

Congress of the United States
Washington, D.C. 20515

March 16, 2021

The Honorable Alison Beam
Acting Secretary
Pennsylvania Department of Health
Health and Welfare Building
8th Floor West
625 Forster Street
Harrisburg, PA 17120

Dear Acting Secretary Beam:

We write to request information relating to the actions the Department took to protect long-term care residents leading up to and during the COVID-19 pandemic. Further, we seek information regarding how the Department, under new leadership, will take the lessons learned from the recent pandemic and improve the quality of care provided in long-term care living facilities.

Ultimately, the state has the sole responsibility of determining which nursing homes may operate based on its own licensing requirements and state regulation, which can be set at or above federal requirements. As you know, entities of the states, known as state survey agencies, are tasked with performing regular surveys of nursing homes, including on-site inspections, under the direction of the Pennsylvania Department of Health (Department). These inspections are an integral oversight mechanism to ensure compliance with state and federal requirements, such as those relating to infection control.

Throughout the pandemic, Congress has provided billions of dollars in funding for states and nursing homes to address personal protective equipment, testing, and staffing needs. Funding has also been provided to boost state survey agency efforts to inspect facilities. To date, over \$7 billion in Provider Relief Funds has gone directly to nursing homes. Most recently, the federal government established a partnership with certain retail pharmacies to ensure all long-term care residents are prioritized for COVID-19 vaccination. This effort has resulted in the vast majority of residents and staff receiving at least one dose of a vaccine and many being fully vaccinated.¹

In the early days of the pandemic, it became clear that long-term care residents faced a higher risk of severe illness and death. Between February 27 and March 9, 2020, the virus decimated a long-term care facility in King County, Washington, resulting in 81 confirmed cases and 22 deaths among residents.² On February 29, 2020 – more than a week before a case had been confirmed in Pennsylvania – the Centers for Disease Control and Prevention reported that a

¹ CVS Health, vaccine data as of 3/8, <https://cvshealth.com/sites/default/files/cvs-health-covid-19-vaccination-data.pdf>

² Centers for Disease Control, “COVID-19 in a Long-Term Care Facility — King County, Washington, February 27–March 9, 2020,” March 27, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e1.htm>

quarter of the residents in the King County facility were showing symptoms.³ On March 4, 2020 – two days before the first case of COVID-19 was announced in Pennsylvania – the *New York Times* reported that there was increased vulnerability among seniors in nursing homes.⁴

Despite the real-time events occurring in Washington State, the Department fell far behind its peers in nursing home inspections. On March 4, 2020, the Centers for Medicare and Medicaid Services (CMS) directed states to pause annual survey inspections and instead focus on infection control surveys – those most targeted towards preventing COVID-19 outbreaks. By June 1st, only 16.3 percent of Pennsylvania's nursing homes had been inspected for infection control – ranking 46th in the nation.^{5,6}

Additionally, the American Association of Retired Persons (AARP) reported Pennsylvania provided lower levels of PPE to nursing homes compared to other states.⁷ This made it even more difficult for nursing home staff to minimize transmission. The Department also failed to provide accurate and transparent public data on nursing home deaths in a timely manner.⁸

These actions, coupled with the decision to strongly encourage facilities to accept patients infected with COVID-19, suggests that the Department lacked public health prevention methods that would keep vulnerable Pennsylvanians out of the crosshairs of the virus.

The results have been tragic. More than half of Pennsylvanians whose deaths have been attributed to COVID-19 were nursing homes residents.⁹ In May of 2020, nearly 70 percent of all fatalities related to COVID-19 in Pennsylvania had occurred in long-term care facilities, compared to just 37 percent nationwide.¹⁰ According to the *New York Times*, four of the top twelve long-term care facilities with the most COVID-19 deaths nationwide are located in Pennsylvania.¹¹ One facility, the Brighton Rehabilitation and Wellness Center (Brighton), had a well-documented history of infection control deficiencies. The facility had received a violation

³ Eric Boodman and Helen Branswell, “First Covid-19 outbreak in a U.S. nursing home raises concerns” STAT News, February 29, 2020, <https://www.statnews.com/2020/02/29/new-covid-19-death-raises-concerns-about-virus-spread-in-nursing-homes/>

⁴ Karen Weise, Amy Harmon, and Sheri Fink, “Why Washington State? How Did It Start? Questions Answered on the U.S. Coronavirus Outbreak,” *New York Times*, March 4, 2020, <https://www.nytimes.com/2020/03/04/us/coronavirus-in-washington-state.html>

⁵ Centers for Medicare and Medicaid Services, “Nursing Home COVID-19 Data,” Centers for Medicare and Medicaid Services, <https://www.cms.gov/files/document/6120-nursing-home-covid-19-data.pdf>

⁶ Paula Sanders, “CMS Ratchets Up Enforcement for States and LTC Facilities,” *Post and Schell*, June 5 2020, https://www.phca.org/wp-content/uploads/2020/06/ACTIVE_20401396_1.pdf

⁷ AARP Dashboard, “AARP Nursing Home COVID-19 Dashboard – Pennsylvania State Fact Sheet,” January 2021, <https://www.aarp.org/content/dam/aarp/ppi/pdf/2021/01/pennsylvania-nursing-home-dashboard-january-2021-aarp.pdf>

⁸ Jamie Martines, “Feds to Fine Brighton Nursing Home at Least \$62K for Coronavirus Response,” *Trib Live*, June 11 2020, <https://triblive.com/local/regional/feds-to-fine-brighton-nursing-home-at-least-62k-for-coronavirus-response/>

⁹ Pennsylvania Department of Health, “COVID-19 Long-Term Care Facilities Data for Pennsylvania,” PA DOH, <https://www.health.pa.gov/topics/disease/coronavirus/Pages/LTCF-Data.aspx>

¹⁰ Karen Yourish, K.K. Rebecca Lai, Danielle Ivory and Mitch Smith, “One-Third of All U.S. Coronavirus Deaths Are Nursing Home Residents or Workers,” *New York Times*, May 11, 2020, <https://www.nytimes.com/interactive/2020/05/09/us/coronavirus-cases-nursing-homes-us.html>

¹¹ Matthew Conlen, et. al., “More than One-Third of U.S. Coronavirus Deaths Are Linked to Nursing Homes,” *The New York Times*, February 12, 2021, <https://www.nytimes.com/interactive/2020/us/coronavirus-nursing-homes.html>

for inadequate infection control procedures less than one year before the pandemic started. In fact, state surveyors from the Department certified that the facility had corrected its deficiencies just four months prior to the deadly outbreak at Brighton. Despite clear knowledge of Brighton’s history of infection control deficiencies, it does not seem that the Department took any actions to help the facility prepare for or prevent a fatal outbreak in the days leading up to the state’s first reported case.

Further, under the previous leadership, the Department failed to address longstanding issues identified in state-led audits that put residents at a higher risk of death.^{12,13} In 2019, Pennsylvania’s Auditor General wrote that “we are facing an elder care crisis, and we continue to ignore it at our own peril.”¹⁴

We are interested in ensuring actions are being taken to prevent the mistakes from early in the COVID-19 pandemic from occurring again. As such, we request that you please provide answers to the following questions on the Department’s pandemic response under the previous leadership and elaborate on the changes that will be implemented to strengthen senior protections moving forward.

1. What actions, if any, did the Department take to provide assistance to nursing homes before the first case of COVID-19 was reported in Pennsylvania?
2. Did state surveyors or anyone else at the Department perform outreach, in-person or virtual, to nursing homes with known infection control deficiencies before the first case of COVID-19 was reported in Pennsylvania?
3. Before April 27, 2020, what early-intervention support did the Department provide to nursing homes with histories of infection control deficiencies or known cases of COVID-19?
4. Between April 27, 2020, and December 31, 2020, how many nursing homes did the Emergency Care Research Institute (ECRI) consult with regarding their infection control procedures?

¹² Centers for Disease Control, “Increased Risk of Hospitalization or Death”, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html#:~:text=Help%20at%20Home-.The%20risk%20for%20severe%20illness%20with%20COVID%2D19%20increases%20with,than%20people%20in%20their%2050s.>

¹³ Rebecca Moss, “The Coronavirus Exploited Failure of PA Health Officials to Improve Long-Standing Problems with Nursing Home Oversight,” Spotlight PA, June 13 2020, <https://www.spotlightpa.org/news/2020/06/pennsylvania-coronavirus-nursing-homes-staffing-audits-problems-deaths/>.

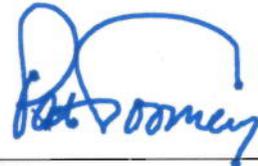
¹⁴ Auditor General Eugene DePasquale, “Who Will Care for Mom & Dad? Preparing for the Senior Population Explosion: A Special Report by Auditor General Eugene DePasquale,” Pennsylvania Department of the Auditor General, July 23, 2019, <https://www.paauditor.gov/press-releases/auditor-general-depasquale-state-improves-nursing-home-oversight-but-action-needed-now-to-prepare-for-wave-of-older-adults>

5. Did the Department provide guidance to ECRI management that audio-only, rather than video, phone consultations were the preferred method for outreach to nursing homes during the pandemic?¹⁵ If so, why was this guidance provided to ECRI?
6. Why was the Department delinquent in its performance of infection control surveys, per CMS instruction?
7. What procedures will the Department take to improve state surveyor performance?
8. As the virus continues to circulate in the U.S., how does the Department plan to provide ongoing resources and support to nursing homes to protect existing and future residents, including through vaccination efforts and the adequate procurement of PPE and testing materials?
9. While the federal government operates the Pharmacy Partnership for Long-term Care Program, it gave states flexibility to choose when to activate components of the program. In Part A, vaccinations would be provided to skilled nursing facilities. In Part B, vaccinations would be provided to other facilities such as assisted living facilities and continuing care facilities. The Department chose to activate Part A first, which resulted in cases where pharmacies delivering the vaccines could not vaccinate the entire care setting. By not simultaneously activating the Part A and Part B components, the state created inequities and inefficiencies in the administration of the vaccine. Why did the Department make the decision to not allow pharmacies to vaccinate both the skilled nursing units and the assisted living/personal care units in the same building?

We look forward to your timely response.



Lloyd Smucker (PA-11)
United States Representative



Pat Toomey
United States Senator



Mike Kelly (PA-16)
United States Representative



Guy Reschenthaler (PA-14)
United States Representative

¹⁵ Aneri Pattani, "Pa. had early plan to protect nursing homes from the coronavirus, but never fully implemented it," Spotlight PA, May 9, 2020, <https://www.spotlightpa.org/news/2020/05/pennsylvania-coronavirus-nursing-homes-plan-quick-strike-teams/>



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