



May 13, 2020
Governor Gavin Newsom
State of California State Capitol
Sacramento, California 95814

Re: Opposition to Long-Term Care Facilities' Request for Blanket Immunity for Providing Inadequate Care

Dear Governor Newsom:

On behalf of the California Elder Justice Coalition (CEJC), a multidisciplinary network of 80 agencies, advocacy organizations, coalitions, and individuals, we thank you for your commitment to serving older adults. CEJC's mission is to provide a voice from the field on preventing elder abuse and upholding the rights of older Californians.

We particularly appreciate your attention to residents of skilled nursing facilities and residential care facilities for the elderly. As you well know, California's Departments of Public Health and Social Services recently reported that COVID-19-related deaths in nursing homes account for nearly 50% of the deaths statewide.ⁱ

We recognize that your call for some facilities to take extraordinary measures to meet communities' needs during these unprecedented times have required some modifications in regulations and standards. We are, however, troubled by requests from industry leaders for you to take executive action to grant what amounts to blanket immunity from potential civil and criminal lawsuits, as well as licensing violations and penalties for adverse care outcomes. It is only through civil actions that elders get justice when facilities commit major acts of elder abuse and through civil court settlements that facilities have been forced to provide sufficient staffing and enact other measures to ensure quality care.

State oversight of facilities has historically been inadequate, allowing bad actors to operate with impunity. Even before COVID-19, many facilities were not compliant with state and federal regulations, including standards for infection control. According to a Kaiser Family Foundation report, California had the highest proportion of deficiencies related to the spread of infections of any state (63% in 2017).ⁱⁱ Facilities that lacked adequate staffing, personal protective equipment, or infection control procedures before the epidemic should not get a pass.

Providing blanket preemptive relief would further deprive residents and their families of legal recourse for both current and long-standing industry failures and for holding bad actors and profiteers accountable. Corporations would have less incentive to address problems at a time when enhanced quality control and safety measures are most needed.

Liability protections must not grant facilities blanket immunity from administrative, civil, or criminal liability for care they provide during the statewide coronavirus emergency or in its aftermath. We stand with our colleagues at the California Long-Term Care Ombudsman Association and others in urging you to allow the judiciary and regulatory systems to carry out their critical functions.

We stand ready to work with you and your administration to get to the other side of this pandemic in ways that strengthen protections for California's most vulnerable residents.

Please do not hesitate to contact us for assistance or information at:

Lisa Nerenberg, CEJC Executive Director at Lisanerenberg.CEJC@gmail.com

Carol Sewell, CEJC Steering Committee Chair at carol.sewell@cco.ca.gov

ⁱ California Department of Public Health. "Skilled Nursing Facilities: COVID-19." Available at: https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/SNFsCOVID_19.aspx

ⁱⁱ Kaiser Family Foundation. "Data Note: How might Coronavirus Affect Residents in Nursing Facilities." at <https://www.kff.org/coronavirus-covid-19/issue-brief/data-note-how-might-coronavirus-affect-residents-in-nursing-facilities/>