

Oppose Immunity for Long-Term Care Facilities During the Covid-19 Pandemic

As advocates for our nation's 1.3 million nursing home residents, we strongly oppose the Safe to Work Act provisions contained in the Senate Republicans' most recently introduced COVID-19 relief bill (S. 178). The bill would allow nursing homes to avoid accountability for their negligent care that harms or kills residents during the COVID-19 pandemic. Over 70,000 residents of long-term care facilities have died from COVID-19 since the pandemic began, countless others have suffered from months of neglect and inadequate care. Although residents of long-term care facilities make up less than half a percent of the American population, they account for 40% of the country's deaths from COVID-19.

Most of these deaths could have been prevented. Years of short staffing and cost cutting to maximize profits resulted in a nursing home industry unprepared to protect residents from infectious disease. Just last month, Seema Verma, the head of the Centers for Medicare & Medicaid Services, stated that failures in basic infection control procedures, such as hand washing, were contributing to the spread of COVID-19 in nursing homes. A report by the Government Accountability Office released in May 2020 found that 82% of all nursing homes had infection control violations in the years prior to the pandemic, with half of those having persistent problems. Now, after tens of thousands of Americans have paid with their lives, the Safe to Work Act will ensure the industry faces no repercussions.

The bill effectively bars all claims against nursing homes until 2024, only allowing suits to proceed where the facility committed gross negligence. To prove gross negligence, a resident or family member would have to show that the facility knew it was placing residents at risk of harm but acted anyway - a standard that is almost impossible to meet. For harm that is not gross negligence, immunity would apply to any claim that is COVID-19 related, which is defined so broadly that any action or decision by a nursing home would likely qualify for immunity, regardless of whether the harm suffered is from COVID-19 itself. The bill goes even further to prohibit lawsuits in cases involving deliberate short staffing and failure to obtain the resources necessary to provide quality care.

We oppose immunity because:

- Immunity harms current and future residents of nursing homes by sanctioning the provision of negligent care by facilities.
- Liability for negligent care protects residents, who currently have little to no protections but the justice system.
- The death and suffering in nursing homes due to the pandemic was largely preventable. Immunity rewards facilities that placed profits over residents.
- Immunity places workers at risk. When facilities do not need to comply with reasonable standards, workers face hazards and increased risks of injury and COVID-19 infection.

Rather than focusing on removing essential protections from nursing home residents, Congress should pass legislation that prevents further devastation in nursing homes. Both the HEROES Act (H.R. 6800 and the Nursing Home COVID-19 Protection and Prevention Act (S. 3768) are bills that offer funding and protection for residents. We strongly urge members of Congress to oppose the Safe to Work Act and to stand up for nursing home residents. They are our loved ones, our parents, our children, our friends, and our neighbors. We must protect them!

For more information, please contact Sam Brooks, sbrooks@theconsumervoice.org

The Coalition for the Protection of Residents of Long-Term Care Facilities

The Coalition for the Protection of Residents of Long-Term Care Facilities is comprised of advocates opposed to weakening protections for residents of long-term care facilities during the COVID-19 pandemic. Coalition members include:

California Advocates for Nursing Home Reform

Center for Independence of Disabled, NY

Center for Medicare Advocacy

Center for Public Representation

Justice in Aging

Law Firm of D.H. Truhowsky

Levin & Perconti

Long Term Care Community Coalition

National Academy of Elder Law Attorneys

National Association of Long-Term Care Ombudsman

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