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June 8, 2020

The Honorable Adrin Nazarian

Chair, Assembly Committee on Aging & Long-Term Care

State Capitol, Room 4146

Sacramento, CA 95814

The Honorable Jim Wood

Chair, Assembly Health Committee

State Capitol, Room 6005

Sacramento, CA 95814

RE: The COVID-19 Outbreak in Skilled Nursing Facilities and the State’s Response: A

Discussion of What Has Worked, What Has Not, and What Are Plans for the Future?

Dear Chairman Nazarian and Chairman Wood:

On behalf of the California Elder Justice Coalition, I thank you for convening the June 9th joint oversight hearing on the COVID-19 outbreak in skilled nursing facilities and providing us the opportunity to submit written comments. CEJC is a multidisciplinary membership organization with over 80 members that is devoted to advancing the rights of older Californians and promoting equity for people of all ages.

As you know, older Californians, and particularly those in nursing homes, have borne the brunt of the pandemic. 79% of COVID deaths have occurred among people over the age of 65 and, of these deaths, more than 40% were among nursing home residents.[[1]](#footnote-1)

In the absence of federal leadership, the responsibility for responding to the crisis has fallen to the state, which was largely unprepared. Sadly, guidance from the California Department of Public Health (CDPH), often in the form of “All Facilities Letters,” have been confusing and counterproductive, even directing facilities to admit COVID-19 positive patients without adequate protective gear, testing, and the ability to isolate residents. Residents have been isolated from family members leading to extreme isolation, loneliness, and distress to residents. Long Term Care Ombudsman Programs, which are charged to defend residents’ rights and serve as the eyes and ears within facilities, have also been denied access. While extreme caution is needed to protect residents, personnel, and the community against COVID-19, some of these restrictions appear arbitrary or discriminatory.

Although we recognize that the COVID-19 pandemic is unprecedented and calls for sweeping emergency action, the pandemic has exposed longstanding failures by nursing homes to offer adequate infection control measures. A May 2020 Government Accountability Office (GAO) report shows that of 1,174 California nursing homes surveyed in 2017, over 60% had been cited for infection prevention and control deficiencies.[[2]](#footnote-2) Studies also show that facilities consistently fail to meet minimum federal staffing guidelines for nurse aides, CNAs, licensed practical nurses, and registered nurses, which also increases the risk of infection.[[3]](#footnote-3) Because of low wages and the failure of facilities to provide overtime pay, many employees work at multiple facilities to make ends meet, further raising the risk of spread of COVID-19 and other infections. We believe that the devastating impact of the current pandemic cannot be reversed, or future threats avoided, without addressing these persistent systemic problems.

The current crisis calls for an all arms on deck response that must include nursing home industry leaders. It is disappointing to hear that at a time when reforms are clearly needed, some leaders are seeking blanket immunity that would not only shield them from liability for recent failures but for longstanding malfeasance or neglect. Granting blanket immunity would also deny nursing home residents their right to seek recourse for egregious acts or failures.

Long Term Care Ombudsman Programs can also play a critical role in the state’s response to COVID-19 in nursing homes and residential care facilities. While, in the interest of safety, on-site visits may not be possible at this time, Ombudsman can provide guidance to local public health officials. They understand residents’ functional abilities, the levels of care they require, standards of practice, infection control policies and challenges, and facilities’ statutory and regulatory responsibilities. They are also familiar with facilities’ performance histories.

In light of these problems and in the interests of protecting long-term care facility residents now and in the future, CEJC offers the following recommendations:

* Make relief funds to nursing homes for COVID-19 expenses or lost revenue contingent upon facilities providing acceptable standards of care with respect to personal protective equipment, screening, transparency, and staffing levels.
* Prevent hospitals from discharging patients with COVID-19 into long-term care facilities with inadequate protections.
* Direct local public health officials to consult with Long Term Care Ombudsmen about patient care needs and rights.
* Develop measures to assist residents communicate with family, friends, and Ombudsmen; and allow screened visitors, using proper PPE, into facilities.
* Adopt measures to expand and support the long-term care workforce by providing health care access, sick leave benefits, overtime and hazard pay, child care, and workplace protections.

Again, we thank you for convening this hearing and invite you to call upon us for assistance.

Sincerely,

Lisa Nerenberg, Executive Director

California Elder Justice Coalition

ElderJusticeCal.org

1. <https://www.sacbee.com/news/local/health-and-medicine/article242348891.html> [↑](#footnote-ref-1)
2. <https://www.gao.gov/assets/710/707069.pdf>. [↑](#footnote-ref-2)
3. Harrington, C.; Mollot, R.; Edelman, T.S.; Wells, J.; & Valanejad, D. (2020). U.S. nursing home violations of international and domestic human rights standards. *international Journal of Health Services* 50(1) :62‐72. doi:10.1177/0020731419886196 [↑](#footnote-ref-3)