

July 20, 2020

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, DC 20515

RE: Oppose H.R. 7059, Which Would Allow Nursing Homes to Escape Accountability for Their Negligent Care During the COVID-19 Pandemic

Dear Speaker Pelosi and Leader McCarthy:

As advocates for our country's 1.3 million nursing home residents, we write to strongly oppose H.R. 7059, the "Coronavirus Provider Protection Act." H.R. 7059 would provide blanket immunity for nursing homes that negligently put older adults and persons with disabilities at risk of death at a time when COVID-19 is raging through nursing homes across the country.

In the United States, over 54,000 residents of long-term care facilities have died due to COVID-19 since the pandemic began, which accounts for roughly 43% of all deaths in the country.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 and 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.

But that is exactly what H.R. 7059 would do. The legislation would immunize nursing homes if the facility follows "any direction, guidance, recommendation, or other statement made by a Federal, State, or local official." This dangerously overbroad language would provide a liability shield for a nursing home whose safety practices were based on any statement by any public official, whether

¹ <https://www.nytimes.com/2020/06/29/world/coronavirus-updates.html>

or not it was backed by public health or scientific expertise. This low standard would remove the last line of defense we have to ensure our loved ones are being cared for properly.

In fact, using COVID-19 as an excuse, H.R. 7059 actually provides nursing homes a legal shield from accountability that they have been seeking for many years. For example, the scope of the legislation goes far beyond COVID-19 patients. It covers any care or diagnosis by a health care professional during the emergency, whether or not it is COVID-19 related. Moreover, the bill provides immunity for nursing homes with inadequate staffing and resources, even though these have been long-standing problems in nursing homes, unrelated to the coronavirus.

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 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/5248136613614)

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-b080-9becb003fbdb.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 passing H.R. 7059 or any similar immunity bill, 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 reward 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
Center for At-Risk Elders
Center for Medicare Advocacy
Center for Public Representation
Community Legal Services of Philadelphia
Justice In Aging
Levin & Perconti
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 State Long-Term Care Ombudsman Programs
The National Consumer Voice for Quality Long-Term Care
National Continuing Care Residents Association
National Disability Rights Network
Rivera & Shackelford, P.C.
Service Employees International Union

cc: Members of the United States House of Representatives