



**House Committee on Ways and Means
Subcommittee on Health**

Examining the COVID-19 Nursing Home Crisis

June 25, 2020

2:00 PM, Remote Hearing via CISCO WebEx

Purpose

The purpose of this hearing is to examine the state of nursing homes amid the COVID-19 crisis.

Members Present

Chairman Doggett, Ranking member Nunes, Representatives Reed, Thompson, Buchanan, Blumenauer, Smith, Higgins, Reed, Chu, Holding, Sewell, Evans, Walorski, Schneider, Horsford, Kelly, Pascrell, Davis, Wenstrup, Byer Panetta, Estes

Witnesses

Delia Satterwhite, Family Member

Melinda Haschak, Licensed Practical Nurse, Regalcare at Southport

Nicole Howell, Executive Director, Ombudsman Services of Contra Costa Inc.

Toby S. Edelman, JD, Senior Policy Attorney, Center for Medicare Advocacy

David Grabowski, PhD, Professor, Harvard Medical School

Dana Kennedy, Arizona State Director, AARP

Rebecca Gould, President/Chief Executive Officer, Schuyler Hospital

Opening Statements

Chairman Doggett said that the Wall Street Journal estimates that 50,000 nursing home residents have died as a result of COVID-19. Remarkably, less than 1% of the US population can account for over 50% of the deaths related to COVID-19. Unfortunately, Seema Verma has not answered repeated requests to sit in front of this committee. Disparities within the nursing home system have existed long before this pandemic. However, this pandemic has exposed all of the flaws within these residencies. Residents within nursing homes deserve to be treated with dignity and respect. Unfortunately, there is a financial incentive for some homes to act in ways which harms their residents. Much of this crisis could have been prevented with proactive federal leadership. Sadly, the Trump administration wants to deny any problem exists. Local journalists have been essential in uncovering the true stories happening in these nursing homes. These journalists should not be the only source of oversight for these facilities. These homes are lacking diagnostic equipment and appropriate levels of PPE. When these homes got equipment from the federal government, it was often unusable. Congress must act to place meaningful accountability measures and oversight on these nursing home facilities.

Ranking member Nunes said that a significant amount of COVID-19 deaths can be attributed to residents in nursing homes. This is a tragedy. Life is different for residents and family members of residents in these nursing homes. Congress must act quickly to protect this vulnerable population. In the past, this committee has worked on a bipartisan basis to allocate resources to these facilities. Luckily, the Trump administration has been proactive in providing resources to nursing homes. The administration remains dedicated to protecting residents in nursing homes. Today's panelists will help to provide insight into actions this committee should take to mitigate the burden in nursing homes. Nursing homes must be protected with the appropriate levels of diagnostic supplies and PPE.

Rep. Neal said that it has been very hard to get the administration to address gaps in oversight of nursing homes. The need for urgent action in nursing homes is not new. The same challenges that exist today have existed for many years. It simply took a global pandemic to bring this conversation to the forefront. The lack of appropriate staffing levels and PPE has led to a surge in cases in these facilities. Nursing home facilities need significantly more support than they are currently getting. Across the country, staff continue to report that they do not have access to vital resources. The federal government has not provided enough support in this area.

Testimony

Ms. Satterwhite said that her brother Stephan Morales passed away on April 16, 2020 from COVID-19 that he contracted while residing at Riverside Nursing and Rehabilitation Center here in Austin. When the nursing homes went on lockdown on March 13, 2020, she had seen her brother just the week before the lockdown, he was in good spirits. The day before her next visit she was called and told that they were going to lock the facility down and no visitors were allowed. After the lockdown, it was hard to reach any of the staff at Riverside. They did not want to take her phone calls and would put her on hold for so long that her lunch break would be over before she could ask how her brother was doing. She was eventually contacted on April 3, 2020 that her brother was being isolated because he was running a fever and coughing. He tested positive for COVID-19 the following week and then developed pneumonia. She requested that he be sent to the hospital to receive the medical care that he needed. The nursing home refused, and he passed away in his room on April 16. I don't blame the workers. They were doing their job. They should have been given the PPE they needed to keep them and their patients safe. And if someone was sick, they should have been given leave to stay home. The nursing homes also need to be testing everyone all the time. Someone can test negative today, but have a positive test next week. If we were testing and providing PPE, the virus wouldn't have gotten to her brother.

Ms. Haschak said though working to take care of residents is very rewarding, her workplace can often be unnecessarily stressful and difficult. Just in the last three years that she has worked at her facility, they had 5 different administrators, all with different sets of policies. It made lives hectic. So her coworkers and decided enough was enough and we voted to unionize last year though are still fighting for our first contract. Some of the things they asked for were time and a half pay, holiday pay, tuition reimbursements, family-sustaining wages to help with short staffing and a training fund. They also wanted a more reasonable healthcare plan that can include families. The pandemic has only deepened the need for what they are fighting for and made the problems that already existed worse. Her facility was hit hard by the PPE shortages. It was so bad that she had to

find PPE for herself and co-workers using her own money and the help of friends and family members. Unfortunately, she contracted COVID-19 at work.

Ms. Howell said Long-term care ombudsmen are charged with protecting the rights of residents who live in licensed long-term care facilities, including skilled nursing facilities as well as other congregate settings, including what is commonly referred to as assisted living. COVID-19 is an opportunistic disease that continues to prey on our most vulnerable citizens and exploit the foundational weaknesses within a web of regulation and safety net services. Assisted living costs at least \$5,000 per month, pricing many out of access and leaving our most vulnerable hard-working adults reliant on the Medicaid system as they age. Forced to seek care and housing within a skilled nursing facility that was not designed to meet their long-term care needs, many Medicaid patients were placed directly in the path of COVID-19 and its deadly impacts. These residents are often in stark contrast to Medicare patients who are only at a skilled nursing facility for a short stay following a hospitalization and require therapy and care along with a healthy dose of visits from concerned family and friends. It is important to note that facilities that have significant numbers of African Americans and Latino residents, irrespective of facility size, rating, or location, are twice as likely to have Coronavirus infection as those facilities whose residents are white. Due to longstanding inequalities in this country, these residents often have had poorer quality health care throughout their lives and rely on Medicaid to pay for long-term care. This crisis is the direct result of inadequate resources, staffing, and regulation to protect these precious lives.

Ms. Edelman said these past several months have brought to fuller public awareness the deadly consequences of poor care, inadequate staffing levels, and treatment of regulations intended to ensure good care for residents as burdens on facilities that need to be eliminated. Although many of these problems in nursing facilities have been identified for decades, they have been made worse by recent deregulatory actions and the coronavirus pandemic. Essential changes are needed. From its earliest days, the Trump Administration has taken steps to weaken and dismantle the regulations and guidance that have been developed over the past 30 years to implement and enforce the federal Nursing Home Reform Law. Following announcement of the public health emergency, CMS unilaterally made many significant changes to federal standards of care, survey, and enforcement. During the pandemic, many changes are needed. CMS needs to reinstate, as quickly as possible, resident protections that have been waived. Urgent issues are ensuring that residents are able to visit with their families and ombudsmen in person again; that residents have a voice in where they are moved, if they need to be transferred for the limited purpose of grouping residents by COVID-19 status; that residents be guaranteed the right to return to their facility at a later time; that residents and their families be given full and accurate information about their facility's COVID-19 status. CMS must require facilities to report resident assessment and staffing data, retroactively to the beginning of the pandemic, and CMS must immediately reinstate a comprehensive survey and enforcement process. For the longer term, all facilities must have sufficient numbers of well-trained, well-supervised, and well compensated nursing staff. Finally the survey and enforcement systems, which have failed to ensure that facilities fully meet federal standards of care, need to be significantly strengthened.

Dr. Grabowski said it didn't have to be this way. Much of the negative impact of COVID in nursing homes could have been avoided with increased federal leadership, resources, and attention. Rather than prioritizing the safety of the 1.3 million individuals that live in nursing homes and the roughly one million direct care staff, the federal government chose to push the logistics and cost off to the states and nursing homes. By failing to invest in testing, personal protective equipment and the workforce, the federal government allowed a problem that could have been contained to grow into a national crisis. The U.S. nursing home market has a series of features that lead to persistent low quality. These features were present prior to the pandemic and they have exacerbated the pandemic. Nursing homes were not operating from a position of strength prior to COVID. The way in which we regulate and oversee care quality, how we pay for nursing home services, and the inability of many residents to oversee and monitor their care all have contributed to the longstanding crisis in nursing homes. Every nursing home in the country needs access to quick and accurate testing, adequate PPE, and a strong workforce. We need to continue to invest in specialized nursing home settings for post-hospital patients. We need to get families back into nursing homes with their loved ones as soon as is safely possible. Finally, we need to continue to improve the data infrastructure around tracking of COVID cases and fatalities.

Ms. Kennedy said nursing homes and other long-term care facilities are ground zero in the fight against the coronavirus, representing a shockingly high share of deaths. The Wall Street Journal now reports that over 50,000 Americans have died in nursing homes and other long-term care facilities. While people living in nursing homes represent less than one percent of the U.S. population, these individuals represent 40 percent of the COVID-19 deaths. AARP urges action on a five-point plan to slow the spread and save lives: 1. Care facilities must have the personal protective equipment (PPE) and testing they need to identify cases, both in staff and residents, and prevent the spread of the virus. 2. There must be adequate staffing to provide necessary care. Staff/resident levels must be maintained despite a potential reduction in workforce due to COVID-19 related circumstances. Furthermore, long-term care Ombudsmen must be allowed back into facilities. 3. Care facilities must be transparent and report publicly on a daily basis whether they have confirmed COVID-19 cases; residents and families need information when loved ones are discharged or transferred out of their room or facility; and federal provider relief funds for nursing homes must be used for testing, PPE, staffing, and other items that are transparent and directly relate to COVID-19 resident care, prevention, and treatment. 4. Virtual visitation must be made available and facilitated on a regular basis as a safety measure between residents and their families. Connecting virtually is also essential to the health and wellbeing of residents, including protecting against social isolation. 5. Proposals to grant blanket immunity related to COVID-19 for nursing homes, assisted living facilities, and other long-term care facilities must be rejected.

Ms. Gould said that keeping up with the constant regulatory changes is laborious; however, we understand the need to keep the Skilled Nursing Facility (SNF) residents safe and have done everything to comply. Prior to COVID-19 there was a nationwide shortage of Registered Nurses (RN) and Certified Nursing Assistants (CNA); therefore we were often running at minimum staffing levels. With COVID-19 regulations, we are experiencing this staffing shortage even more as we are required to assign an RN to swab staff to test for COVID and utilizing unit clerks and

C.N.A.'s to cover the screening tables to monitor staff for symptoms including fever. This draws attention to the staffing shortages and ultimately the possibility of diminished quality of care in some intuitions. In addition, the reassignment of staff means less actual face time of nursing staff to resident. Furthermore, a separate statewide order requiring SNF's to work to confine residents to their rooms has stretched activities staff and their ability to provide quality activities to residents. Finally, the COVID virus itself has created an increase in staff on disability insurance (DBA) either due to risk or anxiety surrounding possible illness - again, putting pressure on already scarce resources. Governor Cuomo has also issued an order originally requiring biweekly testing of all staff, regardless whether the facility is in an outbreak area or an area that has not had an active case. Most SNF's run on thin margins to begin with, being required to provide staff testing bi-weekly and now weekly is a burden. If we do not receive funding, this will not be sustainable.

Questions and Answers

Chairman Doggett asked what the effect has been in having a fragmented government response in securing PPE. **Dr. Grabowski** said that it has resulted in a lot of pointing fingers. No one wants to own the issue. The supply chain should be nationalized. **Chairman Doggett** asked if CMS has created an oversight commission. **Dr. Grabowski** said yes. **Chairman Doggett** asked if the CMS oversight commission meetings are open to the public. **Dr. Grabowski** said no. **Chairman Doggett** asked if people are being evicted from nursing homes and placed into homeless shelters. **Ms. Howell** said when facilities do not think they can meet the needs of resident they will often discharge them to an alternative care site. Some skilled nursing facilities have exploited this and have started to discharge residents they don't want to take care of. **Chairman Doggett** asked if residents get better care when family members are allowed in the facility. **Ms. Howell** said yes. **Chairman Doggett** asked if nursing homes should be granted immunity. **Ms. Kennedy** said no. Many of these facilities need to be held accountable. **Chairman Doggett** asked how a medical loss ratio would work in nursing homes. **Ms. Edelman** said that nursing homes should have an obligation to spend funds on a portion of care for residents.

Rep. Thompson asked how important it is to increase wages in nursing homes. **Ms. Howell** said that long term care does not pay staff appropriately for the level of training they are requiring. It is understandable when staff members refuse to come for work when their wages are so low. **Rep. Thompson** asked if the Trump Administration had a clear plan to distribute PPE. **Dr. Grabowski** said no. Because of the bidding environment around PPE, nursing homes could not afford them.

Rep. Buchanan asked if more needs to be done in the mental health space within nursing homes. **Ms. Gould** said yes. But these solutions need to be made on a resident by resident basis. **Rep. Buchanan** asked how to best deliver PPE supplies to nursing homes. **Ms. Kennedy** said that funding should be prioritized to go to nursing homes and assisted living facilities. **Rep. Buchanan** asked if these facilities need more money. **Ms. Kennedy** said yes.

Rep. Blumenauer asked if there should be more guardrails on how funds received by nursing homes are used. **Dr. Grabowski** said yes. These resources should not go to private equity firms or

CEOs. Instead they should go directly to the workforce. Installing a medical loss ratio could be a solution. **Rep. Blumenauer** asked what Congress should do to mandate testing and supplying PPE. **Ms. Edelman** said that testing should be mandated. This mandate should apply to all residents, especially the asymptomatic patients. This will help to allocate resources in the appropriate areas.

Rep. Smith asked what lessons have been learned surrounding telehealth. **Ms. Gould** said that telehealth is a great option to protect residents and make their care more convenient. Telehealth is here to stay. **Rep. Smith** asked how much longer family can be banned from entering nursing homes. **Ms. Gould** said banning family members is not sustainable. It ruins the mental health of residents.

Rep. Higgins asked how NY's response to COVID has compared to other states. **Dr. Grabowski** said the reason the rates in NY facilities were so high, was because rates in the surrounding communities were very high. **Rep. Higgins** asked if we will have a vaccine by the end of the year. **Dr. Grabowski** said that is very unlikely. **Rep. Higgins** asked if the US committed to developing a coronavirus vaccine in 2003, would a vaccine be developed by now. **Dr. Grabowski** said that it is fair to say that progress would be farther along.

Rep. Reed asked if COVID-19 positive seniors should be ordered to go into nursing home facilities. **Dr. Grabowski** said no. **Rep. Reed** asked if Governors ever apologized for this policy. **Dr. Grabowski** said no. But they were following a CMS guidance. **Rep. Grabowski** asked if nursing homes staff were consulted in the ordering of this policy. **Ms. Gould** said no. **Rep. Grabowski** asked how Ms. Gould responded to this order. **Ms. Gould** said her facility decided to treat COVID-19 positive patients in hospitals.

Rep. Chu asked what issues arise when a facility doesn't have sufficient staff. **Ms. Haschak** said that each worker has to take on more responsibility. This means that often, simple tasks get left unattended. It also takes a serious toll on the workers mental health. **Rep. Chu** asked why it is essential for nursing homes to resume submitting staffing data through the payroll based journal system. **Ms. Edelman** said that the staffing information that is being submitted now is much more accurate now than when it was being self-reported. It is important to have an accurate staffing landscape.

Rep. Holding asked what barriers exist to using telehealth. **Rep. Gould** said that it is not always clinically appropriate to use telehealth. Second, reimbursement is also a significant hurdle to utilizing more telehealth. Finally, some facilities lack the appropriate infrastructure.

Rep. Sewell asked what can be done to address work force shortages. **Dr. Grabowski** said workers need to be paid more. These same workers need to have better benefits such as paid time off and better health insurance. **Ms. Edelman** said that there should be specific staffing ratios in nursing homes.

Rep. Evans asked if inaction at the federal level has made racial disparities worse. **Dr. Grabowski** said yes. These disparities have long existed but they have gotten much worse. **Rep. Evans** asked what needs to change. **Dr. Grabowski** said every nursing homes needs adequate PPE and diagnostic equipment.

Rep. Walorski asked if forcing facilities to accept COVID-19 patients puts residents at risk. **Ms. Gould** said yes. However, this is exacerbated by the lack of PPE.

Rep. Schneider asked how the lack of PPE has affected nursing homes. **Ms. Haschak** said that many workers have to supply their own PPE, they have to reuse PPE and often wear unapproved PPE. **Rep. Schneider** asked what Congress should do to secure the supply chain. **Dr. Grabowski** said that the supply chain should be nationalized.

Rep. Horsford asked what long standing health disparities communities of color face. **Ms. Howell** said the healthcare system has not been built to address this population's need. A majority of these individuals are covered by Medicaid. Unfortunately Medicaid reimburses very low and does not provide many health care options. Home health would often be beneficial for these individuals.

Rep. Kelly asked what the one thing Congress should do is. **Ms. Gould** said coming up with regional strategies to keep COVID-19 positive residents out of nursing homes would be beneficial. Most decisions should be made at the regional level. Staffing incentives should also be adopted. **Ms. Kennedy** said facilities should publicly report cases on a daily basis.

Rep. Pascrell asked what are the harmful impacts of deregulation on nursing home residents. **Dr. Grabowski** said the lack of regulation leads to poor practices and abuse. **Ms. Edelman** said that the lack of oversight contributes to the spread of infectious diseases. Staff members and facility managers often do not follow necessary guidance's without oversight.

Rep. Davis asked where the gaps are in inspection, surveillance and enforcement. **Ms. Edelman** said that for the last 3 months, CMS has told states to stop doing surveys. This has created a significant gap. **Rep. Davis** asked if private equity can harm patient care. **Dr. Grabowski** said that private equity groups are protected while the operators of nursing homes are not. This can impact the quality of care delivered in nursing homes.

Rep. Byer asked what the delay in data transparency has meant to nursing homes. **Dr. Grabowski** said it caused two problems. First it caused a delaying diagnosing the problem. Second, it was difficult to learn which facilities needed resources more than others. **Rep. Byer** asked how rolling back regulations lead to the crisis in nursing homes. **Ms. Edelman** said that the lack of oversight in nursing homes has made the quality of care in nursing homes significantly worse. **Rep. Byer** asked if cost issues are tied to low Medicare reimbursement rates. **Ms. Edelman** said that private equity involvement has been a very serious problem. These firms cut staff in many residents. They have also sold the real estate which is the most valuable asset of these nursing homes.

Rep. Panetta asked if there is any way to incentivize staffing in skilled nursing facilities. **Ms. Kennedy** said yes. Facilities should offer hazard pay. **Rep. Panetta** asked what Congress should know to prevent patient harm. **Ms. Satterwhite** said there needs to be more testing in facilities.

Rep. Estes asked if it would be beneficial to in-house training for CNAs in nursing homes. **Ms. Gould** said yes. There needs to be more compensation for CNAs.

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