a "makeshift" facility at a New Jersey nursing home.⁵ The nursing home had a history of complaints and citations, receiving a one-star rating from CMS. The NJ Attorney General is investigating.⁶
- At least 35 residents died and at least 90 more residents and 25 health care providers tested positive in a Richmond, Virginia nursing home.⁷ Before the outbreak, the latest CMS inspection gave the facility two stars, citing "serious staffing shortages," "high rates of bed sores," and "nearly twice as many health deficiencies as the average Virginia nursing home."⁸

It would be perverse to ask facility residents to pay with their lives for the woefully insufficient emergency preparedness and substandard care of nursing homes, while allowing nursing homes themselves to face no repercussions for their egregious behavior.

² Roughly 70% of the 15,1400 nursing homes in the United State are owned by private investors. The Times article directly tied the purchase of nursing homes by private investment firms to declines in staffing hours and quality ratings. <https://www.nytimes.com/2020/05/07/business/coronavirus-nursing-homes.html>

³ The Coronavirus's Rampage Through a Suburban Nursing Home, New York Times, March 21, 2020, available at <https://www.nytimes.com/2020/03/21/us/coronavirus-nursing-home-kirkland-life-care.html>

⁴ Wash. nursing home faces \$611,000 fine over lapses during fatal coronavirus outbreak, Washington Post, April 2, 2020, available at https://www.washingtonpost.com/investigations/wash-nursing-home-faces-611000-fine-over-lapses-during-fatal-coronavirus-outbreak/2020/04/02/757cee76-7498-11ea-87da-77a8136c1a6d_story.html

⁵ Abbott Koloff, Susanne Cervenka, Jennifer Jean Miller, and Lori Comstock, New Jersey Nursing Home Where Bodies Found in Makeshift Facility has History of Citations, USA Today, April 17, 2020, available at [USA Today.com](https://www.usatoday.com/story/news/nation/2020/04/17/new-jersey-nursing-home-bodies-found-in-makeshift-facility-has-history-of-citations/5181366002/)

⁶ As the New York Times article points out, this particular home was owned by a Chicago based investor who purchased this home and now leases it to the operator for eight million dollars per year.

⁷ Richmond nursing home at center of Virginia coronavirus outbreak, MSNBC, April 9, 2020, available at <https://www.msnbc.com/hallie-jackson/watch/richmond-nursing-home-at-center-of-virginia-coronavirus-outbreak-81836613614>.

⁸ Michael Martz and Bridget Balch, Inside the Covid-19 Spread at Henrico's Canterbury, Richmond Times, April 10, 2020, available at https://www.richmond.com/special-report/coronavirus/we-were-simply-ripe-for-a-spread-like-this-inside-the-covid-19-spread-at/article_2b265624-7fb6-5fe4-b080-9becb003fadb.html

Legal liability has always functioned as a safeguard for nursing home residents by incentivizing nursing homes to provide quality care and comply with laws and regulations. It has served as a silent overseer of nursing homes who know that individuals in this country will not stand for neglect and inadequate care. By providing immunity, Congress would be placing nursing home residents in jeopardy at a time when they are the Americans suffering most from the Covid-19 outbreaks. As a nation, we cannot tolerate rewarding nursing homes for years of cost cutting and profit maximizing by relieving them of responsibility.

We urge you to reject immunity, and instead send a message that our country will not tolerate negligent care of our parents, grandparents, friends, and neighbors. They deserve better.

Sincerely,

California Advocates for Nursing Home Reform

The Center for At Risk Elders (C.A.R.E.)

Center for Medicare Advocacy

Community Legal Services of Philadelphia

Justice in Aging

Law Firm of D. F. Truhowsky

Long Term Care Community Coalition

NALLTCO - National Association of Local Long Term Care Ombudsman

National Academy of Elder Law Attorneys

National Association of Social Workers (NASW)

National Association of State Long Term Care Ombudsman Programs

The National Consumer Voice for Quality Long-Term Care

National Disability Rights Network

Rivera & Shackelford, P.C.

Service Employees International Union

cc: Members, Senate Committee on the Judiciary